



June 20, 2022
7:00 p.m.

Board of Adjustment Packet
Molloy & Schmidt / Lenzini-LeBaron
Day Care Center

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**BOARD OF ADJUSTMENT HEARING
JUNE 20, 2022 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS**

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PUBLIC COMMENTS – NONE.

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AGENDA
BOARD OF ADJUSTMENT HEARING
JUNE 20, 2022 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
****Telephonic/Virtual Information Below****
<http://kenai.city>

<p>Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK</p>
--

A. CALL TO ORDER

B. ROLL CALL

C. OPENING STATEMENT

1. Brian Gabriel, Board Chair

D. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY

E. PUBLIC COMMENT (5 minutes per speaker.)

F. STAFF REPORT (15 minutes)

G. APPELLANT

1. Robert Molloy / Kristine Schmidt (30 minutes)

H. APPELLEE

1. Stephanie Nella Lenzini-LeBaron (30 minutes)

I. APPELLANT REBUTTAL

1. Robert Molloy / Kristine Schmidt (15 minutes)

J. APPELLEE REBUTTAL

1. Stephanie Nella Lenzini-LeBaron (15 minutes)

K. APPELLANT CLOSING ARGUMENTS

1. Robert Molloy / Kristine Schmidt (10 minutes)

L. APPELLEE CLOSING ARGUMENTS

1. Stephanie Nella Lenzini-LeBaron (10 minutes)

M. DELIBERATIONS (Deliberations may be held in public or adjudicative sessions.)

Please contact the City Clerk's Office at 907-283-8231 for additional information or questions.

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BOARD OF ADJUSTMENT HEARING

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Type of Hearing

The Board of Adjustment Hearing will be conducted in compliance with the City of Kenai Municipal Code 14.20.290, reasonable regulations of the Board and other applicable law. The Board of Adjustment is a quasi-judicial board. The hearing is open to the public and is recorded. All persons presenting evidence and testimony shall do so under oath, administered by the City Clerk. This hearing will be conducted less formally with regard to rules of evidence and other court rules of procedure than in a judicial courtroom.

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Prior to any presentations, members of the public may address the Board at the beginning of the hearing. Members of the public will have five (5) minutes each to speak on the Conditional Use Permit to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK.

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Following the staff report, each party will be allowed 30 minutes to present its case. The Appellants will present their cases first. During the parties' presentation of the case, the parties may call witnesses. Any witness that testifies during the presentation of the case by either party, unless excused by the Board with concurrence of the parties, must remain available to be called during rebuttal, at which time cross examination may occur. Each party will be allowed 10 minutes for rebuttal and 5 minutes for closing arguments.

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RECEIVED

MAY 25 2022



CITY OF KENAI
APPEAL TO THE BOARD OF
ADJUSTMENT

City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611
Phone: 283-8231
Fax: 283-5068
Email: cityclerk@kenai.city

Contact Information

Name of Appellant: Robert Molloy/Kristine Schmidt Date: 5/25/2022
Daytime Phone No.: 907-283-7373 Email Address: bob@molloysschmidt.com
Appellant's Physical Address: 513 Ash Avenue, Kenai AK 99611
Appellant's Mailing Address: same

Appeal Information

Description of the decision being appealed:

Decision of the Planning & Zoning Commission to approve Resolution No. 2022-11, approving a CUP for a Day Care Center at 502 Ash Avenue, Kenai.

Subject Property Owner's Name and Address: LeBaron, Bryce; 502 Ash Ave, Kenai AK 99611

Subject Property Street Address: 502 Ash Ave, Kenai AK 99611

Decision was ☒ Approved ☐ Denied Date of Decision: 5/11/22

Decision was made by ☐ Administrative Official ☒ Planning & Zoning Commission

Check One:

- ☐ I am the applicant for the action taken or determination, or the owner of the property that is the subject of the action or determination under appeal.
- ☐ I am the administrative official.
- ☒ I am a legal occupant or owner of an interest in real property who can show the decision has or could have an adverse effect on the use, enjoyment, or value of that real property. An interest which is no different from that of the general public is not sufficient to make a person aggrieved. To be a "party of record," participation with either oral or written comments at the hearing before the Planning and Zoning commission or before the administrative official making a final decision must be shown.

Description of Harm (**Note:** An interest which is no different from that of the general public is not sufficient.):

See Supplement to Notice of Appeal (attached).

I am seeking relief as follows: See Supplement to Notice of Appeal (attached).

Signature of Appellant:

Kristine Schmidt

FOR CITY CLERK'S OFFICE USE ONLY:

Receipt Stamp:

Appellant ☒ Owns ☐ Leases, Lease Requested
Appellant Participated ☒ Orally ☐ In Writing
Appellant Paid Pursuant to ☒ Fee Schedule ☐ Fee Reduction Form
Copy provided to Appellant ☐ In Person ☒ By Mail
By: *M. Tribodeau*
Application ☒ Approved ☐ Denied for _____
Date Appellant Notified: *5/6/22*

**BEFORE THE BOARD OF ADJUSTMENT
CITY OF KENAI, ALASKA**

**SUPPLEMENT TO NOTICE OF APPEAL OF
KPB PLANNING & ZONING COMMISSION ACTION**

Robert J. Molloy and Kritine A. Schmidt appeal to the Board of Adjustment, City of Kenai, as set forth below.

1. The appellants appeal from the decision of the Planning & Zoning Commission to approve Resolution No. 2022-11, *A Resolution Of The Planning And Zoning Commission Of The City Of Kenai* **Granting** *A Conditional Use Permit For A Day Care Center*, for:

Applicant:	Stephanie Nella Lenzini-LeBaron
Property Address:	502 Ash Avenue
Legal Description:	Lot 1, Block G, Woodland Subdivision Part One
Borough Parcel Number:	04326047

2. The appellants are aggrieved persons who also reside in Woodland Subdivision, having owned and resided in their home at 513 Ash Avenue, Kenai, Alaska since 1985, a period of 37 years. Their residence is on the same street as the proposed day care center. The appellants submitted written public comments and made verbal public comments at the Commission's public hearing held on May 11, 2022.

3. The appellants' description of harm includes the following:

A. The Commission's decision has or could have an adverse effect on the appellants' use or enjoyment of their property.

B. An additional day care center business in Woodland Subdivision at 502 Ash Avenue, when added to the existing day care businesses already located in Woodland Subdivision, is not consistent with the purpose of the Kenai Zoning Code and the purpose and intent of the Suburban Residential Zoning District for Woodland Subdivision. KMC 14.20.150(e)(1). This additional day care center business will violate the specific intent of the RS Zone, which is to prohibit uses which would violate the residential character of the environment and would generate heavy traffic in Woodland Subdivision, which was intended to be a residential area. KMC 14.20.090(A)(2).

C. An additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue will not be compatible with the Subdivision's surroundings. KMC 14.20.150(a).

D. An additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue is not in harmony with the Comprehensive Plan. KMC 14.20.150(e)(3).

E. An additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue will be harmful to the public safety. KMC 14.20.150(e)(5).

F. In the alternative, if the Board of Adjustment finds and concludes that the applicant has met the applicant's burden of proof to show that all of the review criteria are met for this conditional use permit, and exercises its discretion to grant the permit, the specific conditions imposed in Resolution No. 2022-11 are insufficient and inadequate to protect the appellants and Woodland Subdivision from the adverse effects of the proposed use of an additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue.

4. The relief requested is that:

A. The Board of Adjustment reverse the Commission's decision, and deny this application for a conditional use permit for this commercial day care center business in Woodland Subdivision at 502 Ash Avenue; or,

B. In the alternative, if the Board of Adjustment finds and concludes that the applicant has met the applicant's burden of proof to show that all of the review criteria are met for this conditional use permit, and exercises its discretion to grant the permit, then the Board should modify the conditional use permit to add specific conditions that will be sufficient and adequate to protect the appellants and Woodland Subdivision from the adverse effects of the proposed use of an additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue.

5. Appellants reserve the right to present additional descriptions of harm and other reasons for reversal or, in the alternative, for specific conditions, in briefing or at the hearing.

DATE:

5/25/22


ROBERT J. MOLLOY, Appellant

DATE:

5/25/22


KRISTINE A. SCHMIDT, Appellant



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

May 26, 2022

Mailed Via: USPS Certified Mail
7020 0640 0002 2738 2069 &
Return Receipt
Emailed to: bob@molloysschmidt.com

Robert Molloy & Kristine Schmidt
513 Ash Avenue
Kenai, AK 99611

RE: Application to Appeal to Board of Adjustment

Mr. Molloy and Ms. Schmidt,

After consulting the City Attorney, your application for an appeal to the Board of Adjustment has been approved. A copy of your application along with the receipt for payment is enclosed.

The City Council during their regularly scheduled meeting on June 1, 2022, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

You may contact me directly at (907) 283-8249, should you have any questions.

Sincerely,

Meghan Thibodeau
Deputy City Clerk



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

May 31, 2022

Mailed Via: USPS Certified Mail

7020 0640 0002 2738 2076 &

Return Receipt

Emailed to: NellaL@busybeesak.org

Stephanie Nella Lenzini-LeBaron
502 Ash Avenue
Kenai, AK 99611

RE: Application to Appeal to Board of Adjustment

Ms. Lenzini-LeBaron,

Our office received an application to appeal the Planning & Zoning Commission decision approving your Conditional Use Permit for a Day Care Center. After consulting the City Attorney, the application for appeal to the Board of Adjustment was approved.

The City Council during their regularly scheduled meeting on June 1, 2022, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

You may contact me directly at (907) 283-8249, should you have any questions.

Sincerely,

Meghan Thibodeau
Deputy City Clerk

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Meghan Thibodeau, Deputy City Clerk

DATE: May 26, 2022

SUBJECT: **Appeal of a Planning and Zoning Commission Action Approving Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK**

An application to appeal the above-referenced matter was received on May 25, 2022. KMC 14.20.290(f)(1), "Appeals - Board of Adjustment" provides,

(1) The Board of Adjustment shall ordinarily set a date for and hold a hearing on all appeals within forty-five (45) days of the filing of the appeal. However, should the forty-fifth day fall on a weekend or a municipal holiday, the hearing may be scheduled for the next following weekday which is not a municipal holiday under KMC 23.40.020(a)(1)-(10) and (b). For good cause, the Board of Adjustment may hold the hearing up to sixty (60) days after the filing of the appeal. Notice of the time and place of such hearing shall be mailed to all parties interested and to all property owners within 300 feet of the property involved at least fifteen (15) days prior to the hearing. Notices to the appellant and/or applicant for the action or determination must be sent by certified mail, return receipt requested.

The following information is provided to help in setting a Board of Adjustment hearing date:

Pursuant to KMC 14.20.290 referenced above, the City is required to provide notice of the hearing at least fifteen (15) days prior to the hearing. As such, to comply with the notice requirements, the hearing **must not** be scheduled sooner than Friday, June 17, 2022.

Forty-Five Day End Date: Saturday, July 9, 2022 per KMC 14.20.290(f)(1) extends to **Monday, July 11, 2022.**

Meetings within the 45-days: **Wednesday, July 6, 2022.** *Note: June 17, 2022 is not an eligible Council Meeting date as it conflicts with the Noticing requirements.*

KMC 14.20.290 allows for an extension, "For good cause, the Board of Adjustment may hold the hearing up to sixty (60) days after the filing of the appeal."

Sixty-Day End Date: Sunday, July 24, 2022.

Meetings within the 60-days: **Wednesday, July 6, 2022**



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

June 2, 2022

Mailed Via: USPS Certified Mail / Return Receipt
7020 0640 0002 2738 7415
Emailed to: bob@molloysschmidt.com

Robert Molloy & Kristine Schmidt
513 Ash Avenue
Kenai, AK 99611

RE: **BOARD OF ADJUSTMENT HEARING** – Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK

Hearing Scheduled: This letter is to inform you that the Board of Adjustment Hearing for the above-referenced matters has been scheduled for **Monday, June 20, 2022, beginning at 7:00 p.m.** The hearing will be held at City Hall in Council Chambers located at 210 Fidalgo Avenue, Kenai, AK 99611. A packet of information will be provided to you and the Board of Adjustment prior to the hearing.

Information/Evidence Deadline: The deadline to submit information, to be included in the Board of Adjustment Hearing packet, related to your appeal is **Friday, June 10, 2022 at 10:00 a.m.**; please submit to Kenai City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or cityclerk@kenai.city. This is your opportunity to introduce additional evidence to support your appeal. The Board of Adjustment Hearing packet will include the record from the Planning and Zoning Commission Hearing and will be distributed to all parties in advance of the hearing. Enclosed is information related to the hearing process.

Notice: Pursuant to KMC 14.20.290, this Notice of Hearing has been mailed to you by certified mail at least 15 days prior to the hearing. Property owners within 300 feet of the referenced property, as well as other interested parties, have also been mailed the Notice of Hearing within 15 days of the hearing.

If you have any questions, please contact me at 283-8231 or ssaner@kenai.city.

Sincerely,

Shellie Saner, MMC
City Clerk

Email CC: Scott Bloom, City Attorney;
Paul Ostrander, City Manager
Ryan Foster, Planning and Zoning Director
Board of Adjustment

Enclosure: Board of Adjustment Procedures

BOARD OF ADJUSTMENT HEARING

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KENAI

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June 2, 2022

Mailed Via: USPS Certified Mail / Return Receipt
7020 0640 0002 2738 7408
Emailed to: NellaL@busybeesak.org

Stephanie Nella Lenzini-LeBaron
502 Ash Avenue
Kenai, AK 99611

RE: **BOARD OF ADJUSTMENT HEARING** – Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK

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Sincerely,

Shellie Saner, MMC
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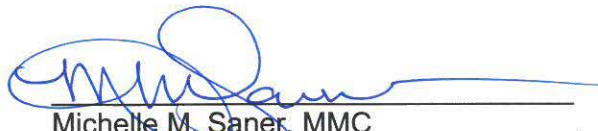
AFFIDAVIT OF SERVICE

I, Michelle M. Saner, City Clerk for the City of Kenai, Alaska, do hereby certify that on the 2nd day of June, 2022, I mailed or caused to be mailed the foregoing Notice of Hearing before the Board of Adjustment of the following appeal:

*Appeal of a Planning and Zoning Commission Action Approving a
Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to
Operate a Day Care Center at 502 Ash Avenue, Kenai, AK*

This notice was sent by first class mail to all residents within 300 feet of the subject property and all other interested parties as required by KMC 14.20.290. The list of recipients of the notice is attached herewith.

Further this affiant sayeth naught.


Michelle M. Saner, MMC
City Clerk

Amelia M. Andersen
PO Box 2081
Kenai, AK 99611

Larry Nelson Barnes
506 Ash Ave.
Kenai, AK 99611

Johna K. Beech
414 Pine Cir
Kenai, AK 99611

Nathan M. Charles
11313 Gainsborough Rd.
Potomac, MD 20854

Jordan M. Couturier
506 Pine Ave.
Kenai, AK 99611

Eicher Properties LLC
38335 Rydberg St.
Sterling, AK 99672

Eddy M. Gomez Jr
503 Ash Ave.
Kenai, AK 99611

Jason Hinkle
46755 Kenai Spur Hwy.
Kenai, AK 99611

Ronald S. Horvath
504 Pine Ave.
Kenai, AK 99611

Amy B. & Shawn Kay
501 Ash Ave.
Kenai, AK 99611

Terridale B. Larkin
502 Pine Ave.
Kenai, AK 99611

Mary B. Lefebvre
510 Ash Ave.
Kenai, AK 99611

Stephanie N. Lenzini-Lebaron
502 Ash Ave.
Kenai, AK 99611

Dinelle M. Penrod
412 Pine Cir.
Kenai, AK 99611

William H. & Lori K. Vedders
504 Ash Ave.
Kenai, AK 99611

Bob Molloy
513 Ash Ave.
Kenai, AK 99611

Kristine Schmidt
513 Ash Ave.
Kenai, AK 99611

Dear Property Owner:

The Kenai City Council will convene as the Board of Adjustment on **Monday, June 20, 2022** at 7:00 p.m. in the Council Chambers, 210 Fidalgo Avenue, Kenai, Alaska. The following will be heard by the Board:

Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK

Because you are a property owner within 300 feet of the above-mentioned property or have stated interest in the subject, you are hereby notified of the hearing date, time, and place, pursuant to KMC 14.20.290. Your comments and/or attendance regarding this appeal are encouraged. Written comments will be accepted until **10:00 a.m. on Friday, June 10, 2022** and may be mailed to the Office of the City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or by email: cityclerk@kenai.city. ~ Shellie Saner, City Clerk, 907-283-8231

Thank you.

Dear Property Owner:

The Kenai City Council will convene as the Board of Adjustment on **Monday, June 20, 2022** at 7:00 p.m. in the Council Chambers, 210 Fidalgo Avenue, Kenai, Alaska. The following will be heard by the Board:

Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK

Because you are a property owner within 300 feet of the above-mentioned property or have stated interest in the subject, you are hereby notified of the hearing date, time, and place, pursuant to KMC 14.20.290. Your comments and/or attendance regarding this appeal are encouraged. Written comments will be accepted until **10:00 a.m. on Friday, June 10, 2022** and may be mailed to the Office of the City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or by email: cityclerk@kenai.city. ~ Shellie Saner, City Clerk, 907-283-8231

Thank you.



City of Kenai
Office of the City Clerk
210 Fidalgo Avenue
Kenai, Alaska 99611

IMPORTANT NOTICE



City of Kenai
Office of the City Clerk
210 Fidalgo Avenue
Kenai, Alaska 99611

IMPORTANT NOTICE



PUBLIC NOTICE

The Kenai City Council will convene as the Board of Adjustment on Monday, June 20, 2022, at 7:00 p.m. in the Council Chambers at 210 Fidalgo Avenue, Kenai. The following item will be heard at that time:

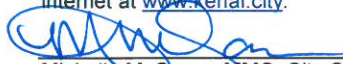
**Appeal of a Planning and Zoning Commission Action
Approving a Conditional Use Permit to Applicant Stephanie
Nella Lenzini-LeBaron, to Operate a Day Care Center at 502
Ash Avenue, Kenai, AK.**

The public is invited to attend and testimony will be taken. Any questions related to this public notice may be directed to the Kenai City Clerk's Office at 283-2831 or cityclerk@kenai.city.

Shellie Saner, MMC, City Clerk
Publish: 6/13/22, 6/17/22

Affidavit of Publication & Posting

I Michelle M. Saner, City Clerk for the City of Kenai, Alaska do hereby certify that on the 6th day of June 2022, I electronically mailed or caused to be published the foregoing Notice of Hearing before the Board of Adjustment to the Peninsula Clarion and requested that this notice be published in June 13th and 17th editions of their newspaper. On the 6th day of June the notice was also posted at Kenai City Hall and on the internet at www.kenai.city.


Michelle M. Saner, MMC, City Clerk

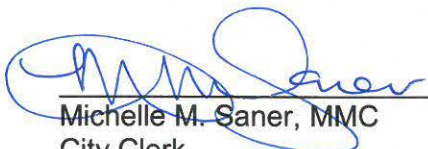
AFFIDAVIT OF SERVICE

I, Michelle M. Saner, Clerk for the City of Kenai, Alaska, do hereby certify that on the 6th day of June 2022, I posted or caused to be posted the foregoing Notice of Hearing before the Board of Adjustment of the following appeal:

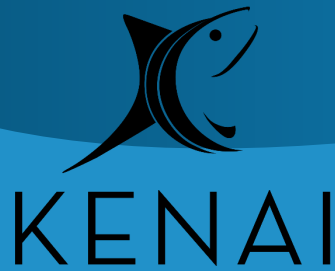
Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK.

