



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
Date: 03/15/07

MEMORANDUM:

DATE: March 2, 2007

TO: Montgomery County Board of Appeals

VIA: Rose Krasnow, Chief, Development Review Division *RK*
 Ralph Wilson, Acting Zoning Supervisor, Development Review Division *RW*
 Division

FROM: Elsabet Tefaye, Development Review Division (301) 495-1301 *ET*

SUBJECT: **Special Exception SE-07-02: Maria C. Ordonez** Request for approval of a special exception for a Child Day Care Center for up to 30 children located on lot 24, Block 14, Brookhaven Subdivision, Rockville.

Zone: R-90
Address: 13904 Bauer Drive, Rockville, MD
Applicants: Maria C. Ordonez

MASTER PLAN: 1994 Aspen Hill Master Plan
FILING DATE: September 18, 2006
PLANNING BOARD HEARING: March 15, 2007
PUBLIC HEARING: March 26, 2007

RECOMMENDATION: APPROVAL with conditions

Rational

With the recommended conditions, the proposed child day care center conforms to all applicable requirements and regulations of the special exception provisions as specified in the Montgomery County Zoning Ordinance. The applicant in this

case has met the burden of proof by showing that the proposed day care center would be operated without any detriment to the neighborhood and would not adversely affect the public interest. Moreover, the proposed use is consistent with the recommendations of the 1994 Aspen Hill Master Plan
Staff recommends approval of SE-07-2 for a child day care center for 14 children with the following conditions:

1. The child day care use must be limited to 14 children up to four years of age and one non-residential staff, with the total number of staff not exceeding three full-time equivalent.
2. Hours of operation for the day care center must be between 7:30 a.m. and 5:30 p.m. Monday through Friday.
3. No more than 8 children are permitted to play outdoors at any one time.
4. The existing chain-link fence along the north, west, and south property lines, including the gate, must be replaced or reinforced with a six-foot-high sight-tight fence.
5. Regular arrival and departure times for children must be staggered between the hours of 7:30 a.m. and 8:30 a.m. and 4:30 and 5:30 p.m. and must be included in the enrollment contract to be signed by parents.
6. Landscaping in the front yard must be enhanced periodically.
7. The total number and the location of lighting fixtures must remain as depicted on Sheet 2 Landscape and Lighting Plan.
8. The enrollment contract must specify that all off-site parking related to the child day care facility be confined to the area of the road along the frontage of the property.
9. The applicant must submit a separate site plan or rename the Landscape and Lighting Plan to read "Site, Landscape and Lighting Plan."
10. A Community Liaison Committee must be formed representing the 22 households located on the 13900 Block of Bauer Dr (including Bauer Court) between Frankfort Drive (south) and Marina Drive (north) to monitor and assess potential problems arising from the operation of the day care. The committee would communicate concerns to the owner/operator and work with her to improve

parking, congestion, or other potential problems that could impact the neighborhood negatively, with the Board of Appeals having the final authority on unresolved matters. The committee will meet at least two times a year and will present reports to the Board of Appeals.

A. Location and Field Inspection

The property is located on the west side of Bauer Drive between West Frankfort Drive and Bauer Court; it is identified as lot 24 Block 14 in the subdivision known as Brookhaven is generally trapezoidal in shape. The property comprises approximately 9,655 square feet of land and is improved with a 1 ½-story plus basement, brick and frame structure that was constructed in 1960. The property has approximately 83 feet of frontage on Bauer Drive from which it is accessed via a concrete driveway.

The front yard is lightly landscaped with grass, a few ornamental trees and two shade trees and contains a 35-foot-long driveway that provides access to the one-car attached garage. The driveway, which widens from 7.5 feet to 11 feet, provides parking spaces for up to two vehicles (stacked). The rear yard of the property is fenced and layered and divided in to two parts by a retaining wall. It contains one mature shade tree and a shed. Access to the child day care center is through the front entrance. The applicant indicated that children will be dropped off and picked up from the on street parking area in front of the house.

Site inspection by staff reveals that the property is properly posted.

B. Elements of Proposal

The applicant originally proposed to operate a child day care facility for up-to 30 children with six full-time staff from the existing single-family-dwelling. The initial proposal included the construction of an additional driveway pad in the western side yard to provide parking for employees, and the conversion of the existing garage to a classroom.

In response to concerns expressed by staff and the adjoining neighbors, the applicant amended the application. In the revised proposal, the applicant reduced the maximum number of children from 30 to 14 and the number of staff from six to three. The children will be divided into two groups. One group will consist of up to six infants and toddlers with two staff. The second group will consist of eight children, ages two to four with one staff member.

In the revised plan, the applicant abandons the proposal to construct an additional driveway and retains the existing one-car garage. The applicant has

submitted elevations, floor plans for the first and basement floors, and photographs showing the various exterior portions of the house. Also, sample pictures of play equipment are included in the submittals. The proposed use is subject to licensing and certification by the State of Maryland Department of Human Resources Child Care Administration.

The revised statement of operation indicates that the applicant will attempt to stagger the arrival times for children between 7:30 a.m. and 9:30 a.m. during the morning drop-off; no information is provided on the evening pick up time. The applicant did not provide information regarding the arrival and departure time for the three full-time staff members and whether it will be staggered or not. Staff recommends that the applicant go a step further and include the staggered arrival times in the enrollment contract to be signed by parents.

The Landscape and Lighting Plan (Sheet 2) and a plan titled "Existing Conditions" (Sheet 1) show a total of five lights mounted on the side (north) front and rear sides of the building. The lights are angled to minimize the glare onto adjoining properties.

No sign is shown on the site plan and none is proposed. All signs placed on the property must meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area, and Section 59-F-4.1 (e) regarding illumination.

C. Neighborhood Description

The neighborhood, for purposes of this application, is defined by the following boundaries:

North:	Heathfield Road and Mariana Drive to the
East:	Parkland Drive
South:	Aspen Hill Road
West:	Brook Haven Elementary and Parkland Park Middle schools

The immediate area is predominantly residential and zoned R-90 and includes an elementary and middle schools, a community library and a church.

The subject property abuts properties containing single-family dwellings to the north, south, and west in the R-90 zone. To the east the property abuts Bauer Drive. The properties across Bauer Drive, confronting the subject site, are also developed with single-family dwellings, in the R-90 zone.

D. Land Use and Zoning History:

The property was placed in the R-90 zone with the enactment of the 1954 Sectional Map Amendment. The 1994 Sectional Map Amendment for Aspen Hill retained the property in the R-90 zone.

E ANALYSIS

1. Master Plan:

The proposed use is not inconsistent with *the 1994 Aspen Hill Master Plan*. The Master Plan addresses child day care facilities on pages 189-193 and special exceptions on pages 79-81. On page 80, the plan states that in the design and review of special exceptions, the following guidelines should be followed, in addition to those stated for special exception uses in the Zoning Ordinance:

- Any modification or addition to an existing building to accommodate a special exception use should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures.
- Close scrutiny should be given to replacing or enhancing the screening and buffering as viewed from abutting residential areas and along the major roadways.
- Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped.

With regard to day care facilities, the plan states (page 190) that day care facilities should provide suitable play area; safe and convenient access; and not create undesirable traffic, noise and other impacts upon the surrounding community.

With the recommended conditions, the proposed use is compatible with the existing development pattern of the adjoining residential dwellings as well as the immediate neighborhood, in terms of height, size, scale, traffic and visual impacts of the structures and parking. The applicant is proposing to enclose the entire rear yard of the property with a six-foot-high vinyl privacy fence and add a four-foot-high aluminum fence (ovation style) with a gate to the top of the retaining wall. In addition, staff recommends that the applicant replenish and enhance the established landscaping in the front yard to project an aesthetic appeal and maintain the residential characteristics of the property.

2. Transportation

There are no transportation issues associated with the proposed use. The proposed special exception use satisfies the Local Area Transportation Review (LATR) test and will have no adverse effect on area roadway

conditions or nearby pedestrian facilities. The Transportation Planning staff has offered the following comments:

Vehicular Site Access and On-Site Parking

Vehicular access and on-site parking to this existing single-family detached unit is via the driveway from Bauer Drive that can hold two vehicles. An additional vehicle could be housed in the garage. Parking is available on the street and is not prohibited on either side. A storm sewer inlet/box and manhole exists in front of the house.

Pedestrian Facilities

Sidewalks exist on both sides along the segment of Bauer Drive fronting this existing single-family detached unit. The proposed Child Day Care Center will not change the existing pedestrian facilities.

Master-Planned Roadways and Bikeway

This segment of Bauer Drive is not listed in the master plan. This segment of Brad Drive is built as a secondary residential street with a 60-foot right-of-way and existing sidewalks. According to the *Aspen Hill Master Plan*, Bauer Drive one block to the north is classified as a two-lane primary residential road, with a 70-foot right-of-way. Parkland Drive, one block to the east, is also classified as a two-lane primary residential road, with a 70-foot right-of-way. The Countywide Bikeways Functional Master Plan designates a signed shared roadway, SR-35, along the segments of Bauer Drive and Parkland Drive that are designated as primary residential roads.

Local Area Transportation Review

Staff reviewed the subject Special Exception use with three staff members, and per the Local Area Transportation Review (LATR) guidelines determined that the use would not require a traffic study since it will not generate 30 or more peak-hour trips during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods. The Special Exception use, therefore, satisfies the LATR requirements.

Transportation Planning staff recommends the following condition as part of the transportation-related requirements to grant this special exception:

- Limit the hours of operation, the number of students, and employees at the proposed facility to that described in the applicant's December 29, 2006 Statement of Operations.

3. Environment

There are no environmental issues or concerns associated with the subject proposal. No environmentally sensitive areas are located on the property. Moreover, the property, which is under 40,000 square feet is not subject to the forest conservation law, under 22A-4.

