

BOA
MOTIONS

1. I move to convene as the Board of Adjustment.

PRESENTATION OF PARTIES

- A. I move to reconsider the Assembly's decision sitting as the Board of Adjustment on February 28, 2012 granting a Conditional Use Permit filed by Dawn Mahoney-Menendez for a more than 4 children Day Care at 506 First Street, based on the recommendation of the Planning Commission at their January 17, 2012 meeting.

OR

- B. I move to remand this matter back to the Planning Commission for further review and recommendation.

2. I move to reconvene as the Assembly in regular session.

Informational Only...
Excerpt from Sitka General Code

22.30.190 Reconsideration.

A party to a public hearing or closed record appeal may seek reconsideration only of a final decision by filing a written request for reconsideration with the administrator within fourteen calendar days of the oral announcement of the final decision.

The Assembly shall consider the request at its next regularly scheduled meeting. If the request is denied, the previous action shall become final. If the request is granted, the assembly body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals.

BOA – HEARING OUTLINE SUMMARY
Conditional Use Permit

- I. **Board of Adjustment** (BOA) - Assembly (*SGC 22.30.060A*)
- A. Quasi-Judicial – avoid *ex parte* contacts
 - B. Authority to approve or deny conditional use permits -*SGC 22.30.060A*
 - C. Assembly’s Other Options - *SGC 22.30.170B.1*
 - 1. Approve Planning Comm’n recommendation
 - 2. Approve with additional conditions
 - 3. Modify with or without applicant’s consent (some limitations)
 - 4. Deny application
 - 5. Remand –
 - a. Issues not covered
 - b. Procedural due process problems (new pertinent evidence)
- II. **Review Criteria**
- A. Assembly reviews Planning Comm’n recommended decision regarding conditional use permit applications – *SGC 22.30.050F*
 - B. Planning Comm’n decision and recommendation in this case regarding conditional use permit applications subject to Assembly review
 - C. Nature of the review by Assembly – review recommended Findings of Fact and General Approval Criteria Considerations and proposed conditions made by Planning Commission regarding each conditional use permit application
 - 1. **FF criteria– All criteria must be met (SGC 22.30.160C)**
 - a. Not detrimental to public health, safety, general welfare;
 - b. Not adversely affect established character of surrounding vicinity;
 - c. Not injurious to uses, property or improvements adjacent to or in vicinity;
 - d. Not inconsistent with Comprehensive Plan;
 - e. Conditions to lessen impacts are monitorable & enforceable
 - f. No hazardous conditions that cannot be mitigated regarding adjacent & vicinity properties ; and
 - g. Not adversely affect public facilities & services, or imposed conditions mitigate impact.
 - 2. **General Approval Criteria Considerations (SGC 22.20.160C)**
 - a. Effects of the conditional use on site (topography, slope and soil stability) and geophysical hazards (flooding, surface and subsurface drainage, water quality);
 - b. Utilities and service requirements (sewers, storm drainage, water, fire protection, access and electrical power);

- c. Lot or tract characteristics (lot size, yard requirements, lot coverage and height of structures);
 - d. Use characteristics that affect adjacent uses and districts (operating hours; number of persons, traffic, parking and loading, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements); and
 - e. Community appearance (landscaping, fencing, screening).
3. **Proposed Conditions**

III. BOA Procedure

A. **Packet Review**

- 1. Planning Comm'n FF and motions
- 2. Planning Comm'n minutes
- 3. Planning Comm'n record (written submissions)

B. **Hearing (SGC 22.30.180)**

- 1. Follow Assembly procedures
- 2. Order
 - a. Staff
 - b. Applicant
 - c. Public
 - d. Rebuttal
 - i. Staff
 - ii. Applicant
 - e. Close evidentiary hearing – Deliberate
 - f. Make Findings of Fact & Decision
 - i. Planning Comm'n recommended Findings of Fact and conditions
 - ii. Modify FF and conditions (use *SGC 22.30.160C* criteria)

C. **Burden of proof on Applicant (SGC 22.30.160C.6)**

D. Assembly Options – See Section I.B above

IV. Actions after Assembly Decision

A. **Remand - *SGC 22.30.200***

B. **Reconsideration - *SGC 22.30.190***

C. **Judicial Appeal (Superior Court – Sitka) - *SGC 22.30240A***

BOA – HEARING OUTLINE
Conditional Use Permit

- I. **Board of Adjustment** (BOA) - Assembly (*SGC 22.30.060A*)
- A. Quasi-judicial – avoid *ex parte* contacts
 - B. Authority to approve or deny conditional use permits -*SGC 22.30.060A*¹
 - C. Assembly's Other Options - *SGC 22.30.170B.1*²
 - 1. Approve Planning Comm'n recommendation
 - 2. Approve with additional conditions
 - 3. Modify with or without applicant's consent (some limitations)
 - 4. Deny application
 - 5. Remand –
 - a. Issues not covered
 - b. Procedural due process problems (new pertinent evidence)
- II. **Review Criteria**
- A. Assembly reviews Planning Comm'n recommended decision regarding conditional use permit applications – *SGC 22.30.050F*³

¹ *SGC 22.30.060 Board of adjustment.*

The assembly of the city and borough shall function as the board of adjustment with the authority to:

- A. *Approve or deny conditional use permits.*

* * *

² *SGC 22.30.170 Assembly actions.* (emphasis added)

* * *

- B. *Decisions. The assembly shall make its decision by motion or ordinance as appropriate.*

- 1. *An assembly decision on a planning commission recommendation or following a public hearing shall include one of the following actions:*

- a. *Approve as recommended.*

- b. *Approve with additional conditions.*

- c. *Modify, with or without the applicant's concurrence; provided, that the modifications do not:*

- i. *Enlarge the area or scope of the project.*

- ii. *Increase the density or proposed building size.*

- iii. *Significantly increase adverse environmental impacts as determined by the responsible official.*

- d. *Deny (reapplication or resubmittal is permitted).*

- e. *Deny with prejudice (reapplication or resubmittal is not allowed for one year).*

- f. *Remand for further proceedings.*

³ *SGC 22.30.050 Planning commission.*

The planning commission shall be constituted in accordance with Chapter 2.18 of this code and the Sitka Home Rule Charter and shall have the responsibility of reviewing and acting on the following:

* * *

B. Planning Comm'n decision and recommendation in this case regarding conditional use permit applications subject to Assembly review

C. Nature of the review by Assembly – review recommended Findings of Fact and General Approval Criteria Considerations and proposed conditions made by Planning Commission regarding each conditional use permit application

1. **FF criteria– All criteria must be met (SGC 22.30.160C)**
 - a. Not detrimental to public health, safety, general welfare;
 - b. Not adversely affect established character of surrounding vicinity;
 - c. Not injurious to uses, property or improvements adjacent to or in vicinity;
 - d. Not inconsistent with Comprehensive Plan;
 - e. Conditions to lessen impacts are monitorable & enforceable
 - f. No hazardous conditions that cannot be mitigated regarding adjacent & vicinity properties ; and
 - g. Not adversely affect public facilities & services, or imposed conditions mitigate impact.

2. **General Approval Criteria Considerations (SGC 22.20.160C)**
 - a. Effects of the conditional use on site (topography, slope and soil stability) and geophysical hazards (flooding, surface and subsurface drainage, water quality);
 - b. Utilities and service requirements (sewers, storm drainage, water, fire protection, access and electrical power);
 - c. Lot or tract characteristics (lot size, yard requirements, lot coverage and height of structures);
 - d. Use characteristics that affect adjacent uses and districts (operating hours; number of persons, traffic, parking and loading, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements); and
 - e. Community appearance (landscaping, fencing, screening).

3. **Proposed Conditions**

F. Recommendations on conditional use permit applications.

* * *

4. SGC 22.30.160C – Planning Comm'n decision requirements⁴

⁴ SGC 22.30.160 Planning commission review and recommendation. (emphasis added)

Planning commission decision and action authority is defined in Section 22.30.050.

* * *

C. *Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:*

1. *The city may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:*

- a. *Be detrimental to the public health, safety, and general welfare;*
- b. *Adversely affect the established character of the surrounding vicinity; nor*
- c. *Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.*

2. *The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives and policies of the comprehensive plan and any implementing regulation.*

3. *All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.*

4. *The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.*

5. *The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.*

6. *Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.*

The city may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The general approval criteria are as follows:

1. *Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;*

2. *Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;*

3. *Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;*

4. *Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking*

III. BOA Procedure

A. Packet Review

1. Planning Comm'n FF and motions
2. Planning Comm'n minutes
3. Planning Comm'n record (written submissions)

B. Hearing (SGC 22.30.180)⁵

1. Follow Assembly procedures
2. Order
 - a. Staff
 - b. Applicant
 - c. Public
 - d. Rebuttal
 - i. Staff
 - ii. Applicant
 - e. Close evidentiary hearing – Deliberate
 - f. Make Findings of Fact & Decision
 - i. Planning Comm'n recommended Findings of Fact and conditions
 - ii. Modify FF and conditions (use *SGC 22.30.160C* criteria)

C. Burden of proof on Applicant (SGC 22.30.160C.6)⁶

and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;

5. *Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.*

⁵ *SGC 22.30.180 Procedures for public hearings.* (emphasis added)

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. The chair shall open the public hearing and, in general, observe the following sequence of events:

- A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.
- B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
- C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the chair at its discretion.
- D. Rebuttal, response or clarifying statements by the staff and the applicant.
- E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.

⁶ *SGC 22.30.160 Planning commission review and recommendation.* (emphasis added)

D. Assembly Options – See Section I.B above

IV. Actions after Assembly Decision

A. Remand - *SGC 22.30.200*⁷

B. Reconsideration - *SGC 22.30.190*⁸

C. Judicial Appeal (Superior Court – Sitka) - *SGC 22.30240A*⁹

C. *Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:*

* * *

6. **Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.**

⁷ *SGC 22.30.200 Remand.*

In the event the assembly determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the assembly may remand the matter back to the hearing body. The assembly shall specify the items or issues to be considered and the time frame for completing the additional work. The assembly may hold a public hearing on a closed record appeal only for the limited purposes identified in the remand.

⁸ *SGC 22.30.190 Reconsideration.*

A party to a public hearing or closed record appeal may seek reconsideration only of a final decision by filing a written request for reconsideration with the administrator within fourteen calendar days of the oral announcement of the final decision. The assembly shall consider the request at its next regularly scheduled meeting. If the request is denied, the previous action shall become final. If the request is granted, the assembly body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals.

⁹ *SGC 22.30.240 Judicial appeal.*

A. *Appeals from the final decision of the assembly, or other city board or body involving Title 21 SGC, and for which all other appeals specifically authorized have been timely exhausted, shall be made to superior court within thirty days of the date the decision or action became final, unless another time period is established by state law or local ordinance.*

* * *

Connor and Valorie Nelson
107 Littlebyrd Way
Sitka, AK 99835

RECEIVED
MAR - 7 2012

City & Borough of Sitka

City and Borough of Sitka
100 Lincoln Street
Sitka, AK 99835

030712

To City Administrator Dinley and Assemblymembers;

Please consider this letter to be our official request for reconsideration (per SGC 22.30.190) to the Administrator and the Assembly on their approval of the conditional use permit for Menendez Day Care at 506 First Street on February 28, 2012.

We did provide written testimony, making us a party to the public hearing.

/s/Connor and Valorie Nelson

cc: Municipal Clerk

Connor and Valorie Nelson
107 Littlebyrd Way
Sitka, AK 99835
907-747-4589

RECEIVED
MAR - 9 2012

City & Borough of Sitka

030912

To Municipal Clerk;

Please consider this letter to be our official appeal (per SGC 22.30.230) of the approval of the conditional use permit for Menendez Day Care at 506 First Street by the assembly on February 28, 2012.

Our names are Connor and Valorie Nelson, our address is listed above and our interests in the matter are as follows: we are owners of zero lot line (ZLL) subdivision property and the approval of this permit is not legal per SGC. Additionally, the approval of this conditional use permit devalues ours and others zero lot line properties.

Specific Reasons:

1. Item #4 of the conditions for approval states; "The applicant shall submit a plan showing where the four nine feet by eighteen feet parking spaces will be located prior to Assembly review." Item #5 of the conditions for approval states; "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." Clearly the plans submitted and the one you approved do not fit the requirements of conditions #4 and #5, and on this basis alone, the assembly was in error to proceed as the board of adjustment.
2. Item 12 of the conditions for approval – First Street is a dedicated city street, the Menendez's nor the city can obligate the owners to maintain a street that is a responsibility of the city to maintain.
3. Your attorney stated that day cares are permitted conditional uses under the R-1 zoning using Table 22.16.015-3 Accessory Uses under General Services Uses. Tables 22.16.015-1 through Tables 22.16.015-6 apply only to major and minor subdivisions. Chapter 21.24 Zero Lot Line Subdivisions is the only subdivision type that has it's own zoning requirements "21.24.030" built into the subdivision requirement. Per 21.04.030 Scope and Jurisdiction Item C "Zero Lot Line Subdivisions (Chapter 21.24). A subdivision creating lots for residential units with common walls or for building residences on the side lot lines." Clearly the law states zero lot lines are residential. SGC 22.08.720 Residential. "Residential" means activity involving the occupation of a building for living, cooking and sleeping purposes." Nowhere does our code allow for home occupancy or business use in a zero lot line property.
4. In response to Mayor Westover's question "Will this set a precedent?", Wells stated no. Let me point out again ZLLs are permitted in R-1 zones, R-2 zones, C zones and WD zoning. If you allow day care as an accessory use under Table 22.16.015.3, General Services Uses, then under the same table you'd have to allow all the accessory uses, including crematoriums that are a permitted use in the C zones. This will apply to all six Tables, 22.16.015.1 – 6.

030912
Municipal Clerk

5. The language in the party wall agreement is part of the ZLL subdivision requirements, approved by Planning and Zoning prior to plat approval regardless of your view this is a civil matter. The language in chapter 21.24 doesn't change. Under zoning requirements A-1 "One-family structures only". Under 21.24.040 C-2 restricted use to a single-family dwelling only.
6. 22.04.040 Interpretation and Applications of Provision A "It is not intended by this title to interfere with or revoke or invalidate any easement, covenant, or other agreement between parties." The covenant party-wall agreements are owned equally by both parties, both parties agreed "to ensure the use of the property for residential purposes only."
7. Wells stated the conditional use permit was hashed over in three meetings, never once was the subdivision code hashed over as it relates to land use.

The desired outcome is to deny the conditional use permit. At the very minimum this should go back to Planning and Zoning to vet the land uses allowed in ZLL subdivisions. Right now the land use is being determined by one attorney's opinion. This is a Planning and Zoning function.

/s/Connor and Valorie L Nelson

Connor K. Nelson
107 Littlebyrd Way
Sitka, AK 99835
907-747-4589

02/24/12

Re: Menendez Conditional Use Permit Application

Dear Mayor and Assemblymembers;

As stated in my 2/21/12 email to the attorney I'm writing to address the common sense and Sitka General Code (SGC) reasons why these commercial businesses can't be expanded in the Zero Lot Line (ZLL) Subdivisions.