This notice was posted on the Kenai City Hall Bulletin Board and on the internet at www.kenai.city on June 6, 2022. A copy of the notice is attached.

Further this affiant sayeth naught.



Michelle M. Saner, MMC
City Clerk



City of Kenai Public Notice

Notice is hereby given; the Kenai City Council will convene as the Board of Adjustment on **Monday, June 20, 2022, at 7:00 p.m.** in the Council Chambers at 210 Fidalgo Avenue, Kenai. The following will be heard at that time:

Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK

The public is invited to attend and testimony will be taken. The agenda and any supporting documents can be located on the City's website, www.kenai.city. Any questions related to this public notice may be directed to the Kenai City Clerk's Office at 283-8231 or cityclerk@kenai.city.

Shellie Saner, MMC
City Clerk

Posted: 6/9/22
Shellie Saner, MMC, City Clerk

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**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. 2022-11**

**A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI
GRANTING A CONDITIONAL USE PERMIT FOR A DAY CARE CENTER.**

APPLICANT: Stephanie Nella Lenzini-LeBaron

PROPERTY ADDRESS: 502 Ash Avenue

LEGAL DESCRIPTION: Lot 1, Block G, Woodland Subdivision Part One

KENAI PENINSULA BOROUGH PARCEL NUMBER: 04326047

WHEREAS, a complete application meeting the requirements of Kenai Municipal Code 14.20.150 was submitted to the City on April 25, 2022; and,

WHEREAS, the applicant has demonstrated with plans and other documents that the prerequisites of a Conditional Use Permit have been met pursuant to Kenai Municipal Code 14.20.150; and,

WHEREAS, the City of Kenai Planning and Zoning Commission conducted a duly advertised public hearing on May 11, 2022, following requirements outlined in Kenai Municipal Code 14.20.280 for public hearings and notifications.

WHEREAS, the Planning and Zoning Commission finds:

1. *KMC 14.20.150(d)(1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;*

Criteria Met: The proposed Day Care meets the intent of the Suburban Residential Zone (RS) to provide for medium density residential development in areas which will be provided with common utility systems. The specific intent in establishing this zone is:

- (1) To separate residential structures to an extent which will allow for adequate light, air, and privacy;
- (2) To prohibit uses which would:
 - (A) Violate the residential character of the environment;
 - (B) Generate heavy traffic in predominantly residential areas.

The existing home is consistent with the intent of the Suburban Residential District by preserving a medium density residential neighborhood with a site design that provides

light, air, and privacy between neighboring parcels via lot setbacks, trees, a grass lawn, and back yard fencing. While a Day Care Center would generate consistent vehicle trips, it would likely not generate heavy traffic. KMC 14.22 Land Use Table permits a single dwelling house on a Suburban Residential property.

The Land Use Table provides that Day Care Centers are a conditional use; therefore, a conditional use permit must be granted for the operation of a Day Care Center. The applicant has provided a site plan that provides the layout of the premises.

2. *KMC 14.20.150(d)(2) The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired;*

Criteria Met. The parcels located to the north and west of the subject property contain single family dwellings. The parcels located to the east and south are vacant parcels with trees and wetlands. The economic and noneconomic value of adjacent properties should not be significantly impacted by this change.

3. *KMC 14.20.150(d)(3) The proposed use is in harmony with the Comprehensive Plan;*

Criteria Met. The Land Use Plan, from the 2016 Comprehensive Plan, proposes a Suburban Residential land use for this neighborhood. The Suburban Residential Land Use Classification is defined in the Comprehensive Plan:

"Suburban Residential is intended for single-family and multi-family residential uses that are urban or suburban in character. The area will typically be developed at a higher density; lots are typically smaller; and, public water and sewer services are required or planned. Some developments may be required to construct streets to a paved standard and larger subdivisions may be required to provide sidewalks and public areas. Parks and open space land uses may be considered appropriate."

The subject parcel has similar land use, lot size and orientation, City water and wastewater connections, and medium density as neighboring properties. Ash Avenue is paved with no sidewalks.

The Comprehensive Plan has goals to support businesses and economic development and to provide a high quality of life within the City. Below are specific goals/objectives from the Comprehensive Plan that support this CUP application:

Goal 1 of the Comprehensive Plan is to promote and encourage quality of life in Kenai.

- Q-4 Promote the siting and design of land uses that are in harmony and scale with surrounding uses. The single family home where the Day Care Center operations would take place, is in harmony with the site design and layout of the Suburban Residential Zoning District.

Goal 2 of the Comprehensive Plan is to provide economic development to support the fiscal health of Kenai. Day Care Centers contribute to the economic vitality of the City by providing for child care during working hours for parents. The availability of child care can have a significant impact on the ability of parents to maintain employment.

4. *KMC 14.20.150(d)(4) Public services and facilities are adequate to serve the proposed use;*

Criteria Met. The residence located at 502 Ash Avenue is connected to City water and sewer services, and has access to natural gas, electricity and telephone services. Ash Avenue is a paved road which is maintained by the City of Kenai. The operation of a Day Care will not have an impact on these services.

5. *KMC 14.150(d)(5) The proposed use will not be harmful to the public safety, health or welfare;*

Criteria Met: The operation of a Day Care Center will not be harmful to public safety, health, or welfare. Staff believes that services are available to adequately serve this use will be harmful to the public safety, health or welfare of the community.

6. *KMC 14.150(d)(6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.*

See Conditions of Approval as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That a conditional use permit is granted to Stephanie Nella Lenzini-LeBaron for a Day Care Center for property described as Lot 1, Block G, Woodland Subdivision Part One, and located at 502 Ash Avenue.

Section 2. That the conditional use permit is subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. A yearly Conditional Use Permit report must be submitted to the City of Kenai prior to the 31st day of December of each year.
3. Biennial fire inspection must be completed by the Fire Marshal for the City of Kenai.
4. The applicant will meet with City staff for on-site inspections when requested.
5. If there is a change of use for the above described property a new Conditional Use Permit must be obtained, pursuant to 14.20.150(i)(5).
6. Pursuant to KMC 14.20.150(i)(2), this permit shall expire automatically upon termination or interruption of the use for a period of at least one year.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 11th day of May, 2022.



JEFF WAIT, CHAIRPERSON

ATTEST:



Meghan Thibodeau, Deputy City Clerk



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

STAFF REPORT

TO: Planning and Zoning Commission
FROM: Ryan Foster, Planning Director
DATE: May 5, 2022
SUBJECT: PZ2022-11 – Conditional Use Permit – Day Care Center

Applicant: Stephanie Nella Lenzini-LeBaron
502 Ash Avenue
Kenai, Alaska 99611

Legal Description: Lot 1, Block G, Woodland Subdivision Part One

Property Address: 502 Ash Avenue

KPB Parcel No: 04326047

Lot Size: .34 Acres (14,810 square feet)

Existing Zoning: Suburban Residential

Current Land Use: Single Family Dwelling

Land Use Plan: Suburban Residential

GENERAL INFORMATION

Kenai Municipal Code 14.20.230(b)(2) provides that a day care of no more than eight (8) children under the age twelve (12), including children related to the caregiver is allowed with a Home Occupation Permit. The applicant wishes to operate a day care with a maximum of 12 children; therefore, it is necessary for the applicant to obtain a Conditional Use Permit for a Day Care Center, which The Land Use Table provides as a conditional use in the Suburban Residential zoning district. "Day care center" means an establishment where child care is regularly provided for children for periods of less than twenty-four (24) hours, including the building housing the facility and adjoining areas, and where tuition, fees, or other compensation for the care of the children is charged. The applicant has been in contact with Jeremiah Hamilton, Fire Marshal, for the City of Kenai, to schedule a fire inspection.

Application, Public Notice, Public Comment

Pursuant to Kenai Municipal Code 14.20.280(c) notices of the public hearing for the conditional use were mailed to property owners within a three hundred-foot (300') periphery of the subject property. City staff published notice of the public hearing in the *Peninsula Clarion*. The applicant submitted an Affidavit of Posting verifying a sign was placed on the parcel with information on the public hearing for the conditional use request.

ANALYSIS

Kenai Municipal Code 14.20.150(e) – Review Criteria for Conditional Use Permits

Pursuant to KMC 14.20.150(a), the intent of a conditional use permit is to allow some uses that may be compatible with the designated principal uses in specific zoning districts provided certain conditions are met. KMC 14.20.150(e)-Conditional Use Permits Review Criteria states six conditions that the Planning and Zoning Commission must deem to exist when establishing findings prior to issuing a conditional use permit:

Criteria # 1: The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district.

Applicant Response: By providing a childcare facility in the community that can accept state assistance for payment and help families in the community in need of reliable and close childcare.

Staff Response: The proposed Day Care meets the intent of the Suburban Residential Zone (RS) to provide for medium density residential development in areas which will be provided with common utility systems. The specific intent in establishing this zone is:

- (1) To separate residential structures to an extent which will allow for adequate light, air, and privacy;
- (2) To prohibit uses which would:
 - (A) Violate the residential character of the environment;
 - (B) Generate heavy traffic in predominantly residential areas.

The existing home is consistent with the intent of the Suburban Residential District by preserving a medium density residential neighborhood with a site design that provides light, air, and privacy between neighboring parcels via lot setbacks, trees, a grass lawn, and back yard fencing. While a Day Care Center would generate consistent vehicle trips, it would likely not generate heavy traffic. KMC 14.22 Land Use Table permits a single dwelling house on a Suburban Residential property.

The Land Use Table provides that Day Care Centers are a conditional use; therefore, a conditional use permit must be granted for the operation of a Day Care Center. The applicant has provided a site plan that provides the layout of the premises.



Criteria #2: The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired.

Applicant Response: By adding a childcare facility to the neighborhood I will increase the safety of the neighborhood by providing a safe location for children to be attended by a licensed provider. I will also be adding to the general moral of the neighborhood, giving local families a place they can depend on.

Staff Response: The parcels located to the north and west of the subject property contain single family dwellings. The parcels located to the east and south are vacant parcels with trees and wetlands. The economic and noneconomic value of adjacent properties should not be significantly impacted by this change.

Criteria #3: The proposed use is in harmony with the Comprehensive Plan.

Applicant Response: The use of the property will be in harmony with the City's Comprehensive Plan by providing a vital service to the community and contributing to the economic development to the city of Kenai. In doing so I will also be providing reliable and affordable childcare so parents and caregivers can also attend economically progressive jobs.

Staff Response: The Land Use Plan, from the 2016 Comprehensive Plan, proposes a Suburban Residential land use for this neighborhood. The Suburban Residential Land Use Classification is defined in the Comprehensive Plan:

“Suburban Residential is intended for single-family and multi-family residential uses that are urban or suburban in character. The area will typically be developed at a higher density; lots are typically smaller; and, public water and sewer services are required or planned. Some developments may be required to construct streets to a paved standard and larger subdivisions may be required to provide sidewalks and public areas. Parks and open space land uses may be considered appropriate.”

The subject parcel has similar land use, lot size and orientation, City water and wastewater connections, and medium density as neighboring properties. Ash Avenue is paved with no sidewalks.

The Comprehensive Plan has goals to support businesses and economic development and to provide a high quality of life within the City. Below are specific goals/objectives from the Comprehensive Plan that support this CUP application:

Goal 1 of the Comprehensive Plan is to promote and encourage quality of life in Kenai.

- Q-4 Promote the siting and design of land uses that are in harmony and scale with surrounding uses. The single family home where the Day Care Center operations would take place, is in harmony with the site design and layout of the Suburban Residential Zoning District.

Goal 2 of the Comprehensive Plan is to provide economic development to support the fiscal health of Kenai. Day Care Centers contribute to the economic vitality of the City by



providing for child care during working hours for parents. The availability of child care can have a significant impact on the ability of parents to maintain employment.

Criteria #4: Public services and facilities are adequate to serve the proposed use.

Applicant Response: Yes.

Staff Response: The residence located at 502 Ash Avenue is connected to City water and sewer services, and has access to natural gas, electricity and telephone services. Ash Avenue is a paved road which is maintained by the City of Kenai. The operation of a Day Care will not have an impact on these services.

Criteria #5: The proposed use will not be harmful to the public safety, health or welfare.

Applicant Response: The use of the property will be to add safety and care to the communities children and their families.

Staff Response: The operation of a Day Care Center will not be harmful to public safety, health, or welfare. Staff believes that services are available to adequately serve this use will be harmful to the public safety, health or welfare of the community.

Criteria # 6: Specific conditions deemed necessary.

Applicant Response: No.

Staff Response: See Conditions of Approval as set forth below.

RECOMMENDATIONS

City staff find that the applicant meets the criteria for issuance of a Conditional Use Permit as set forth in subsections (e)(1) through (e)(6) of Kenai Municipal Code 14.20.150, and hereby recommends that the Planning and Zoning Commission approve the Conditional Use Permit application, subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. A yearly Conditional Use Permit report must be submitted to the City of Kenai prior to the 31st day of December of each year.
3. Biennial fire inspection must be completed by the Fire Marshal for the City of Kenai.
4. The applicant will meet with City staff for on-site inspections when requested.
5. If there is a change of use for the above described property a new Conditional Use Permit must be obtained, pursuant to 14.20.150(i)(5).
6. Pursuant to KMC 14.20.150(i)(2), this permit shall expire automatically upon termination or interruption of the use for a period of at least one year.



ATTACHMENTS

- A. Application
- B. Site Plan
- C. Aerial Map





Conditional Use Permit Application

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

PROPERTY OWNER

Name:					
Mailing Address:					
City:		State:		Zip Code:	
Phone Number(s):					
Email:					

PETITIONER REPRESENTATIVE (LEAVE BLANK IF NONE)

Name:					
Mailing Address:					
City:		State:		Zip Code:	
Phone Number(s):					
Email:					

PROPERTY INFORMATION

Kenai Peninsula Borough Parcel # (Property Tax ID):					
Physical Address:					
Legal Description:					
Zoning:					
Acres:					

CONDITIONAL USE DESCRIPTION

(include site plan/floor plan with square footages)

(include State Business License and KPB Tax Compliance if applicable)

How is this property currently being used?	
Conditional Use Requested for (attach additional sheets if necessary):	

--	--

Explain how the conditional use is consistent with purposes and intent of the zoning district of the property:

--	--

Explain how the value of adjoining property and neighborhood will not be significantly impaired by the conditional use:

--	--

Use of surrounding property - north:			
Use of surrounding property - south:			
Use of surrounding property - east:			
Use of surrounding property - west:			
Explain how the conditional use is in harmony with the City's Comprehensive Plan:			
Are public services and facilities on the property adequate to serve the proposed conditional use?			
Explain how the conditional use will not be harmful to public safety, health, or welfare:			
Are there any measures with access, screening, site development, building design, or business operation that will lessen potential impacts of the conditional use to neighbors?			
<p>AUTHORITY TO APPLY FOR CONDITIONAL USE:</p> <p>I hereby certify that (I am) (I have been authorized to act for) owner of the property described above and that I petition for a conditional use permit in conformance with Title 14 of the Kenai Municipal Code. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the conditional use. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff of the Planning and Zoning Commission for administrative reasons. I understand that a site visit may be required to process this application. City of Kenai personnel are authorized to access the above-referenced property for the purpose of processing this application.</p>			
Signature:	<i>Stephanie Nella Lenzini-LeBaron</i>		Date:
Print Name:		Title/Business:	
For City Use Only		Date Application Fee Received:	
		PZ Resolution Number:	



Conditional Use Permit Application

CHECKLIST

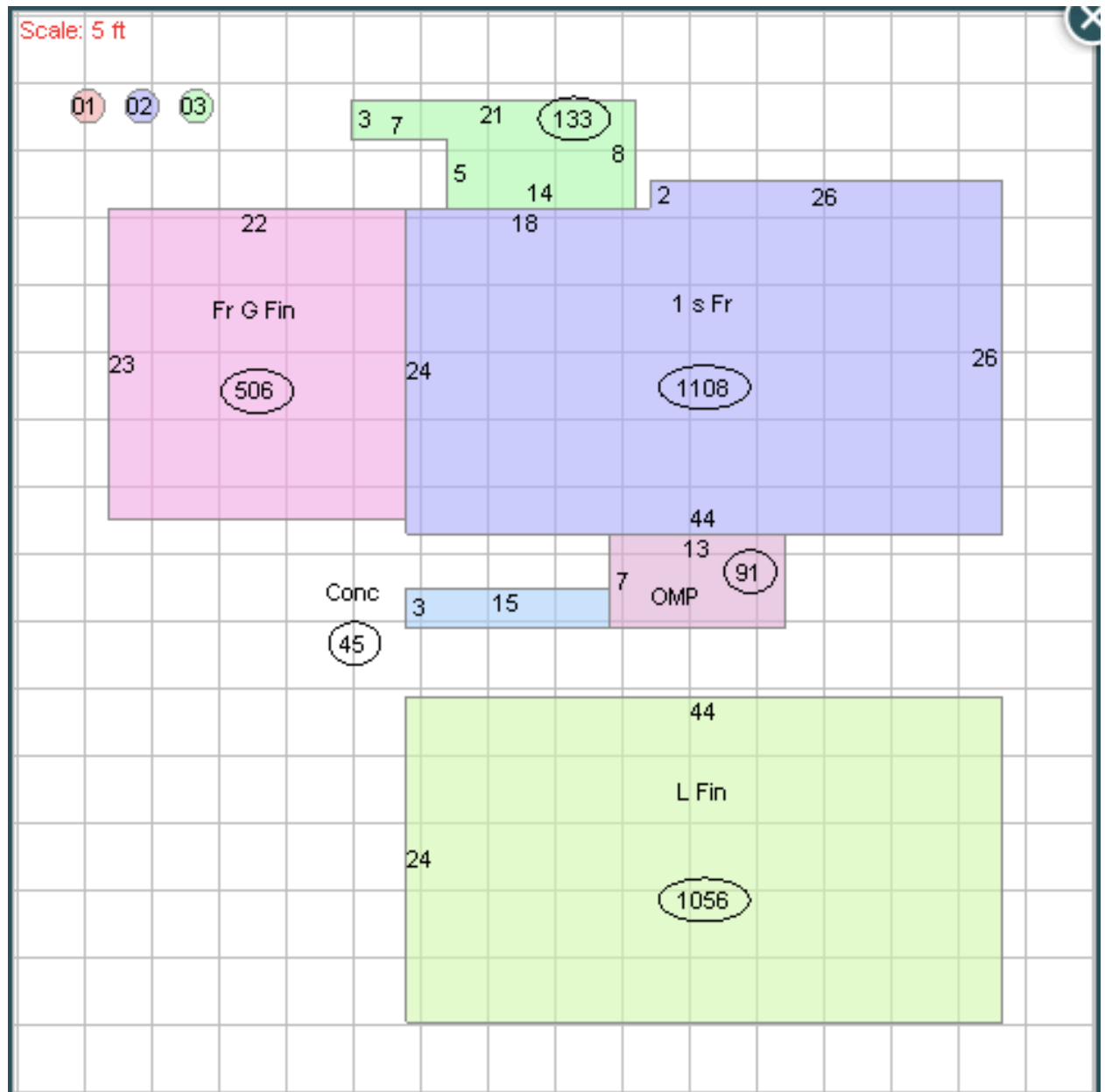
City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

- ☐ Evaluate uses allowed in your zoning district. Information on zoning is available at kenai.city/planning/page/zoning.
- ☐ Submit completed application form. The application form must include an attached site plan/floor plan with square footages of all structures on the property and parking areas. If applicable, include a State Business License and a KPB Tax Compliance Form with the application.
Intents of zoning districts are at kenai.municipal.codes/KMC/14.20.
Information about the Comprehensive Plan is at kenai.city/planning/page/comprehensive-plan.
- ☐ Pay the \$265 fee as outlined in the Fee Schedule (\$250 + 6% tax).
- ☐ City staff will evaluate your application following Kenai Municipal Code 14.20.230 (kenai.municipal.codes/KMC/14.20.150). Please answer questions from City staff about your application.
- ☐ Meet with Fire Marshall for inspection of premises (if necessary).
The Fire Marshal will contact you to arrange an inspection.
- ☐ Post sign on your property and confirm the posting with the City. Planning staff will contact you and provide a sign stating a conditional use permit application has been submitted. The sign must be posted at least 10 days before the Planning & Zoning Commission meeting.
- ☐ Attend Planning & Zoning Commission meeting (not mandatory, but recommended).
Attendance is beneficial so you are able to answer questions of the Commission.
- ☐ 15-day appeal period of the Planning & Zoning Commission's decision.