4. General Development Standards

1. **Development Standards-59-G-1.23 (a): Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.**

The following table summarizes the relevant development standards for the R-90 Zone that are applicable to the proposed special exception request:

Development Standard	Required	Proposed/Existing
Minimum Lot Area	9,000	9,655
Minimum Lot width:		
▪ at front building line	75 ft	83 ft
▪ at street line	25 ft	83+
Minimum Building Setback:		
Front Yards	30 ft	35
Side Yards		
▪ One side	8 ft	8.2 ft.
▪ Sum of both sides	25ft	27.2 ft
Rear Yard	25 ft	34 ft
Maximum Building Height	2 ½ stories or 35 ft	25 ft (to peak of roof)
Maximum Building Coverage	30%	16.7%

2. **Parking Requirements—59-G-1.23 (b): Special exceptions are subject to all relevant requirements of Article 59-E.**

Section 59-E-3.7: Child day care facility. For a family day care home or group day care home, one space for every non-resident staff member in addition to the residential parking requirement. The required number of spaces may be allowed on the street abutting the site. For a child day care center, one space for every non-resident staff member in addition to the residential parking requirement if applicable and adequate parking for discharge and pick up of children. In this instance, the average drop off and pick up space required is one space for every six children. Waivers and variances are allowed in accordance with the Zoning Ordinance.

A total of six parking spaces are required. The applicant proposes to meet this requirement by providing three spaces on the driveway and the existing garage and using on street parking along the property's frontage on Bauer drive for the remaining three spaces.

3. **Forest Conservation-59-G-23 (d):** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

The property, which is less than 40,000 square feet, is not subject to the forest conservation law, under 22A-4.

4. **Signs—59-G-23 (f):** The display of a sign must comply with Article 59-F.

No sign is proposed with the application. All signs placed on the property must meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area and Section 59-F-4.1 (e) regarding illumination.

5. **Building compatibility in residential zones —59-G-23 (g):** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its sitting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

No external modification was proposed to the existing one story residential structure, which was originally constructed in 1960. With the recommended conditions, the proposed use is compatible with

the existing development pattern of the adjoining residential dwellings as well as the immediate neighborhood, in terms of height, size, scale, traffic and visual impacts of the structures and parking.

6. Lighting in residential zones —59-G-23(h): All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.**
- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.**

The applicant's statement of operation provides the following information regarding lighting:

The only external change proposed is the addition of one light above the rear door to the back yard, which will be a hooded, residential style fixture allowing up to a 100 watt light bulb. Two 50-watt directional halogen bulbs will be used in the spotlight in the rear of the home, which will be directed toward the ground, so that none of the light will escape the path of the bulb. There will be no other changes to the façade of the home, which will maintain its residential appearance.

Both Sheet No. 1 (Existing Condition) and Sheet 2 (Landscape and Lighting Plan) of the revised plans show only one rear light. Neither plan shows the existing security light on the northwestern corner of the house. The applicant's attorney did not respond to e-mail and telephone messages requesting clarification of inconsistencies between the plans and the statement of operation. The proposed lighting as depicted on the landscape/lighting plan appears to adequately meet the lighting requirements. But the applicant must provide a clarification on the number of light fixtures proposed for the rear side of the house and whether the existing security light located on the northwest corner of the house will be removed.

F. Community Concerns

Two neighbors who are residents and owners of the properties 13901 and 13903 Bauer Drive confronting the subject property wrote letters opposing the subject proposal. The following issues and concerns were identified in the letters:

1. The property was last used as a group home and the neighbors have experienced parking and street congestion problems from that use. The proposed use may result in similar problems.
2. The proposed use may result in depreciating the value of the adjoining residential properties.

In view of the fact that neither the operator nor any of the staff members reside on the property, it is imperative that a mechanism be put in place to promote communication, on a regular basis, between the neighbors and the child day care facility. Staff recommends that residents of the 22 houses located on the 13900 Block of Bauer Drive (including Bauer Court) between Frankfort Drive (south) and Marina Drive (north) to form a Community Liaison Committee to monitor and assess potential problems arising from the operation of the day care. The committee would communicate concerns to the operator and work with the operator to improve potential parking, congestion, or other potential problems that could impact the neighborhood negatively, The Board of Appeals having the final authority on unresolved matters.

G. Inherent and Non-Inherent Adverse Effects

Standard for Evaluation: Section 59-G-1.2.1 of the Zoning Ordinance specifies that a special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

As established in previous special exception cases, seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are

size, scale, scope, lighting, noise, traffic, and the environment. Any special exception case may have some or all of these characteristics in varying degrees.

The inherent, generic physical and operational characteristics associated with a child day care use include outdoor play areas, parking, drop off and pick up areas, lighting, noise generated by children, and vehicular trips to and from the site. There are no significant transportation impacts that would result from the proposed Special Exception. The Transportation Planning staff finds that the proposed special exception use satisfies the Local Area Transportation Review test and will have no adverse effect on nearby roadway conditions or pedestrian facilities.

The revised plan provides for adequate parking to serve the proposed child day care center. The house has a one-car garage and the driveway accommodates up to two additional parking spaces for staff parking. Moreover, up to three vehicles can be parked curbside, along the property's frontage on Bauer Drive. This area can serve as drop off and pick up area for children.

Proposed lighting for the property is adequate and consistent with the residential character of the neighborhood. With the exception of one rear light, all lighting fixtures already exist on the property.

The front and side yards are landscaped with grass. Two large mature trees are located on the property; one in the front yard and another one in the rear yard where the children's play area will be located. A small shed is located on the southeast side of the existing house. Shrubs and small decorative plants are located in the front and side of the house. Existing landscaping and grassy areas are in keeping with the residential character of the property, and promote compatibility with the residential neighborhood. But landscaping needs to be maintained and upgraded.

Provided that the recommended conditions are complied with, there will be no inherent or non-inherent impacts associated with the subject proposal that warrant denial.

H. Specific Special Exception Requirements: A special exception may be granted for a child day care facility in the R-90 Zone. Section 59-G-2.13.1 sets forth the specific requirements:

- (a) The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:**
 - (1) A plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site.**

The applicant has submitted site and landscape plans that generally satisfy these requirements.

- (2) Parking is provided in accordance with the Parking Regulations of Article 59-E. The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:**
- (A) Existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or**
 - (B) A reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;**

Six parking spaces (three for staff, three for the pick up and drop off of children) are required. A total of three on-site parking spaces, including one garage space and two driveway parking spaces are provided. Moreover, ample on-street parking is available on both sides of Bauer Drive on which the property has 83 feet of frontage. It is estimated that up to three vehicles can be parked curbside along the frontage of the property. There is no parking restriction on either side of Bauer Drive. In addition, all of the houses located along Bauer Drive have driveway-parking areas, and therefore, the demand for street parking at this location is low. It should also be noted that the property abutting the subject site is a corner lot and is accessed from Frankfort Drive with approximately 103 feet of frontage on Bauer Drive and no curb cut. But, to further minimize potential negative impacts to the adjoining properties, it is recommended that all off-site parking related to the subject child day care facility be confined to the frontage of the property adjacent to the road. It is also recommended that arrival and departure time of the children be staggered in a manner that would be enforceable.

Given the availability of ample on street parking in front of and near the property, and the fact that the arrival and departure times for children will be staggered as recommended (see No. 3 below), It is unlikely that the proposed use would generate a level of traffic or noise that would cause concern about congestion in the neighborhood.

- (3) An adequate area for the discharge and pick up of children is provided;**

With the two driveway parking spaces and available on-street parking, adequate discharge and pick up area is provided. Staff recommends that

arrival and departure time of the children be staggered over a two hour period in the morning and one hour period in the evening — 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 5:30 p.m. Staff also recommends that the applicant instruct parents as to the location of the drop-of and pick up area. Moreover, drop off and pick up staggering must be included in enrollment contract with parents.

- (4) The petitioner submits an affidavit that the petitioner will:**
- (A) Comply with all applicable State and County requirements.**
 - (B) Correct any deficiencies found in any government inspection.**
 - (C) Be bound by the affidavit as a condition of approval for this special exception.**

The applicant has submitted such an affidavit, dated July 19, 2006, stating compliance with the above-cited requirements.

- (5) The use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.**

With the recommended conditions, the use will be compatible with surrounding uses and will not result in nuisance because of traffic, parking, noise or any type of physical activity. The use will provide childcare services to the nearby community and will operate within the regulations of the Zoning Ordinance. It will function in an unobtrusive fashion and, with the recommended conditions, it will not be detrimental to surrounding properties or the general neighborhood.

I. 59-G-1.21. General conditions

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:**
- (1) Is a permissible special exception in the Zone.**

The subject property is located in the R-90 Zone, which permits the proposed special exception.

- (2) **Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.**

With the proposed conditions the proposal is in compliance with the specific special exception requirements of Section 59.G-2.13.1 for a *child day care facility*.

- (3) **Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency**

There are no Master Plan concerns that are associated with this application.

- (4) **Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.**

The proposed use will be operated in such a manner that it will not interfere with the orderly use, development and improvement of surrounding properties. With the recommended conditions, the proposed use will be in harmony with the general character of the residential neighborhood.