I've received Theresa's memorandum and the case cited is moot. She states in her second paragraph "SGC 21.24.040 does not specify that the party wall agreement can restrict use of the property". SGC 21.24.040 states "This agreement **shall** include, but is not limited to, the following section". Again, one of the sections is C-2 "The restricted use to a single-family dwelling **only** for each lot". By its own definition this would limit it to a residential use. But it also says not limited to, so other restrictions can be added in addition to the "shall include". Remember, the party wall agreement is one part of the package that has to be presented to the planning commission to be passed as part of the ZLL Subdivision.

Theresa also states "Even if it could, this would be contrary to SGC 22.16..015-3 which specifically allows for such R-1 zoned property to operate a day care, etc, etc". SGC 22.16.015-1 specifically allows for a duplex in R-1 as a permitted use, yet if you go to 21.24.030 zoning requirements A-1 "One family structures **only** (no duplex or more per side) so even the language of the ZLL Subdivisions is contrary to specifically allowed uses in 22.16.015-1. In both cases it's a matter of the most restrictive language. ZLL Subdivisions allow for single-family dwelling only. Per SGC 22.08.290 "Single-Family Dwelling" means a detached building constructed on a permanent foundation, and designed for human habitation exclusively and constituting one household.

If you allowed a day care under table 22.16.015-3, then you'd have to allow all the listed uses under table 22.16.015-1 through 22.16.015-6 that fall under the R-1 zoning across to WD zoning as allowable uses on all ZLL lots, as ZLLs are allowed in these zones. Then it would follow any listed use could reasonably use either or both sides of the ZLL lot. For instance, in the R-1 zone you could have a bed and breakfast on one side and a short term rental on the other, and maybe in the C-2 zoning a funeral home/crematorium on one side and a misc. repair shop on the other.

Certainly, the above scenarios are not where the ZLL subdivisions were intended to head. I think that everyone understands that the ZLL subdivision process allows 2 small lots to be made from 1 standard size lot. For instance, R-1 requires 8,000 sq. ft. for a legal lot. Under the ZLL Subdivision that can be made into two 4,000 sq. ft. legal lots. Obviously by the ZLL subdivision codes these small lots are for single-family dwellings

Connor K. Nelson
107 Littlebyrd Way
Sitka, AK 99835
907-747-4589

only. Simply put, nothing more, not even home occupations. 22.08.450 "Home Occupations" means nonresidential use conducted within a dwelling unit by the resident thereof.

I believe you have the party wall agreement in your packet. You'll note it's part of the required filing of Plat 85-8. You can pull this plat up on your computer and see the complete plat with the party wall agreement on the face (the one provided to the commission had the plat notes cut off). Item 3 & 6 of the agreement – the agreement is perpetual and shall run with both parcels as required by SGC. Under item D "The purpose of this document is to ensure the use of the property for residential purposes only." Again, home occupations are a non-residential use.

I'm not sure if you received a copy of the warranty deed in your packet granting the property to the Menendez's in June of 2007, but it clearly states "subject to covenants, conditions, easements, etc". Neither I nor my attorney can't see anything but the strictest compliance with the ZLL Subdivision codes for this property.

Now it seems like we have parties trying to change the code and meaning by simply stating the required documents for the creation of ZLL subdivisions are meaningless. The major problems we have now with persons trying to sort the meaning of the ZLL Subdivision Code is that it was never vetted at the Planning Commission level. Wells, I'm sure knew the ramifications of trying to do a conditional use permit for a business in a ZLL development, but in 3 meetings it was never put on the table by him. Mrs. Johnson addressed it in the last meeting, where none of the commissioners had a handle on it and were coerced by Wells to pass it.

I think that the assembly is in a spot now that either way you vote; you may get a court challenge. I believe the correct action of the assembly would be to send it back to the planning commission so this can be properly vetted. It would give everyone a chance to understand the workings of the ZLL subdivision platting process and then each person should be able to understand any final decision of the assembly.

Again, thanks so much for your time and consideration of this matter.

/s/ Connor K Nelson

**Valorie L. Nelson
107 Littlebyrd Way
Sitka, AK 99835
907-747-4589**

City and Borough of Sitka
100 Lincoln Street
Sitka, AK 99835

Attn: Municipal Attorney Theresa Hillhouse

RE: Conditional Use Permit – Menendez Day Care

February 24, 2012

Dear Ms. Hillhouse,

Please thank Ms. Joseph for emailing me the copy of your 021912 memo to the assembly regarding the Conditional Use Permit – Menendez Day Care. No disrespect intended but you are completely wrong. First and foremost, the case you cite has nothing to do with the issue at hand. It relates to charges of violations of the due processes and open meetings act and briefly addresses covenants of a private homeowners association (not a Fairbanks North Star Borough or City & Borough of Sitka required zero-lot-line party wall agreement).

The above referenced conditional use permit application was only passed on to the assembly by the Planning and Zoning Commission at their meeting of 01/17/12 for approval (as a few of them had some serious concerns) after Wells assured them you would give a satisfactory review. As a matter of fact, I have transcribed the motion approving the conditions and at approximately one hour and 25 minutes into the meeting: “The motion is to approve these conditions and that it be contingent upon a satisfactory review by the municipal attorney.” That motion was passed unanimously. The findings were then made up and approved and the final motion of three was “It is moved and seconded by the planning commission to request and recommend to the municipal attorney that she evaluate the existing party-wall agreement, specifically typed chapter 2, paragraph 1, which describes the use as a single-family residence and provide her guidance to the assembly prior to the assembly review of this case.”

While traveling outside of Sitka in late January, per requirement of Sitka General Code, I filed a timely request to the Planning and Zoning Commission for an appeal and a request for reconsideration as well as an appeal to the assembly. It appears by your memo that each one of those 3 items is being blown off as seems to be the norm for this city. Please refer to Nelson, Valorie vs. Sitka assembly, City of (1SI-92-00239CI) to be reminded that I am and can be an aggrieved person if you fail to follow the laws as written in our charter and Sitka General Code.

/s/ Valorie L Nelson

Colleen Ingman

From: Valorie Nelson [valorie@ablueberryinn.com]
Sent: Thursday, January 26, 2012 8:18 PM
To: colleen@cityofsitka.com; sara@cityofsitka.com; serena@cityofsitka.com;
jimdinley@cityofsitka.com
Cc: Connor Nelson
Subject: Request for reconsideration of Planning and Zoning Decision
Attachments: Reconsideration.docx

Please consider my attached document to be a timely filed request for reconsideration of the Planning and Zoning Commission's decision to pass a conditional use permit for the Menendez Day Care at 506 First Street on January 17, 2012. I respectfully request that the party wall agreements that were submitted by Mrs. Johnson be reviewed, as well as the audio of that meeting. In order to protect my rights as a property owner in Sitka I will be following this up with an appeal and will get that to the municipal clerk sometime before close of business tomorrow as required by Sitka General Code. Your planner stated that I can not take any actions, however I read the code and have a different opinion. As stated in my letter attached, I am currently traveling for medical purposes, however I do have my cell phone if there are any questions. Thankyou for your time and consideration of this matter.

Valorie L Nelson
107 Littlebyrd Way
Sitka, AK 99835

012712

Municipal Clerk, Colleen Ingman;

Please consider this letter to be my official appeal (per SGC 22.30.230) to the Assembly of the Planning and Zoning Commission recommendation of approval to the assembly for a conditional use permit request for a day care at 506 First Street at their meeting on January 17, 2012.

My name and address are listed above and my interest in the matter is that the law is not being followed. I am co-owner of a zero lot line property in a commercial zone and if the same reasoning is used in the future as was used on January 17, a gas station could be one wall away from me.

The specific reasons why I believe the decision by the commission to recommend approval of the permit request is wrong are as follows: Per SGC 21.04.030 C Zero Lot Line (ZLL) Subdivisions states that a ZLL is a subdivision creating lots for residential units with common walls or for building residences on the side lot lines. 21.24.040 requires that a party wall agreement be included as a covenant and 21.24.040 A.2 requires it to include the purpose of the agreement. The purpose section of both party wall agreements submitted by Amanda Johnson at that meeting state "for residential purposes only". Table 22.16.015-1 lists residential land uses and a day care business is not one of them. Per 22.04.070 Conflict with other regulations states "Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted rule, regulation or ordinance, the most restrictive of those imposing the higher standards shall apply". SGC 21.04.040 B states "When the provisions of this title impose greater restrictions than are imposed by other applicable city, state and federal regulations, the provisions of this title shall control. Clearly title 21 states zero lots lines are for residential units only, therefore a conditional use for a business in a residential zero lot line subdivision is not a lawful use.

The desired outcome is that the conditional use permit application should not be recommended to the assembly for approval, and should be denied by the Planning and Zoning Commission.

The record of appeal documentation should include the audio of the Planning and Zoning meeting of that item on 011712 and the documentation submitted by Amanda Johnson. If the 8 pages of the party wall agreements are not available to you, I will submit those when I return to Sitka next week.

I am currently traveling for medical reasons, and should you need to contact me, you may do so by calling my cell at 907-738-0027.

/s/Valorie L Nelson

Valorie L Nelson
107 Littlebyrd Way
Sitka, AK 99835

012512

To Whom It May Concern;

Please consider this letter to be my official request for reconsideration (per SGC 21.52.060 and 22.30.190) to the Planning and Zoning Commission and the Administrator on the conditional approval of the conditional use permit for Menendez Day Care at 506 First Street on January 17, 2012.

I am an aggrieved person per SGC 21.08.010 A because I am an owner of a zero lot line subdivision property. Per SGC 21.04.030 C "Zero Lot Line Subdivisions (Chapter 21.24). A subdivision creating lots for residential units with common walls or for building residences on the side lot lines." Clearly the law states zero lot lines are residential, to argue otherwise will certainly result in litigation from those currently holding title to zero lot line properties.

The party wall agreements submitted by Mrs. Johnson (as required by SGC Chapter 21.24) clearly state that the purpose of the document is to ensure the use of the property for residential purposes only and that the duration of the agreement is perpetual. Webster's New World Dictionary Third College Edition defines residential as "of or connected with a residence" and perpetual as lasting or enduring forever.

The planning commission erred in passing this permit subject to the blessing of the municipal attorney, who now appears to be saying this is a civil issue. We have laws in this community known as the SGC, when the city fails to follow their own laws, it is not a civil matter just because they don't choose to enforce it.

If the reasoning that was used at the 011712 Planning and Zoning meeting continues, my zero lot line could conceptually turn into me having a gasoline station, food store or many other commercial uses right next door (my zero lot line in is the commercial zone).

I am currently traveling for medical reasons, and should you need to contact me, you may do so by calling my cell at 907-738-0027.

/s/Valorie L Nelson

21.52.060 Reconsideration.

A. The planning commission may reconsider decisions upon petition of any aggrieved person, filed within ten calendar days after the date of the decision, or, on its own motion. If the plat approval is denied or the applicant is not satisfied with the conditions placed on the plats the matter shall be reconsidered by the planning commission unless the applicant files an appeal directly to the assembly.

B. The assembly may reconsider decisions only if it finds any of the following:

1. That there was a clerical error in the decision;
2. The decision resulted from fraud or mistake;
3. New evidence or a change in circumstances is discovered;
4. The application was rejected by a tie vote.

C. The planning commission shall review the petition, and decide whether to reconsider the matter. Additional evidence shall be necessary to support reconsideration. If the petition is granted, the planning commission then shall decide the matter or set the matter on its agenda for rehearing. The decision of the planning commission on reconsideration shall be final, subject to appeals to the assembly.

(Ord. 03-1729 § 4 (part), 2003.)

21.52.070 Appeals—General.

Planning commission decisions authorized under this title may be appealed by the applicant, any person adversely affected by the decision, any governmental agency that has previously submitted comments on the issue, or any member of the assembly or planning commission. (Ord. 03-1729 § 4 (part), 2003.)

21.52.080 Commencement of appeal—Stay.

A. A decision of the planning commission is final unless an appeal is filed within ten calendar days after the planning commission's final action, including reconsideration.

B. Any appeal shall be filed with the municipal clerk in writing, specifically stating the reason for the appeal and the relief sought.

C. Upon commencement of an appeal, the subject decision is stayed until the decision on appeal becomes final.

(Ord. 03-1729 § 4 (part), 2003.)

21.52.090 Notice appeal hearing and preparation of record.

A. The municipal clerk shall schedule the appeal hearing, mail notice of the appeal, and prepare the appeal record.

B. All persons listed in the record shall receive notice of the appeal hearing. The notice shall include the appellant's notice of appeal, state the date of the appeal hearing and that written argument supporting or opposing the appeal may be submitted by persons who are not able to be present at the hearing.

(Ord. 03-1729 § 4 (part), 2003.)

21.52.100 Appeal hearing.

A. The public hearing on the appeal shall occur at the first available regular assembly meeting and that occurs at least ten days after the filing of the appeal unless the planning commission, the applicant, or the assembly requests it be heard at the next following regular meeting.

B. A full rehearing shall occur, with all parties presenting whatever evidence is relevant with opportunity to make argument, unless the assembly elects to make its decision only on the record as to evidence, considering only the arguments of those opposing or supporting the appeal.

C. Every decision of the assembly shall be based upon adopted findings and conclusions which should be reasonably specific so as to provide the applicant, community and where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision. The assembly may refer the matter back to the planning commission to develop additional findings and conclusions.

(Ord. 03-1729 § 4 (part), 2003.)

21.52.110 Scope of appellate review.

The assembly may exercise its independent judgment on legal issues raised by the appellant. Legal issues are those matters that relate to the interpretation of construction of ordinances or other provisions of law. (Ord. 03-1729 § 4 (part), 2003.)

21.52.120 Judicial review.

Any person aggrieved by a final decision of the assembly under this chapter may appeal that decision to the superior court. An appeal to the superior court shall be heard solely on the record created before the assembly and the planning commission. (Ord. 03-1729 § 4 (part), 2003.)

21.52.130 Penalties and remedies.

A. The owner or agent of the owner of land located within a subdivision who offers to sell, transfers, sells or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this title, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than five hundred dollars for each lot or parcel offered for sale, transferred, sold or included in a contract to be sold. This subsection does not apply to any government or governmental agency, federal, state or municipality, that is exempt by AS 34.55.042 from such penalties and subdivision requirements.

B. No person may record a plat or seek to have a plat recorded unless it has been formally approved by the city and borough. A person who violates this subsection is punishable upon conviction by a fine of not more than five hundred dollars.

C. The city and borough of Sitka or any aggrieved person may bring a civil action to enjoin any violation of this title, any transfer or sale of an unlawfully subdivided parcel, the violation of the planning commission or the assembly pursuant to this title issued, and the violation of any term or condition of any plat or other entitlement approved under this title, and to obtain damages for any injury the plaintiff suffered as a result of the violation. An action for injunction under this section may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the superior court shall enjoin the violation.

(Ord. 10-05 § 4, 2010; Ord. 03-1729 § 4 (part), 2003.)

21.52.140 Fees.

The assembly shall adopt a schedule of fees for plat, variance, and vacation applications, and for appeals under this title. Specifically, fees shall be set for:

- A. All subdivision plat applications;
- B. Platting variance;
- C. Street or other dedication;
- D. Vacation and appeals;
- E. Planned unit development;
- F. Boundary survey application;
- G. Subdivision replat.