Thank you for choosing the City of Kenai!

Please contact the Planning & Zoning Department with application questions.

- All of the first floor will remain as private residential space. Occupied by Stephanie, Bryce, & Kaladin LeBaron.
- All of the lower level will be used for the daycare facility.
- Outside spaces will be shared residential and commercial use.
- All residential cars will be parked in the attached garage.
- Any cars parking temporarily to drop-off or pick-up children will park in the driveway.





**PZ2022-11 CUP Day Care Center
502 Ash Avenue
Parcel 04326047**



Data Source: Kenai Peninsula Borough. Data is for graphic representation only. Imagery may not match true parcel boundaries.

PLANNING & ZONING COMMISSION

Resolution PZ2022-11 – Conditional Use Permit – Day Care Center

502 Ash Avenue

SUMMARY

Applicant:	Stephanie Nella Lenzini-LeBaron 502 Ash Avenue Kenai, Alaska 99611
Legal Description:	Lot 1, Block G, Woodland Subdivision Part One
Property Address:	502 Ash Avenue
KPB Parcel No:	04326047
Lot Size:	.34 Acres (14,810 square feet)
Existing Zoning:	Suburban Residential
Current Land Use:	Single Family Dwelling
Land Use Plan:	Suburban Residential



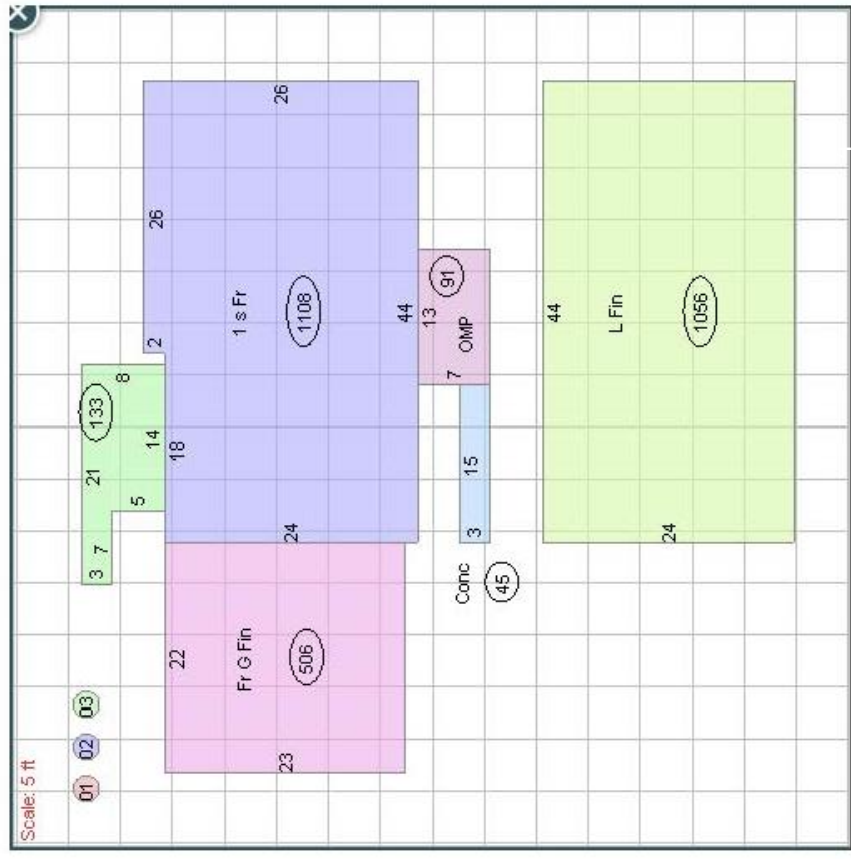
SUMMARY

- Kenai Municipal Code 14.20.230(b)(2) provides that a day care of no more than eight (8) children under the age twelve (12), including children related to the caregiver is allowed with a Home Occupation Permit.
- The applicant wishes to operate a day care with a maximum of 12 children; therefore, requiring a Conditional Use Permit for a Day Care Center.
- . “Day care center” means an establishment where child care is regularly provided for children for periods of less than twenty-four (24) hours, including the building housing the facility and adjoining areas, and where tuition, fees, or other compensation for the care of the children is charged.

SITE PLAN

- Site plan identifies the layout of the interior of the day care.

- All of the first floor will remain as private residential space. Occupied by Stephanie, Bryce, & Kaladin LeBaron.
- All of the lower level will be used for the daycare facility.
- Outside spaces will be shared residential and commercial use.
- All residential cars will be parked in the attached garage.
- Any cars parking temporarily to drop-off or pick-up children will park in the driveway.



STAFF ANALYSIS

- Kenai Municipal Code 14.20.150(e) – Review Criteria for Conditional Use Permits
- Pursuant to KMC 14.20.150(a), the intent of a conditional use permit is to allow some uses that may be compatible with the designated principal uses in specific zoning districts provided certain conditions are met. KMC 14.20.150(e)- Conditional Use Permits Review Criteria states six conditions that the Planning and Zoning Commission must deem to exist when establishing findings prior to issuing a conditional use permit:

REVIEW CRITERIA

- *Criteria #1: The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district.*
- *Criteria #2: The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired.*
- *Criteria #3: The proposed use is in harmony with the Comprehensive Plan.*
- *Criteria #4: Public services and facilities are adequate to serve the proposed use.*
- *Criteria #5: The proposed use will not be harmful to the public safety, health or welfare.*
- *Criteria #6: Specific conditions deemed necessary.*


RECOMMENDATIONS

- City staff find that the applicant meets the criteria for issuance of a Conditional Use Permit as set forth in subsections (e)(1) through (e)(6) of Kenai Municipal Code 14.20.150, and hereby recommends that the Planning and Zoning Commission approve the Conditional Use Permit application, subject to the following conditions:
 1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
 2. A yearly Conditional Use Permit report must be submitted to the City of Kenai prior to the 31st day of December of each year.
 3. Biennial fire inspection must be completed by the Fire Marshal for the City of Kenai.
 4. The applicant will meet with City staff for on-site inspections when requested.
 5. If there is a change of use for the above described property a new Conditional Use Permit must be obtained, pursuant to 14.20.150(i)(5).
 6. Pursuant to KMC 14.20.150(i)(2), this permit shall expire automatically upon termination or interruption of the use for a period of at least one year.

ATTACHMENTS

- A. Application
- B. Site Plan
- C. Aerial Map

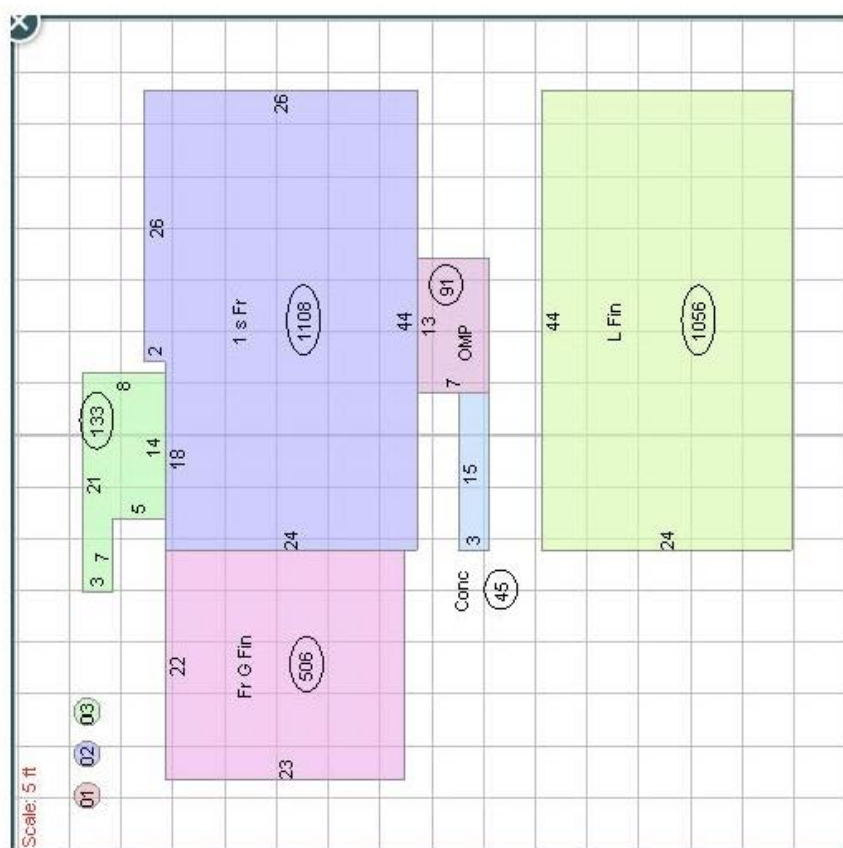
A. APPLICATION

	<div>City of Kenai Planning and Zoning Department 210 Fidalgo Avenue Kenai, AK 99611 (907) 283-8200 planning@kenai.city www.kenai.city/planning</div>
<div>Conditional Use Permit Application</div>	
PROPERTY OWNER	
Name:	Stephanie Nella Lenzini-LeBaron
Mailing Address:	502 Ash ave
City:	Kenai
State:	AK
Zip Code:	99611
Phone Number(s):	847-363-0891
Email:	Nellal@busybeesak.org
PETITIONER REPRESENTATIVE (LEAVE BLANK IF NONE)	
Name:	
Mailing Address:	
City:	
State:	
Zip Code:	
Phone Number(s):	
Email:	
PROPERTY INFORMATION	
Kenai Peninsula Borough Parcel # (Property Tax ID):	04326047
Physical Address:	502 Ash Ave, Kenai AK 99611
Legal Description:	T 6N R 11W SEC 31 SEWARD MERIDIAN KN 0001522 WOODLAND SUB PT I LOT 1 BLK G
Zoning:	Suburban Residential KEN4120
Acres:	0.34
CONDITIONAL USE DESCRIPTION (include site plan/floor plan with square footages) (include State Business License and KPB Tax Compliance if applicable)	
How is this property currently being used? Living	
Conditional Use Requested for (attach additional sheets if necessary):	
Request to use a portion of the property as a state licensed childcare facility.	
Explain how the conditional use is consistent with purposes and intent of the zoning district of the property:	
By providing a childcare facility in the community that can accept state assistance for payment and help families in the community in need of reliable and close childcare.	
Explain how the value of adjoining property and neighborhood will not be significantly impaired by the conditional use:	
By adding a childcare facility to the neighborhood I will increase the safety of the neighborhood by providing a safe location for children to be attended by a licensed provider. I will also be adding to the general moral of the neighborhood, giving local families a place they can depend on.	

Use of surrounding property - north:	Yard/ driveway		
Use of surrounding property - south:	Yard / outdoor play area		
Use of surrounding property - east:	Driveway / shed		
Use of surrounding property - west:	Yard / outdoor play area		
Explain how the conditional use is in harmony with the City's Comprehensive Plan:			
The use of the property will be in harmony with the City's Comprehensive Plan by providing a vital service to the community and contributing to the economic development to the city of Kenai. In doing so I will also be providing reliable and affordable childcare so parents and caregivers can also attend economically progressive jobs.			
Are public services and facilities on the property adequate to serve the proposed conditional use?			
Yes			
Explain how the conditional use will not be harmful to public safety, health, or welfare:			
The use of the property will be to add safety and care to the communities children and their families.			
Are there any measures with access, screening, site development, building design, or business operation that will lessen potential impacts of the conditional use to neighbors?			
No			
AUTHORITY TO APPLY FOR CONDITIONAL USE: I hereby certify that I am (I have been authorized to act for) owner of the property described above and that I petition for a conditional use permit in conformance with Title 14 of the Kenai Municipal Code. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the conditional use. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff of the Planning and Zoning Commission for administrative reasons. I understand that a site visit may be required to process this application. City of Kenai personnel are authorized to access the above-referenced property for the purpose of processing this application.			
Signature:	Stephanie Nella Lenzini-LeBaron	Date:	04/25/2022
Print Name:	Stephanie Nella Lenzini-LeBaron	Title/Business:	Administrator/ Busy Bees Child Learning Center
For City Use Only			
Date Application Fee Received:			
PZ Resolution Number:			

B. SITE PLAN

- All of the first floor will remain as private residential space. Occupied by Stephanie, Bryce, & Kalladin LeBaron.
- All of the lower level will be used for the daycare facility.
- Outside spaces will be shared residential and commercial use.
- All residential cars will be parked in the attached garage.
- Any cars parking temporarily to drop-off or pick-up children will park in the driveway.



C. AERIAL MAP



**MAY 11, 2022
PLANNING & ZONING COMMISSION
ADDITIONAL MATERIAL/REVISIONS**

REQUESTED ADDITIONS TO THE PACKET:

ACTION

ITEM

REQUESTED BY

Add to item F.1

Resolution PZ2022-11

- Public Comment

Planning Director

From: [Kristine Schmidt](#)
To: [Ryan Foster](#)
Cc: [Alex Douthit](#); [Diane Fikes - Planning & Zoning Commission \(dmfikes@yahoo.com\)](#); [Gary Greenberg \(ggreenberg@akmapco.com\)](#); [Gwen Woodard \(woodard.g@outlook.com\)](#); [Jeff Twait](#); [Joe Halstead \(joe@digitsak.com\)](#); [Tea Winger](#); [ectt@ptialaska.net](#)
Subject: CUP Application - 502 Ash Avenue, Woodland Subdivision
Date: Wednesday, May 11, 2022 11:04:17 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

We request that the Planning and Zoning Commission vote no on the CUP for 502 Ash Avenue, Kenai, Alaska for the following reasons:

• Notices did not comply with Kenai Municipal Code

- sign not posted on subject property until Wednesday May 4, 2022 (6 days before meeting)
- supposed to be posted 10 days before the date of the meeting per KMC 14.20.280(d)
- published on May 5, 2022, 6 days "prior to date of hearing" on Wednesday May 11, 2022 meeting -- supposed to be published 7 days "prior to date of hearing" per KMC 14.20.280(b)

• Businesses in Woodland Subdivision are prohibited by the Covenants Conditions and Restrictions of Woodland Subdivision, in effect since 1967

- Subject property restricted to single family residential use per Woodland Subdivision covenants
- The Planning Commission should not give a permit to violate subdivision covenants
- City of Kenai Planning Department used to deny CUPs for businesses in residential subdivisions with restrictive covenants, at least through the 1980s

• This business is not appropriate for this location, this commercial use is not consistent with the purposes and intent of the relevant zoning district

- This commercial use will be harmful to public safety. Small children in nearby houses dash into and play in Ash Avenue as it
- Ash Avenue is one of the two busiest streets in Woodland Subdivision, one of the main routes for subdivision traffic to access N. Forest Drive, Fourth Avenue and Kenai Spur Highway
- The house is located on a dangerous corner with lots of traffic
- This commercial use will generate heavy traffic multiple times daily, there will be a large increase in business traffic in neighborhood
- The back yard is small, because it is sloughing off into "Richka Creek" -- no place for children to play except for front yard
- Increase in noise outside

- **Domino effect**

- There are no other large businesses in Woodland Subdivision

- This CUP would open the door for other large, inappropriate businesses in the neighborhood

Thank you for your consideration.

Kristine Schmidt and Bob Molloy
513 Ash Avenue
Kenai, Alaska 99611
(907) 283-7373
kristine@molloysschmidt.com
bob@molloysschmidt.com

**KENAI PLANNING & ZONING COMMISSION –
REGULAR MEETING
MAY 11, 2022 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
CHAIR JEFF TWAIT, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai Planning & Zoning Commission was held on May 11, 2022, in City Hall Council Chambers, Kenai, AK. Chair Twait called the meeting to order at approximately 7:00 p.m.

1. Pledge of Allegiance

Chair Twait led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Commissioners present: J. Twait, A. Douthit, G. Woodard, J. Halstead, D. Fikes

Commissioners absent: V. Askin, G. Greenberg

Staff/Council Liaison present: Planning Director R. Foster, City Attorney S. Bloom, Vice Mayor Glendening, Deputy Clerk M. Thibodeau

A quorum was present.

3. Agenda Approval

Chair Twait noted the following additions to the Packet:

Add item F.1. **Resolution PZ2022-11**
• Public Comment

MOTION:

Commissioner Halstead **MOVED** to approve the agenda with the requested revisions. Commissioner Woodard **SECONDED** the motion. There being no objection; **SO ORDERED**.

4. Consent Agenda

MOTION:

Commissioner Halstead **MOVED** to approve the consent agenda. Commissioner Woodard **SECONDED** the motion. There being no objection; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a commission member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

5. *Excused Absences – V. Askin, G. Greenberg

B. APPROVAL OF MINUTES

1. *Regular Meeting of April 27, 2022

Approved by the consent agenda.

C. **SCHEDULED PUBLIC COMMENTS** – None.

D. **UNSCHEDULED PUBLIC COMMENTS** – None.

E. **CONSIDERATION OF PLATS** – None.

F. **PUBLIC HEARINGS**

1. **Resolution PZ2022-11** - Application for a Conditional Use Permit for a Day Care Center, for the property described as Lot 1 Blk G Woodland Sub Pt I, located at 502 Ash Avenue, Kenai, Alaska 99611. The application was submitted by Stephanie Nella Lenzini-LeBaron, 502 Ash Avenue, Kenai, Alaska 99611.

MOTION:

Commissioner Halstead **MOVED** to approve Resolution PZ2022-11. Vice Chair Fikes **SECONDED** the motion.

Planning Director Foster presented his staff report with information provided in the packet explaining that the applicant wishes to obtain a conditional use permit (CUP) for a day care center. The criteria for conditional use permits was reviewed; it was noted the application met the criteria and City staff recommends approval subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. A yearly Conditional Use Permit report must be submitted to the City of Kenai prior to the 31st day of December of each year.
3. Biennial fire inspection must be completed by the Fire Marshal for the City of Kenai.
4. The applicant will meet with City staff for on-site inspections when requested.
5. If there is a change of use for the above described property a new Conditional Use Permit must be obtained, pursuant to 14.20.150(I)(5).
6. Pursuant to KMC 14.20.150(I)(2), this permit shall expire automatically upon termination or interruption of the use for a period of at least one year.