- (5) **Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**

There is no indication that the proposed special exception would be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood, provided that the applicant complies with the recommended conditions of approval of this application. To insure adequate screening, and to provide additional safety and security measures to the children, the applicant is proposing to enclose the entire rear yard of the property with a six-foot-high vinyl privacy fence and add a four-foot-high aluminum fence (ovation style) with a gate to the top of the retaining wall. In addition, staff recommends that the applicant replenish and enhance the established landscaping in the front yard to project an aesthetic appeal and maintain the residential characteristics of the property.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use will not cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The use will be adequately screened from the views of neighboring properties, will generate minimal noise, will have minimal lighting and glare, and no significant traffic impact. Sufficient screening is proposed with retaining walls, and sight-tight fences. A combination of on site and available on street parking provide adequate parking accommodation and orderly circulation on and around the subject property in a manner that will not result in a traffic spill over onto the adjacent road. The interior lay out of the facility is designed in accordance with the licensing agency's requirements and is subject to approval by the licensing agency. The applicant has submitted a floor plan for the day care facility into the record of this application.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The proposed use will not exacerbate the concentration of child day care centers or other special exception uses in the area. An accessory apartment use, approved in May of 1994, is located at 4423 Renn Street, approximately 575 feet south of the subject property. There are no other special exception uses in the immediate neighborhood. The proposed use will not increase the number, intensity or scope of special exception uses

sufficiently to affect the area adversely or alter the residential nature of the block.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**

No inherent or non-inherent adverse effects are associated with the subject proposal. As such, with the recommended conditions, the proposed use will not adversely affect the health, safety, security, morals or welfare of residents, visitors or workers in the area.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.**
- (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.**
- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.**

The proposed use will be adequately served by existing public facilities. The use as proposed is not likely to reduce the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department, which approves or licenses the project.**

The applicants will so note.

- (c) **The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.**

The applicant has met the burden of proof under Sections 59-G-2.13.1 (specific requirements). And Section 59-G-1.21 (General conditions)

Conclusion

Based on the foregoing analysis, staff recommends approval of the subject application subject to the conditions found at the beginning of the technical staff report.

ATTACHMENTS

- **AERIAL/ ZONING**
- **SITE/LANDSCAPE/LIGHTING PLANS**
- **FLOOR PLANS**
- **ELEVATIONS**
- **PHOTOGRAPHS**
- **REFERRAL COMMENTS**
- **LETTERS IN OPPOSITION**
- **APPLICANT'S LETTER TO HEARING EXAMINER**

SE-07-2 MARIA C. ORDONEZ



Map compiled on February 27, 2007 at 1:34 PM | Site located on base sheet no. -18NW04 | Date of Orthophotos: April 2006 - Used with permission from Montgomery County Government

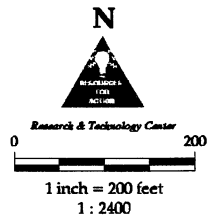
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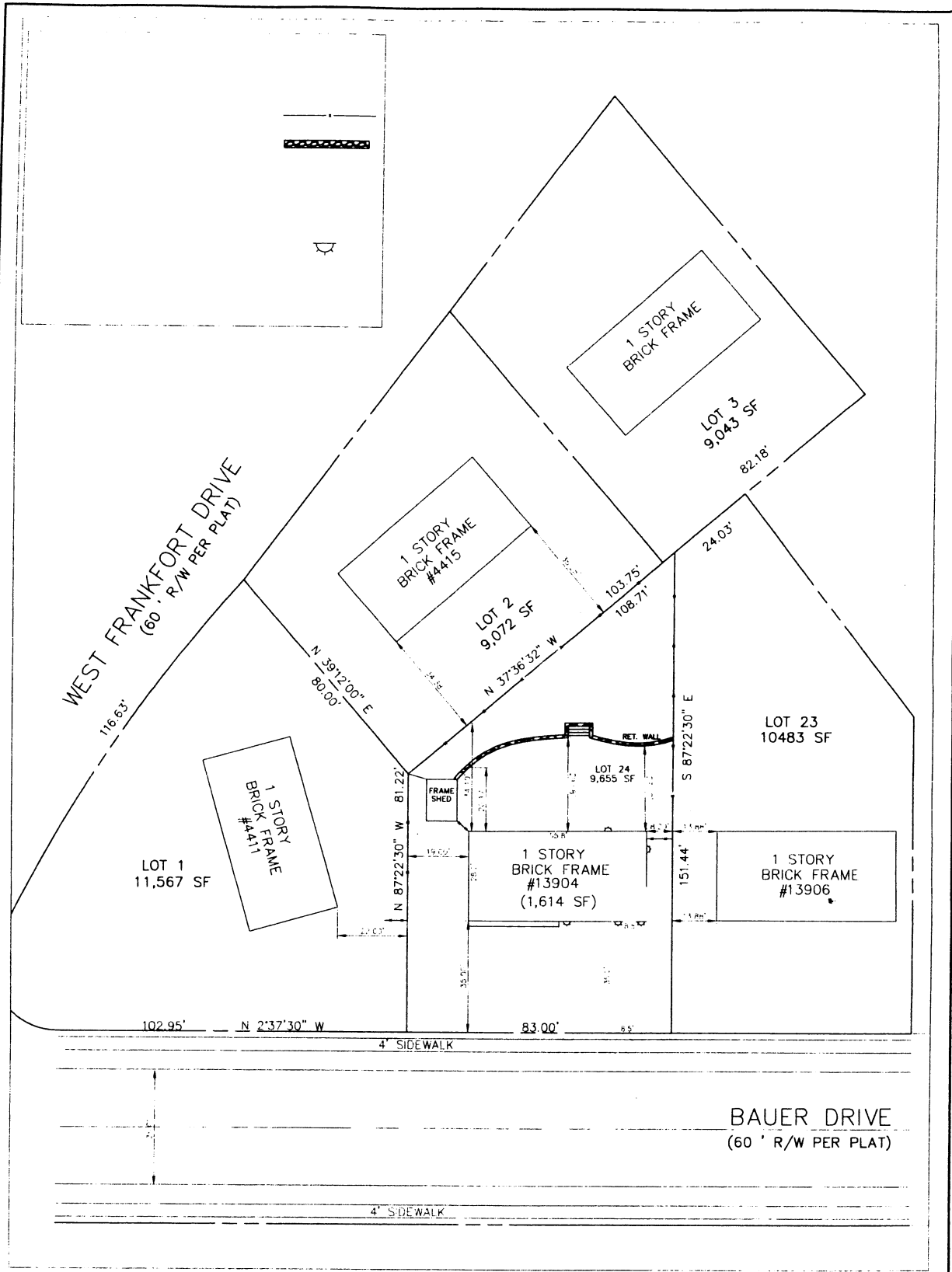
Key Map



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

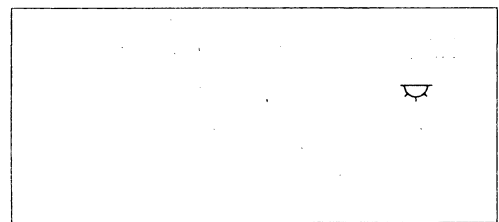
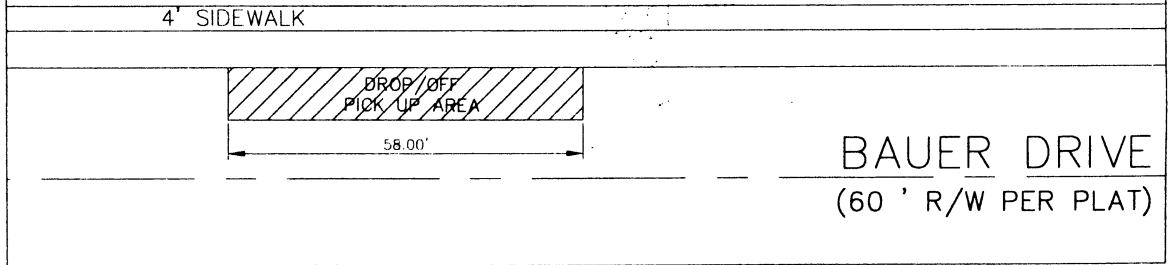
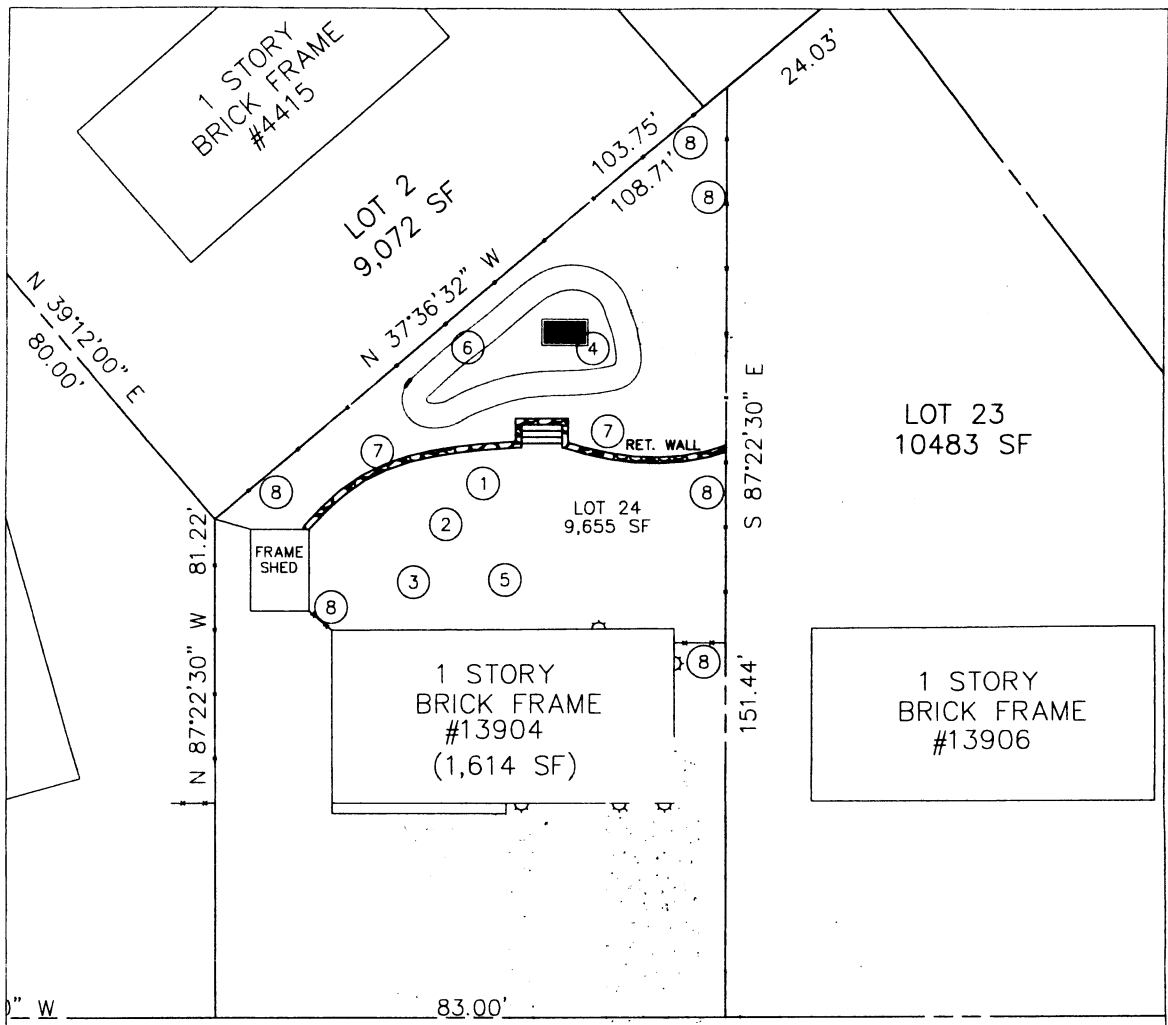
SITE