22.30.190 Reconsideration.

A party to a public hearing or closed record appeal may seek reconsideration only of a final decision by filing a written request for reconsideration with the administrator within fourteen calendar days of the oral announcement of the final decision. The assembly shall consider the request at its next regularly scheduled meeting. If the request is denied, the previous action shall become final. If the request is granted, the assembly body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. (Ord. 04-60 § 4(M), 2004.)

22.30.200 Remand.

22.30.220 Appeals to the planning commission.

A. Filing. Every appeal to the planning commission shall be filed with the municipal clerk within ten days of the date of the recommendation or decision of the matter being appealed. Appeals of enforcement actions by the administrator shall be made directly to the assembly.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed.
2. The name and address of the appellant and his interest(s) in the matter.
3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
4. The desired outcome or requested changes to the decision.

C. Appeals of enforcement actions by the administrator shall be made in manner outlined above.

(Ord. 02-1683 § 4 (part), 2002.)

22.30.230 Appeals to the assembly.

A. Filing. Every appeal to the assembly shall be filed with the municipal clerk within ten days after the date of the recommendation or decision of the matter being appealed.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed.
2. The name and address of the appellant and his interest(s) in the matter.
3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
4. The desired outcome or requested changes to the decision.

(Ord. 02-1683 § 4 (part), 2002.)

22.30.240 Judicial appeal.

A. Appeals from the final decision of the assembly, or other city board or body involving Title 21 SGC, and for which all other appeals specifically authorized have been timely exhausted, shall be made to superior court within thirty days of the date the decision or action became final, unless another time period is established by state law or local ordinance.

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the municipal clerk, administrator, and city attorney within the applicable time period. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the municipal clerk prior to the preparation of any records an advance fee deposit in the amount specified by the municipal clerk. Any overage will be promptly returned to the appellant.

(Ord. 02-1683 § 4 (part), 2002.)

Item H

RECEIVED
MAR 13 2012

Sara Peterson

From: Connor Nelson <keystone99835@yahoo.com>
Sent: Monday, March 12, 2012 5:31 PM
To: James Dinley
Cc: Colleen Ingman
Subject: Fw: Emailing: 008A7431, 008CB791, 103-1986-000801-0, 103-1986-000802-0, 103-1993-001094-0, 103-1997-000089-0, 103-1999-001269-0
Attachments: 008A7431.tiff; 008CB791.tiff; 103-1986-000801-0.tiff; 103-1986-000802-0.tiff; 103-1993-001094-0.tiff; 103-1997-000089-0.tiff; 103-1999-001269-0.tiff

City & Borough of Sitka

Menendez Day Care-reconsideration

Dear Mr. Dinley,

I've attached some party wall agreements as they apply to ZLL sub-divisions, these are random among dozens filed since the early 1980's at the local recorders office. To a T, they all state the same, "to ensure the use of the property for residential use only" Again, 22.08.450 "Home Occupation" means nonresidential use etc, The Menendez day care is a home occupation business.

22.04.040 Interpretation and application of provisions. Sub . Para. A "It is not intended by this title to interfere with or revoke or invalidate any easement, covenant, or other agreement between parties."

I'm certain the city's position is wrong on the land use, and clearly wrong as the above applies. I don't think anyone's up to another Dove Is., and I still believe this should go back to P&Z to be aired out so everyone can have a good understanding of what happens in the ZLL sub-division.

Thanks for your time, Val/Connor

--- On Mon, 3/12/12, Stevens, Diana L (DNR) <diana.stevens@alaska.gov> wrote:

From: Stevens, Diana L (DNR) <diana.stevens@alaska.gov>
Subject: Emailing: 008A7431, 008CB791, 103-1986-000801-0, 103-1986-000802-0, 103-1993-001094-0, 103-1997-000089-0, 103-1999-001269-0
To: "Connor Nelson" <keystone99835@yahoo.com>
Date: Monday, March 12, 2012, 2:59 PM

<<008A7431.tiff>> <<008CB791.tiff>> <<103-1986-000801-0.tiff>>
<<103-1986-000802-0.tiff>> He <<103-1993-001094-0.tiff>> re
<<103-1997-000089-0.tiff>> i <<103-1999-001269-0.tiff>> s the docs that
you requested and the credit card receipt will be in tonight's mail to
you.

Your message is ready to be sent with the following file or link
attachments:

008A7431
008CB791
103-1986-000801-0
103-1986-000802-0
103-1993-001094-0
103-1997-000089-0

2007-000404-0

Recording Dist: 103 - Sitka
3/14/2007 9:54 AM Pages: 1 of 3

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Handwritten initials

Please return to:
Todd & Brandi Fleming
1107 Edgumbe Drive
Sitka, Alaska 99835

DECLARATION OF PARTY WALL

COVENANTS MADE THIS 28th DAY OF FEBRUARY, 2007, BY TODD & BRANDI FLEMING, 1107 EDGE CUMBE DRIVE, SITKA, AK, 99835.

RECITALS

- A. There is proposed to be a two family residence located on the property with the common property line for each lot running through the common wall of each residence.
- C. Todd & Brandi Fleming, desire that the boundary wall be and remain a common wall, party wall.
- D. The purpose of this document is to ensure that use of the property for residential use only; to prevent nuisances; to prevent the impairment of the attractiveness of the property and thereby to secure to each homeowner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his property than is necessary to ensure the same advantage to other property owners.

WITNESSETH: PARTY WALL

1. DECLARATION OF PARTY WALL. The above described common wall shall constitute a party wall and the owners of ~~Lot 4A and 4B~~ shall have the right to use the wall jointly. *Lots 1 and 2 of Plat 2007-8.*
2. REPAIR, RESTORATION, REBUILDING ON DESTRUCTION. Should the party wall at anytime while in use be both parties as aforesaid be damaged by any cause other than act or omission by the party, the wall shall be repaired or rebuilt at their joint equal expense, provided that the sum received from any insurance against such damage or destruction shall be first applied to such damage, destruction restoration or repair. Should the party wall be damaged or destroyed by the act or omission of either party, the wall shall be repaired or rebuilt at the party's sole expense.
3. DURATION AND EFFECT OF AGREEMENT. This agreement shall be perpetual and the covenants herein contained shall run with both parcels of land above so described,

but the agreement shall not operate to convey to either party, the fee to any part of the land owned or to be acquired by the other party.

4. USES OF THE WALL. The parties shall each have the full right to use the wall to support joists, beams, studs, and other structural members as required on the erection of building on the respective premises, provided, however, that such use shall not injure the adjoining building nor impair the value of the easement to which the adjoining building is entitled.

5. ENCROACHMENT. Neither party shall extent the wall's thickness onto the land of the other party without the other party's written consent.

USE OF THE PROPERTY

1. USE. Each lot covered by this agreement shall be used for single family residences only. Any enlargements to provide for additional separate units shall be an illegal use of the property.

2. EXTERIOR MAINTNEANCE. Maintenance to common areas of the structure shall be shared equally by both parties. Maintenance of unshared building and grounds in a neat and orderly fashion shall be the responsibility of the respective owners. All structure and grounds shall be maintained as to not negatively impart the other party's interest.

3. MODIFICATIONS TO STRUCTURE. No party shall modify or change the appearance of the structure without approval from the other party in writing and obtaining both building and planning departments approval. The approval shall not be arbitrarily withheld, if the proposal does not negatively impact the adjoining party.

4. DURATION AND EFFECT. The benefits and obligations of the covenants set forth in this agreement shall run with the land herein described so long as the wall or any extension thereof shall exist. Should for some reason one or both units are destroyed, the structure must be rebuilt as the same common wall unless either one of the parties desires to purchase the other party's interest and build a single unit, or duplex unit using the total space occupied by both former units. Should destruction occur to only one unit, it shall be reconstructed only as a common wall unit, again fully joined to its common wall neighbor.

IN WITNESS WHEREOF TODD & BRANDI FLEMING, HAVE EXECUTED THIS AGREEMENT IN SITKA, ALASKA ON THIS 28th DAY OF February 2007.


BY

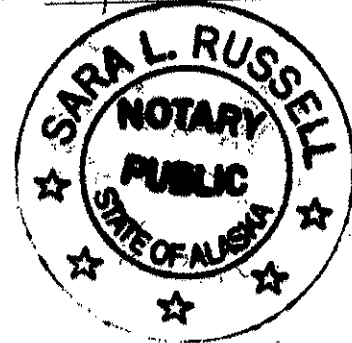
Todd Fleming
Brandi Fleming



UNITED STATES OF AMERICA |
| SS.
STATE OF ALASKA |

THIS IS TO CERTIFY THAT ON THIS 28 DAY OF February
2007, BEFORE, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE
STATE OF ALASKA, DULY COMMISSIONED AND SWORN, PERSONALLY
APPEARED TODD & BRANDI FLEMING, TO ME KNOWN TO BE THE PERSONS
DESCRIBED IN AND WHO EXECUTED THE ABOVE AND FOREGOING
INSTRUMENT, AND ACKNOWLEDGE TO ME THAT THEY SIGNED AND
SEALED THE SAME FREELY AND VOLUNTARILY FOR THE USES AND
PURPOSES HEREIN MENTIONED.


NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES 4-15-07



3 of 3

2007-000404-0

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2007-001690-0

Recording Dist: 103 - Sitka

10/23/2007 9:01 AM Pages: 1 of 3



CC

Return to:
Patrick & Tamara O'Neill
2309 Merganser Drive
Sitka, AK 99835

Declaration of Party Wall

Covenants made this 17th day of OCTOBER, 2007 by Patrick and Tamara O'Neill, 2309 Merganser Drive; Sitka, AK 99835.

Recitals

- A. Patrick and Tamara O'Neill are the owners of Lot 1 and Lot 2 of the Classic Zero Lot Line Subdivision, created from Lot 4, Block 2 of the Hillside Subdivision, previously recorded.
- B. There is proposed to be a two family residence located on the property with the common property line for each lot running through the common wall of each residence.
- C. Patrick and Tamara O'Neill desire that the boundary wall be and remain a common wall, party wall.
- D. The purpose of this document is to ensure the use of the property for residential use only, to prevent nuisances, to prevent the impairment of the attractiveness of the property and thereby to secure to each homeowner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his property than is necessary to ensure the same advantage to other property owners.

Witnesseth: Party Wall

1. Declaration of Party Wall. The above described common wall shall constitute a party wall and the owners of Lot 1 and Lot 2 shall have the right to use the wall jointly.
2. Repair, restoration, rebuilding on destruction. Should the party wall at any time while in use by both parties as aforesaid be damaged by any cause other than act or omission by the party, the wall shall be repaired or rebuilt at their joint equal expense, provided that the sum received from any insurance against such damage or destruction shall be first applied to such damage, destruction restoration or repair. Should the party wall be damaged or destroyed by the act or omission of either party, the wall shall be repaired or rebuilt at that party's sole expense.

3. Duration and effect of agreement. This agreement shall be perpetual and the covenants herein contained shall run with both parcels of land above so described, but the agreement shall not operate to convey to either party, the fee to any part of the land owned or to be acquired by the other party.
4. Uses of the wall. The parties shall each have the full right to use the wall to support joists, beams, studs, and other structural members as required on the erection of building on the respective premises, provided, however, that such use shall not injure the adjoining building nor impair the value of the easement to which the adjoining building is entitled.
5. Encroachment. Neither party shall extend the wall's thickness onto the land of the other party without the other party's written consent.

Use of the property

1. Use. Each lot covered by this agreement shall be used for single family residences only. Any enlargement to provide for additional separate units shall be an illegal use of the property.
2. Exterior Maintenance. Maintenance to common areas of the structure shall be shared equally by both parties. Maintenance of unshared building and grounds shall be provided in a neat and orderly fashion and shall be the responsibility of the respective owners. All structures and grounds shall be maintained as to not negatively impact the other party's interest.
3. Modifications to structure. No party shall modify or change the appearance of the structure without approval from the other party in writing and obtaining both building and planning department approval. The approval shall not be arbitrarily withheld, if the proposal does not negatively impact the adjoining party.

Duration and Effect.

The benefits and obligations of the covenants set forth in this agreement shall run with the land herein described so long as the wall or any extension thereof shall exist. Should for some reason one or both units be destroyed, the structure must be rebuilt as the same common wall unless either one of the parties desires to purchase the other party's interest and build a single unit, or duplex unit using the total space occupied by both former units. Should destruction occur to only one unit, it shall be reconstructed only as a common wall unit, again fully joined to its common wall neighbor.



In witness whereof Patrick K. O'Neill and Tamara J. O'Neill have executed this agreement in Sitka, Alaska on this 17th day of OCTOBER, 2007.

SIGNED:

Patrick K. O'Neill
Patrick K. O'Neill

Tamara J. O'Neill
Tamara J. O'Neill

Acknowledgements
STATE OF ALASKA)
FIRST JUDICIAL DISTRICT) s.s.

The foregoing instrument was acknowledged before me this 17 day of October, 2007, by Patrick K. O'Neill and Tamara J. O'Neill, the owners of Lots 1 and 2 of the Classic Zero Lot Line Subdivision, created from Lot 4, Block 2 of the Hillside Subdivision.



Sara L. Russell
Notary Public for State of Alaska
My Commission Expires: 4-15-2011

Page 3

Declaration of Party Wall
Lot 1 & Lot 2 classic zero lot line sub.



DECLARATION OF PARTY WALL

COVENANTS made April, 15, 1986, by Michael K.
(Month) (Day) (Year) (Owner)
Reif of P. O. Box 2346, Sitka,
(P.O. Box or Address) (City)

99835;

RECITALS

A. Michael K. Reif is to be the owner of the following described real property: (legal description of lot as subdivided into two (2) parcels)

Lot 1, Briehaupt Estates, A Subdivision of Lot 3,
Channel View Subdivision II,

Recorded May 6, 1986 as Mod 86-9 Sitka Recording
District, First Judicial District, Sitka, Alaska 99835.

B. There is now a two family residence located on the property with the common property line for each lot running through the common wall of each residence.

C. Michael K. Reif desires that the boundary wall be and remain a common wall, party wall.

D. The purpose of this document is to ensure the use of the property for residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property and thereby to secure to each homeowner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his property than is necessary to ensure the same advantages to other property owners.

WITNESSETH

I. PARTY WALL

1. Declaration of Party Wall. The above described common wall shall constitute a party wall and the owner of the above described Lot 1 of real property shall have the right to use the wall jointly with the owner of Lot 2.

2. Repair, Restoration, Rebuilding on Destruction. Should the party wall at any time while in use by both parties as aforesaid be damaged by any cause other than act or omission by the party, the wall shall be repaired or rebuilt at their joint, equal expense provided that the sum received from any insurance against such damage or destruction shall be first applied to such damage or destruction, restoration or repair. Should the party wall be damaged or destroyed by the act or omission of either party, the wall shall be repaired or rebuilt at that party's sole expense.

3. Duration and Effect of Agreement. This agreement shall be perpetual and the covenants herein contained shall run with both parcels of land above so described, but the agreement shall not operate to convey to either party, the fee to any part of the land owned or to be acquired by the other party.