Stephanie Nella Lenzini-LeBaron noted that having childcare is vital for community, and currently options are very limited in Kenai. She explained that she already has a waitlist of families who want to send their children to a State-licensed facility like she will be providing, and that her business will have an economic benefit to the area. She explained that she already has two full-time employees lined up to begin work.

Chair Twait opened for public hearing.

Bob Molloy spoke in opposition, noting that there are already several childcare facilities in the neighborhood and he disagreed with staff's analysis of Criteria 1, 3 and 5. He discussed the home location and street layout, noting that the commercial use will generate heavy traffic which is already dangerous to children in the neighborhood and it is not a good location for a childcare facility. He stated that it is not in harmony with the Goal 1 of the Comprehensive Plan because there are other childcare home occupations in neighborhood and some may not have a license with City.

Kristine Schmidt presented an aerial map of the parcel. She expressed disappointment in the staff report, noting that it did not consider the impact of the business on the historical residential neighborhood with small lots, and that it goes against the Comprehensive Plan's focus on quality of life. She explained that businesses are prohibited in their subdivision covenants, and that the City should not issue permits that violate covenants. She expressed concerns about the location of the business

on a corner lot, increase in traffic, that it will be the only large business in the Woodland subdivision, and that the noise will make it difficult for her to work from home.

Stephanie Nella Lenzini-LeBaron addressed concerns about traffic around her property, noted that it is a family-friendly neighborhood where many children play and the addition of children from her childcare center will not have a harmful impact, and provided details about her large backyard where children where the children will play. She explained that although her intention is to be permitted for twelve children, she only plans on admitting five children full-time and having leeway to allow for emergency drop-offs. She discussed her business hours and the impact of traffic, parking and noise. She stated that it would be negligent if the City decided that more childcare is not necessary, and explained the benefits her learning center will have on the community.

There being no one else wishing to be heard, the public hearing was closed.

Discussion involved how more childcare options are needed in the community, and the impacts of living adjacent to a daycare. The disturbance of noise from a large daycare center was cited as findings in disagreement with Staff's analysis of Criteria 2 "*The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired;*" and Criteria 3 "*The proposed use is in harmony with the Comprehensive Plan.*" Concern was expressed for the number of children, and the lack of enforcement for covenants in the neighborhood. A suggestion was made for issuing the CUP with a limited number for one year, which could be modified to allow more children after a year of operation; a provision for emergency drop-offs was considered.

In response to questions from the commission, the applicant provided details about the State license application process and requirements. Director Foster provided clarification on home occupation permits for childcare, and the applicant explained that to apply for a home occupation permit at this time would require a new application to the State and would delay her business operations for several months.

In response to the earlier suggestion of approving a CUP that is modifiable after one year, Director Foster clarified that this change would be substantial enough to require a second public process.

In response to questions from the commission, the applicant provided further details about the State license requirements for training, safety equipment, and Fire Department and State inspections.

Support was expressed for the CUP; it was noted that it is an appropriate land use, and that it is possible to have a family with twelve people in a suburban residential area and it would be better to have a learning center with strong educational and safety standards. It was noted that denying permits after applicants have gone through the proper channels could prevent people from applying in the future.

In response to questions from the commission, the applicant provided a description of her back yard, fencing and gates. She explained her plan for a rotational schedule of outdoor/indoor play, and types of activity.

MOTION:

Vice Chair Douthit **MOVED** to adjourn to adjudicative session with the Director Foster present. Commissioner Halstead **SECONDED** the motion. There being no objection; **SO ORDERED**.

The commission returned from adjudicative session.

MOTION TO AMEND:

Commissioner Halstead **MOVED** to amend Resolution No. PZ2022-11 by adding a condition that the operating capacity will be eight full time children and an additional 4 children on an emergency/temporary basis. Commissioner Fikes **SECONDED** the motion.

The definitions of “temporary” and “emergency” were deliberated, and it was noted that the way the motion is currently written this could not be enforced.

Support was expressed; it was noted that the community would lose out if the CUP was denied, that the applicant’s willingness to get State-certified which has stringent requirements and shows that she will be a prudent business owner.

The motion to amend was withdrawn with concurrence from the Second.

VOTE:

YEA: Douthit, Woodard, Fikes,

NAY: Halstead, Twait

MOTION PASSED.

Chair Twait noted the fifteen-day appeal period.

G. UNFINISHED BUSINESS – None.

H. NEW BUSINESS

1. **Action/Approval** - Recommending the Kenai City Council Adopt a Resolution Approving the Updated 2022 Kenai Peninsula Borough Community Wildfire Protection Plan.

MOTION:

Vice Chair Douthit **MOVED** to recommend that the Kenai City Council adopt a Resolution approving the Updated 2022 Kenai Peninsula Borough Community Wildfire Protection Plan. Commissioner Halstead **SECONDED** the motion.

Fire Chief Prior provided background on the development of the 2022 Kenai Peninsula Borough Community Wildfire Protection Plan, noting that it was a collaborative effort between Kenai Peninsula Borough communities. He explained some of the main items included in the plan including a slash disposal site and mitigation of gullies, and noted there are specifics for the City of Kenai. He clarified the primary goals and focus, and encouraged the commission to read the plan.

Appreciation was expressed for the hard work that was put into developing this plan, and that grant funding was being pursued for these projects.

VOTE:

YEA: Woodard, Fikes, Halstead, Twait, Douthit

NAY: None

MOTION PASSED UNANIMOUSLY.

2. **Action/Approval** - Recommending the Kenai City Council Enact Ordinance 3287-2022 - Conditionally Donating Certain City Owned Property Described as Tract A Park View Subdivision (KPB Parcel No. 047010118) to the Boys and Girls Club of the Kenai Peninsula for Development of Facilities for Youth Sports, Recreation, Education, After School Care and Other Youth Activities.

Chair Twait passed gavel to Vice Chair Douthit, and declared that he may have a financial interest in the matter in the future. Vice Chair Douthit ruled that he has a conflict of interest and excused him from voting.

MOTION:

Commissioner Halstead **MOVED** to recommend that the Kenai City Council enact Ordinance 3287-2022. Commissioner Fikes **SECONDED** the motion.

Director Foster provided a staff report explaining that the Boys and Girls Club of the Kenai Peninsula is interested in purchasing a parcel to expand and relocate its campus, and is requesting a land donation from the City of an adjacent parcel. Details were provided on the development plan and goals for the land. It was clarified that the Boys & Girls Club Board had approved the purchase of this parcel on the condition that the City agrees to donate the adjacent one.

Ryan Tunseth, Boys & Girls Club Board of Directors member, explained that the creation of a clubhouse had long been on the strategic plan of the Boys & Girls Club, but had not been realized due to a lack of funding. He explained that their current initiative to expand was the result of two events: first, a donation of \$5 million received from the estate of Royce Roberts with a condition that the money be used for a new facility in Kenai; and second, the sale of a parcel owned by the Kenai Community Care Center. He noted that the Care Center property would work for their new campus, but would not encompass their vision without the addition of the adjacent parcel. He stated that if the City donates this land, it will send a strong message about its respect for the vision of Royce Roberts and the Boys & Girls Club.

Mr. Tunseth responded to questions from the commission, clarifying the number of facilities operated by the Boys & Girls Club; their pursuit of additional grants and intent to retain much of the donated funds for future operations; the services provided by their organization and how they benefit the community; further details about the plans for the facility and land utilization; status of the purchase agreement with the Kenai Community Care Center; and total land acreage of these parcels.

Concern was expressed that the lot could be better used for commercial purposes. Clarification was provided on the slope of the land. It was noted that the packet materials did not provide sufficient information for a recommendation to be made.

Mr. Tunseth responded to questions from the commission about the Boys & Girls Club research on potential alternative parcels.

Director Foster provided background on conditional land donations by the City, and confirmed that the City does not currently have plans for this parcel. It was noted that its recommendation in the draft Land Management Plan is Dispose, and that the definition of Dispose includes donation.

A preference was expressed for allowing more time to receive plans and data from the Boys & Girls Club before a recommendation is made.

Kristine Schmidt noted that very little information was provided to the public on this issue; it's a prime piece of land that should not be donated. She questioned the fairness of City's process for evaluating requests for land donation, and whether this land could be better used for something that generates tax revenue.

Bob Molloy stated that the City doesn't have much valuable residential property left in its inventory. He noted that the City Council had discussed this parcel during meetings on the Land Management Plan, and many had thought that this would be a good location for private development that would increase tax revenue. He stated that the City has soccer fields and playgrounds and the Boys & Girls Club can transport their children there in vans, and he doesn't see the value to the public if the land is donated. Expressed concern that the Boys & Girls Club does not have enough confidence to purchase the Care Center's property unless the City donates the adjacent land.

MOTION TO POSTPONE:

Commissioner Halstead **MOVED** to postpone their recommendation until May 25, 2022, and request that the City Council postpone their decision until after that. Commissioner Woodard **SECONDED** the motion.

VOTE ON POSTPONEMENT:

YEA: Halstead, Douthit, Woodard

NAY: Fikes

MOTION PASSED.

Vice Chair Douthit returned the gavel to Chair Twait.

3. **Action/Approval** - Recommending the Kenai City Council Adopt Resolution No. 2022-XX – Approving the Execution of a Lease to Swanson Properties, LLC for Lot 6, Block 5, General Aviation Subdivision No. 1 Amended.

MOTION:

Commissioner Halstead **MOVED** to recommend that the Kenai City Council adopt Resolution No. 2022-XX. Vice Chair Douthit **SECONDED** the motion.

Director Foster provided a staff report, explaining that this property and the adjacent lot to the north is currently leased to Swanson Properties for Ron's Rent It Center. The current 55 year lease terminates on June 30, 2022; the application proposes to maintain original and current uses, and includes evidence of existing improvements that would allow for a 45 year lease. He clarified that it is a non-aeronautical use with direct airfield access.

Clarification was provided that by 2031 there may be consideration about finding a better, more compatible location for Ron's Rent It Center and an aeronautical use for this property.

It was noted that Ron's Rent It Center had been at this location for decades and have served the community well.

VOTE:

YEA: Woodard, Fikes, Halstead, Twait, Douthit

NAY: None

MOTION PASSED UNANIMOUSLY.

I. PENDING ITEMS – None.

J. REPORTS

1. City Council – Vice Mayor Glendening reported on the actions of the May 4, 2022 City Council Meeting.
2. Kenai Peninsula Borough Planning – Commissioner Fikes reported on the actions of the May 9, 2022 Kenai Peninsula Borough Planning meeting.
3. City Administration – Planning Director Foster reported on the following:
 - Next commission meeting May 25, 2022 will include the postponed Boys & Girls Club recommendation, a rezoning application and a vacation of easement.

K. ADDITIONAL PUBLIC COMMENTS – None.

L. INFORMATIONAL ITEMS – None.

M. NEXT MEETING ATTENDANCE NOTIFICATION

1. May 11, 2022

N. COMMISSION COMMENTS & QUESTIONS

Commissioner Woodard noted she is glad to see green grass and leaves outside.

Commissioner Halstead thanked staff for providing food during their work session, and noted he is looking forward to more work sessions and continuing work with the commission.

Commissioner Fikes noted that working together with the public during work sessions can affect change, and it is beneficial for the commission to receive help using the tools available to facilitate this change.

Vice Chair Douthit noted that he learned from the work session, and this will continue to help the commission in the future.

O. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 9:58p.m.

Minutes prepared and submitted by:

Meghan Thibodeau
Deputy City Clerk



May 12, 2022

Stephanie Nella Lenzini-LeBaron
502 Ash Avenue
Kenai, AK 99611

RE: Resolution PZ2022-11 - Conditional Use Permit – Day Care Center – 502 Ash Avenue

Dear Ms. Lenzini-LeBaron:

At their meeting on May 11, 2022, the City of Kenai Planning & Zoning Commission approved the Conditional Use Permit for the property located at 502 Ash Avenue. Decisions made by the Commission are subject to a 15-day appeal period. Appeals must be filed in writing with the City Clerk.

The appeal period expires at 5 p.m. on May 26, 2022. If an appeal is filed, I will notify you. If an appeal is not filed, I will forward a copy of Resolution PZ2022-11 (the conditional use permit) for your records.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Foster", is written over a horizontal line.

Ryan Foster
Planning Director



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

AFFIDAVIT OF POSTING PUBLIC HEARING NOTICE

I hereby certify that I have posted a Notice of Public Hearing as prescribed by Kenai Municipal Code 14.20.280 (d) on the property that

Stephanie Nella Lenzini-LeBaron (Name of Applicant) has petitioned for a
Conditional use permit for
Day care center

The notice was posted on the date of 04/29/2022, which is at least 10 days prior to the public hearing on this petition. I acknowledge this Notice must be posted so as to be visible from each improved street adjacent to the property and must be maintained and displayed until all public hearings have been completed. I acknowledge that the Notice must be removed within 5 days after the hearing.

Affirmed and signed by:

Stephanie Nella Lenzini-LeBaron
Signature

Stephanie Nella Lenzini-LeBaron
Printed Name

04/29/2020
Date

Property:

Address: 502 Ash Ave
Legal Description: Residential
KPB Parcel #: 041326047

P&Z Resolution #:

PZ-_____



Dear Property Owner:

The following application is being reviewed by the City of Kenai Planning and Zoning Commission:

Resolution PZ2022-11 – Application for a Conditional Use Permit for a Day Care Center, for the property described as Lot 1 Blk G Woodland Sub Pt I, located at 502 Ash Avenue, Kenai, Alaska 99611. The application was submitted by Stephanie Nella Lenzini-LeBaron, 502 Ash Avenue, Kenai, Alaska 99611.

The City of Kenai Planning & Zoning Commission has scheduled a public hearing in the Kenai City Hall Council Chambers at 210 Fidalgo Avenue, Kenai, Alaska at 7:00 p.m. on Wednesday, **May 11, 2022**. The public is invited to participate. Telephonic and virtual participation options will be posted closer to the public hearing date to follow State guidelines for gatherings. Please visit www.kenai.city for the most current information. Your comments and participation is encouraged.

More information may be obtained by contacting Katie Rector, Planning Assistant, at 907-283-8237. Your comments and/or attendance regarding the proposals are encouraged. Written comments may be mailed to the City of Kenai, Planning & Zoning Department, 210 Fidalgo Ave., Kenai, AK 99611 or by email: krector@kenai.city

You are being sent this notice because you own/lease property within 300 feet of the project site or an interested party.

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City of Kenai
Planning & Zoning Department
210 Fidalgo Avenue
Kenai, Alaska 99611
planning@kenai.city
www.kenai.city/planning

KENAI

IMPORTANT NOTICE ABOUT YOUR PROPERTY



City of Kenai
Planning & Zoning Department
210 Fidalgo Avenue
Kenai, Alaska 99611
planning@kenai.city
www.kenai.city/planning

KENAI

IMPORTANT NOTICE ABOUT YOUR PROPERTY



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210 Fidalgo Avenue
Kenai, Alaska 99611
planning@kenai.city
www.kenai.city/planning

KENAI

IMPORTANT NOTICE ABOUT YOUR PROPERTY



City of Kenai
Planning & Zoning Department
210 Fidalgo Avenue
Kenai, Alaska 99611
planning@kenai.city
www.kenai.city/planning

KENAI

IMPORTANT NOTICE ABOUT YOUR PROPERTY

OWNER	ADDRESS	CITY	STATE	ZIP
ANDERSEN AMELIA M	PO BOX 2081	KENAI	AK	99611
BARNES LARRY NELSON	506 ASH AVE	KENAI	AK	99611
BEECH JOHNA K	414 PINE CIR	KENAI	AK	99611
CHARLES NATHAN M	11313 GAINSBOROUGH RD	POTOMAC	MD	20854
COUTURIER JORDAN M	506 PINE AVE	KENAI	AK	99611
EICHER PROPERTIES LLC	38335 RYDBERG ST	STERLING	AK	99672
GOMEZ EDDY M Jr	503 ASH AVE	KENAI	AK	99611
HINKLE JASON	46755 KENAI SPUR HWY	KENAI	AK	99611
HORVATH RONALD S	504 PINE AVE	KENAI	AK	99611
KAY AMY B & SHAWN	501 ASH AVE	KENAI	AK	99611
LARKIN TERRIDALE B	502 PINE AVE	KENAI	AK	99611
LEFEBVRE MARY B	510 ASH AVE	KENAI	AK	99611
LENZINI-LEBARON STEPHANIE N	502 ASH AVE	KENAI	AK	99611
PENROD DINELLE M	412 PINE CIR	KENAI	AK	99611
VEDDERS WILLIAM H & LORI K	504 ASH AVE	KENAI	AK	99611



**CITY OF KENAI
PLANNING & ZONING COMMISSION
MEETINGS – May 11, 2022**

WORK SESSION – 5:30 p.m. – 7:00 p.m.

REGULAR MEETING – 7:00 p.m.

**City of Kenai Council Chambers
210 Fidalgo Avenue, Kenai, AK 99611**

**A Work Session for Commissioner Training will be held from
5:30 p.m. to 7:00 p.m.**

The following agenda items will be before the City of Kenai Planning and Zoning Commission at their meeting starting at 7:00 p.m. on **May 11, 2022.**

PUBLIC HEARINGS

1. **Resolution PZ2022-11** – Application for a Conditional Use Permit for a Day Care Center, for the property described as Lot 1 Blk G Woodland Sub Pt I, located at 502 Ash Avenue, Kenai, Alaska 99611. The application was submitted by Stephanie Nella Lenzini-LeBaron, 502 Ash Avenue, Kenai, Alaska 99611.

The public is invited to attend the meeting and to participate virtually/telephonically. Additional information is available through the Planning and Zoning Department at krector@kenai.city and (907) 283-8237, or on the City's website at www.kenai.city.

Katie Rector, Planning & Zoning Administration

Publish: May 5, 2022

KENAI PLANNING & ZONING COMMISSION –
REGULAR MEETING
MAY 11, 2022 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
CHAIR JEFF TWAIT, PRESIDING

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai Planning & Zoning Commission was held on May 11, 2022, in City Hall Council Chambers, Kenai, AK. Chair Twait called the meeting to order at approximately 7:00 p.m.

1. Pledge of Allegiance

Chair Twait led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Commissioners present: J. Twait, A. Douthit, G. Woodard, J. Halstead, D. Fikes

Commissioners absent: V. Askin, G. Greenberg

Staff/Council Liaison present: Planning Director R. Foster, City Attorney S. Bloom, Vice Mayor Glendening, Deputy Clerk M. Thibodeau

A quorum was present.

3. Agenda Approval

Chair Twait noted the following additions to the Packet:

Add item F.1. **Resolution PZ2022-11**
 • Public Comment

MOTION:

Commissioner Halstead **MOVED** to approve the agenda with the requested revisions. Commissioner Woodard **SECONDED** the motion. There being no objection; **SO ORDERED**.

4. Consent Agenda

MOTION:

Commissioner Halstead **MOVED** to approve the consent agenda. Commissioner Woodard **SECONDED** the motion. There being no objection; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a commission member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

5. *Excused Absences – V. Askin, G. Greenberg

B. APPROVAL OF MINUTES

1. *Regular Meeting of April 27, 2022

Approved by the consent agenda.