RECEIVED
DEC 27 2006
DEVELOPMENT REVIEW DIVISION

RECEIVED
DEC 27 2006
DEVELOPMENT REVIEW DIVISION

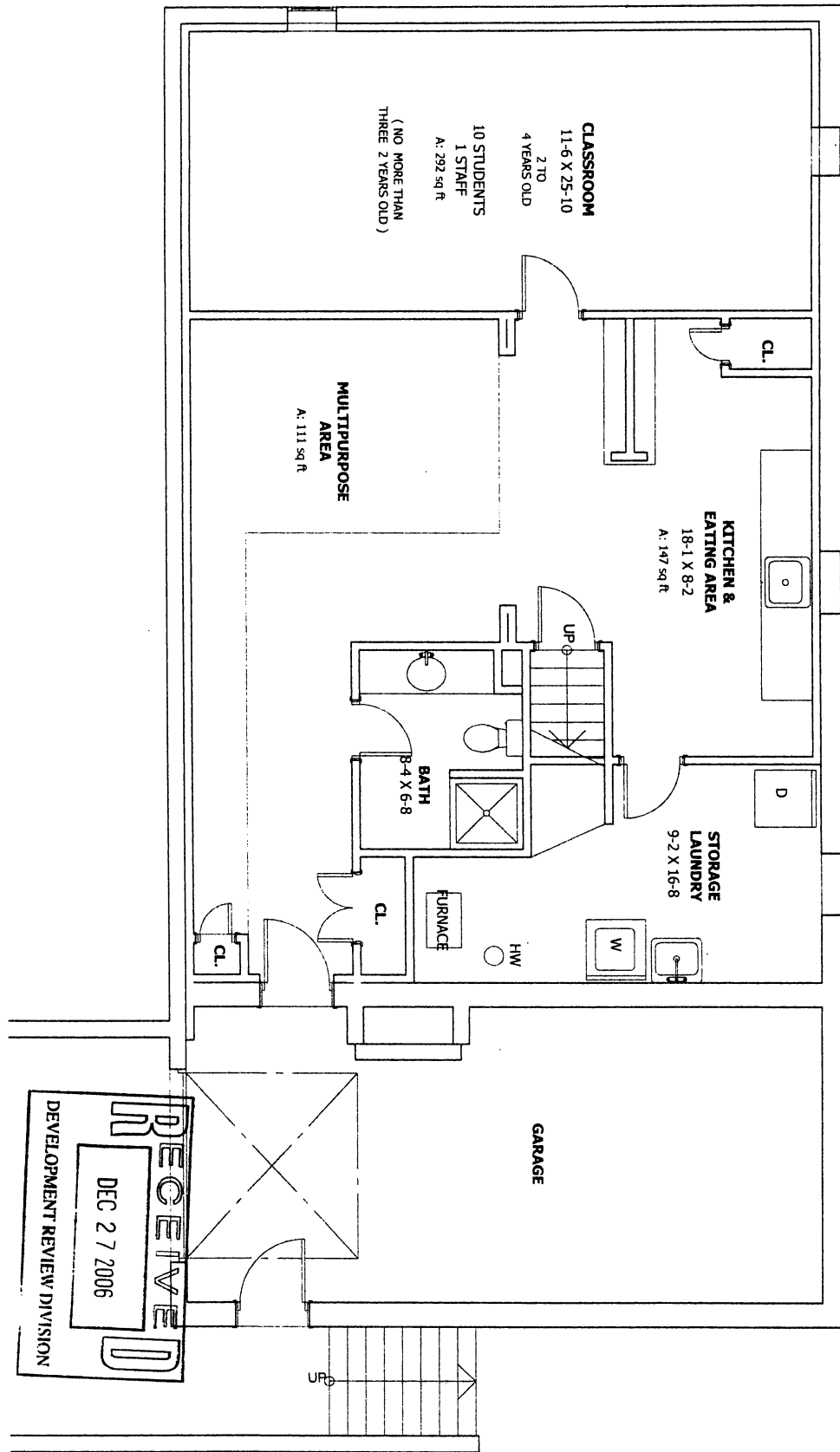
DATE SEP, 2006	SCALE 1 : 30	TITLE EXISTING CONDITIONS	SHEET NO. 1
PROJ. NO.	PROJECT DAY CARE CENTER - CAROLINA ORDONEZ		



- ① KIDS CENTER 23' x 22'
- ② EASY SCORE BASKETBALL SET 27" x 27"
- ③ CRAWL AND CLIMB CATERPILLAR 5' LONG
- ④ SAND ACTIVITY STATION
- ⑤ SPRING MATE PONY
- ⑥ TRICYCLE PATH
- ⑦ ALUMINUM FENCE TO BE ADDED TO TOP OF RETAINING WALL WITH GATE AT TOP OF STAIRS 4' HIGH "OVATION STYLE" (REPRESENTATIVE PICTURE ATTACHED)
- ⑧ REAR FENCE IS SURROUNDED BY 4' WIRE MESH FENCE WHICH WILL BE REPLACED WITH A 6' HIGH VYNIL PRIVACY FENCE (REPRESENTATIVE PICTURE ATTACHED) AROUND ENTIRE REAR OF THE PROPERTY (AS SHOWN).

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 DEC 27 2006
 DEVELOPMENT REVIEW DIVISION

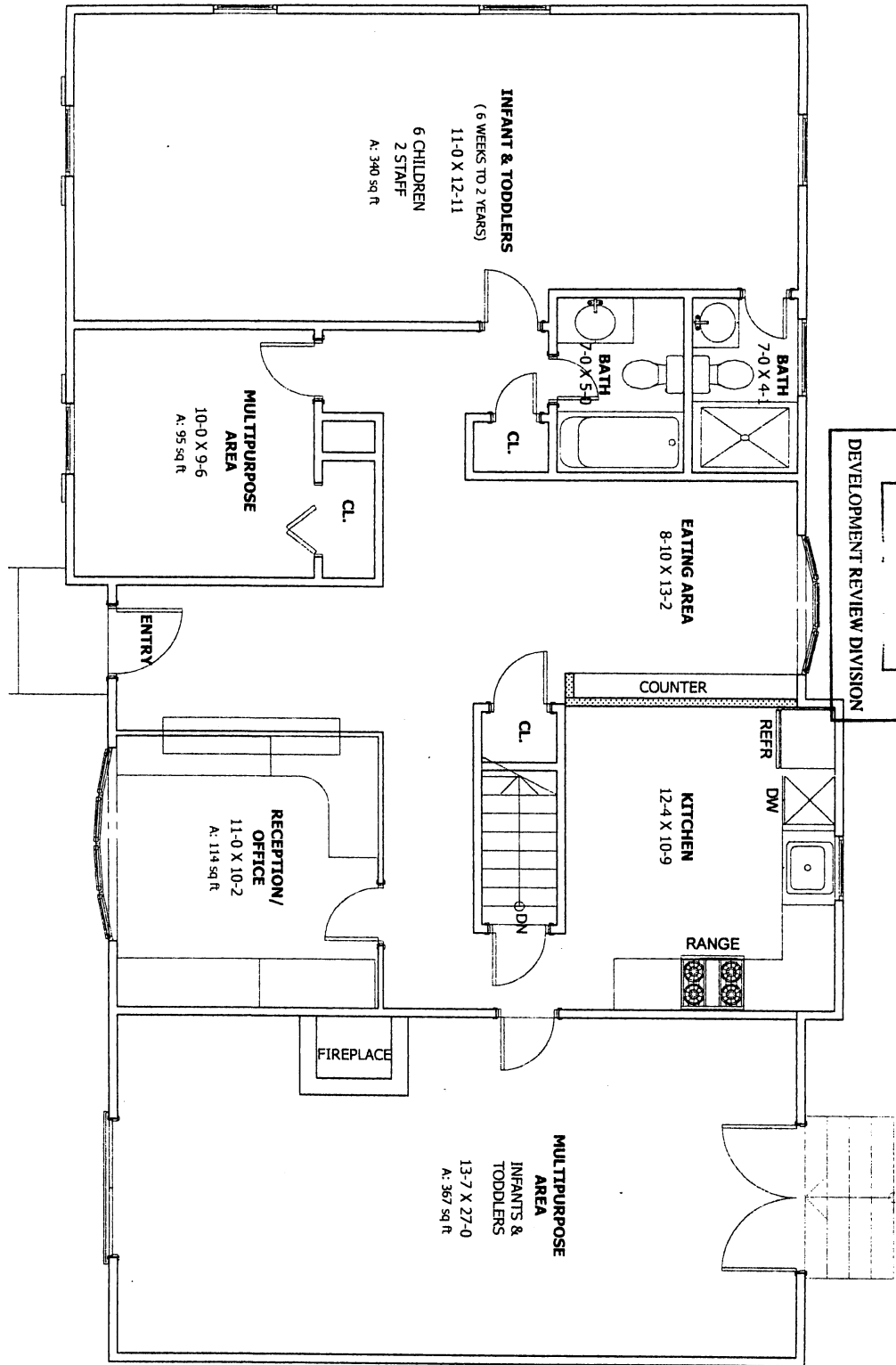
	DATE SEP, 2006	SCALE 1 : 20	TITLE LANDSCAPE AND LIGHTING PLAN	SHEET NO. 2
	PROJ. NO.	PROJECT DAY CARE CENTER - CAROLINA ORDONEZ		