4. Use of the Wall. The parties shall each have the full right to use the wall to support joists, cross-beams, studs, and other structural members as required on the erection of buildings on the respective premises, provided, however, that such use shall not injure the adjoining building nor impair the value of the easement to which the adjoining building is entitled.

5. Encroaching Modifications. Neither party shall extend the wall's thickness onto the land of the other party without the party's consent. Neither party shall add, expand or increase the size of their unit without full compliance with all municipal codes, the consent of the other party and a reapproval and rewriting of an expanded common party wall agreement.

II. USE OF THE PROPERTY

1. Use. Each lot, tract, or plot covered by this agreement shall be used for single family residences ONLY. Any enlargement to provide for additional separate units shall be an illegal use of the property, subject the owner to legal action by the municipality and void the intent of this agreement thereby allowing private suit for damages by the common wall other party.

2. Maintenance of Exterior. Neither party shall paint or stain the exterior of his home without first submitting a plan to the owner of the other unit for approval. If the other owner fails to approve or disapprove such plans within ten (10) days after the submission, no such approval shall be required. The approval shall not be arbitrarily withheld and the second party is also required to then agree to utilize the same paint or stain and accomplish the same task within thirty (30) days on his portion of the structure.

3. Modification or Additions to Current Structure. No addition or modification or alteration of the existing building, nor any other new building shall or will be constructed or erected on the common wall properties until plans and specifications have been submitted to and approved by the owner of the adjacent common wall lot, tract, or plot as to the outward appearance and design, provided, however, that if the other owner fails to approve or disapprove within ten (10) days of submittal, no approval is required. In addition, a new party wall agreement and approval of the municipality is required as well as meeting all applicable building codes. The approval of the common wall other party may not be unreasonably withheld and can only be withheld if the plans are found to be incompatible aesthetically with the original structure and/or other homes in the neighborhood.

4. Maintenance of Yard. The owner of each lot, tract, or plot shall maintain his property in neat fashion and shall not permit refuse, inoperable vehicles, junk or other clutter to be stored or placed on his property. Violation shall constitute a civil breach of this agreement and shall further place the owner in violation of municipal codes.

5. Restrictive Covenants. Restrictive covenants on the above described real property, as recorded in Book 70, Page 166 and 167, Sitka Recording District. Owners are encouraged to read these documents.

6. Duration and Effect of Agreement. The benefits and obligations of the covenants set forth in this agreement shall run with the land herein described so long as the wall or any extension thereof shall exist, and shall bind the respective parties hereto, their heirs and assigns, legal representatives and assigns. Should for some reason such as the total destruction of either one or the total two (2) family structures occur, the structure must be rebuilt as the same common wall unless either one of the parties desires to purchase the other party's interest and build a single family unit occupying all of the mutual property formerly containing two units or construct a standard duplex for rental using the total space occupied by both former units. Should fire or other destruction occur to only one such unit, it shall be reconstructed only as a common wall unit, again fully joined to its common wall neighbor.

IN WITNESS WHEREOF, Michael K Reif has executed this agreement in Sitka, Alaska on this 6th day of May, 1986.

By: Michael K Reif
(Owner)

POOR FILING QUALITY

DECLARATION OF PARTY WALL

COVENANTS made April, 15, 1986, by Gregory B.
(Month) (Day) (Year) (Owner)
and Debra A. Briethaupt of 708 Pherson, Sitka,
(P.O. Box or Address) (City)

99835;

RECITALS

A. Gregory B. and Debra A. Briethaupt are to be the owners of the following described real property: (legal description of lot as subdivided into two (2) parcels)

Lot 2, Briethaupt Estates, A Subdivision of Lot 3,
Channel View Subdivision II, recorded May 6, 1986
as Plot 86-9, Sitka Recording District.

B. There is now a two family residence located on the property with the common property line for each lot running through the common wall of each residence.

C. Gregory B. and Debra A. Briethaupt desires that the boundary wall be and remain a common wall, party wall.

D. The purpose of this document is to ensure the use of the property for residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property and thereby to secure to each homeowner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his property than is necessary to ensure the same advantages to other property owners.

WITNESSETH

I. PARTY WALL

1. Declaration of Party Wall. The above described common wall shall constitute a party wall and the owner of the above described Lot 2 of real property shall have the right to use the wall jointly with the owner of Lot 1.

2. Repair, Restoration, Rebuilding on Destruction. Should the party wall at any time while in use by both parties as aforesaid be damaged by any cause other than act or omission by the party, the wall shall be repaired or rebuilt at their joint, equal expense provided that the sum recieved from any insurance against such damage or destruction shall be first applied to such damage or destruction, restoration or repair. Should the party wall be damaged or destroyed by the act or omission of either party, the wall shall be repaired or rebuilt at that party's sole expense.

FOR FILING QUALITY

3. Duration and Effect of Agreement. This agreement shall be perpetual and the covenants herein contained shall run with both parcels of land above so described, but the agreement shall not operate to convey to either party, the fee to any part of the land owned or to be aquired by the other party.

4. Use of the Wall. The parties shall each have the full right to use the wall to support joists, cross-beams, studs, and other structural members as required on the erection of buildings on the respective premises, provided, however, that such use shall not injure the adjoining building nor impair the value of the easement to which the adjoining building is entitled.

5. Encroaching Modifications. Neither party shall extend the wall's thickness onto the land of the other party without the party's consent. Neither party shall add, expand or increase the size of their unit without full compliance with all municipal codes, the consent of the other party and a reappraisal and rewriting of an expanded common party wall agreement.

II. USE OF THE PROPERTY

1. Use. Each lot, tract, or plot covered by this agreement shall be used for single family residences ONLY. Any enlargement to provide for additional seperate units shall be an illegal use of the property, subject the owner to legal action by the municipality and void the intent of this agreement thereby allowing private suit for damages by the common wall other party.

2. Maintenance of Exterior. Neither party shall paint or stain the exterior of his home without first submitting a plan to the owner of the other unit for approval. If the other owner fails to approve or disapprove such plans within ten (10) days after the submission, no such approval shall be required. The approval shall not be arbitrarily withheld and the second party is also required to then agree to utilize the same paint or stain and accomplish the same task within thirty (30) days on his portion of the structure.

3. Modification or Additons to Current Structure. No addition or modification or alteration of the existing building, nor any other new building shall or will be constructed or erected on the common wall properties until plans and specifications have been submitted to and approved by the owner of the adjacent common wall lot, tract, or plot as to the outward appearance and design, provided, however, that if the other owner fails to approve or disapprove within ten (10) days of submittal, no approval is required. In addition, a new party wall agreement and approval of the municipality is required as well as meeting all applicable building codes. The approval of the common wall other party may not be unreasonably withheld and can only be withheld if the plans are found to be incompatible aesthetically with the original structure and/or other homes in the neighborhood.

4. Maintenance of Yard. The owner of each lot, tract, or plot shall maintain his property in neat fashion and shall not permit refuse, inoperable vehicles, junk or other clutter to be stored or placed on his property. Violation shall constitute a civil breach of this agreement and shall further place the owner in violation of municipal codes.

5. Restrictive Covenants. Restrictive covenants on the above described real property, as recorded in Book 70, Page 166 and 167, Sitka Recording District. Owners are encouraged to read these documents.

6. Duration and Effect of Agreement. The benefits and obligations of the covenants set forth in this agreement shall run with the land herein described so long as the wall or any extension thereof shall exist, and shall bind the respective parties hereto, their heirs and assigns, legal representatives and assigns. Should for some reason such as the total destruction of either one or the total two (2) family structures occur, the structure must be rebuilt as the same common wall unless either one of the parties desires to purchase the other party's interest and build a single family unit occupying all of the mutual property formerly containing two units or construct a standard duplex for rental using the total space occupied by both former units. Should fire or other destruction occur to only one such unit, it shall be reconstructed only as a common wall unit, again fully joined to its common wall neighbor.

IN WITNESS WHEREOF, GREGORY & DEBRA BREITHAUNT has executed this agreement in SITKA, Alaska on this 28th day of APRIL, 1986

By: _____
OWNER

Debra Breithaupt

DECLARATION OF PARTY WALL

COVENANTS made September, 3, 1992 by Harold and Barbara Stocker of P.O. Box 2457, Sitka, Alaska 99835.

RECITALS

- A. Harold and Barbara Stocker are the owners of the following described real property: Lot 2A and 2B of the Cove Harbor Subdivision, a (plat 93-12) resubdivision of Lot 2 of the Cove Harbor Subdivision.
- B. There is now (there is proposed to be) a two family residence located on the property with the common property line for each lot running through the common wall of each residence.
- C. Harold and Barbara Stocker desire that the boundary wall be and remain a common wall, party wall.
- D. The purpose of this document is to ensure the use of the property for residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property and thereby to secure to each homeowner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his property than is necessary to ensure the same advantages to other property owners.

WITNESSETH:

I. PARTY WALL

1. Declaration of Party Wall. The above described common wall shall constitute a party wall and each owner of the above described lot of real property shall have the right to use the wall jointly with owner of the other lot.
2. Repair, Restoration, Rebuilding on Destruction. Should the party wall at any time while in use by both parties as aforesaid be damaged by any cause other than act or omission by the party, the wall shall be repaired or rebuilt at their joint, equal, expense, provided that the sum received from insurance against such damage or destruction shall be first be applied to such damage or destruction restoration or repair. Should the party wall be damaged or destroyed by the act or omission of either party, the wall shall be repaired or rebuilt at that party's sole expense.
3. Duration and Effect of Agreement. This agreement shall be perpetual and the covenants herein contained shall run with both parcels of land above described, but the agreement shall not operate to convey to either party, the fee to any part of the land owned or to be acquired by the other party.
4. Use of the Wall. The parties shall each have the full right to use the wall to support joists, cross-beams, studs, and other structural members as required on the erection of buildings on the respective premises, provided, however that such use shall not injure the adjoining building nor impair the value of the easement to which the adjoining building is entitled.

5. Encroaching Modifications. Neither party shall extend the wall's thickness onto the land of the other party without the party's consent. Neither party shall add, expand or increase the size of their unit without full compliance with all Municipal codes, the consent of the other party and a reapproval and rewriting of an expanded common party wall agreement.

II. USE OF THE PROPERTY

1. Use. Each lot, tract, or plot covered by this agreement shall be used for single family residences only. Any enlargement to provide for additional separate units shall be an illegal use of the property, subject to the owner to legal action by the Municipality and void the intent of this agreement thereby allowing private suit for damages by the common wall other party.

2. Maintenance of Exterior. Neither party shall paint or stain the exterior of his home without first submitting a plan to the owner of the other unit for approval. If the other owner fails to approve or disapprove such plans within ten (10) days after the submission, no such approval shall be required. The approval shall not be arbitrarily withheld. The intent of this section is to maintain an attractive and nicely cared for exterior. Should either owner feel that this intent is not being met by the other owner, then the arbitration procedure outlined under II-5 will be that owners recourse.

3. Modifications or Additions to Current Structures. No addition or modification or alteration of the existing building, nor any other new building shall be constructed or erected on the common wall properties until plans and specifications have been submitted to and approved by the owner of the adjacent common wall lot, tract, or plot as to the outward appearance and design, provided, however, that if the other owner fails to approve or disapprove within ten (10) days of submittal, no approval is required. In addition, a new party wall agreement and approval of the Municipality is required as well as meeting all applicable building codes. The approval of the common wall other party may not be unreasonably withheld and can only be withheld if the plans are found to be aesthetically incompatible with the original structure and other homes in the neighborhood.

4. Maintenance of Yard. The owner of each lot, tract or plat shall maintain his property in neat fashion and shall not permit refuse, inoperable vehicles, junk or other clutter to be stored or placed on his property. Violation shall constitute a civil breach of this agreement and shall further place the owner in violation of Municipal codes.

5. Arbitration of Disputes. Any controversy that may arise between the parties with respect to the necessity of costs of repairs or with respect to any other rights or liabilities of the parties under this agreement shall be submitted to the decision of three (3) arbitrators, one (1) to be chosen by each of the parties hereto and the third by the two (2) arbitrators so chosen. The award of the majority of the arbitrators shall be final and conclusive on the parties. The arbitrators shall be entitled to modest compensation for their services.

6. Duration and Effect of Agreement. The benefits and obligations of the covenants setforth in this agreement shall run with the land herein described so long as the wall or any extension thereof shall exist, and shall bind the respective parties hereto, their heirs and assigns, legal representatives and assigns. Should for some reason such as the total destruction of the entire two (2) family residence occur, the structure must be rebuilt as the same common wall unless either one of the parties desires to purchase the other party's interest and build a single family unit occupying all of the mutual property formerly containing two (2) units or construct a standard duplex for rental using the total space occupied by both former units.

IN WITNESS WHEREOF, Harold and Barbara Stocker have executed this agreement, in Sitka, Alaska on this 3rd day of Sept., 1992.

BY: Harold E. Stocker
Harold E. Stocker
Barbara J. Stocker
Barbara J. Stocker

ATTEST:

Secretary
UNITED STATES OF AMERICA)
STATE OF ALASKA)

THIS IS to certify that on this 3rd day of September, 1992 before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared Harold Stocker and Barbara Stocker to me known to be the persons described in and who executed the above foregoing instrument and acknowledged to me that they signed and sealed the same freely and voluntarily for the uses and purposes herein mentioned.

WITNESS my hand and official seal the day and year first above written.

Lori S. Fuern
Notary Public for Alaska
My Commission Expires: 7/24/96

93-094

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RECORDED-FILED
SITKA REC.
DISTRICT

MAY 19 3 29 PM '93

REQUESTED BY SCUB
ADDRESS SITKA



DECLARATION OF PARTY WALL

COVENANTS MADE THIS 31st DAY OF JANUARY 1997, BY CASCADE ENTERPRISES, INC., PO BOX 1412, SITKA, AK. 99835

RECITALS

- A. CASCADE ENTERPRISES, INC. ARE THE OWNERS OF THE FOLLOWING DESCRIBED REAL PROPERTY:
LOT 13A, AND 13B, GOSS SUBDIVISION CREATED FROM LOT 13, BLOCK 19, U.S.S. 1474 SITKA TOWNSITE, NOT PREVIOUSLY RECORDED.
- B. THERE IS PROPOSED TO BE A TWO FAMILY RESIDENCE LOCATED ON THE PROPERTY WITH THE COMMON PROPERTY LINE FOR EACH LOT RUNNING THROUGH THE COMMON WALL OF EACH RESIDENCE.
- C. CASCADE ENTERPRISES, INC. DESIRE THAT THE BOUNDARY WALL BE AND REMAIN A COMMON WALL, PARTY WALL.
- D. THE PURPOSE OF THIS DOCUMENT IS TO ENSURE THE USE OF THE PROPERTY FOR RESIDENTIAL USE ONLY; TO PREVENT NUISANCES; TO PREVENT THE IMPAIRMENT OF THE ATTRACTIVENESS OF THE PROPERTY AND THEREBY TO SECURE TO EACH HOMEOWNER THE FULL BENEFIT AND ENJOYMENT OF HIS HOME, WITH NO GREATER RESTRICTION ON THE FREE AND UNDISTURBED USE OF HIS PROPERTY THAN IS NECESSARY TO ENSURE THE SAME ADVANTAGE TO OTHER PROPERTY OWNERS.