C. SCHEDULED PUBLIC COMMENTS – None.

D. UNSCHEDULED PUBLIC COMMENTS – None.

E. CONSIDERATION OF PLATS – None.

F. PUBLIC HEARINGS

1. **Resolution PZ2022-11** - Application for a Conditional Use Permit for a Day Care Center, for the property described as Lot 1 Blk G Woodland Sub Pt I, located at 502 Ash Avenue, Kenai, Alaska 99611. The application was submitted by Stephanie Nella Lenzini-LeBaron, 502 Ash Avenue, Kenai, Alaska 99611.

MOTION:

Commissioner Halstead **MOVED** to approve Resolution PZ2022-11. Vice Chair Fikes **SECONDED** the motion.

Planning Director Foster presented his staff report with information provided in the packet explaining that the applicant wishes to obtain a conditional use permit (CUP) for a day care center. The criteria for conditional use permits was reviewed; it was noted the application met the criteria and City staff recommends approval subject to the following conditions:

1. Further development of the property shall conform to all federal, State of Alaska, and local regulations.
2. A yearly Conditional Use Permit report must be submitted to the City of Kenai prior to the 31st day of December of each year.
3. Biennial fire inspection must be completed by the Fire Marshal for the City of Kenai.
4. The applicant will meet with City staff for on-site inspections when requested.
5. If there is a change of use for the above described property a new Conditional Use Permit must be obtained, pursuant to 14.20.150(l)(5).
6. Pursuant to KMC 14.20.150(l)(2), this permit shall expire automatically upon termination or interruption of the use for a period of at least one year.

Stephanie Nella Lenzini-LeBaron noted that having childcare is vital for community, and currently options are very limited in Kenai. She explained that she already has a waitlist of families who want to send their children to a State-licensed facility like she will be providing, and that her business will have an economic benefit to the area. She explained that she already has two full-time employees lined up to begin work.

Chair Twait opened for public hearing.

Bob Molloy spoke in opposition, noting that there are already several childcare facilities in the neighborhood and he disagreed with staff's analysis of Criteria 1, 3 and 5. He discussed the home location and street layout, noting that the commercial use will generate heavy traffic which is already dangerous to children in the neighborhood and it is not a good location for a childcare facility. He stated that it is not in harmony with the Goal 1 of the Comprehensive Plan because there are other childcare home occupations in neighborhood and some may not have a license with City.

Kristine Schmidt presented an aerial map of the parcel. She expressed disappointment in the staff report, noting that it did not consider the impact of the business on the historical residential neighborhood with small lots, and that it goes against the Comprehensive Plan's focus on quality of life. She explained that businesses are prohibited in their subdivision covenants, and that the City should not issue permits that violate covenants. She expressed concerns about the location of the business

on a corner lot, increase in traffic, that it will be the only large business in the Woodland subdivision, and that the noise will make it difficult for her to work from home.

Stephanie Nella Lenzini-LeBaron addressed concerns about traffic around her property, noted that it is a family-friendly neighborhood where many children play and the addition of children from her childcare center will not have a harmful impact, and provided details about her large backyard where children where the children will play. She explained that although her intention is to be permitted for twelve children, she only plans on admitting five children full-time and having leeway to allow for emergency drop-offs. She discussed her business hours and the impact of traffic, parking and noise. She stated that it would be negligent if the City decided that more childcare is not necessary, and explained the benefits her learning center will have on the community.

There being no one else wishing to be heard, the public hearing was closed.

Discussion involved how more childcare options are needed in the community, and the impacts of living adjacent to a daycare. The disturbance of noise from a large daycare center was cited as findings in disagreement with Staff's analysis of Criteria 2 "*The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired;*" and Criteria 3 "*The proposed use is in harmony with the Comprehensive Plan.*" Concern was expressed for the number of children, and the lack of enforcement for covenants in the neighborhood. A suggestion was made for issuing the CUP with a limited number for one year, which could be modified to allow more children after a year of operation; a provision for emergency drop-offs was considered.

In response to questions from the commission, the applicant provided details about the State license application process and requirements. Director Foster provided clarification on home occupation permits for childcare, and the applicant explained that to apply for a home occupation permit at this time would require a new application to the State and would delay her business operations for several months.

In response to the earlier suggestion of approving a CUP that is modifiable after one year, Director Foster clarified that this change would be substantial enough to require a second public process.

In response to questions from the commission, the applicant provided further details about the State license requirements for training, safety equipment, and Fire Department and State inspections.

Support was expressed for the CUP; it was noted that it is an appropriate land use, and that it is possible to have a family with twelve people in a suburban residential area and it would be better to have a learning center with strong educational and safety standards. It was noted that denying permits after applicants have gone through the proper channels could prevent people from applying in the future.

In response to questions from the commission, the applicant provided a description of her back yard, fencing and gates. She explained her plan for a rotational schedule of outdoor/indoor play, and types of activity.

MOTION:

Vice Chair Douthit **MOVED** to adjourn to adjudicative session with the Director Foster present. Commissioner Halstead **SECONDED** the motion. There being no objection; **SO ORDERED**.

The commission returned from adjudicative session.

MOTION TO AMEND:

Commissioner Halstead **MOVED** to amend Resolution No. PZ2022-11 by adding a condition that the operating capacity will be eight full time children and an additional 4 children on an emergency/temporary basis. Commissioner Fikes **SECONDED** the motion.

The definitions of “temporary” and “emergency” were deliberated, and it was noted that the way the motion is currently written this could not be enforced.

Support was expressed; it was noted that the community would lose out if the CUP was denied, that the applicant’s willingness to get State-certified which has stringent requirements and shows that she will be a prudent business owner.

The motion to amend was withdrawn with concurrence from the Second.

VOTE:

YEA: Douthit, Woodard, Fikes,

NAY: Halstead, Twait

MOTION PASSED.

Chair Twait noted the fifteen-day appeal period.

G. UNFINISHED BUSINESS – None.

H. NEW BUSINESS

1. **Action/Approval** - Recommending the Kenai City Council Adopt a Resolution Approving the Updated 2022 Kenai Peninsula Borough Community Wildfire Protection Plan.

MOTION:

Vice Chair Douthit **MOVED** to recommend that the Kenai City Council adopt a Resolution approving the Updated 2022 Kenai Peninsula Borough Community Wildfire Protection Plan. Commissioner Halstead **SECONDED** the motion.

Fire Chief Prior provided background on the development of the 2022 Kenai Peninsula Borough Community Wildfire Protection Plan, noting that it was a collaborative effort between Kenai Peninsula Borough communities. He explained some of the main items included in the plan including a slash disposal site and mitigation of gullies, and noted there are specifics for the City of Kenai. He clarified the primary goals and focus, and encouraged the commission to read the plan.

Appreciation was expressed for the hard work that was put into developing this plan, and that grant funding was being pursued for these projects.

VOTE:

YEA: Woodard, Fikes, Halstead, Twait, Douthit

NAY: None

MOTION PASSED UNANIMOUSLY.

2. **Action/Approval** - Recommending the Kenai City Council Enact Ordinance 3287-2022 - Conditionally Donating Certain City Owned Property Described as Tract A Park View Subdivision (KPB Parcel No. 047010118) to the Boys and Girls Club of the Kenai Peninsula for Development of Facilities for Youth Sports, Recreation, Education, After School Care and Other Youth Activities.

Chair Twait passed gavel to Vice Chair Douthit, and declared that he may have a financial interest in the matter in the future. Vice Chair Douthit ruled that he has a conflict of interest and excused him from voting.

MOTION:

Commissioner Halstead **MOVED** to recommend that the Kenai City Council enact Ordinance 3287-2022. Commissioner Fikes **SECONDED** the motion.

Director Foster provided a staff report explaining that the Boys and Girls Club of the Kenai Peninsula is interested in purchasing a parcel to expand and relocate its campus, and is requesting a land donation from the City of an adjacent parcel. Details were provided on the development plan and goals for the land. It was clarified that the Boys & Girls Club Board had approved the purchase of this parcel on the condition that the City agrees to donate the adjacent one.

Ryan Tunseth, Boys & Girls Club Board of Directors member, explained that the creation of a clubhouse had long been on the strategic plan of the Boys & Girls Club, but had not been realized due to a lack of funding. He explained that their current initiative to expand was the result of two events: first, a donation of \$5 million received from the estate of Royce Roberts with a condition that the money be used for a new facility in Kenai; and second, the sale of a parcel owned by the Kenai Community Care Center. He noted that the Care Center property would work for their new campus, but would not encompass their vision without the addition of the adjacent parcel. He stated that if the City donates this land, it will send a strong message about its respect for the vision of Royce Roberts and the Boys & Girls Club.

Mr. Tunseth responded to questions from the commission, clarifying the number of facilities operated by the Boys & Girls Club; their pursuit of additional grants and intent to retain much of the donated funds for future operations; the services provided by their organization and how they benefit the community; further details about the plans for the facility and land utilization; status of the purchase agreement with the Kenai Community Care Center; and total land acreage of these parcels.

Concern was expressed that the lot could be better used for commercial purposes. Clarification was provided on the slope of the land. It was noted that the packet materials did not provide sufficient information for a recommendation to be made.

Mr. Tunseth responded to questions from the commission about the Boys & Girls Club research on potential alternative parcels.

Director Foster provided background on conditional land donations by the City, and confirmed that the City does not currently have plans for this parcel. It was noted that its recommendation in the draft Land Management Plan is Dispose, and that the definition of Dispose includes donation.

A preference was expressed for allowing more time to receive plans and data from the Boys & Girls Club before a recommendation is made.

Kristine Schmidt noted that very little information was provided to the public on this issue; it's a prime piece of land that should not be donated. She questioned the fairness of City's process for evaluating requests for land donation, and whether this land could be better used for something that generates tax revenue.

Bob Molloy stated that the City doesn't have much valuable residential property left in its inventory. He noted that the City Council had discussed this parcel during meetings on the Land Management Plan, and many had thought that this would be a good location for private development that would increase tax revenue. He stated that the City has soccer fields and playgrounds and the Boys & Girls Club can transport their children there in vans, and he doesn't see the value to the public if the land is donated. Expressed concern that the Boys & Girls Club does not have enough confidence to purchase the Care Center's property unless the City donates the adjacent land.

MOTION TO POSTPONE:

Commissioner Halstead **MOVED** to postpone their recommendation until May 25, 2022, and request that the City Council postpone their decision until after that. Commissioner Woodard **SECONDED** the motion.

VOTE ON POSTPONEMENT:

YEA: Halstead, Douthit, Woodard

NAY: Fikes

MOTION PASSED.

Vice Chair Douthit returned the gavel to Chair Twait.

3. **Action/Approval** - Recommending the Kenai City Council Adopt Resolution No. 2022-XX – Approving the Execution of a Lease to Swanson Properties, LLC for Lot 6, Block 5, General Aviation Subdivision No. 1 Amended.

MOTION:

Commissioner Halstead **MOVED** to recommend that the Kenai City Council adopt Resolution No. 2022-XX. Vice Chair Douthit **SECONDED** the motion.

Director Foster provided a staff report, explaining that this property and the adjacent lot to the north is currently leased to Swanson Properties for Ron's Rent It Center. The current 55 year lease terminates on June 30, 2022; the application proposes to maintain original and current uses, and includes evidence of existing improvements that would allow for a 45 year lease. He clarified that it is a non-aeronautical use with direct airfield access.

Clarification was provided that by 2031 there may be consideration about finding a better, more compatible location for Ron's Rent It Center and an aeronautical use for this property.

It was noted that Ron's Rent It Center had been at this location for decades and have served the community well.

VOTE:

YEA: Woodard, Fikes, Halstead, Twait, Douthit

NAY: None

MOTION PASSED UNANIMOUSLY.

I. PENDING ITEMS – None.

J. REPORTS

1. City Council – Vice Mayor Glendening reported on the actions of the May 4, 2022 City Council Meeting.
2. Kenai Peninsula Borough Planning – Commissioner Fikes reported on the actions of the May 9, 2022 Kenai Peninsula Borough Planning meeting.
3. City Administration – Planning Director Foster reported on the following:
 - Next commission meeting May 25, 2022 will include the postponed Boys & Girls Club recommendation, a rezoning application and a vacation of easement.

K. ADDITIONAL PUBLIC COMMENTS – None.

L. INFORMATIONAL ITEMS – None.

M. NEXT MEETING ATTENDANCE NOTIFICATION

1. May 11, 2022

N. COMMISSION COMMENTS & QUESTIONS

Commissioner Woodard noted she is glad to see green grass and leaves outside.

Commissioner Halstead thanked staff for providing food during their work session, and noted he is looking forward to more work sessions and continuing work with the commission.

Commissioner Fikes noted that working together with the public during work sessions can affect change, and it is beneficial for the commission to receive help using the tools available to facilitate this change.

Vice Chair Douthit noted that he learned from the work session, and this will continue to help the commission in the future.

O. ADJOURNMENT

There being no further business before the Commission, the meeting was adjourned at 9:58p.m.

Minutes prepared and submitted by:



Meghan Thibodeau
Deputy City Clerk

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City of Kenai - Board of Adjustment

Appellant's Statement

Appeal of CUP for LeBaron - Busy Bees Child Learning Center - 502 Ash Avenue

Robert J. Molloy and Kristine A. Schmidt request that the Kenai City Council overturn the 3-2 decision of the Planning & Zoning Commission approving a conditional use permit (CUP) for a Day Care Center at 502 Ash Avenue, Kenai: **because the CUP application and proposed use does not meet all of the criteria for a CUP at this location.**

I. Background

We purchased our home at 513 Ash Avenue in Woodland Subdivision, Kenai, Alaska, in 1985; and we have lived there (and we raised our daughter there) for the last **thirty seven (37) years**. Our residence is on the same street as the proposed "Day Care Center," at 502 Ash Avenue, 4 houses over from ours. The applicant acquired her property at 502 Ash Ave on June 15, 2021, approximately **one (1) year** ago.

Woodland Subdivision (Woodland) was created by Collier Carbon & Chemical Corporation (Colliers) in the 1960s to provide housing for employees. Ash Avenue is in the oldest part of the Subdivision, Part 1 (Plat K-1522, recorded 12/15/1967). Woodland is a quiet residential subdivision, far from the commercial districts of Kenai; there are no retail businesses nearby. The Conditions, Restrictions and Covenants ("Covenants") of Woodland Subdivision, Part 1, also recorded on **12/15/1967, generally restrict land use to single family residential**. These Covenants are in the public record, and sellers are required by Alaska law to notify buyers of these Covenants. Woodland Subdivision lot sizes are small (1/4-1/3 acre), the streets are narrow and curvy, and there are no sidewalks in the Subdivision. See Documents 1 and 2.

Fifth Avenue, one of main entry roads into Woodland Subdivision, is particularly narrow, as it was approved to be only 33 feet wide; and it was constructed as a one lane road, which would not meet current Borough standards for road width. There was and is no public park or playground in Woodland Subdivision. Children often play on the streets, which can be a very dangerous situation, since there is frequent traffic, no speed limits; and it is hard to see around the street curves.

When we bought our home in 1985, our property, and what is now applicant's property, were subject to the Covenants and were zoned Suburban Residential (RS). We specifically chose to purchase a home in Woodland because there were covenants restricting use to residential. The RS Zone is intended to provide for medium density residential development. The specific intent of this zone is to "prohibit uses which would violate the residential character of the environment and generate heavy traffic in predominantly residential areas." KMC 14.20.090(a).

In 1985, when we purchased our home, we relied upon the Covenants and the RS Zone; and our expectation was, and is, that our use and enjoyment of our property and the quality of life and environment of Woodland Subdivision would be residential, not commercial, with the traffic and noise and other nuisances generated by businesses. When we moved to Woodland in 1985, the City of Kenai zoning code generally did not allow businesses in residential subdivisions such as Woodland; and conditional uses were extremely restricted.

II. Day Care Permits.

According to City records, there have been eleven (11) City-issued day care permits for properties in Woodland Subdivision, starting in 1999, through 2021: all except one (1) were for home occupation permits.¹ See Document 5. At least five (5) permits appear to be currently active, including:

- 520 Ash Ave, Michelle's Daycare – home occupation permit;
- 530 Ash Ave, Sproutlets Creative Learning, conditional use permit for day care center;
- 604 Laurel Dr, Little Duckling's Daycare – home occupation permit;
- 701 Maple Dr, Woodland Day Care – home occupation permit and,
- 619 Cedar Dr, Danielle's DayCare – home occupation permit.²

Homeowners such as ourselves are not notified when the City intends to issue a home occupation permit in our neighborhood; and we are only notified of City-issued conditional use permit applications if the property is within 300 feet of our home. So in our case, we were not aware of the existing day care permits in Woodland (they are not on our block); and we were not notified of the 502 Ash Ave CUP application, because we live just further than 300 feet from the residence. We only found out about the 502 Ash Ave CUP application when we drove by the house and saw the 11 x 17 yellow sign on May 4, 2022, barely a week before the CUP hearing.

The 502 Ash Ave CUP application is for a “day care center,” not a home occupation permit. Home occupation permits for day care are restricted to 8 children, including the caregiver's children, and have a list of conditions (restrictions) in the home occupation ordinance. KMC 14.20.030. On the other hand, a conditional use permit for a “day care center” does not limit the number of children, and has few other conditions, unless other conditions are adopted by the Planning Commission (Commission). In this case, neither planning staff nor the Planning Commission required any conditions for the CUP that are specific to a “day care center” – for example, there is ***no limit on the number of children*** in the proposed CUP (Commission Resolution 2022-11). And neither planning staff nor the Commission considered the conditions required by the Kenai Zoning Code, Land Use Table for “Day Care Center.” KMC 14.22.010.

III. The application violates the purpose of the RS Zone and does not meet all of the criteria for a CUP for Day Care Center at this location.

1. The application does not satisfy the first criteria for a CUP, KMC 14.20.150(e)(1), because the use is not consistent with the purposes and intent of the RS zoning district, as applied to Woodland Subdivision. An additional day care center business in Woodland Subdivision at 502 Ash Avenue, when added to the other existing day care businesses already operating in Woodland Subdivision, is not consistent with the purpose of the Kenai Zoning Code and the purpose and intent of the Suburban Residential Zoning District for Woodland Subdivision. KMC 14.20.150(e)(1). When added to the existing day care businesses, this additional day care business will violate the specific intent of the RS Zone, which is to prohibit uses which would violate the residential character of the environment and would

¹ The Land Use Table “flipped” in 1997 to allow numerous conditional uses in the RS zone that were not allowed before. Compare Ordinance 925-84 and Ordinance 1997-1776.

² See Document 5 and photos at Documents 11 through 15.

generate heavy traffic in Woodland Subdivision, which was intended to be a residential area. Covenants; KMC 14.20.090(a)(2). And an additional commercial day care center business in Woodland Subdivision, with an *unlimited number* of clients, plus numerous vehicles twice a day at 502 Ash Avenue will not be compatible with the Subdivision's surroundings.³ KMC 14.20.150(a).