PROJECT NUMBER	DATE	DRAWN BY	CENTER DAY CARE ROCKVILLE, MD	CLIENT MARIA ORDONEZ
01-0004	12/18/06	JAOM		
SET NUMBER	SCALE	CHECKED BY	PROPOSED BASEMENT PLAN	
03	3/16" = 1'-0"	JAOM		

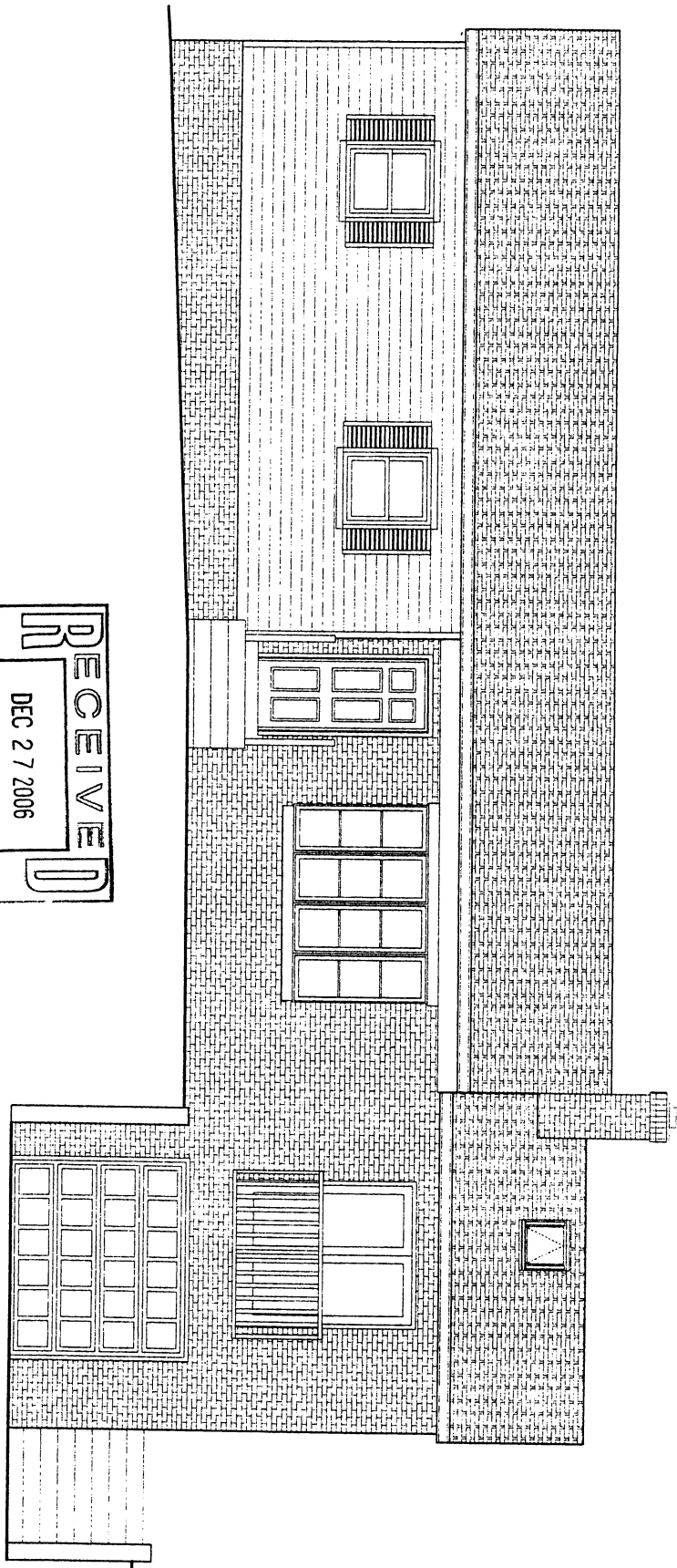
RECEIVED
DEC 27 2006

DEVELOPMENT REVIEW DIVISION



PROJECT NUMBER	DATE	DRAWN BY	CENTER DAY CARE ROCKVILLE, MD PROPOSED FIRST FLOOR PLAN	CLIENT
01-0004	12/18/06	JAOM		MARIA ORDONEZ
SET NUMBER	SCALE	CHECKED BY		
04	3/16" = 1'-0"	JAOM		