WITNESSETH: PARTY WALL

1. DECLARATION OF PARTY WALL. THE ABOVE DESCRIBED COMMON WALL SHALL CONSTITUTE A PARTY WALL AND THE OWNERS OF LOT 13A AND 13B SHALL HAVE THE RIGHT TO USE THE WALL JOINTLY.
2. REPAIR, RESTORATION, REBUILDING ON DESTRUCTION. SHOULD THE PARTY WALL AT ANY TIME WHILE IN USE BE BOTH PARTIES AS AFORESAID BE DAMAGED BY ANY CAUSE OTHER THAN ACT OR OMISSION BY THE PARTY, THE WALL SHALL BE REPAIRED OR REBUILT AT THEIR JOINT EQUAL EXPENSE, PROVIDED THAT THE SUM RECEIVED FROM ANY INSURANCE AGAINST SUCH DAMAGE OR DESTRUCTION SHALL BE FIRST APPLIED TO SUCH DAMAGE, DESTRUCTION RESTORATION OR REPAIR. SHOULD THE PARTY WALL BE DAMAGED OR DESTROYED BY THE ACT OR OMISSION OF EITHER PARTY, THE WALL SHALL BE REPAIRED OF REBUILT AT THAT PARTY'S SOLE EXPENSE.
3. DURATION AND EFFECT OF AGREEMENT. THIS AGREEMENT SHALL BE PERPETUAL AND THE COVENANTS HEREIN CONTAINED SHALL RUN WITH BOTH

PARCELS OF LAND ABOVE SO DESCRIBED, BUT THE AGREEMENT SHALL NOT OPERATE TO CONVEY TO EITHER PARTY, THE FEE TO ANY PART OF THE LAND OWNED OR TO BE ACQUIRED BY THE OTHER PARTY.

4. USES OF THE WALL. THE PARTIES SHALL EACH HAVE THE FULL RIGHT TO USE THE WALL TO SUPPORT JOISTS, BEAMS, STUDS, AND OTHER STRUCTURAL MEMBERS AS REQUIRED ON THE ERECTION OF BUILDING ON THE RESPECTIVE PREMISES, PROVIDED, HOWEVER, THAT SUCH USE SHALL NOT INJURE THE ADJOINING BUILDING NOR IMPARE THE VALUE OF THE EASEMENT TO WHICH THE ADJOINING BUILDING IS ENTITLED.

5. ENCROACHMENT. NEITHER PARTY SHALL EXTEND THE WALL'S THICKNESS ONTO THE LAND OF THE OTHER PARTY WITHOUT THE OTHER PARTY'S WRITTEN CONSENT.

USE OF THE PROPERTY

1. USE. EACH LOT COVERED BY THIS AGREEMENT SHALL BE USED FOR SINGLE FAMILY RESIDENCES ONLY. ANY ENLARGEMENT TO PROVIDE FOR ADDITIONAL SEPARATE UNITS SHALL BE AN ILLEGAL USE OF THE PROPERTY.

2. EXTERIOR MAINTENANCE. MAINTENANCE TO COMMON AREAS OF THE STRUCTURE SHALL BE SHARED EQUALLY BY BOTH PARTIES. MAINTENANCE OF UNSHARED BUILDING AND GROUNDS IN A NEAT AND ORDERLY FASHION SHALL BE THE RESPONSIBILITY OF THE RESPECTIVE OWNERS. ALL STRUCTURE AND GROUNDS SHALL BE MAINTAINED AS TO NOT NEGATIVELY IMPACT THE OTHER PARTY'S INTEREST.

3. MODIFICATIONS TO STRUCTURE. NO PARTY SHALL MODIFY OR CHANGE THE APPEARANCE OF THE STRUCTURE WITHOUT APPROVAL FROM THE OTHER PARTY IN WRITING AND OBTAINING BOTH BUILDING AND PLANNING DEPARTMENT APPROVAL. THE APPROVAL SHALL NOT BE ARBITRARILY WITHHELD, IF THE PROPOSAL DOES NOT NEGATIVELY IMPACT THE ADJOINING PARTY.

4. DURATION AND EFFECT. THE BENEFITS AND OBLIGATIONS OF THE COVENANTS SET FORTH IN THIS AGREEMENT SHALL RUN WITH THE LAND HEREIN DESCRIBED SO LONG AS THE WALL OR ANY EXTENSION THEREOF SHALL EXIST. SHOULD FOR SOME REASON ONE OR BOTH UNITS ARE DESTROYED, THE STRUCTURE MUST BE REBUILT AS THE SAME COMMON WALL UNLESS EITHER ONE OF THE PARTIES DESIRES TO PURCHASE THE OTHER PARTY'S INTEREST AND BUILD A SINGLE UNIT, OR DUPLEX UNIT USING THE TOTAL SPACE OCCUPIED BY BOTH FORMER UNITS. SHOULD DESTRUCTION OCCUR TO ONLY ONE UNIT, IT SHALL BE RECONSTRUCTED ONLY AS A COMMON WALL UNIT, AGAIN FULLY JOINED TO ITS COMMON WALL NEIGHBOR.

BOOK 123 PAGE 784

IN WITNESS WHEREOF CASCADE ENTERPRISES, INC, HAS EXECUTED THIS AGREEMENT IN SITKA, AK. ON THIS 8th DAY OF JANUARY 1997

BY Robert Goss
V. PRESIDENT

UNITED STATES OF AMERICA]
1 SS.
STATE OF ALASKA]

THIS IS TO CERTIFY THAT ON THIS 8th DAY OF JANUARY 1997, BEFORE, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED ROBERT GOSS, VICE PRESIDENT OF CASCADE ENTERPRISES, TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGE TO ME THAT HE SIGNED AND SEALED THE SAME FREELY AND VOLUNTARILY FOR THE USES AND PURPOSES HEREIN MENTIONED.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

Edwina Barnett Simmons
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES 11-18-97
Edwina BARNETT Simmons

Please return to:
Robert Goss
Cascade Enterprises, Inc.
PO Box 1412
Sitka AK 99835

97-89

cc	<u>Sitka</u>	21.00
		REC. DIST.
DATE	<u>1-16</u>	19 <u>97</u>
TIME	<u>2:35</u>	<u>P.M.</u>
Requested By	<u>City and Borough</u>	
Address	<u>Sitka</u>	

RETURN TO:
City & Borough of Sitka
PLANNING DEPT.
100 LINCOLN STREET
Sitka AK 99833

BOOK 137 PAGE 1099

DECLARATION OF PARTY WALL

COVENANTS MADE THIS 6 DAY OF APRIL 1999, BY CASCADE ENTERPRISES, INC., PO BOX 1412, SITKA, AK. 99835

RECITALS

- A. CASCADE ENTERPRISES, INC. ARE THE OWNERS OF THE FOLLOWING DESCRIBED REAL PROPERTY:
~~PLAT #99-14~~, LOT 1A, AND 1B, BOB GOSS SUBDIVISION CREATED FROM LOT 1, PAMCO RESUBDIVISION OF LOT A OF PAMCO SUBDIVISION PREVIOUSLY RECORDED.
- B. THERE IS PROPOSED TO BE A TWO FAMILY RESIDENCE LOCATED ON THE PROPERTY WITH THE COMMON PROPERTY LINE FOR EACH LOT RUNNING THROUGH THE COMMON WALL OF EACH RESIDENCE.
- C. CASCADE ENTERPRISES, INC. DESIRE THAT THE BOUNDARY WALL BE AND REMAIN A COMMON WALL, PARTY WALL.
- D. THE PURPOSE OF THIS DOCUMENT IS TO ENSURE THE USE OF THE PROPERTY FOR RESIDENTIAL USE ONLY; TO PREVENT NUISANCES; TO PREVENT THE IMPAIRMENT OF THE ATTRACTIVENESS OF THE PROPERTY AND THEREBY TO SECURE TO EACH HOMEOWNER THE FULL BENEFIT AND ENJOYMENT OF HIS HOME, WITH NO GREATER RESTRICTION ON THE FREE AND UNDISTURBED USE OF HIS PROPERTY THAN IS NECESSARY TO ENSURE THE SAME ADVANTAGE TO OTHER PROPERTY OWNERS.

WITNESSETH: PARTY WALL

1. DECLARATION OF PARTY WALL. THE ABOVE DESCRIBED COMMON WALL SHALL CONSTITUTE A PARTY WALL AND THE OWNERS OF LOT 13A AND 13B SHALL HAVE THE RIGHT TO USE THE WALL JOINTLY.
2. REPAIR, RESTORATION, REBUILDING ON DESTRUCTION. SHOULD THE PARTY WALL AT ANY TIME WHILE IN USE BE BOTH PARTIES AS AFORESAID BE DAMAGED BY ANY CAUSE OTHER THAN ACT OR OMISSION BY THE PARTY, THE WALL SHALL BE REPAIRED OR REBUILT AT THEIR JOINT EQUAL EXPENSE, PROVIDED THAT THE SUM RECEIVED FROM ANY INSURANCE AGAINST SUCH DAMAGE OR DESTRUCTION SHALL BE FIRST APPLIED TO SUCH DAMAGE, DESTRUCTION RESTORATION OR REPAIR. SHOULD THE PARTY WALL BE DAMAGED OR DESTROYED BY THE ACT OR OMISSION OF EITHER PARTY, THE WALL SHALL BE REPAIRED OF REBUILT AT THAT PARTY'S SOLE EXPENSE.
3. DURATION AND EFFECT OF AGREEMENT. THIS AGREEMENT SHALL BE

PERPETUAL AND THE COVENANTS HEREIN CONTAINED SHALL RUN WITH BOTH PARCELS OF LAND ABOVE SO DESCRIBED. BUT THE AGREEMENT SHALL NOT OPERATE TO CONVEY TO EITHER PARTY, THE FEE TO ANY PART OF THE LAND OWNED OR TO BE ACQUIRED BY THE OTHER PARTY.

4. USES OF THE WALL. THE PARTIES SHALL EACH HAVE THE FULL RIGHT TO USE THE WALL TO SUPPORT JOISTS, BEAMS, STUDS, AND OTHER STRUCTURAL MEMBERS AS REQUIRED ON THE ERECTION OF BUILDING ON THE RESPECTIVE PREMISES, PROVIDED, HOWEVER, THAT SUCH USE SHALL NOT INJURE THE ADJOINING BUILDING NOR IMPARE THE VALUE OF THE EASEMENT TO WHICH THE ADJOINING BUILDING IS ENTITLED.

5. ENCROACHMENT. NEITHER PARTY SHALL EXTEND THE WALL'S THICKNESS ONTO THE LAND OF THE OTHER PARTY WITHOUT THE OTHER PARTY'S WRITTEN CONSENT.

USE OF THE PROPERTY

1. USE. EACH LOT COVERED BY THIS AGREEMENT SHALL BE USED FOR SINGLE FAMILY RESIDENCES ONLY. ANY ENLARGEMENT TO PROVIDE FOR ADDITIONAL SEPARATE UNITS SHALL BE AN ILLEGAL USE OF THE PROPERTY.

2. EXTERIOR MAINTENANCE. MAINTENANCE TO COMMON AREAS OF THE STRUCTURE SHALL BE SHARED EQUALLY BE BOTH PARTIES. MAINTENANCE OF UNSHARED BUILDING AND GROUNDS IN A NEAT AND ORDERLY FASHION SHALL BE THE RESPONSIBILITY OF THE RESPECTIVE OWNERS. ALL STRUCTURE AND GROUNDS SHALL BE MAINTAINED AS TO NOT NEGATIVELY IMPACT THE OTHER PARDY'S INTEREST.

3. MODIFICATIONS TO STRUCTURE. NO PARTY SHALL MODIFY OR CHANGE THE APPEARANCE OF THE STRUCTURE WITHOUT APPROVAL FROM THE OTHER PARTY IN WRITING AND OBTAINING BOTH BUILDING AND PLANNING DEPARTMENT APPROVAL. THE APPROVAL SHALL NOT BE ARBITRARILY WITHHELD, IF THE PROPOSAL DOES NOT NEGATIVELY IMPACT THE ADJOINING PARTY.

4. DURATION AND EFFECT. THE BENEFITS AND OBLIGATIONS OF THE COVENANTS SET FORTH IN THIS AGREEMENT SHALL RUN WITH THE LAND HEREIN DESCRIBED SO LONG AS THE WALL OR ANY EXTENSION THEREOF SHALL EXIST. SHOULD FOR SOME REASON ONE OR BOTH UNITS ARE DESTROYED, THE STRUCTURE MUST BE REBUILT AS THE SAME COMMON WALL UNLESS EITHER ONE OF THE PARTIES DESIRES TO PURCHASE THE OTHER PARTY'S INTEREST AND BUILD A SINGLE UNIT, OR DUPLEX UNIT USING THE TOTAL SPACE OCCUPIED BY BOTH FORMER UNITS. SHOULD DESTRUCTION OCCUR TO ONLY ONE UNIT, IT SHALL BE RECONSTRUCTED ONLY AS A COMMON

BOOK 137 PAGE 701

WALL UNIT, AGAIN FULLY JOINED TO ITS COMMON WALL NEIGHBOR.
IN WITNESS WHEREOF CASCADE ENTERPRISES, INC. HAS EXECUTED THIS
AGREEMENT IN SITKA, AK. ON THIS 6 DAY OF APRIL 1999

BY Robert N. Goss

UNITED STATES OF AMERICA }
STATE OF ALASKA } SS.
}

THIS IS TO CERTIFY THAT ON THIS 6th DAY OF April 1999,
BEFORE, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF
ALASKA, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED ROBERT
GOSS, VICE PRESIDENT OF CASCADE ENTERPRISES, TO ME KNOWN TO BE THE
PERSON DESCRIBED IN AND WHO EXECUTED THE ABOVE AND FOREGOING
INSTRUMENT, AND ACKNOWLEDGE TO ME THAT HE SIGNED AND SEALED THE
SAME FREELY AND VOLUNTARILY FOR THE USES AND PURPOSES HEREIN
MENTIONED.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE
WRITTEN.

Janet Gassman
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES 6/5/99

STATE OF ALASKA
NOTARY PUBLIC
JAN GASSMAN
My Commission Expires 6/5/99



1269

cc	21-
<u>J. H. H.</u>	REC. DIST.
DATE <u>6-24</u>	19 <u>99</u>
TIME <u>3:53</u>	<u>P.</u> M.
Requested By <u>seq B</u>	
Address _____	

Colleen Ingman

From: Wells Williams [wells@cityofsitka.com]
Sent: Wednesday, February 01, 2012 11:14 AM
To: valorie@ablueberryinn.com
Cc: 'Colleen Ingman'; jimdinley@cityofsitka.com; 'Melissa Henshaw'; 'Theresa Hillhouse'; sharonj@cityofsitka.com
Subject: Reconsideration request

Hi Valorie,

When the Municipal Attorney returns next week, I'll discuss your request for reconsideration on the Menendez case with her.

Your letter raised a series of legal issues that merit her input.

As you know, the applicant is represented by an attorney and there may be multiple legal views on the matters you have raised.