2. The application does not satisfy the second criteria for a CUP, KMC 14.20.150(e)(2), because the economic and noneconomic value of the neighborhood will be impaired. The residential character of Woodland Subdivision, especially Ash Avenue, will be adversely affected if a *fourth* day care business is permitted along Ash Avenue, which consists of two blocks. The addition of a *fourth* day care business – the second CUP with *unlimited* numbers of children, will adversely affect the quality of life (a noneconomic value) of our home and the neighborhood, increasing noise and generating heavy traffic. There is no question that children playing outside are very noisy; and the applicant testified at the Commission hearing that she intended for the day care children to be outdoors as much as possible. She also plans to operate 7 days a week. Another Day Care Center at 502 Ash Ave with this type of heavy use will generate consistent vehicle traffic in the morning and afternoons/early evenings, resulting in heavy traffic when added to the existing traffic from residents and from users of the other existing day care businesses.

Another economic (and noneconomic) value that will be negatively impacted is our property rights to the pre-existing Woodland Subdivision covenants that restrict land use, including our property and the applicant's property, to single family residential only. The day care business at 502 Ash Avenue business violates those covenants. Covenants restricting use of property are property rights themselves. When the City of Kenai gives a permit to a property owner to violate the restrictive covenants which encumber their property, then the City is taking away the property rights of the other property owners like ourselves who, when we purchased our property in 1985, paid for the right to live in a subdivision that is restricted to residential use only – a significant impairment of our property rights. The Board of Adjustment has concluded that while covenants are not determinative because the City does not enforce covenants, covenants "are evidence that the neighbors expect the neighborhood to be residential in character and free of commercial activity."⁴ That has been our expectation since 1985.

3. The application does not satisfy the third criteria for a CUP, KMC 14.20.150(e)(3), because an additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue is not in harmony with the Comprehensive Plan.

Goal 1 of the Comprehensive Plan is to promote and encourage quality of life in the City, including an objective to protect and rejuvenate the livability of existing neighborhoods and to promote the siting and design of land uses that are in harmony and scale with surrounding uses. Goal 1 of the Plan is more applicable than Goal 2 (see below), especially in light of the numerous day care businesses already operating in Woodland Subdivision, three already along Ash Avenue. And siting this fourth Day Care business along Ash Ave at a busy and crowded

³ Although there was a discussion at the Commission hearing of 12 children at the 502 Ash Ave day care center, this limit is a function of the type of State day care license involved; however, *the CUP resolution has no limit on number of children.*

⁴ See, *ITMO Schlehofer Appeal*, City of Kenai Board of Adjustment Case No. BA021002 at 8.
PAGE 3 – APPELLANTS' STATEMENT

intersection, with no limits on number of children, parking, etc. does not promote quality of life or protect the livability of our neighborhood. A fourth day care business along Ash Ave is not in harmony with and is incompatible with the existing uses of a quiet residential street of single family homes. In addition, the proximity of the other nearby day care businesses at 701 Maple Dr. and 619 Cedar Dr. need to be accounted for and considered, Goal 1 and KMC 14.20.150(a).

Goal 2 of the Comprehensive Plan is to provide economic development to support the fiscal health of Kenai. While day care businesses do provide economic development, there are already many options for parents for day care businesses within Woodland Subdivision and elsewhere in the City: the City's own list shows **73 existing day care permits**, located all over the City, and this list does not include day care businesses that don't need to apply for home occupation permits or CUPs, such as Creative Play in downtown Kenai. See Document 4. And there is vacant space in commercial buildings suitable for a Day Care Center in the City's commercial districts. For example, there was until recently an empty day care space in the Schillings' Mall, 130 N. Willow Street Unit 9, complete with fenced in play area, and adjacent playground lot leased from the City of Kenai. Goal 2 would be better served if the applicant leased existing commercial space in the City's commercial district which is currently vacant, since that would better support economic development. Goal 2 is less specific to this neighborhood and Woodland Subdivision than Goals 1 and 3.

Goal 3 of the Comprehensive Plan discusses land use strategy to implement a forward-looking approach to community growth and development. Siting another day care business in a quiet, residential subdivision such as Woodland, instead of in suitable, vacant commercial space, is not consistent with Goal 3. Woodland Subdivision is already maxed out for day care businesses. Economic development through additional day care businesses can be provided in vacant commercial space; or, if necessary, in other subdivisions in the City.

4. The application does not satisfy the fifth criteria for a CUP, KMC 14.20.150(e)(5), because an additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue will be harmful to the public safety, health or welfare. KMC 14.20.150(e)(5).

The house at 502 Ash Ave is located on a corner with only one stop sign in one traffic direction. See Documents 1, 3, 6 and 9. Ash Avenue is a main street into Woodland Subdivision, and is used by traffic to and from N. Forest Drive/5th Avenue and Redoubt Avenue/Maple Drive. See Documents 1 and 3. There is no public park in Woodland Subdivision. Children can and do play on the streets, unsupervised, including small children from homes across the street and near 502 Ash Ave. See Document 8. There is daily a lot of traffic in the morning and afternoons, and the intersection and nearby area is dangerous for children's safety, health and welfare, especially when vehicles are parked on the road, and in the winter.

Parents dropping off and picking up children at 502 Ash Ave park on the street, not in the applicant's driveway. See Document 7. Although the CUP application states that the parents will drop off or pick up in the driveway, this condition is not in the CUP, and it isn't happening. There is not enough parking space in the driveway at 502 Ash Ave for 12 or more cars to park there, plus the property owners, who also park in their driveway daily. See Documents 6 and

10. This location is unsafe for another Day Care Center, with an unlimited number of children and parents picking up and dropping off multiple times daily, with no restrictions on number of children or parking or days/hours of operation.

According to the applicant, she is already running a day care business at 502 Ash Avenue, even though she does not have a home occupation permit as required by the Kenai Municipal Code, and even though her business violates Woodland Subdivision covenants. She does not have a fenced front yard, so the children in her care can and do run into the street. Her clients park on the street, for some time – they don't just drop off and pick up. These parked cars cause traffic hazards at/near the Fifth Avenue/Ash Avenue intersection – through cars have to go around them into the other traffic lane, into head on traffic.

5. The application does not satisfy the criteria for a Day Care Center in the Land Use Table, KMC 14.22.010, note 12.

The Land Use Table has conditions specific to a Day Care Center CUP, at note 12:

- a. The proposed location of the use and the size and characteristics of the site will maximize its benefit to the public;
- b. Exits and entrances and off-street parking for the use are located to prevent traffic hazards on public streets.

Neither planning staff nor the Commission considered whether these note 12 conditions were satisfied in making their decision to approve the 502 Ash Ave CUP. For that reason alone, this CUP should be remanded to the Commission to consider and making findings on these conditions.

In our view, this CUP does not satisfy these conditions. Condition (a), the proposed location of the CUP, is at a busy intersection on a street in a quiet residential neighborhood which already has three other day care businesses within two blocks; which is not a maximum benefit to the public: its current unrestricted use will be detrimental to our neighborhood, as discussed above. In addition, allowing a commercial day care business to locate in a residential neighborhood -- especially one that operates 24 hours a day, 7 days a week -- instead of in a more compatible area with other businesses, is not beneficial to the public. The applicant and the Commission emphasized that day care businesses are beneficial as a reason to allow the larger impact of a **Day Care Center** into our neighborhood. However, as we have shown, there are numerous existing day care businesses in Kenai, including many who take day care assistance; and our subdivision is maxed out on day care businesses. Like other neighborhoods in Kenai, we don't want our neighborhood to become "Angler Drive" – for day care businesses.

Condition (b) appears to require off-street parking for Day Care Center use. However, the 502 Ash Ave CUP does not require off-street parking, and the existing day care business clients park on the street. The "exits and entrances...for the use" **are not** located to prevent traffic hazards; instead, the cars dropping off and picking up children park on Ash Avenue and impede Fifth Avenue and Ash Avenue traffic, blocking one lane of traffic on Ash Avenue, requiring through traffic to go around the parked cars, into the other lane.

IV. In the alternative, conditions are inadequate to protect public safety and the residential environment of Woodland Subdivision.

As noted, the house at 502 Ash Ave is located on a dangerous corner with lots of traffic, and parked cars of the day care business impede through traffic. The area of the back yard that is fenced in is small (see Documents 6, page 2, and 10); especially compared to other day care businesses in Woodland Subdivision (see Documents 11 through 15), and sloughs off into the creek behind Woodland. The driveway in the front is small. Children at 502 Ash Ave play in the front yard and on the street.

There was a dialogue with the applicant where the Commission discussed and considered a condition specifying a number of children less than twelve, and allowing up to twelve (12) children only on an emergency basis, but the applicant wanted at least twelve with no other conditions, so the Commission was unable to agree on a limit. The Commission approved the application on a 3-2 vote without adding to or modifying conditions recommended by staff – none of which are specific to a day care center.

The conditions imposed in Resolution No. 2022-11 are insufficient and inadequate to protect the appellants and Woodland Subdivision from the adverse effects of the proposed use of an additional commercial day care center business in Woodland Subdivision at 502 Ash Avenue.

If this CUP is granted, then the conditions for this location should be the same as the Code requirements for a home occupation permit at KMC 14.20.230(d): limited number of children and employees; limited non-residential space; and operations held within the building. At a minimum, specific day care center conditions should be put in the CUP itself:

(1) For day care Home Occupation Permits no more than eight (8) children under the age twelve (12) are allowed, including children related to the caregiver. KMC 14.20230(b)(2). The applicant is apparently applying for the type of State day care license (child care group home) that limits the number of children to 9-12 under 12 years, including the caregiver's children. In our view, given the location, the CUP should limit the number of children to 9 under 12 years, including the caregiver's children.

(2) Not more than one (1) person outside the family shall be employed in the home occupation. KMC 14.20230(d)(1). A child care group home requires at least 2 caregivers, and the applicant stated that she planned to employ one; so a limit of 2 caregivers, including applicant.

(3) No more than thirty percent (30%) of the gross floor area of all buildings on the lot shall be used for the home occupation. KMC 14.20230(d)(2). A similar restriction should be in the CUP.

(4) The home occupation shall be carried on wholly within the principal building, or other buildings which are accessory thereto. KMC 14.20230(d)(3). This means that for a day care business the play yard should be fenced in, and the children should not be allowed to play in the front yard where they can run into the street. A similar restriction should be in the CUP.

(5) In addition, only off-street parking is allowed, as required by the Land Use Table, note 12(b).

(6) The business should have regular business hours, Monday-Friday, instead of operating 24 hours a day, 7 days a week as proposed by applicant. That is an extremely unreasonable amount of time to allow a commercial business to operate in a residential neighborhood.

V. The CUP procedures were not followed, so the CUP should not have been granted.

The CUP ordinance states that the CUP procedure must be followed in order for the CUP to be approved, but the procedures were not followed in this case. KMC 14.20.150(a). It appears to us that the required posting for 10 days before the hearing on May 11, 2022 was not done. KMC 14.20.280(d). We drive by 502 Ash Avenue every day, and the first time we saw the yellow sign posted was on Wednesday May 4, 2022; that is 7 days before the hearing, not 10 days. The published notice is required to be "not less than 7 days prior to the date of the hearing" on May 11, 2022. KMC 14.20.280(a). But it was actually published on May 5, 2022, which is 6 days "prior to the date of the hearing." See Document 16.

In addition, as noted above, the Commission did not consider and make findings that the Day Care Center satisfied the conditions on the Land Use Table, Note 12. This is another procedure that is required, but was not followed. KMC 14.20.150(a); KMC 14.22.010, note 12.

VI. Conclusion.

The conditional use permit for a Day Care Center at 502 Ash Avenue did not satisfy the review criteria for a conditional use permit stated in KMC 14.20.150(e). The Commission did not consider and make findings on the conditions required by the Land Use Table, note 12. The CUP procedures in KMC 14.20.150 and 14.22.010 were not followed. Therefore, we request that the Board of Adjustment deny the CUP for a Day Care Center at 502 Ash Avenue.

DATE: 6/10/22


ROBERT J. MOLLOY, Appellant

DATE: 6/10/22


KRISTINE A. SCHMIDT, Appellant

Board of Adjustment, City of Kenai

Appeal of CUP for LeBaron - Busy Bees Child Learning Center - 502 Ash Avenue

ATTACHMENT A

Day Care Provider Information From Internet on 4 Existing Day Care Businesses

Numbers Cross-Reference to Numbers in Document List

<u>No.:</u>	<u>Description</u>
12	530 Ash Ave, Sproutlets Creative Learning, CUP for maximum 12 children <u>Description from internet:</u> "Sproutlets Creative Learning located in Kenai AK is a licensed home-based childcare and education provider that offers a nurturing environment for children. It provides age-appropriate activities that foster holistic growth of children from age two and a half. The home center promotes balanced programs by integrating recreational activities with academics. The provider also participates in a subsidized child care program."
13	604 Laurel Dr., Little Duckling's Daycare, HOP <u>Description from internet:</u> "I am now a licensed daycare provider and have opened my own in home daycare called " Little Duckling's". If you are interested or or looking for a daycare please give me a call. I have 8 openings for children 2 weeks-5 years of age. Little Duckling's is located in Kenai in the Woodland Estates area. I have worked in child care all over the US for over 18 years. I have taken many courses on early childhood education, behavioral management, child psychology, cognitive skills, communications, language, and interpersonal conflict. I am CPR and First Aid certified and able to manage pediatric injuries. Little Ducklings provides a neat and child-safe environment for little ones to learn and grow. It has an enclosed outdoor space for play. There are many age appropriate toys and activities. I teach a preschool curriculum .. "
14	619 Cedar Dr., Danielle's DayCare, HOP <u>Description from internet:</u> DANIELLE'S DAYCARE is a LICENSED HOME in KENAI AK, with a maximum capacity of 8 children. The home-based daycare service helps with children in the age range of 6 WEEK(S) THROUGH 12 YEAR(S). The provider also participates in a subsidized child care program.
15	701 Maple Dr, Woodland Day Care, HOP <u>Description from internet:</u> "WOODLAND DAY CARE is a LICENSED HOME in KENAI AK, with a maximum capacity of 8 children. The home-based daycare service helps with children in the age range of 1 MONTH(S) THROUGH 12 YEAR(S). The provider also participates in a subsidized child care program.

Board of Adjustment, City of Kenai**Appeal of CUP for LeBaron - Busy Bees Child Learning Center - 502 Ash Avenue****Appellant's Document List**

<u>No.:</u>	<u>Description - Comments</u>
1	Plat: Woodland Subdivision (Part I) - Annotated
2	Covenants: Woodland Subdivision (Part I)
3	Images: Woodland Subdivision - Page 1, Partial - Page 2, Entire
4	Spreadsheet 1: City's List of Home Occupation Permits (HOP) & Conditional Use Permits (CUP) for Child Day Care -- All Permits, 2022
5	Spreadsheet 2: List of City's HOPs and CUPs for Child Day Care -- Permits, Woodland Subdivision, 2022
6	Photos: 502 Ash Ave - LeBaron/Busy Bees Child Learning Center, Application for CUP for maximum 12 children
7	Photos: Cars parked for dropping off - picking up children for Busy Bees, 502 Ash
8	Photo: Children at play in Ash Ave nearby 502 Ash Ave
9	Photos: Intersection of Fifth & Ash Ave
10	Report: 502 Ash Ave Borough Assessing Department Report
11	Photos: 520 Ash Ave, Michelle's Daycare, HOP
12	Photos: 530 Ash Ave, Sproutlets Creative Learning, CUP for maximum 12 children
13	Photos: 604 Laurel Dr., Little Duckling's Daycare, HOP
14	Photos: 619 Cedar Dr., Danielle's DayCare, HOP
15	Photo: 701 Maple Dr, Woodland Day Care, HOP
16	Notice of 5/11/22 Public Hearing on Resolution PZ2022-11, published 5/5/22

DECLARATION AND ESTABLISHMENT OF
CONDITIONS, RESTRICTIONS AND COVENANTS FOR
WOODLAND SUBDIVISION, KENAI, ALASKA

This Declaration of Covenants, Conditions, Restrictions, and Charges is made this 12th day of October, 1967, by COLLIER CARBON AND CHEMICAL CORPORATION, a California corporation, hereinafter referred to for the purposes of convenience as "Declarant".

WHEREAS, Declarant is owner of the real property situated in the State of Alaska, Third Judicial District, Kenai Recording District, legally described as set forth in the attached "Exhibit A" which is incorporated herein by reference; and

WHEREAS, Declarant has established a general plan for the improvement and development of said real property and desires to create covenants, conditions and restrictions upon which and subject to which that portion of said real property shown and legally described in "Exhibit B", incorporated herein by reference, shall be improved, or sold and conveyed by it, as owner thereof.

NOW THEREFORE, Declarant does hereby establish and impose upon said Lots described in said "Exhibit B", excepting those lots described in paragraph numbered 1 on page 2 hereof, provisions, conditions, restrictions, covenants, easements and reservations upon and subject to which each and all of said Lots as provided for herein shall be held, occupied, leased, sold, and/or conveyed by Declarant or Declarant's successors. Said covenants shall run with said lots for the benefit of said Subdivision and each and every such lot, and for the benefit of each owner of one or more lots therein, and their assigns and successors in interest, and shall apply to and bind the respective successors in interest of Declarant and the owners of each and every lot in said Subdivision from and after the recordation of these Declarations. Said provisions, conditions, restrictions, covenants, easements and reservations now made applicable to said lots are as follows:

1. SPECIFIC EXCLUSION OF COMMERCIAL SITE

The conditions, restrictions and covenants contained herein shall apply to all of the real property described in "Exhibit B" except for the following parcel:

A parcel 130' deep and 190' in width located in the Southwesterly portion thereof, and now known as Lots 1 and 2, Block A of the Woodland Sub-division.

Declarant specifically reserves the right to develop and utilize the above described parcel for a service station site, a convenience shopping center or any other related commercial use.

2. LAND USE AND BUILDING TYPE

No lot or other portion of the real property described in "Exhibit B" hereof shall be used for any purpose other than described in paragraph numbered 1 above, or as may be specifically noted and described in this paragraph hereinbelow, or on a subsequently filed plat.

Block A
Lots 3 through 7, single family, duplex, tri-plex, or four-plex.

Block B
Lots 1 through 10, single family.

Block C
Lots 1 through 4, single family, duplex, tri-plex, or four-plex.
Lots 5 through 8, single family.

Block D
Lots 1 through 18, single family.

Block E
Lots 1 through 13, single family.

Block F
Lots 1 through 13, single family.

Block G
Lots 1 through 7, single family.
Lots 8 through 10, recreational, educational or other related use.

Block H
Lots 1 through 6, single family.

Block J
Lots 1 through 11, single family.

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Block K
Lots 1 through 7, single family.

Block L
Lots 1 through 10, single family.

3. ARCHITECTURAL CONTROL

No building shall be erected, placed, or altered on any lot until the construction plans and specifications plus a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Approval shall be secured as provided in paragraph 20 hereunder. In no event shall any building be erected, placed or altered on any lot in violation of any building or zoning law and code of the City of Kenai.

4. DWELLING COST AND QUALITY

No dwelling shall be permitted on any lot at a cost of less than \$25,000, based upon cost levels prevailing on the date these conditions, restrictions, and covenants are recorded, it being the intention and purpose of such conditions, restrictions and covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date such conditions, restrictions, and covenants are recorded at the minimum cost stated herein.

5. BUILDING LOCATION

(a) No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum setback lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than 25 feet to the front line, or nearer than 20 feet to any side street line.