RECEIVED
 DEC 27 2006
 DEVELOPMENT REVIEW DIVISION

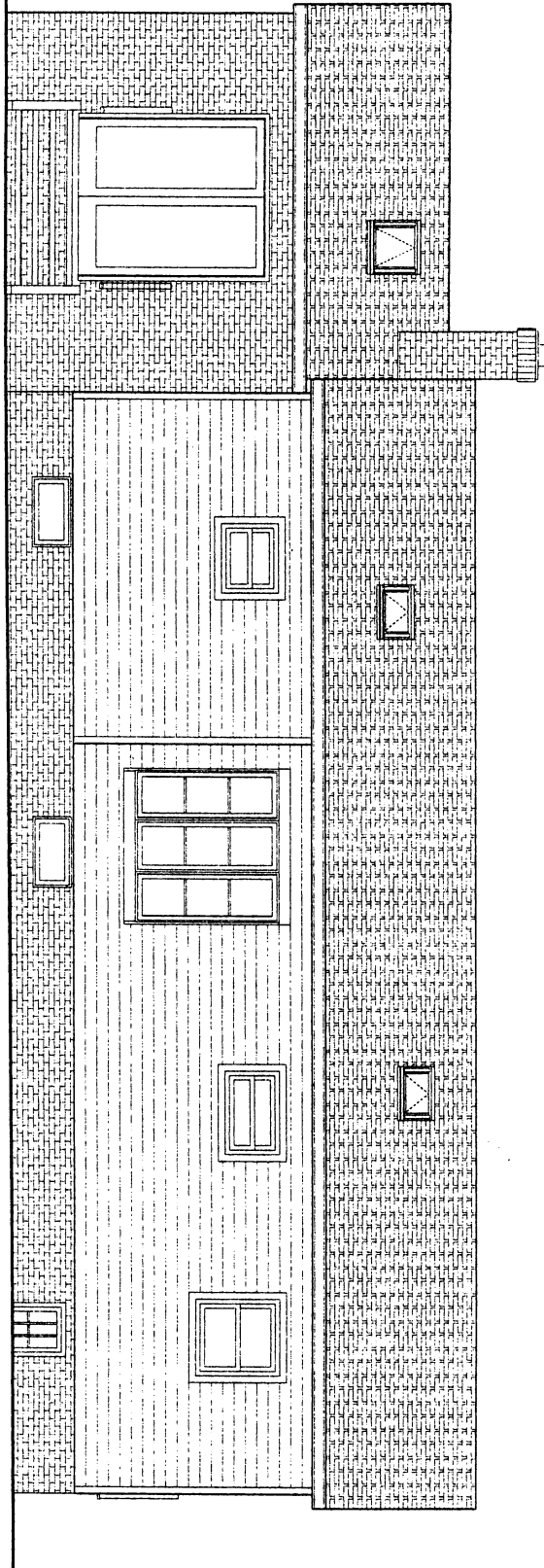


CT NUMBER	DATE	DRAWN BY
01-0004	12/18/06	JAOM
NUMBER	SCALE	CHECKED BY
05	3/16" = 1'-0"	JAOM

CENTER DAY CARE
ROCKVILLE, MD
 EXISTING FRONT ELEVATION

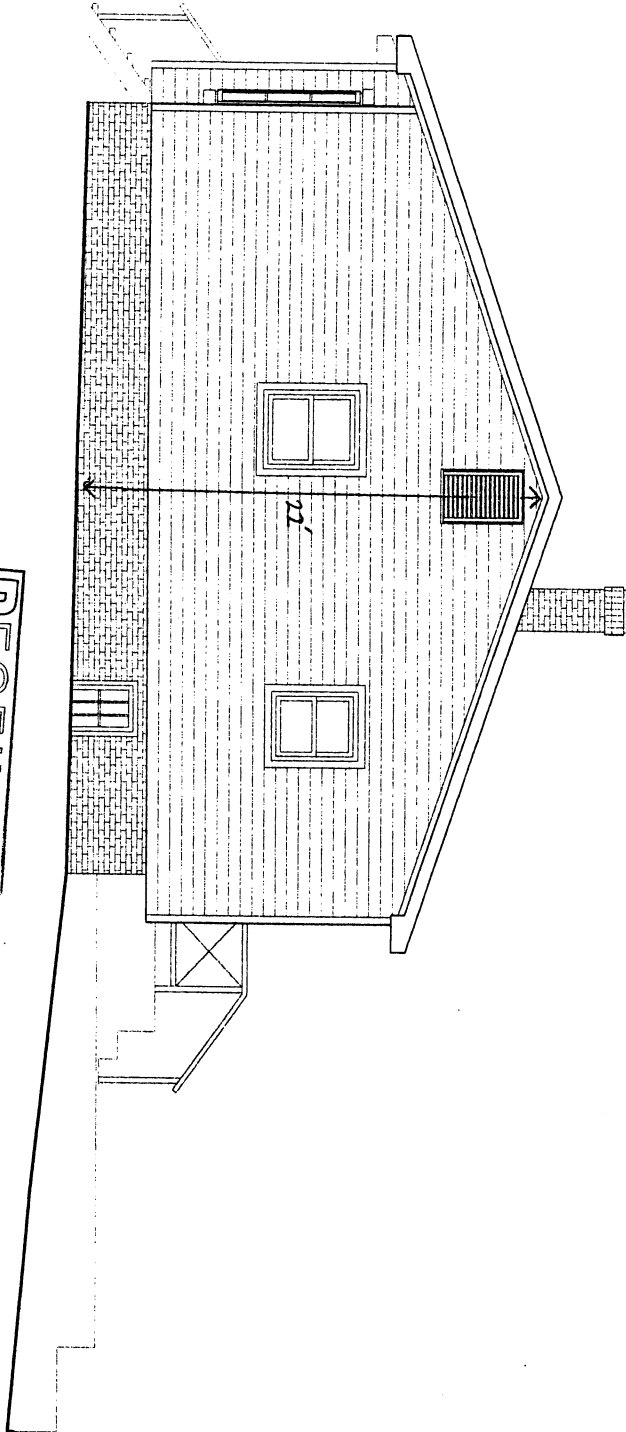
CLIENT
MARIA ORDONEZ

RECEIVED
 DEC 27 2006
 DEVELOPMENT REVIEW DIVISION

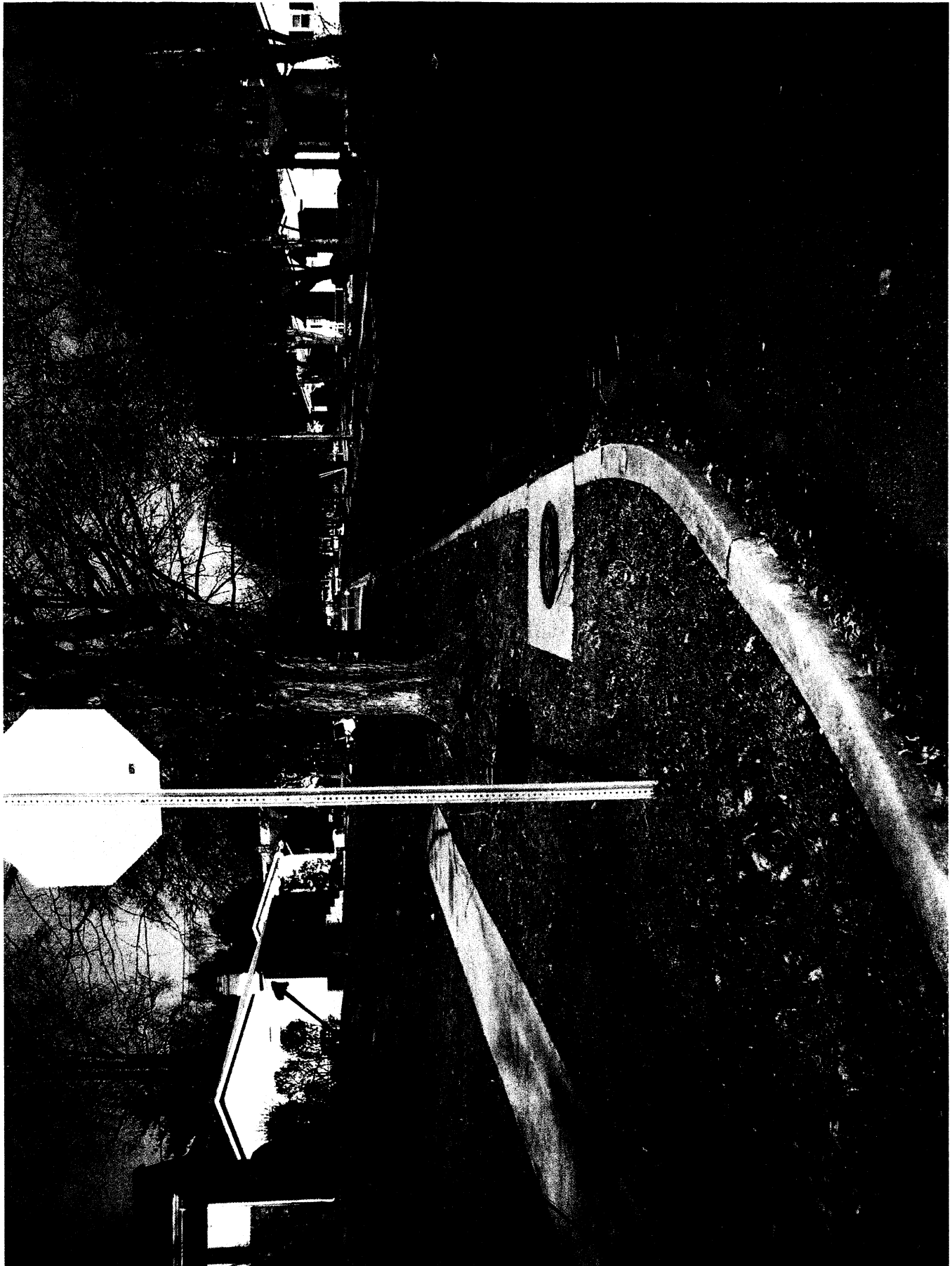


PROJECT NUMBER	DATE	DRAWN BY	CENTER DAY CARE ROCKVILLE, MD EXISTING REAR ELEVATION	CLIENT MARIA ORDONEZ
01-0004	12/18/06	JAOM		
SHEET NUMBER	SCALE	CHECKED BY		
06	3/16" = 1'-0"	JAOM		

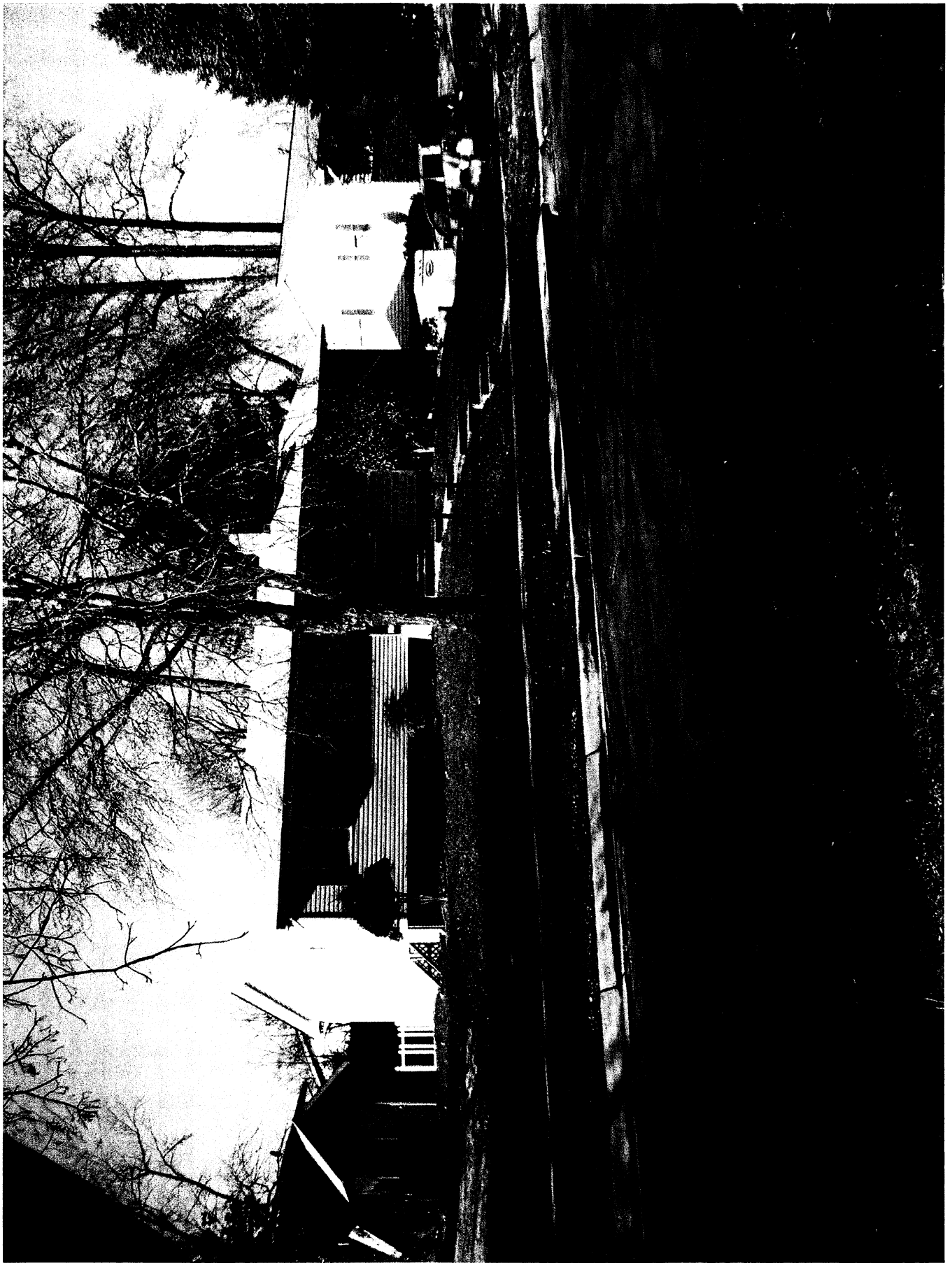
RECEIVED
 DEC 27 2006
 DEVELOPMENT REVIEW DIVISION