As a result, the Planning Office has a responsibility to bring Ms. Hillhouse in at this stage.

Thanks

wells

Wells Williams, AICP
Planning Director
City and Borough of Sitka, Alaska
100 Lincoln Street
Sitka, Alaska 99835

907 747 1824 (direct phone)



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

MEMORANDUM

Assembly

FROM: Theresa Hillhouse
Municipal Attorney

RE: Conditional Use Permit – Menendez Day Care

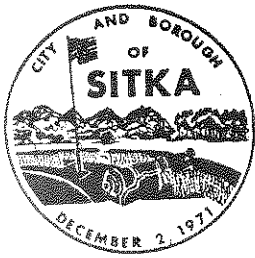
DATE: February 19, 2012

I understand the Planning Commission recently asked for legal advice regarding a conditional use permit (CUP) involving the Menendez Day Care. The legal issue involved the impact of a party wall agreement under SGC 21.24.040 between two zero lot line neighbors in a R-1 zone, which may have referenced the property to be used for residential purposes. Attached are documents requesting somewhat similar advice by a private citizen (Valarie Nelson) about party wall agreement impacts, who also owns a zero lot line but in a commercial zone not near the CUP property.

As I informed the Planning Commission through the Planning Director Wells Williams, CBS Municipal Attorney does not give legal advice to two neighbors, or to those not involved in the present controversy, regarding any covenants or agreements they may have entered into about their property and its use. See attached recent Alaska Supreme Court decision in *Gold Country Estates Preservation Group, Inc. et al. v. Fairbanks North Star Borough*, AK Supreme Ct. No. 6651 (February 10, 2012) at page 22. It is up to the private parties to enforce their own such agreements through the Courts. Any review of agreements by CBS Municipal Attorney would be limited to the type of conditions specified in SGC 21.24.040 entitled "Party wall agreement." SGC 21.24.040 does not specify that the party wall agreement can restrict use of the property, such as for a day care or only residential use. Even if it could, this would be contrary to SGC 22.16.015-3 which specifically allows for such R-1 zoned property to operate a day care with more than 4 children if a conditional use permit is granted, and does not specifically exclude a zero lot lines from such a process. See *Gold Country, Id.*

Attachments

cc: Jim Dinley, Municipal Administrator
Wells Williams, Planning Director
Valarie Nelson
Corrie Bosman, Attorney
Planning Commission

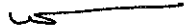


City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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 17th 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.

Providing for today...preparing for tomorrow

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

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706
705
704
703
702
701
700
708
707
706A
Main-upstr
706B
Apt-Dwnstr
705
704
703
702
701
700
707
705
703
701
615
613
611
612
613
611
606
607
604
605
602
601
600
401
524
525
524

AD STREET

MONASTERY STREET

PHERSON ST.

FIRST ST.

SHENNETT ST.

ARROWHEAD ST.

KINKEAD ST.

LAKE STREET

FIRST STREET

LAKE STREET

ARROWHEAD

SWAN LAKE

PIONEER CEMETERY



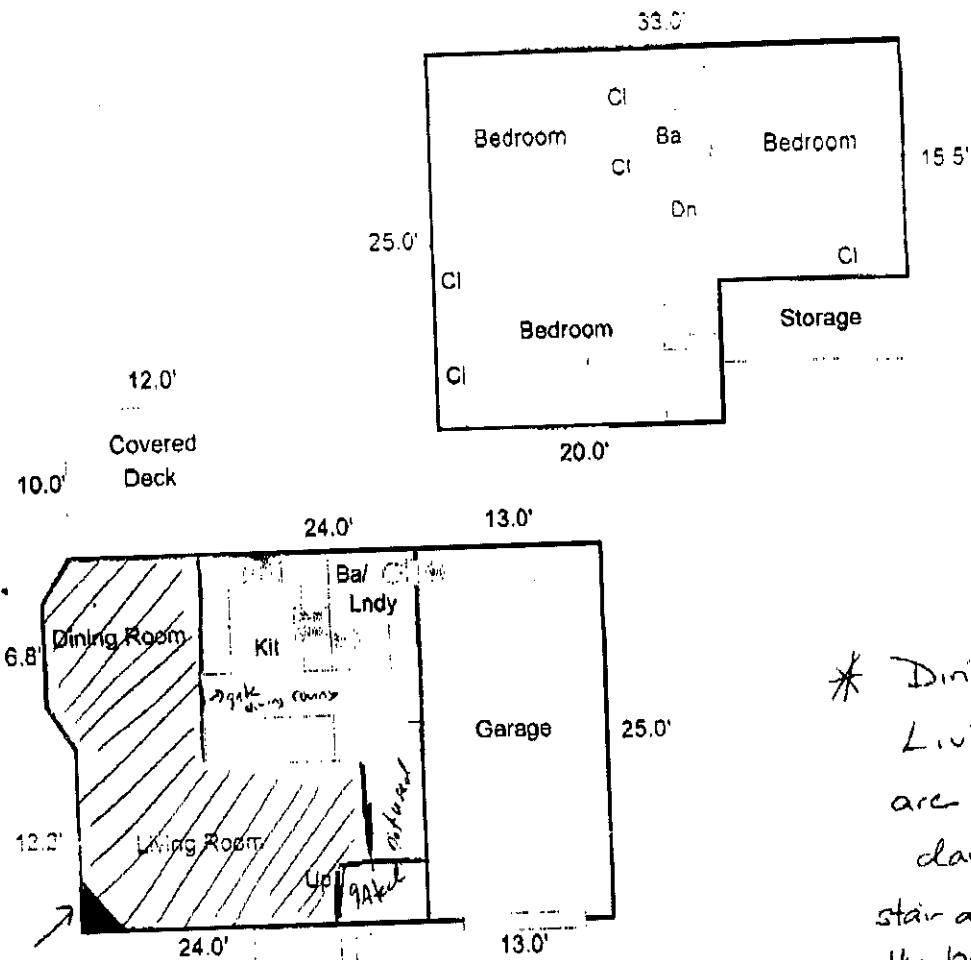
Menendez
Conditional Use Permit Request
Day Care
506 First Street











* Dining Room + Living Room areas are used for the day care
 stair are gated at the bottom + not used

Monitor heater on raised dining not used for children
 Sketch by Apex TV 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
First Floor			
	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
Second Floor			
	20.0 x	25.0	500.00
	13.0 x	15.5	201.50

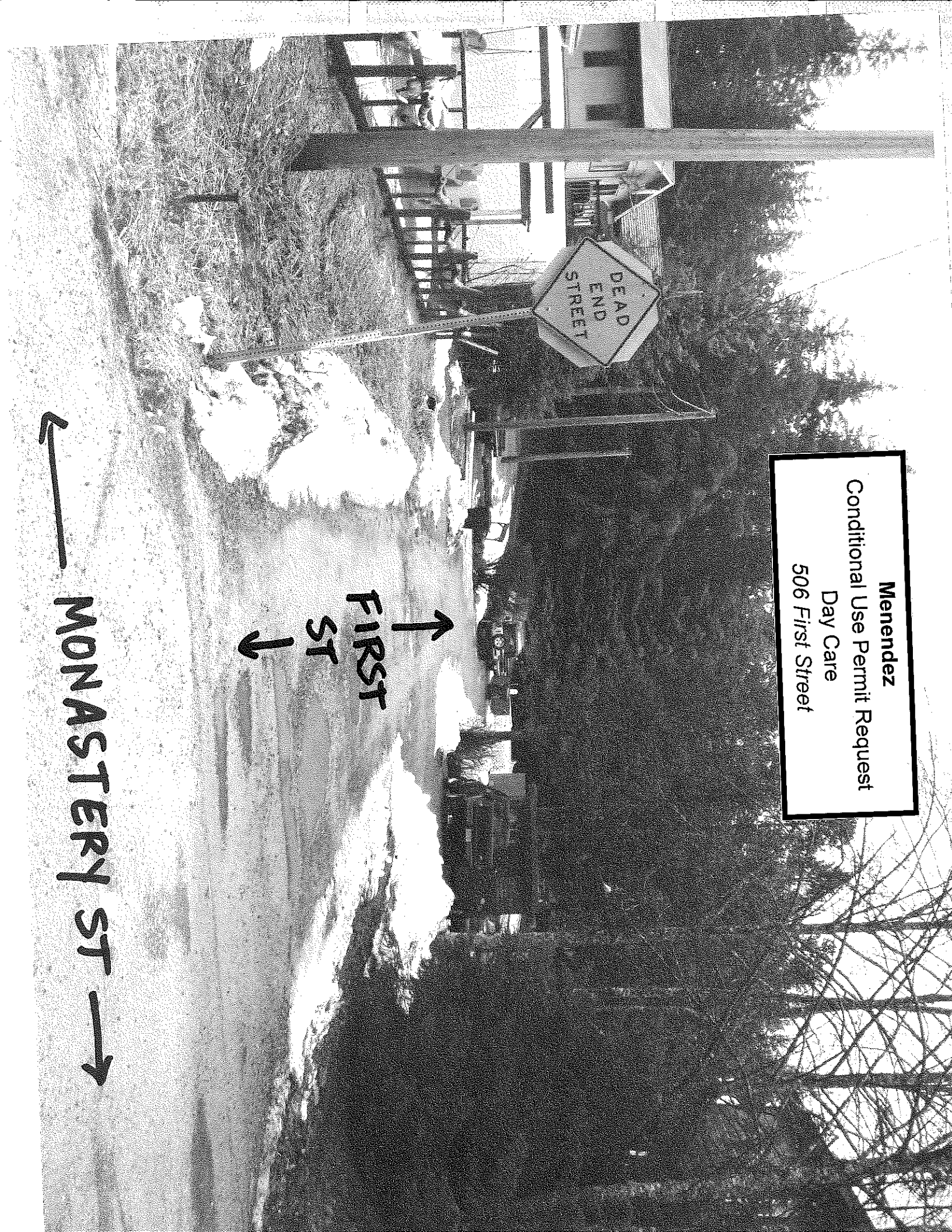
Menendez
 Conditional Use Permit Request
 Day Care
 506 First Street

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Conditional Use Permit Request
Day Care
506 First Street