DOCUMENT 2
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(b) No building shall be located nearer than 5 feet to an interior lot line, except that no side yard shall be required for a garage or other permitted accessory building located 60 feet or more from the minimum building setback line.

(c) No dwelling shall be located on any lot nearer than 15 feet to the rear lot line.

(d) For the purposes of these conditions, restrictions and covenants, eaves, steps, and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

6. TIME FOR CONSTRUCTION

Any and all improvements erected upon any lot in said Subdivision shall be completed with reasonable diligence.

7. LOT AREA AND WIDTH

No dwelling shall be erected or placed on any lot having a width of less than 80 feet at the minimum building setback line, nor shall any dwelling be erected or placed on any lot having an area of less than 9,500 square feet.

8. EASEMENTS

Easements for installation and maintenance of utilities, drainage facilities, and natural vegetation screening, are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

9. NUISANCES

No noxious or offensive activities shall be carried on

upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

10. TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

11. SIGNS

No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by owner or a builder to advertise the property during the construction and/or sales period for marketing Subdivision lots.

12. OIL AND MINING OPERATIONS

No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

13. LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. And further provided that no more than one dog of sled type breed may be maintained, and all dogs shall be restrained as necessary, to prevent their becoming nuisances.

14. GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish. Trash or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the disposal or storage of such material shall be kept in a clean and sanitary condition.

DOCUMENT 2
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All homes constructed on all lots shall have constructed and built in as part of the plumbing equipment a suitable garbage disposal. No garbage cans shall be allowed upon any of the areas upon said Subdivision and all occupants in said Subdivision shall dispose of their garbage as indicated above and shall not place the same in any trash containers.

15. WATER SUPPLY

No individual water supply system shall be permitted on any lot.

16. SEWAGE DISPOSAL

No individual sewage disposal system shall be permitted on any lot.

17. PROTECTIVE SCREENING AREAS

Protective screening areas are established as shown on "Exhibit B", including a 15-foot strip of land along Lots 3 through 7, Block "A"; Lots 1 through 10, Block "B". No building or structure except utility or drainage facilities or the screen fence provided for herein shall be placed or permitted to remain in such areas. No vehicular access over the area shall be permitted, except for the purpose of installation and maintenance of screening, utilities and drainage facilities.

18. SIGHT DISTANCE AT INTERSECTIONS

No fence, wall, hedge or shrub plantings which obstruct sight lines at elevations of between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property line and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property line extended. The same sight line limitations shall apply to any lot within 10 feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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19. GRADING

BOOK 29 PAGE 193
Kendal Recording District

Declarant reserves the right to make such cuts and fills as it or its proper Engineering Department may deem necessary to grade the streets or private ways, whether dedicated or not within the boundaries thereof, in accordance with such grades as may be established to conform to the general plans and grades of the entire Subdivision and the adjoining subdivisions, if any, including the right so far as is reasonable and proper for the necessary support and protection of streets so graded to slope upon abutting lots.

20. ARCHITECTURAL CONTROL COMMITTEE

(a) Membership. The Architectural Control Committee shall be composed of: Three (3) members to be elected by the Board of Directors of the Declarant.

A majority of such committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this instrument. At any time after June 1, 1973, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee, or to withdraw from or restore to such committee, any of its powers and duties.

(b) Procedure. The committee's approval or disapproval as required in these conditions, restrictions and covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within sixty (60) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the relevant covenants, conditions and restrictions shall be deemed to have been fully complied with.

(c) Grading. No grading shall be done or changed on any lot until all the plans and specifications thereof have been submitted to the Architectural Committee for the required approval in the same manner as for building any lot as set forth above.

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(d) Disapproval of Plans. In the event said Committee disapproves said plans and specifications, and sufficient changes or alterations therein have not been submitted which meet the approval of the Architectural Committee, in its sole discretion, said Committee shall notify the applicant of the disapproval thereof, and in that event applicant shall have no rights whatsoever to construct or install said proposed improvement upon any lot in said Subdivision. Said Architectural Committee shall have the right to inspect any construction during progress in order to ascertain that the same is being constructed in accordance with the plans on file with said Committee which have theretofore been approved in writing by it. In the event any owner attempts to construct or maintain any improvement, structure, landscaping, fencing, or any other type of planting in any area of said Project which has not been approved in writing by said Architectural Committee, said Architectural Committee, the Declarant, or any other owner of any lot in said Subdivision shall have the right to enforce the conditions of this document and may proceed with legal action as deemed necessary to stop and remove the proposed construction or change in construction or erection of the matters not approved in writing as provided for herein. In the event of any such legal action against any such owner, such owner agrees to pay all court costs plus reasonable attorneys' fees to the party enforcing any part of this Declaration.

(e) Non-Responsibility of Committee. Neither the Architectural Committee, nor any member thereof shall be responsible for any damages for approval or disapproval of any plan, or for structural or other defects of any kind or nature whatsoever in said plans or specifications erected in accordance therewith. Any person filing suit against said Committee must pay all court costs and all reasonable attorneys' fees for said Committee for each proceeding regardless of the outcome of said proceeding.

21. TREES

No owner shall be permitted to completely clear a lot on which standing trees of size and beauty exist. Space may be cleared for

construction, and trees may be thinned so long as maximum natural beauty and esthetic values of such trees are retained.

22. RESUBDIVISION

The area of the lots herein described shall not be reduced in size by resubdivision, except that owners of three (3) contiguous lots may divide the inner lot, or middle lot, thus increasing the size of the two remaining lots which shall then be treated for all purposes pertinent to these conditions, restrictions and covenants, as enlarged single lots.

23. TERM

These conditions, restrictions and covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these conditions, restrictions and covenants are recorded, after which time said conditions, restrictions and covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said conditions, restrictions and covenants in whole or in part.

24. REMEDIES FOR VIOLATIONS - INVALIDATIONS

(a) Declarant may abate Violation. For a violation or breach of any of these conditions, restrictions or covenants by any person claiming by, through, or under the Declarant, or by virtue of any judicial proceedings, the Declarant, and the lot owners, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Declarant shall have the right whenever there shall have been built on any lot any structure which is in violation of these restrictions, to enter upon the property where such violation of these conditions, restrictions and covenants exists and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal shall not be deemed a trespass. The failure to promptly enforce any of these conditions, restrictions or covenants shall not bar their enforcement.

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(b) Record Notice. Notwithstanding anything contained in this article, there shall be no right of re-entry as provided hereinabove, nor shall there be any right to enforce any remedies set forth in these Declarations until ten (10) days after there is recorded with the Recorder of Kenai District a Notice of Breach of this Declaration, which Notice shall state: The provisions hereof which have been breached, a description of the lot, the name of the person who has breached these restrictions, the name of the record owner of said lot, and an affidavit that a copy of said notice was served on any person present, if any, on the lot, and a copy of said notice posted on a stake in a conspicuous place on said lot or common area. Any such Notice must be signed by Declarant, or the record owner of one or more lots in the Subdivision.

(c) Attorneys Fees and Costs. Whenever the Declarant, or any person entitled to enforce any rights hereunder, engages in legal proceedings to enforce the same, and prevails in said proceedings, the person violating said restrictions by acceptance of the title to said lot does hereby agree to pay to the prevailing party such reasonable attorneys' fees and court costs as are awarded by any court.

25. RESERVATIONS

Declarant, its successors and assigns, for the purpose of further insuring the development of the real property which is the subject of these conditions, restrictions and covenants, as an area of high standards, reserves the right until June 1, 1974:

- (1) to change, lay out a new, or discontinue any street, avenue or way shown on a filed plat which is not necessary for ingress or egress to or from an owner's premises, subject to the approval of the City of Kenai, or the platting authority, or both, if required.
- (2) to make such further exceptions, amendments and additions to these conditions, restrictions and covenants as it and the Architectural Control Committee shall deem reasonably necessary and proper.

26. ASSIGNMENT OF RIGHTS AND POWERS

Any and all of the rights and powers and reservations of the Declarant herein contained may be decided, conveyed and/or assigned to any other corporation or association which is now organized, or which

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BOA Packet Page No. 91

may hereafter be organized, and which will assume the duties of Declarant hereunder pertaining to the particular rights and powers and reservations assigned, and upon any such corporation or association evidencing its consent in writing to accept such assignment and assume such duties, it shall, to the extent of such deed, conveyance or assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein; and thereafter, upon the sale by Declarant of all lots in the Subdivision covered herein, Declarant shall be relieved from that time on of the performance of any further duty and/or obligation hereunder.

27. WAIVER

Any delay or omission on the part of the Declarant, or its successors or assigns, or the owners of other lots or parcels in the Woodland Subdivision, in exercising any rights, powers, remedy or remedies provided by law or herein, in the event of any breach of the conditions, restrictions and covenants herein contained, shall not be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant for on on account of its failure to bring any action on account of the breach of these conditions, restrictions and covenants, or for imposing restrictions herein which may be unenforceable.

IN WITNESS WHEREOF, Collier Carbon and Chemical Corporation has caused these presents to be signed by its President and Vice President and Treasurer on the 12th day of October, 1967.

COLLIER CARBON AND CHEMICAL CORPORATION

By [Signature]
President

By [Signature]
Vice President and Treasurer

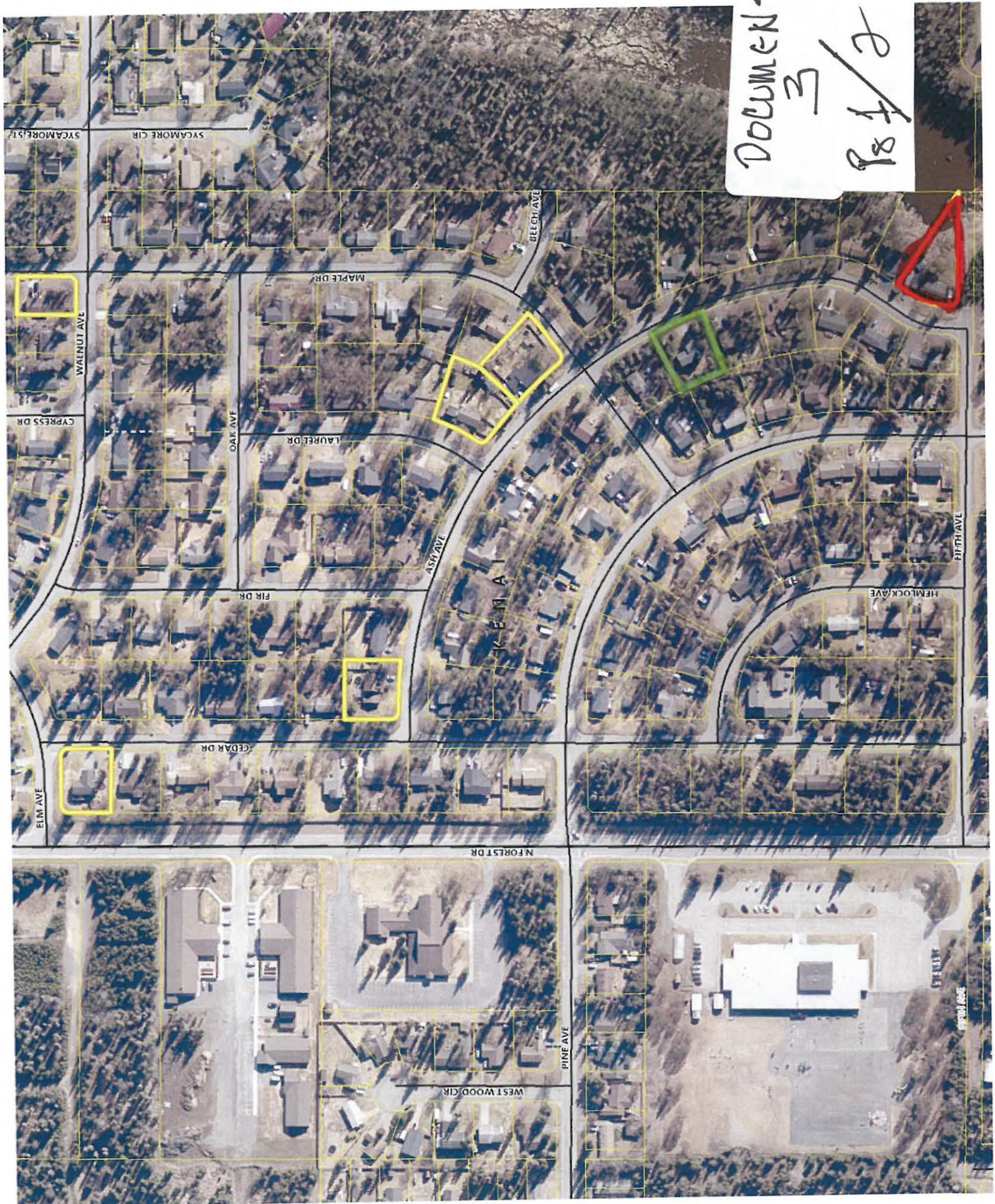
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TIME	1:55 PM
Requester	[Signature]
Address	[Signature]

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DOCUMENT 4

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DOCUMENT 3
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No.	Resolution	Type of Permit	Requested By	Mailing Address	Description
1	199134	Home Occupation Permit	Peggy Oberg	315 Ames	Day Care
2	199806	Home Occupation Permit	Rachele Martin	712 Maple Dr	Day Care
3	199848	Home Occupation Permit	Jan Stiers	518 Pine Avenue	Day Care
4	199859	Home Occupation Permit	Shannon Fitt	1702 Fourth Ave	Day Care
5	199860	Home Occupation Permit	Debra K. Brown-Roper	718 Sycamore St	Day Care
6	199909	Home Occupation Permit	Kathy Rust	308 Haller St	Day Care
7	199933	Home Occupation Permit	Janet Stiers	612 Laurel Dr	Day Care
8	200006	Home Occupation Permit	Marilyn Newton	260 Julissen ST	Day Care
9	200038	Home Occupation Permit	Ashlie Farrell	1814 Julie Anna Dr	Day Care
10	200113	Home Occupation Permit	Marian F. Van Home	2505 Watergate Way	Day Care
11	200134	Conditional Use Permit	Anita Rodriguez	511 S. Willow	Day Care
12	200149	Home Occupation Permit	Michelle Conaway	110 Aleene Way	Day Care
13	200153	Home Occupation Permit	Bobbie J. McGahan	412 Linwood	Day Care
14	200157	Home Occupation Permit	Joyce Woodcock	1901 Aliak Dr.	Day Care
15	200158	Home Occupation Permit	Diance Stockdale	860 Sand Dollar Dr	Day Care
16	200160	Home Occupation Permit	Sonja Tribble	9464 Kenai Spru Hwy	Day Care
17	200162	Home Occupation Permit	Ashley Buiot	903 Magic Ave	Day Care
18	200164	Home Occupation Permit	Francine Jones	226 Susieana Ln	Day Care
19	200165	Home Occupation Permit	Bethany Rogers	410 Birch St	Day Care
20	200166	Home Occupation Permit	Marsha Malone	206 Portlock St	Day Care
21	200168	Home Occupation Permit	Valerie Warchola	2915 Ketch St	Day Care
22	200169	Home Occupation Permit	Mary Goggia	2915 Clipper Circle	Day Care
23	200170	Home Occupation Permit	Kelly Dunham	860 Set Net Dr	Day Care
24	200172	Home Occupation Permit	Myrna Hogg	1111 First St	Day Care
25	200174	Home Occupation Permit	Tammy Freeman	11823 Kenai Spur Hwy	Day Care
26	200203	Home Occupation Permit	Bonnie Feik	Peninsula Ave	Day Care
27	200205	Home Occupation Permit	Cheryl's Daycare	110 Spruce St. N	Day Care
28	200209	Home Occupation Permit	Tiffany Treider	1805 Julie Anna Dr	Day Care
29	200210	Home Occupation Permit	Tina Kivi-Gage	414 Haller St	Day Care
30	200211	Home Occupation Permit	Amber J Gomez	501 Ash Ave	Day Care
31	200213	Home Occupation Permit	Kali Bilerback	1405 Colonial Dr	Day Care
32	200220	Home Occupation Permit	Linda Campanella	2730 VIP Drive	Day Care
33	200241	Home Occupation Permit	Marie Baty	408 Birch St	Day Care
34	200242	Home Occupation Permit	Alice Lambert	603 B Peninsula Ave	Day Care
35	200263	Home Occupation Permit	Brandy Gage	414 Haller St	Day Care
36	200266	Home Occupation Permit	Barbara E. Esteban	711 Cypress Dr	Day Care
37	200304	Home Occupation Permit	Linda Savok	1314 Fourth Ave	Day Care
38	200318	Conditional Use Permit	Ashley Buiot	903 Magic Ave	Day Care
39	200330	Home Occupation Permit	Michele McCauley-Olsen	520 Ash Ave	Day Care
40	200337	Home Occupation Permit	Rowena Wilshusen	1308 Kiana	Day Care

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8/1/22

No.	Resolution	Type of Permit	Requested By	Mailing Address	Description
41	200348	Home Occupation Permit	Raquel Pisa	545 Shane Ct	Day Care
42	200401	Home Occupation Permit	Christine Casiano	603 Magic Ave	Day Care
43	200403	Home Occupation Permit	Sylvia Stuart	401 McCollum Dr	Day Care
44	200407	Home Occupation Permit	Cecilia A. Dobbs	1232 Lilac Ln	Day Care
45	200410	Home Occupation Permit	Kim Navarre	1620 Tanaga	Day Care
46	200417	Home Occupation Permit	Emma Lee Whitaker	1506 Bumblebee Ave	Daycare
47	200433	Home Occupation Permit	Rose m Wilshuson	1310 Kiana Lane	Day Care
48	200435	Home Occupation Permit	Diane Stockdale	1531 Toyon Way	Day Care
49	200441	Conditional Use Permit	Sonia Rose dba ABC Angels	1511 Fathom Dr.	Daycare
50	200445	Home Occupation Permit	Kathryn Medcoff	1614 Tanaga	Day Care
51	200446	Home Occupation Permit	Pat Reilly	1217 Lawton Dr	Day Care
52	200447	Home Occupation Permit	Maria Bravo	1720 Aliak Drive	Day Care
53	200507	Home Occupation Permit	Stephanie Owens	235 Eisenhower Ln	Day Care
54	200520	Home Occupation Permit	Tanya Erwin	106 Wooded Glen Ct	Day Care
55	200538	Home Occupation Permit	Carolyn Barnes	503 Candlelight Dr	Day Care
56	200563	Home Occupation Permit	Patsy A. Easling	550 Wortham Ave	Day Care
57	200567	Home Occupation Permit	Jan Stiers	1612 Tanaga	Day Care
58	200604	Home Occupation Permit	Charlotte Yamada	1106 First St	Day Care
59	200681	Home Occupation Permit	LaRae Selfridge	2620 VIP Drive	Day Care
60	200709	Home Occupation Permit	Tammy Christin	1228 Lilac Ln	Day Care
61	200710	Conditional Use Permit	Tammy Christin	1228 Lilac Ln	Day Care
62	200716	Conditional Use Permit	Kenai Peninsula Community Care Center	320 S. Spruce St.	Adolescent Care Facility
63	200737	Home Occupation Permit	Michelle Sparhawk	320 Phillip Dr	Day Care
64	200921	Home Occupation Permit	Leslie Cottrell dba Trappers Den	640 Tern Place	Day Care
65	201129	Home Occupation Permit	Danielle Edwards - Dean dba Danielle's Daycare	700 Poplar Cir	Day Care
66	201235	Home Occupation Permit	Jan Marquis	305 Linwood Ln	Day Care
67	201313	Home Occupation Permit	Danielle Edwards - Dean dba Danielle's Daycare	619 Cedar Drive	Home Day Care
68	201735	Home Occupation Permit	Martina McCaughey	701 Maple Drive	Day Care no more than 8 children under 12 year old
69	201922	Home Occupation Permit	Glenn & Charlotte Yamada	1806 4th Ave	Day Care no more than 8 children under 12 year old
70	201939	Home Occupation Permit	Mindy Dalebout	604 Laurel Drive	Day Care no more than 8 children under 12 year old
71	202112	Conditional Use Permit	Lupine M Orlob	530 Ash Ave.	Day Care for Maximum of 12 Children
72	202201	Home Occupation Permit	Jean Berger	314 Birch St	Day Care
73	202204	Home Occupation Permit	Pearl Grimsley	1101 First St	Day Care