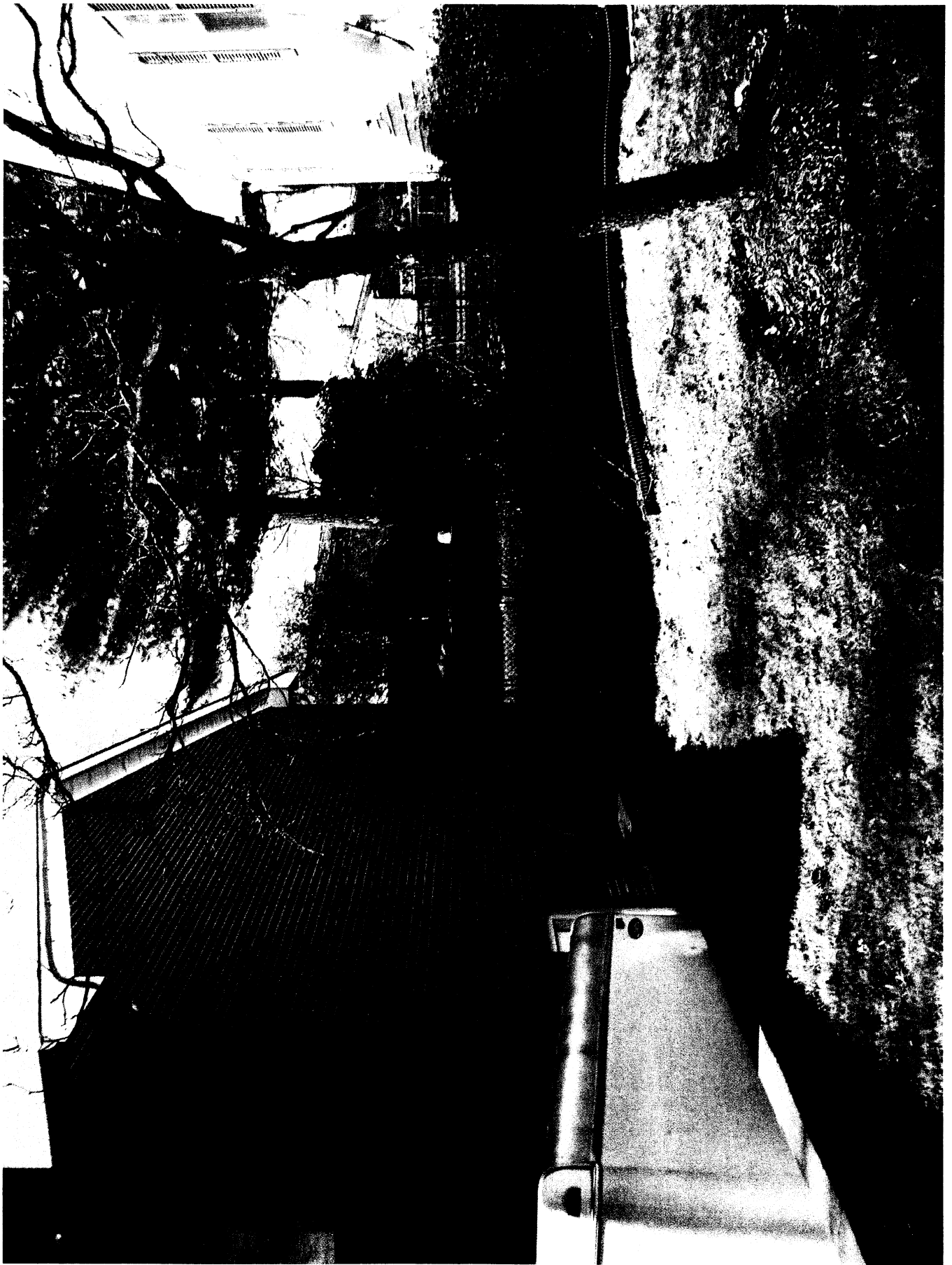


PROJECT NUMBER	DATE	DRAWN BY	CENTER DAY CARE ROCKVILLE, MD EXISTING LEFT ELEVATION	CLIENT
01-0004	12/18/06	JAOM		MARIA ORDONEZ
FIGURE NUMBER	SCALE	CHECKED BY		
08	3/16" = 1'-0"	JAOM		



13904 BAUER DR









Exh. 8(a)

FRONT OF THE HOUSE



Exh. 8(b)

GARAGE & DRIVEWAY

LEFT SIDE OF THE HOUSE SHOWING
SHED



LET SIDE OF THE HOUSE SHOWING ONE
WINDOW OF THE BASEMENT

BACK SIDE OF THE HOUSE SHOWING
WINDOW OF THE BASEMENT



RIGHT SIDE OF THE HOUSE SHOWING
FENCE & SIDE DOOR

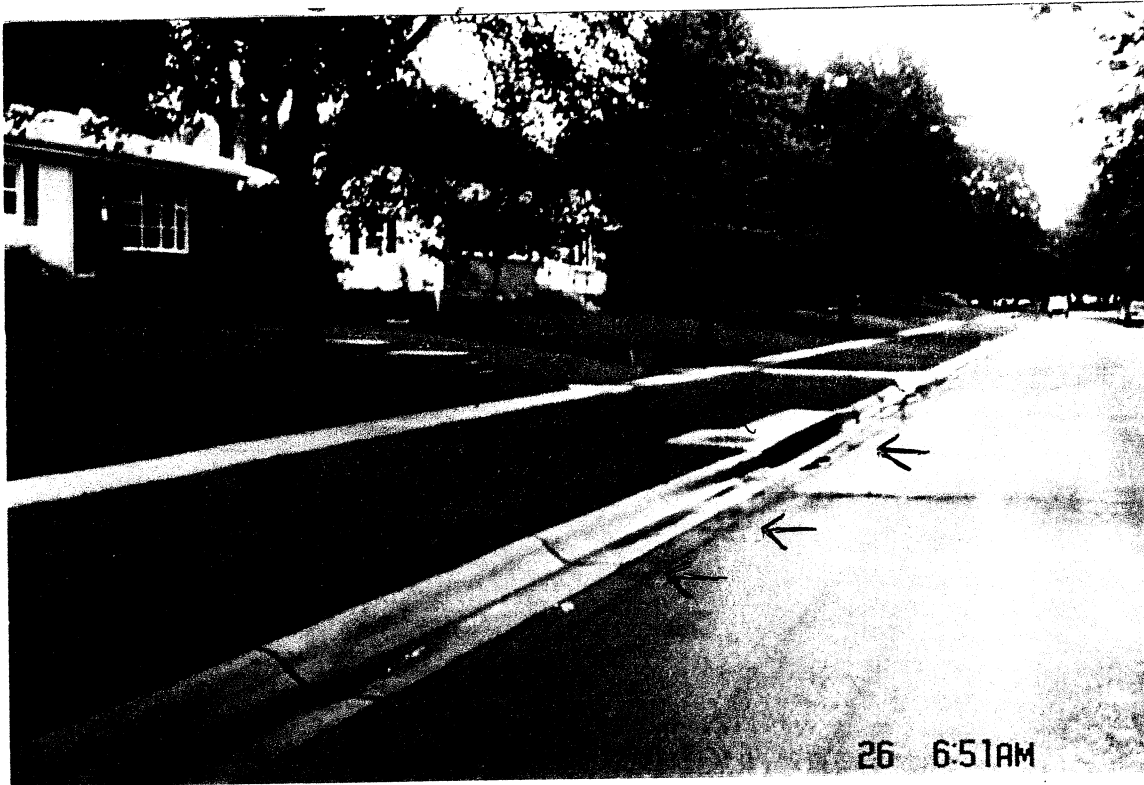
BACKYARD SHOWING FENCE &
RETAINING WALL



PARKING IN FRONT OF SUBJECT
PROPERTY (LOOKING NORTH)



**STREET IN FRONT OF SUBJECT
PROPERTY (LOOKING NORTH)**



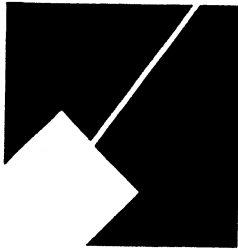
**PARKING BY 8 CARS DURING MEETING USING
SUBJECT PROPERTY & ADJOINING CORNER
LOT**

LEFT VIEW OF THE HOUSE



Merion

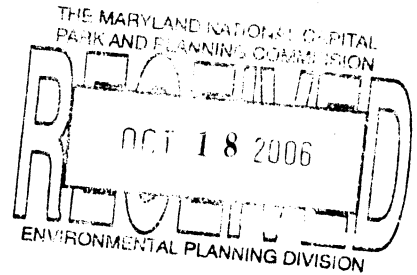
M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org



MEMORANDUM

DATE: October 11, 2006

TO: John Carter, Community Based Planning Division
Melissa Banach, Strategic Planning Division
Tom Vanderpoel, Community Based Planning Division
Mary Dolan, Environmental Planning Division
Daniel Hardy, Transportation Planning Division
Tanya Schmieler, Park Planning and Development Division
Gwen Wright, Historic Preservation Unit
Taslina Alam, Development Review Division
Callum Murray, Community Based Planning Team 4

FROM: Carlton Gilbert
Community Based Planning Division

*less than 40,000 SF
FC law not applicable
Marilyn Belmont
December 7, 2006*

PLEASE REPLY TO: Elsabett Tesfaye

SUBJECT: Board of Appeals Petition No. S.E. 07-2

Special Exception Request: To operate a Child Day Care Center from the raised ranch style home.
Location: 13904 Bauer Drive, Rockville **Zone:** R-90

Please assign a person on your staff to review the case cited above. Written comments and recommendations are requested by **Monday, December 11, 2006** for the staff report on this case. Staff may sign case files out of the Development Review Division, briefly, for review.