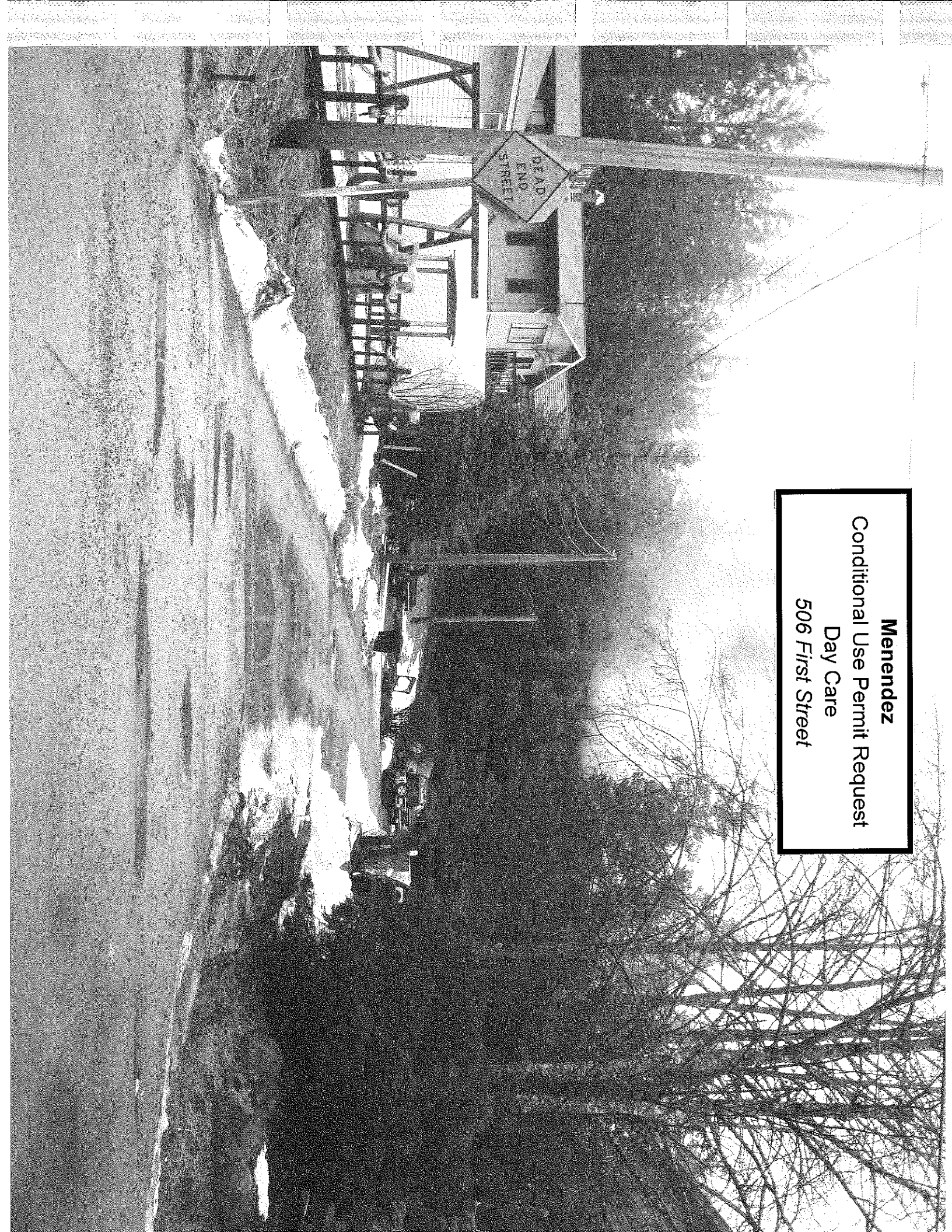


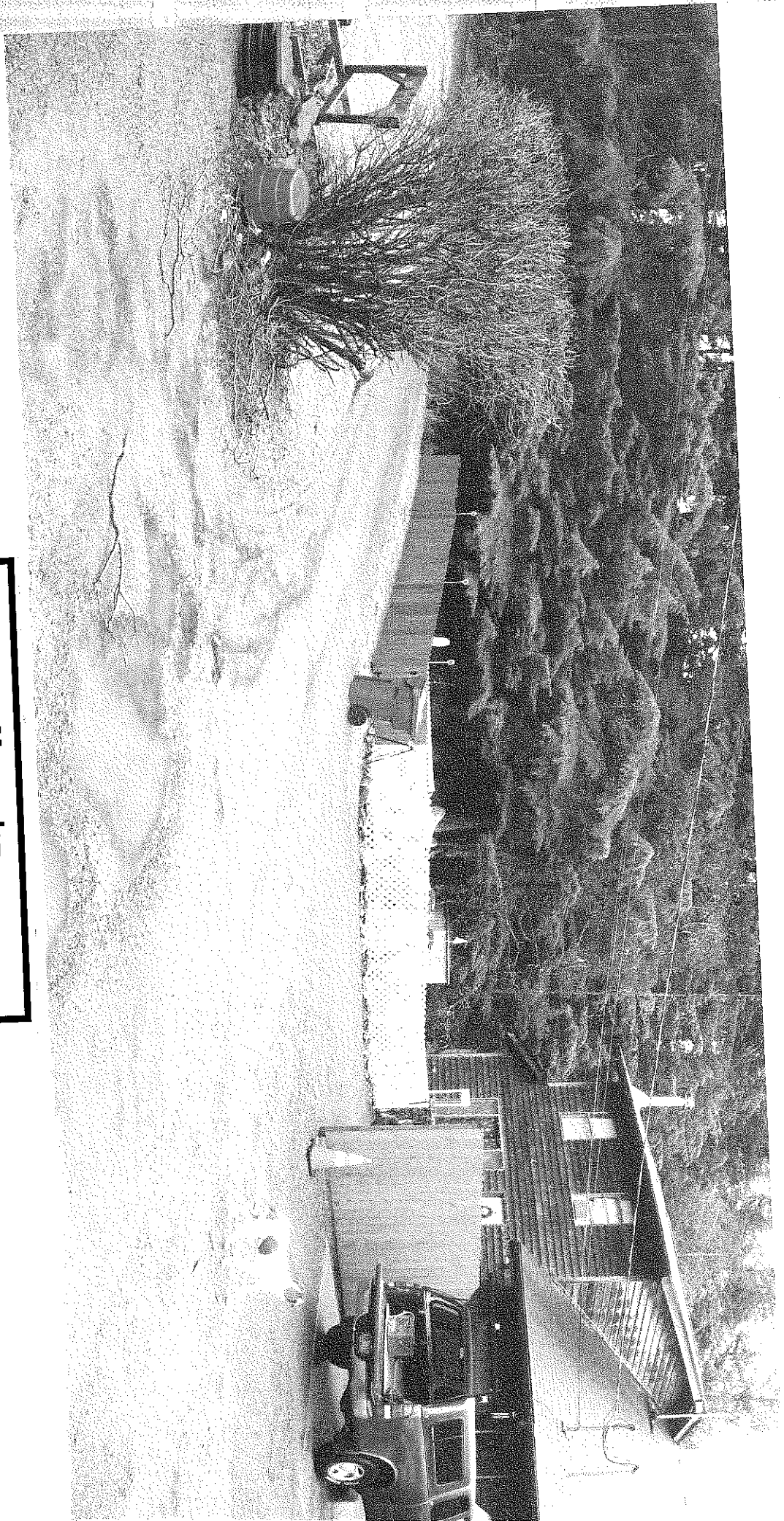
FIRST
ST

← 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

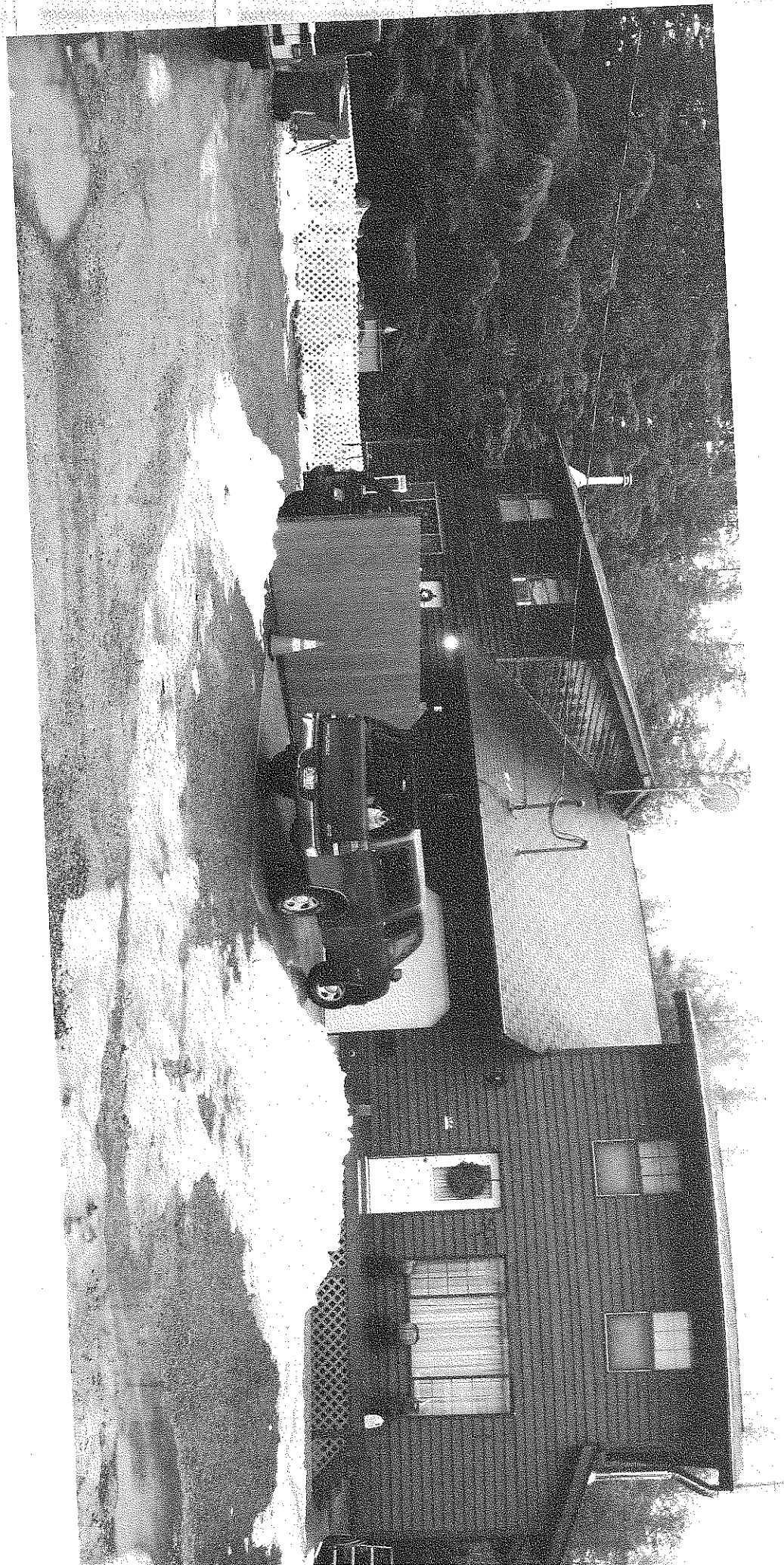
DRIVEWAY



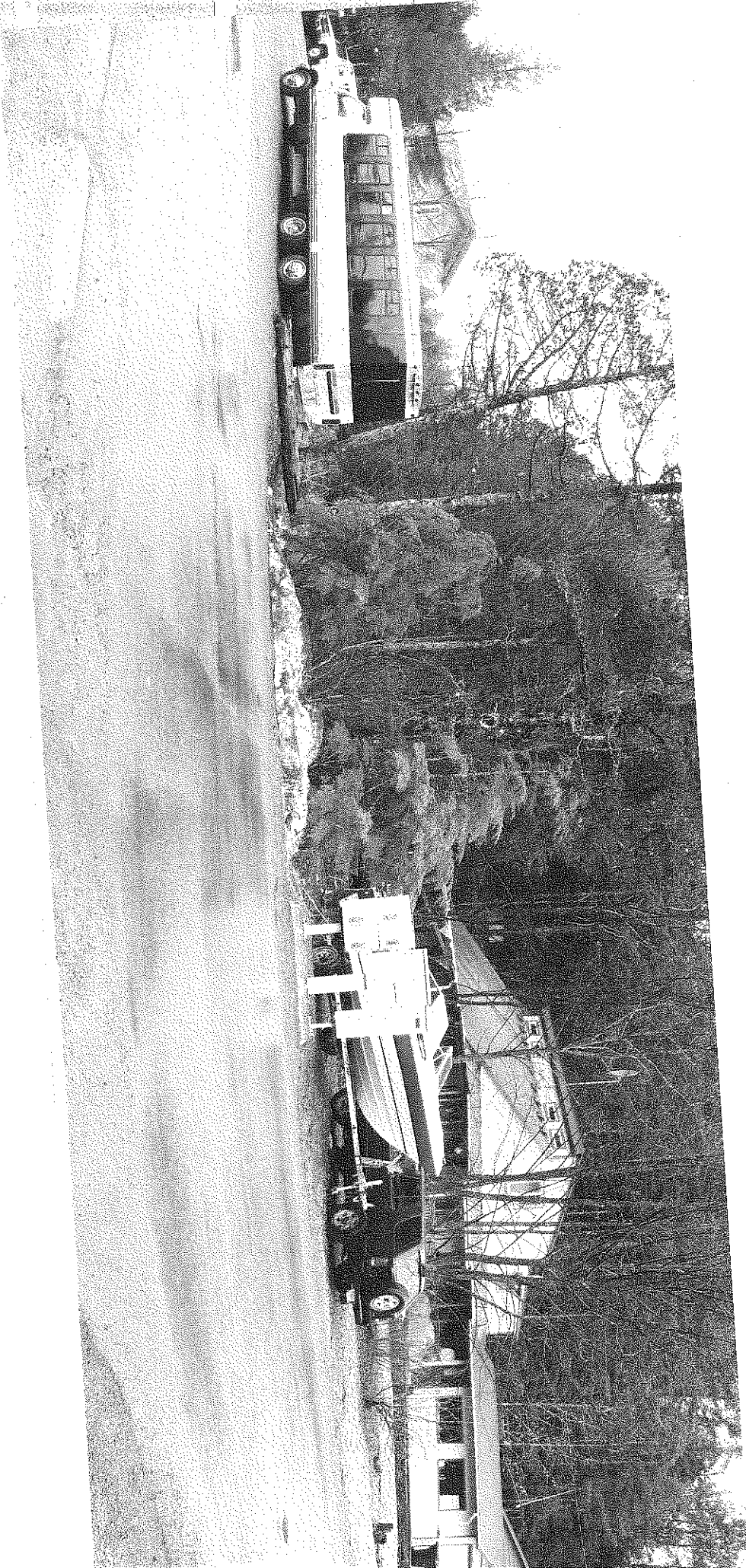
Menendez
Conditional Use Permit Request
Day Care
506 First Street







Menendez
Conditional Use Permit Request
Day Care
506 First Street



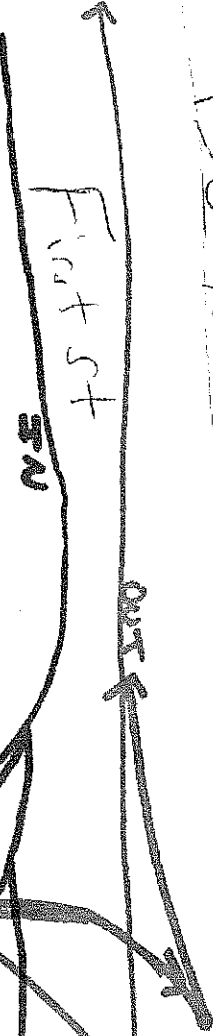
MONASTERY STREET

Available to park MAIL

Monastery st

DO NOT PARK OR BLOCK

SD4



DO NOT PARK OR BLOCK

SD3

DAWN CAR

#2 spot pull allway to front leave room for another car

#1 SPOT - use 1st pull allway forward + leave room for another car

3 SPOT (if large truck + space 1 is taken. Pull allway to garage + do not let car go first. SD4 parents line up

SD6 Kid First Day Care

Porch

Fenced yard

DO NOT PARK OR BLOCK

DO NOT PARK OR BLOCK

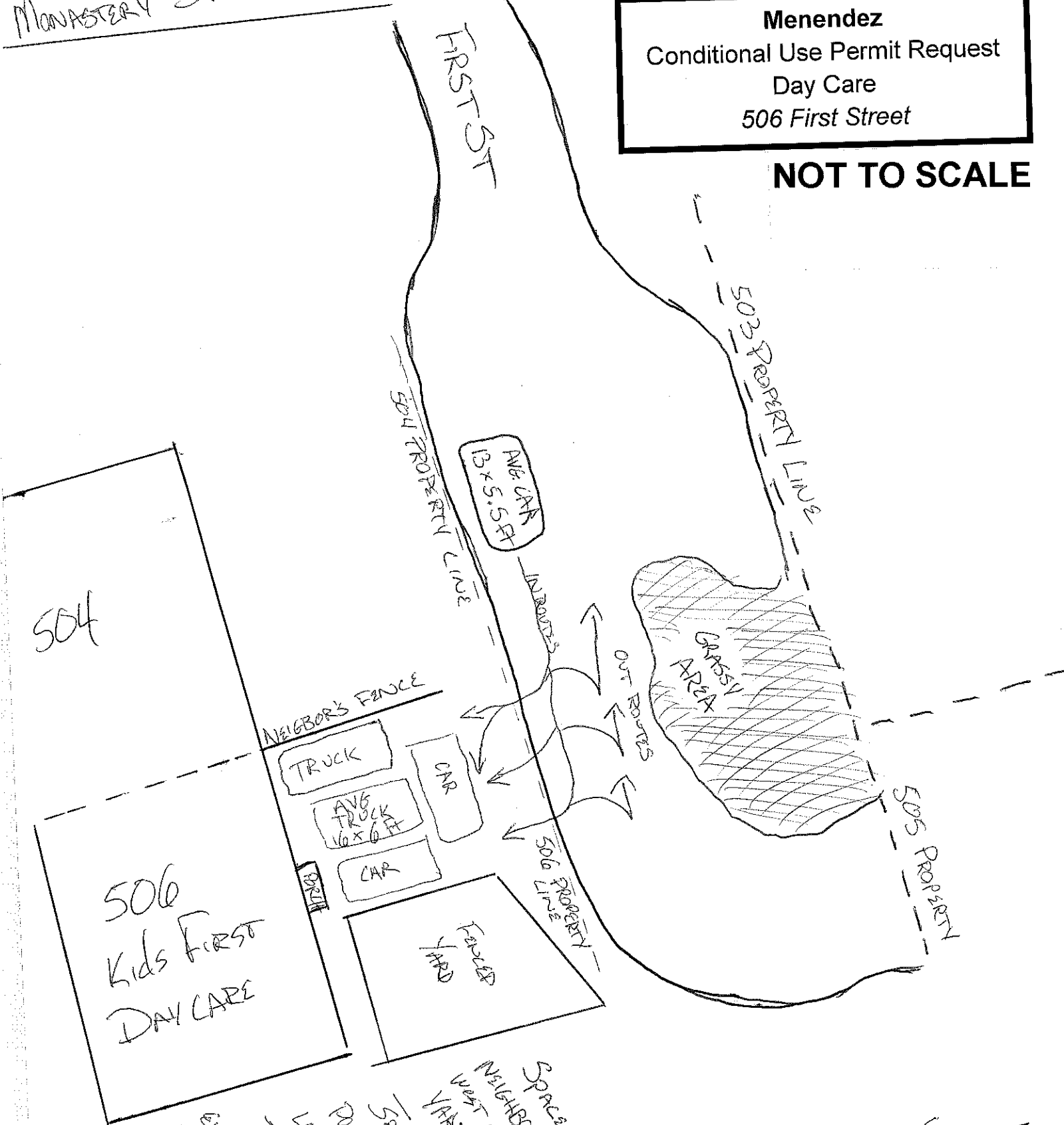
SD5

MONASTERY ST

X BUS STOP

Menendez
Conditional Use Permit Request
Day Care
506 First Street

NOT TO SCALE



504

AVE CAR
13x5.5 FT

NEIGHBOR'S FENCE

TRUCK

AVE TRUCK
6x6 FT

CAR

506
Kids First
DAY CARE

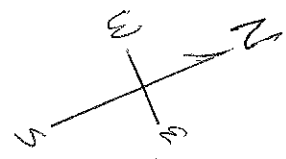
FENCED
YARD

GRASSY
AREA

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

SPACE BETWEEN PORCH AND PROPERTY LINE = 30 FT APPROX

SPACE BETWEEN EXTERIOR WALL AND PROPERTY LINE = 30 FT 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 28th 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.

Jeremy Twaddle, Chair

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 17th. 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.

Jeremy Twaddle, Chair

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 28th 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 17th 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 errant 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.

Jeremy Twaddle, Chair

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 5th 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 3rd 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 3rd. In an effort to be fair to all concerned, the conditions should be distributed to all the parties between January 3rd and January 17th. Some of the property owners in the area may not be in attendance at the meeting on January 3rd 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 17th 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 3rd, they can be mailed to property owners in the area in advance of the January 17th meeting.

The conditions for Mt. Edgumbe 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.

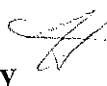


City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

MEMORANDUM

Assembly

FROM: Theresa Hillhouse
Municipal Attorney 

RE: Conditional Use Permit – Menendez Day Care

DATE: February 19, 2012

I understand the Planning Commission recently asked for legal advice regarding a conditional use permit (CUP) involving the Menendez Day Care. The legal issue involved the impact of a party wall agreement under SGC 21.24.040 between two zero lot line neighbors in a R-1 zone, which may have referenced the property to be used for residential purposes. Attached are documents requesting somewhat similar advice by a private citizen (Valarie Nelson) about party wall agreement impacts, who also owns a zero lot line but in a commercial zone not near the CUP property.

As I informed the Planning Commission through the Planning Director Wells Williams, CBS Municipal Attorney does not give legal advice to two neighbors, or to those not involved in the present controversy, regarding any covenants or agreements they may have entered into about their property and its use. *See* attached recent Alaska Supreme Court decision in *Gold Country Estates Preservation Group, Inc. et al. v. Fairbanks North Star Borough*, AK Supreme Ct. No. 6651 (February 10, 2012) at page 22. It is up to the private parties to enforce their own such agreements through the Courts. Any review of agreements by CBS Municipal Attorney would be limited to the type of conditions specified in SGC 21.24.040 entitled "Party wall agreement." SGC 21.24.040 does not specify that the party wall agreement can restrict use of the property, such as for a day care or only residential use. Even if it could, this would be contrary to SGC 22.16.015-3 which specifically allows for such R-1 zoned property to operate a day care with more than 4 children if a conditional use permit is granted, and does not specifically exclude a zero lot lines from such a process. *See Gold Country, Id.*

Attachments

cc: Jim Dinley, Municipal Administrator
Wells Williams, Planning Director
Valarie Nelson
Corrie Bosman, Attorney
Planning Commission

Providing for today...preparing for tomorrow

Theresa Hillhouse

From: Wells Williams [wells@cityofsitka.com]
Sent: Friday, February 10, 2012 2:50 PM
To: valorie@ablueberryinn.com
Cc: 'Melissa Henshaw'; 'Theresa Hillhouse'; jimdinley@cityofsitka.com; sara@cityofsitka.com;
'Colleen Ingman'
Subject: First Street Day Care CU

Hi Valorie,

As promised, I discussed your requests for reconsideration and appeal of the Planning Commission's recommendations on the First Street day care application with the Municipal Attorney.

The application is scheduled for the Assembly agenda on February 28th.

This scheduling was made in consultation with the applicant's attorney.

There will be an opportunity for you to make comments at that meeting.

Any written comments that you would like to provide to the Assembly, in addition to those you have already submitted, can be provided to the Municipal Clerk for inclusion into the Assembly packet.

The memo that covers the Planning Commission's recommendation, along with the supporting materials, should be available online at www.cityofsitka.com by Friday afternoon February 24th.

Thanks... and have a good weekend...

wells

Wells Williams, AICP
Planning Director
City and Borough of Sitka, Alaska
100 Lincoln Street
Sitka, Alaska 99835

907 747 1824 (direct phone)

Theresa Hillhouse

From: Wells Williams [wells@cityofsitka.com]
Sent: Wednesday, February 01, 2012 11:14 AM
To: valorie@ablueberryinn.com
Cc: 'Colleen Ingman'; jimdinley@cityofsitka.com; 'Melissa Henshaw'; 'Theresa Hillhouse'; sharonj@cityofsitka.com
Subject: Reconsideration request

Hi Valorie,

When the Municipal Attorney returns next week, I'll discuss your request for reconsideration on the Menendez case with her.

Your letter raised a series of legal issues that merit her input.

As you know, the applicant is represented by an attorney and there may be multiple legal views on the matters you have raised.

As a result, the Planning Office has a responsibility to bring Ms. Hillhouse in at this stage.

Thanks

wells

Wells Williams, AICP
Planning Director
City and Borough of Sitka, Alaska
100 Lincoln Street
Sitka, Alaska 99835

907 747 1824 (direct phone)

Valorie L Nelson
107 Littlebyrd Way
Sitka, AK 99835

012512

To Whom It May Concern;

Please consider this letter to be my official request for reconsideration (per SGC 21.52.060 and 22.30.190) to the Planning and Zoning Commission and the Administrator on the conditional approval of the conditional use permit for Menendez Day Care at 506 First Street on January 17, 2012.

I am an aggrieved person per SGC 21.08.010 A because I am an owner of a zero lot line subdivision property. Per SGC 21.04.030 C "Zero Lot Line Subdivisions (Chapter 21.24). A subdivision creating lots for residential units with common walls or for building residences on the side lot lines." Clearly the law states zero lot lines are residential, to argue otherwise will certainly result in litigation from those currently holding title to zero lot line properties.

The party wall agreements submitted by Mrs. Johnson (as required by SGC Chapter 21.24) clearly state that the purpose of the document is to ensure the use of the property for residential purposes only and that the duration of the agreement is perpetual. Webster's New World Dictionary Third College Edition defines residential as "of or connected with a residence" and perpetual as lasting or enduring forever.

The planning commission erred in passing this permit subject to the blessing of the municipal attorney, who now appears to be saying this is a civil issue. We have laws in this community known as the SGC, when the city fails to follow their own laws, it is not a civil matter just because they don't choose to enforce it.

If the reasoning that was used at the 011712 Planning and Zoning meeting continues, my zero lot line could conceptually turn into me having a gasoline station, food store or many other commercial uses right next door (my zero lot line in is the commercial zone).

I am currently traveling for medical reasons, and should you need to contact me, you may do so by calling my cell at 907-738-0027.

/s/Valorie L Nelson

Valorie L Nelson
107 Littlebyrd Way
Sitka, AK 99835

012712

Municipal Clerk, Colleen Ingman;

Please consider this letter to be my official appeal (per SGC 22.30.230) to the Assembly of the Planning and Zoning Commission recommendation of approval to the assembly for a conditional use permit request for a day care at 506 First Street at their meeting on January 17, 2012.

My name and address are listed above and my interest in the matter is that the law is not being followed. I am co-owner of a zero lot line property in a commercial zone and if the same reasoning is used in the future as was used on January 17, a gas station could be one wall away from me.

The specific reasons why I believe the decision by the commission to recommend approval of the permit request is wrong are as follows: Per SGC 21.04.030 C Zero Lot Line (ZLL) Subdivisions states that a ZLL is a subdivision creating lots for residential units with common walls or for building residences on the side lot lines. 21.24.040 requires that a party wall agreement be included as a covenant and 21.24.040 A.2 requires it to include the purpose of the agreement. The purpose section of both party wall agreements submitted by Amanda Johnson at that meeting state "for residential purposes only". Table 22.16.015-1 lists residential land uses and a day care business is not one of them. Per 22.04.070 Conflict with other regulations states "Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted rule, regulation or ordinance, the most restrictive of those imposing the higher standards shall apply". SGC 21.04.040 B states "When the provisions of this title impose greater restrictions than are imposed by other applicable city, state and federal regulations, the provisions of this title shall control. Clearly title 21 states zero lots lines are for residential units only, therefore a conditional use for a business in a residential zero lot line subdivision is not a lawful use.

The desired outcome is that the conditional use permit application should not be recommended to the assembly for approval, and should be denied by the Planning and Zoning Commission.

The record of appeal documentation should include the audio of the Planning and Zoning meeting of that item on 011712 and the documentation submitted by Amanda Johnson. If the 8 pages of the party wall agreements are not available to you, I will submit those when I return to Sitka next week.

I am currently traveling for medical reasons, and should you need to contact me, you may do so by calling my cell at 907-738-0027.

/s/Valorie L Nelson

Code Sections Referenced in Valorie Nelson's Menendez Appeal to the Assembly

The Menendez request is a conditional use application being processed through the Zoning Code – Title 22. Citations below in regular font are from Title 22. Citations below in *italic font* are from the Subdivision Code.

22.30.230 Appeals to the assembly.

- A. Filing. Every appeal to the assembly shall be filed with the municipal clerk within ten days after the date of the recommendation or decision of the matter being appealed.
- B. Contents. The notice of appeal shall contain a concise statement identifying:
 - 1. The decision being appealed.
 - 2. The name and address of the appellant and his interest(s) in the matter.
 - 3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
 - 4. The desired outcome or requested changes to the decision.

21.04.030 C. Zero Lot Line Subdivisions (Chapter 21.24). A subdivision creating lots for residential units with common walls or for building residences on the side lot lines.

21.04.040 Interpretation, conflict, and separability.

In their interpretation and application, the provisions of this title shall be the minimum requirements. More stringent requirements may be required if it is demonstrated that different standards are necessary to protect the public health, safety and welfare.

- A. *This title is not intended to interfere with or revoke or invalidate any easement, covenant, or other agreement between parties.*
- B. *When the provisions of this title impose greater restrictions than are imposed by other applicable city, state, and federal regulations, the provisions of this title shall control.*
- C. *In case of any ambiguity or difference of meaning or inconsistencies between the text and any illustrations or other graphics, the text throughout this title shall apply.*
- D. *Unless the context clearly indicates otherwise, words in the present tense can include the future tense, and words in the singular can include the plural, or vice versa. Except for words and terms defined in the beginning of each chapter of this title and in Chapter 21.08, all words and terms used in this title shall have their customary meanings.*
- E. *The words "shall" and "should" are always mandatory and not discretionary. The word "may" is discretionary.*

22.04.070 Conflict with other regulations.

Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted rule, regulation or ordinance, the most restrictive or those imposing the higher standards shall apply. (Ord. 02-1683 § 4 (part), 2002.)

Code Sections Referenced in Valorie Nelson's Menendez Reconsideration Request

21.52.060 Reconsideration.

A. *The planning commission may reconsider decisions upon petition of any aggrieved person, filed within ten calendar days after the date of the decision, or, on its own motion. If the plat approval is denied or the applicant is not satisfied with the conditions placed on the plats the matter shall be reconsidered by the planning commission unless the applicant files an appeal directly to the assembly.*

B. *The assembly may reconsider decisions only if it finds any of the following:*

1. *That there was a clerical error in the decision;*
2. *The decision resulted from fraud or mistake;*
3. *New evidence or a change in circumstances is discovered;*
4. *The application was rejected by a tie vote.*

C. *The planning commission shall review the petition, and decide whether to reconsider the matter. Additional evidence shall be necessary to support reconsideration. If the petition is granted, the planning commission then shall decide the matter or set the matter on its agenda for rehearing. The decision of the planning commission on reconsideration shall be final, subject to appeals to the assembly.*

22.30.190 Reconsideration.

A party to a public hearing or closed record appeal may seek reconsideration only of a final decision by filing a written request for reconsideration with the administrator within fourteen calendar days of the oral announcement of the final decision. The assembly shall consider the request at its next regularly scheduled meeting. If the request is denied, the previous action shall become final. If the request is granted, the assembly body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. (Ord. 04-60 § 4(M), 2004.)

21.08.010 "A".

A. *"Aggrieved person" means:*

1. *The applicant or any person adversely affected by the decision;*
2. *Any governmental unit who is a party to or has submitted comments on any actions before the planning commission and contends the fulfilling of their governmental responsibilities are threatened by the action of the planning commission or assembly.*

21.04.030 C. *Zero Lot Line Subdivisions (Chapter 21.24). A subdivision creating lots for residential units with common walls or for building residences on the side lot lines.*

Table 22.16.015-3

General Services Uses

ZONES	P (1)	SF	SFLD (6)	R-1 MH (6)	R-1 LDMH (6)	R-2 MHP (6)	R-2 CBD (6)	C-1	C-2	WD (2)	I	G(3)	LI (3)	R	OS	SC (8)
PERSONAL SERVICES																
• General services								P	P	P		C				
• Dry cleaning								P	P							
• Industrial laundry								C	C		P					
• Funeral home/crematorium								C	P			C				
• Cemeteries/mausoleum	P											C	C			
• Day care/kindergartens	P			P (6)	P (6)	P (5)	C (5)	C (5)	C (5)			P	P			
• Veterinary clinic						(7)	C	C	C		P	C				
• Automotive repair							C	P	P	P	P	C				
• Automotive service							C	P	P	P	P	C				
• Miscellaneous repair							P	P	P	P	P	C	C			
• Social service agencies							P	P	P	C		CU/S	C			
• Stable	C							C	C			PU/CS	C			
• Kennel								C	C		C	P				
• Bank						C	C	P	P			C	C			
• Credit union						C	C	P	P			C	C			
• Massage treatments																C

ZONES	P (1)	SF	SFLD (6)	R-1 MH (6)	R-1 LDMH (6)	R-2 MHP	CBD	C-1	C-2	WD (2)	I	GI(3)	LI (3)	R	OS	SC (8)
HEALTH SERVICES																
• Offices/outpatient clinic						C	C	P	P	P		C	C			
• Hospital	C					(4)	C	P	P			C	C			
• Medical/dental laboratory							C	C	P	P		P	C			
• Miscellaneous health facility							C	C	C	C		C	C			
EDUCATIONAL SERVICES																
• Elementary school	P						C	C	C	C		C	C			
• Middle/junior high school	P						C	C	C	C		C	C			
• Secondary/high school	P						C	C	C	C		C	C			
• Vocational school	P						C	C	C	C		C	C			
• Specialized instruction school	P						C	C	C	C		C	C			
• College/university	P								C	C		C	C			
• School district support facility (excluding bus barns)	P						C	C	C	P		P	C			
• Auditorium	P															

P: Public Lands District
 SF: Single-Family District
 SFLD: Single-Family Low Density District
 R-1: Single-Family/Duplex District
 R-1 MH: Mobile Home Districts
 R-1 LDMH: Low Density Mobile Home Districts
 R-2 MHP: Mobile Home Districts
 CBD: Commercial Districts
 C-1: Commercial Districts
 C-2: Commercial and General Commercial/ Mobile Home Districts
 WD: Waterfront District
 I: Industrial District