In addition to any other observations, it would be helpful to have your input on the following:

Community Based Planning: 1) consistency with master plan, 2) whether the special exception will adversely affect the surrounding area, 3) any information or recommendation concerning relevant master planning studies or other government action now under way.

Environmental Planning: 1) environmental impact due to topographic or other factors which may cause problems, 2) conformance with tree preservation legislation of Chapter 22-A of the County Code.

Transportation Planning: traffic impact and adequacy of road network affected by request.

Park Planning & Development: impact on existing or proposed park areas.

Development Review: applicable subdivision requirements.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

February 14, 2007

MEMORANDUM

TO: Elsabett Tesfaye, Zoning Analyst
Development Review Division

VIA: Daniel K. Hardy, Supervisor *DKH*
Transportation Planning

FROM: David Paine, Planner/Coordinator *DP*
Transportation Planning

SUBJECT: Board of Appeals Petition No. S.E. 07-2
Child Day Care Center for up to 30 Children
Center Day Care
Aspen Hill Policy Area

This memorandum is Transportation Planning staff's Adequate Public Facilities review of the above petition to operate a child day care facility called Center Day Care, to be located at 13904 Bauer Drive, within the Aspen Hill Policy Area

RECOMMENDATIONS

Transportation Planning staff recommends the following condition as part of the transportation-related requirements to grant this special exception:

1. Limit the hours of operation, the number of students, and employees at the proposed facility to that described in the applicant's December 29, 2006 Statement of Operations.

Staff finds that the proposed special exception use satisfies the Local Area Transportation Review (LATR) test and will have no adverse effect on area roadway conditions or nearby pedestrian facilities.

DISCUSSION

Site Location

The existing single-family detached unit where the subject Child Day Care Center is proposed is located on the west side of Bauer Drive between Bauer Court and Frankfort Drive, east of the City of Rockville.

Vehicular Site Access and On-Site Parking

Vehicular access and on-site parking to this existing single-family detached unit is via the driveway from Bauer Drive that can hold two vehicles. An additional vehicle could be housed in the garage. Parking is available on the street and is not prohibited on either side. A storm sewer inlet/box and manhole exists in front of the house.

Pedestrian Facilities

Sidewalks exist on both sides along the segment of Bauer Drive fronting this existing single-family detached unit. The proposed Child Day Care Center will not change the existing pedestrian facilities.

Master-Planned Roadways and Bikeway

This segment of Bauer Drive is not listed in the master plan. This segment of Brad Drive is built as a secondary residential street with a 60-foot right-of-way and existing sidewalks. According to the *Aspen Hill Master Plan*, Bauer Drive one block to the north is classified as a two-lane primary residential road, with a 70-foot right-of-way. Parkland Drive, one block to the east, is also classified as a two-lane primary residential road, with an 70-foot right-of-way. The Countywide Bikeways Functional Master Plan designates a signed shared roadway, SR-35, along the segments of Bauer Drive and Parkland Drive that are designated as primary residential roads.

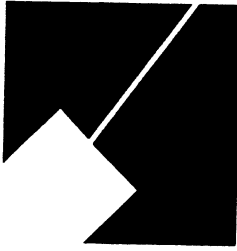
Local Area Transportation Review

Staff reviewed the subject Special Exception use with three staff members, and per the Local Area Transportation Review (LATR) guidelines determined that the use would not require a traffic study since it will not generate 30 or more peak-hour trips during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods. The Special Exception use, therefore, satisfies the LATR requirements.

DP:nm

CA\Free\0512 DevRev\07-2 mmo to tesfaye.DOC

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MEMORANDUM

DATE: October 11, 2006

TO: John Carter, Community Based Planning Division
Melissa Banach, Strategic Planning Division
Tom Vanderpoel, Community Based Planning Division
Mary Dolan, Environmental Planning Division
Daniel Hardy, Transportation Planning Division
Tanya Schmieler, Park Planning and Development Division
Gwen Wright, Historic Preservation Unit
Taslina Alam, Development Review Division
Callum Murray, Community Based Planning Team 4

*Does not
affect any
identified
Historic Resource
- M. Oaks
10/20/06*

FROM: Carlton Gilbert
Community Based Planning Division

PLEASE REPLY TO: Elsabett Tesfaye

SUBJECT: Board of Appeals Petition No. S.E. 07-2

Special Exception Request: To operate a Child Day Care Center from the raised ranch style home.

Location: 13904 Bauer Drive, Rockville

Zone: R-90

Please assign a person on your staff to review the case cited above. Written comments and recommendations are requested by **Monday, December 11, 2006** for the staff report on this case. Staff may sign case files out of the Development Review Division, briefly, for review.

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Transportation Planning: traffic impact and adequacy of road network affected by request.

Park Planning & Development: impact on existing or proposed park areas.

Development Review: applicable subdivision requirements.

December 29, 2006

Attention: Elsabett Tesfaye
Montgomery County Department
of Park & Planning

Subject: Special Exception SE-07-2

We hereby oppose granting a license for a child day care business or any type of business.

At the proposed area, Bauer Drive has only what could be considered 3 lanes for automotive traffic, with one lane on each side used for owner parking.

The proposed business is directly across from our home and we just went thru 3 years of that property being used for Special needed children.

At times we would have their cars parked on both sides of the street, including occasionally, cars parked right in front of our driveway, blocking our entrance.

The property value of our home will depreciate with a business across the street.

Granting a license in this residential area will open opportunities for other applications for all sorts of businesses.

This Special Business Exception would certainly be the first and would be considered a precedent.

We have lived at this address since 1989 and we consider the neighborhood a residential area, not a commercial area.

We urge you to consider and ponder our situation and concerns on this matter.

Very truly yours

Artur P. Lemos Maria H. Lemos
Artur P. Lemos & Maria H. Lemos

13903 Bauer Dr.
Rockville, MD 20853
Ph. 301- 871- 0903

1/8/07

Office of Zoning

Ref: Special Exception No 07-2; to amend application

attn: Elisabeth Desfaye

I hereby oppose granting a license for a day care business or any type of business as previously stated either for 30, 16 and now 14 children.

Will this day care business be for 8 hours a day, 24 hours a day, 7 days a week and 12 months a year?

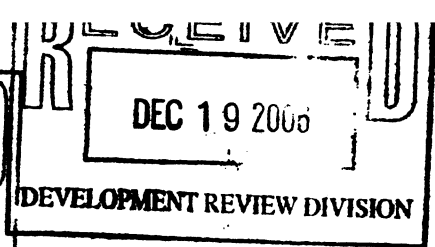
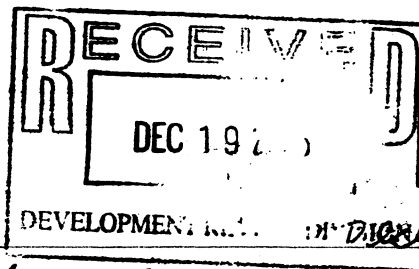
The need for a day care center could better be accomplished using a school parking lot with mobile housing that could hold 50 to 100 children.

Very truly yours

Edward Hinkle

13901 Bauer Dr.
Rockville, Md. 20853

301-871-7074



DEVELOPMENT REVIEW DIVISION December 14, 2006

attn: Elisabeth Desfaye
Dept of Park & Planning

Ref: Special Exception SE-07-2

I hereby oppose granting a license for a day care business or any type of business.

We just went thru 3 years at that house for special children. There were 6 to 8 cars parked behind my driveway at times.

The property value of my home will depreciate with a business across the street.

Bauer Drive begins at Open Hill Rd with the first 2 blocks having only 3 lanes for cars with 1 lane on each side for our parking. The next block on Bauer Drive has 4 lanes.

Granting a business license in a residential area could open the door for all sorts of applications I've lived here at this address since 1960 and is the first that a Special Business Exception is being considered that I know of.

Very truly yours
Edward Thibault

13901 Bauer Dr.
Rockville, Md 20853
301-871-7074

THE LAW OFFICES OF
DAVID C. GARDNER

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dgardner@davidgardnerlaw.com

MICHELE H. CABRERA (MD, DC)
mcabrera@davidgardnerlaw.com

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ROCKVILLE, MARYLAND 20852

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(301) 762-8475

FAX: (301) 762-1180

SERENA R. WOOD, PARALEGAL
swood@davidgardnerlaw.com

PATRICIA McNAMEE, PARALEGAL
pmcnamee@davidgardnerlaw.com

December 29, 2006

Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, MD 20850
ATTN: Ms. Francoise M. Carrier

**Re: Special Exception Case No. SE-07-02
Reduction in Number of Children Using Proposed Child
Day Care Center 13904 Bauer Drive, Rockville, MD**

Dear Ms. Carrier:

I am writing to further amend the Statement of Operations submitted by my client in the above-referenced special exception application, to indicate that the maximum number of children utilizing the center has been reduced to fourteen(14) children. The center will still utilize three (3) staff members and the children will be divided into two groups. One group will consist of up to six infants and toddlers, and will have two staff persons assigned to the group. The second group will consist of up to eight children, ages two to four, and one staff member will be assigned to this group. This reduction in the number of children has been discussed with Elsabett Tesfaye, who is the staff member assigned to this matter by the Montgomery County Department of Planning, and I understand that she will be using this number in preparing her staff report.

Attached to this is a second amended Statement of Operations which includes these revised figures.

Thank you.

Very truly yours,


David C. Gardner

DCG/dsb

Enclosure

cc: Maria Ordonez

Elsabett Tesfaye