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P&Z/2

DAY CARE PERMITS - CITY OF KENAI - WOODLAND SUBDIVISION

No.	Resolution	Type of Permit	Requested By	Mailing Address	Description
1	199806	Home Occupation Permit	Rachele Martin	712 Maple Dr	Day Care
2	199848	Home Occupation Permit	Jan Stiers	518 Pine Avenue	Day Care
3	199860	Home Occupation Permit	Debra K. Brown-Roper	718 Sycamore St	Day Care
4	199933	Home Occupation Permit	Janet Stiers	612 Laurel Dr	Day Care
5	200211	Home Occupation Permit	Amber J Gomez	501 Ash Ave	Day Care
6	200266	Home Occupation Permit	Barbara E. Esteban	711 Cypress Dr	Day Care
7	200330	Home Occupation Permit	Michele McCauley-Olsen	520 Ash Ave	Day Care
8	201313	Home Occupation Permit	Danielle Edwards - Dean dba Danielle's Daycare	619 Cedar Drive	Home Day Care
9	201735	Home Occupation Permit	Martina McCaughey	701 Maple Drive	Day Care no more than 8 children under 12 year old
10	201939	Home Occupation Permit	Mindy Dalebout	604 Laurel Drive	Day Care no more than 8 children under 12 year old
11	202112	Conditional Use Permit	Lupine M Orlob	530 Ash Ave.	Day Care for Maximum of 12 Children

DOCUMENT 5

(source: City of Kenai 2022)



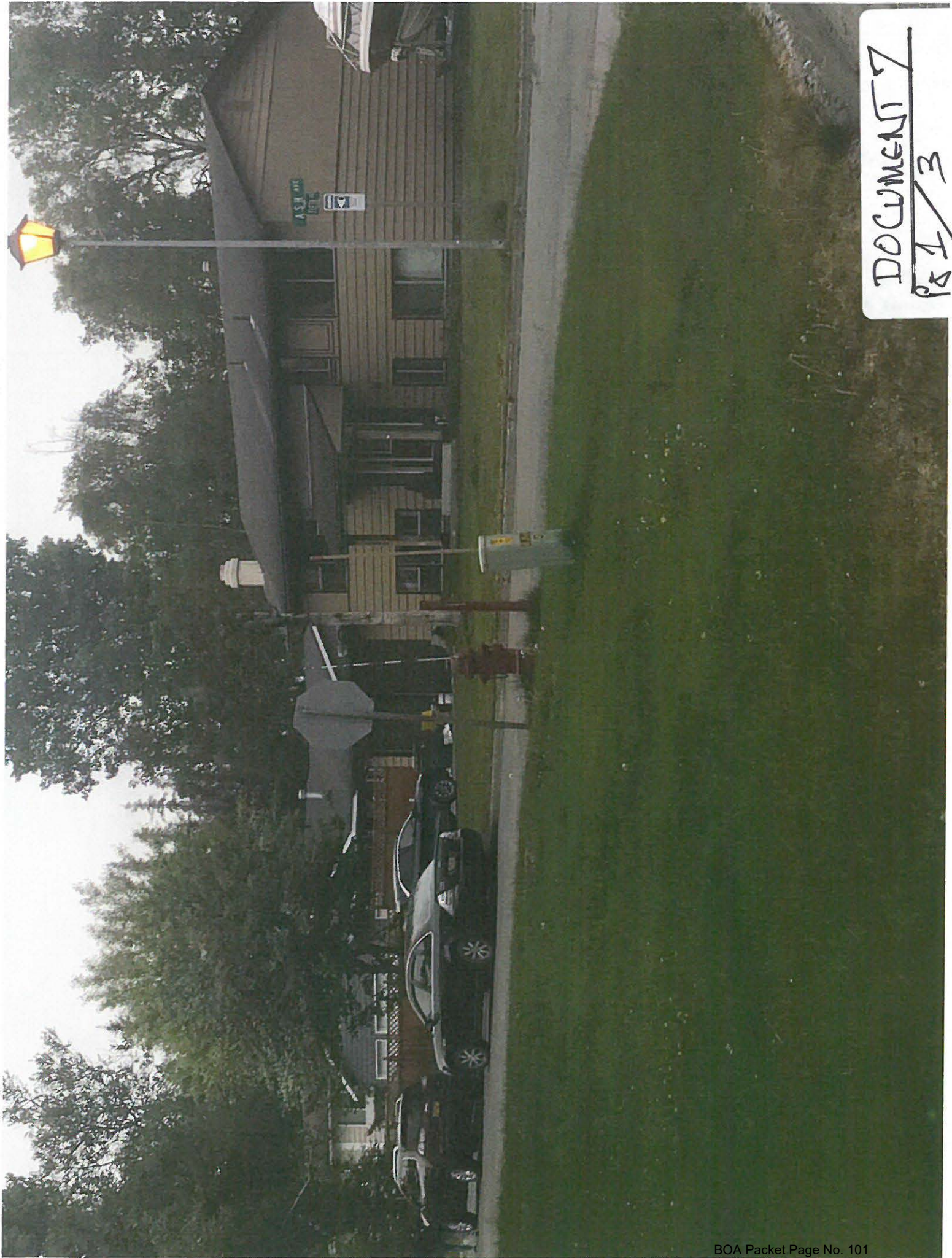
DOCUMENT 6
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DOCUMENT 7
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DOCUMENT 17
Px 2/3





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DOCUMENT 8





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Kenai Peninsula Borough

Assessing Department
144 N. Binkley Street
Soldotna AK 99669

Jun 7 2022 5:08PM

General Information

LEBARON BRYCE J LENZINI-LEBARON STEPHANIE N 502 ASH AVE KENAI, AK 99611-7558	Property ID	04326047
	Address	502 ASH AVE
	Document / Book Page	20210064910
	Acreage	0.3400

Owners

Property ID	Display Name	Address
04326047	LEBARON BRYCE J	502 ASH AVE
04326047	LENZINI-LEBARON STEPHANIE N	502 ASH AVE

Legal Description

Description
T 6N R 11W SEC 31 Seward Meridian KN 0001522 WOODLAND SUB PT I LOT 1 BLK G

Value History

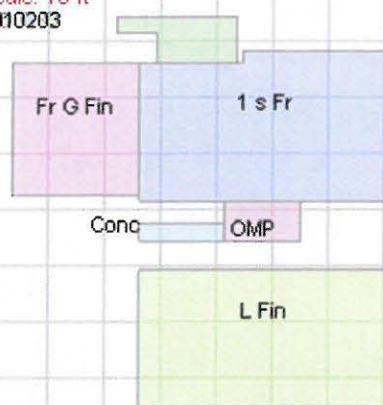
Year	Reason	Assessed		
		Land	Structures	Total
2022	Main Roll Certification	\$25,600	\$237,400	\$263,000
2021	Main Roll Certification	\$25,600	\$155,700	\$181,300
2020	Main Roll Certification	\$19,600	\$162,500	\$182,100
2019	Main Roll Certification	\$19,600	\$147,000	\$166,600
2018	Main Roll Certification	\$19,600	\$145,300	\$164,900
2017	Main Roll Certification	\$19,600	\$140,000	\$159,600
2016	Main Roll Certification	\$19,600	\$140,800	\$160,400
2015	Main Roll Certification	\$19,600	\$120,600	\$140,200
2014	Main Roll Certification	\$19,600	\$126,800	\$146,400
2013	Main Roll Certification	\$19,600	\$119,900	\$139,500
2012	Main Roll Certification	\$19,600	\$121,600	\$141,200
2011	Main Roll Certification	\$19,600	\$121,700	\$141,300
2010	Main Roll Certification	\$19,600	\$105,800	\$125,400
2009	Main Roll Certification	\$19,600	\$139,600	\$159,200
2008	Main Roll Certification	\$20,000	\$132,200	\$152,200
2007	Main Roll Certification	\$15,100	\$110,600	\$125,700
2006	Main Roll Certification	\$15,100	\$114,800	\$129,900
2005	Main Roll Certification	\$16,700	\$109,100	\$125,800
2004	Main Roll Certification	\$16,700	\$104,800	\$121,500
2003	Main Roll Certification	\$16,700	\$97,500	\$114,200
2002	Main Roll Certification	\$16,700	\$97,500	\$114,200
2001	Main Roll Certification	\$16,700	\$92,100	\$108,800

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R01 - Extension Details

Address 502 ASH AVE
Type BI-L FRAME
Grade A-
Year Built 1968
Value \$232,700

Scale: 10 ft
010203



Attributes

Story	Attribute	Detail
	Type	BI-L FRAME
	Occupancy	Single family
	Roof Structure	Gable
	Roof Cover	Comp sh to 235#
	Heating	Hot water
	Stories	0
	Bathrooms	2
	Feature	Fireplace
1	Interior Flooring	Base Allowance
1	Exterior Wall (50%)	T 111 plywood-economy
1	Exterior Wall (50%)	Wood siding
1	Interior Wall	Normal for Class
L	Interior Wall	Unknown
L	Exterior Wall (50%)	T 111 plywood-economy
L	Exterior Wall (50%)	Wood siding
L	Interior Flooring	None

Floor Areas

Code	Description	Gross	Finished	Construction
1.0	Floor Level	1,108	1,108	Wood frame
L	Floor Level	1,056	1,056	Concrete block
Total		2,164	2,164	

Exterior Features

Code	Description	Size	Construction
ATTGAR	Attached Garage	506	Wood frame
CONCP	Concrete patio	45	
OMP	Open masonry porch	91	
WDDK-R	0	133	

Improvements

Code	Year	Bldg	Length	Width	Units	Unit Type	Value
DRIVE	3000	R01	0.00	0.00	1	IT	2,000
PAV	3000	R01	45.00	17.00	765	SF	1,800
SHEDGP	2005	R01	12.00	10.00	120	SF	900

Land Details

Primary Use	Land Type	Acres	Eff Frontage	Eff Depth	Asd Value
	Residential City/Residential B	0.3400	0.00	0.00	\$25,600

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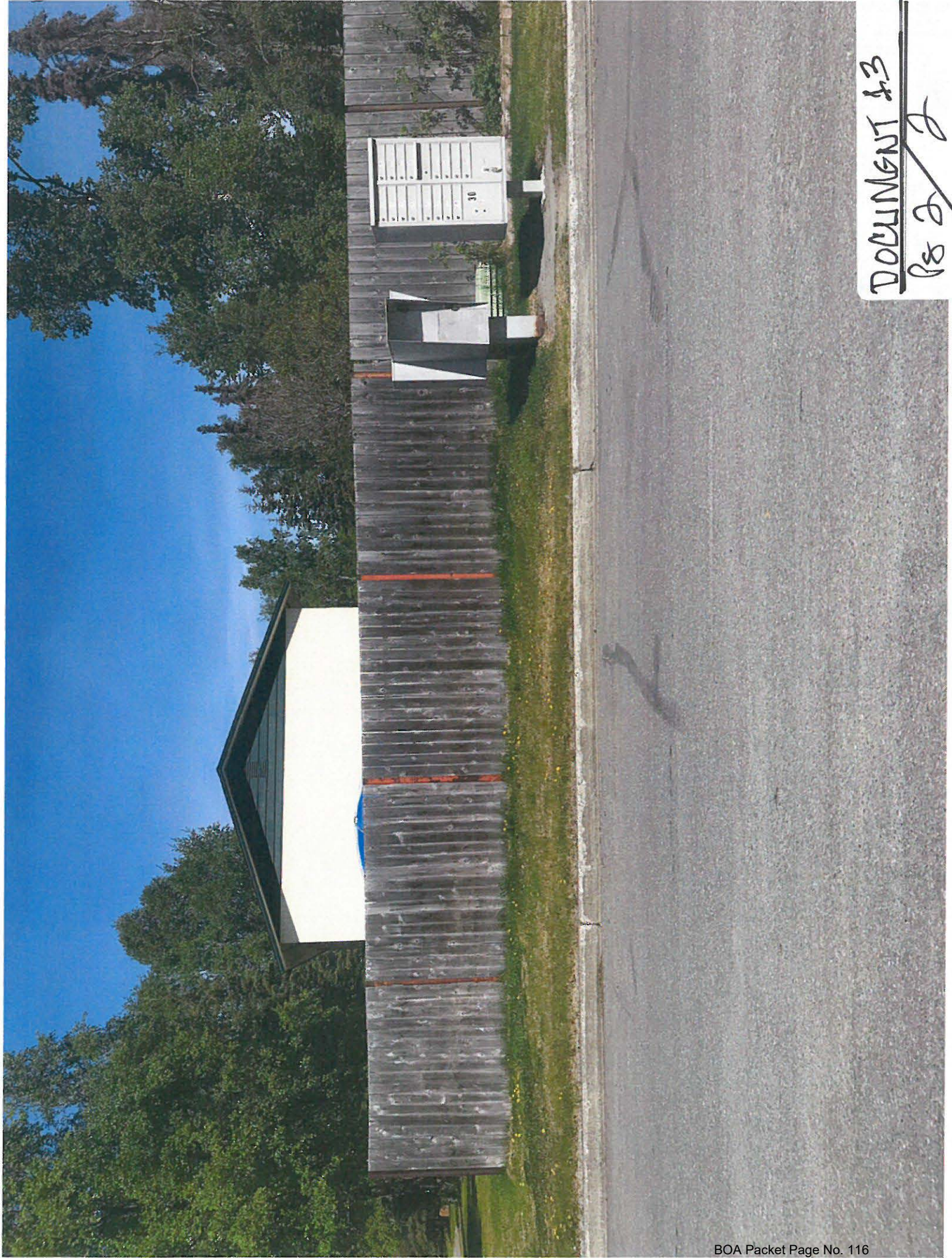
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DOCUMENT 14
P22



DOCUMENT 15

8. Puffin Acres Bayweld 2022 Permit; KPB File 2022-046; Seabright Surveying / ENT Properties LLC & East Road Services Inc.; Location: East End Road & Little Fireweed Lane; City of Homer

PLANNING COMMISSION - 7:30 P.M.

New Business

1. Building Setback Permit; KPB File 2022-055; PC Resolution 2022-19; Property: Lot 17, Block 1, Sunny Slope Unit 1 (HM 75-33); Petitioner/Landowner: Seaguetta; Community Property Trust
2. Sewer Easement Vacation; KPB File 2022-041V; PC Resolution 2022-20; Remove a 20' sewer easement granted by Forth Raymond Subdivision (W 36-10); Petitioner/Landowner: City of Seward
3. Right-of-Way Vacation; KPB File 2022-023VR1; Vacate a portion of Paper Birch Lane, a 60' right-of-way & associated utility easement; Petitioners/Landowners: KittleKnife Inc. & Gale Smith
4. Conditional Use Permit; PC Resolution; Applicant: Ken Cushman; Location: Lot 10, Block 5, Kenai River Keys Amended (KN 092-0044); Soldotna Area
5. Conditional Land Use Permit Modification; PC Resolution 2022-18; Legal Description Tract A-1A Kalifornsky Center Subdivision; Applicant/Landowner: Peninsula Resources, LLC; PIN: 055-072-93; Kalifornsky Area
6. Ordinance 2021-19-51: An ordinance appropriating funds from the Land Trust Fund, fund balance, for a project to conduct soils investigations and land planning on the 100-acre Unit 395, Juneau Bench, near Cooper Landing.
7. Ordinance 2022-10: An ordinance authorizing a three-party agreement and real property lease with Verizon Wireless & Alaska Pipeline Company.
8. Ordinance 2022-11: An ordinance authorizing emergency harvest of spruce bark beetle impacted forestlands including spruce which are dying, or susceptible to dying, and establishing a framework to guide forest treatments.
9. Resolution 2020-XX: A resolution classifying certain parcels of Borough owned and managed land in the Point Possession, Nikiski, North Kenai, Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward, Kalifornsky, Anchor Point, Happy Valley, Bear Cove and Beluga Areas

Anyone wishing to testify may attend in person or via Zoom to give testimony. Written statements must be submitted by 1:00 PM Friday March 18, 2022. The deadline to submit written comments does not impact the ability to provide verbal testimony at the public hearing. Written statements may be submitted by email (planning@kpb.us) or fax (907-714-2378). Written comments may also be submitted by hand-delivery or mail (Planning Department, 144 N. Binkley St., Soldotna AK 99689).

FUTURE MEETINGS

The next regularly scheduled Plat Committee meeting will be held Monday, May 23, 2022. The Plat Committee meeting will begin at 5:30 p.m. The next regularly scheduled Planning Commission meeting will be held Monday, May 23, 2022. The Planning Commission meeting will begin at 7:30 p.m.

KPB PLANNING DEPARTMENT

Ann Shimberg, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough 1-800-478-4441

2651651



**CITY OF KENAI
PLANNING & ZONING COMMISSION
MEETINGS - May 11, 2022**

WORK SESSION - 5:30 p.m. - 7 p.m.

REGULAR MEETING - 7:00 p.m.

**City of Kenai Council Chambers
210 Fidalgo Avenue, Kenai, AK 99611**

**A Work Session for Commissioner Training will be held from
5:30 p.m. to 7:00 p.m.**

The following agenda items will be before the City of Kenai Planning and Zoning Commission at their meeting starting at 7:00 p.m. on May 11, 2022.

PUBLIC HEARINGS

1. **Resolution PZ2022-11** - Application for a Conditional Use Permit for a Day Care Center, for the property described as Lot 1 Blk G Woodland Sub Pt I, located at 502 Ash Avenue, Kenai, Alaska 99611. The application was submitted by Stephanie Nella Lenzini-LeBaron, 502 Ash Avenue, Kenai, Alaska 99611.

The public is invited to attend the meeting and to participate virtually/telephonically. Additional information is available through the Planning and Zoning Department at krector@kenai.city and (907) 283-8237, or on the City's website at www.kenai.city.

Katie Rector, Planning & Zoning Administration

Publish: May 5, 2022

2651767



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Shellie Saner

From: Scott Bloom
Sent: Tuesday, May 31, 2022 11:07 AM
To: Shellie Saner
Subject: FW: Regarding the permit approved on May 11th for Busy Bees Daycare

From: Ryan Foster <rfoster@kenai.city>
Sent: Tuesday, May 31, 2022 10:44 AM
To: Scott Bloom <sbloom@kenai.city>; Paul Ostrander <postrander@kenai.city>
Subject: FW: Regarding the permit approved on May 11th for Busy Bees Daycare

FYI. She has been notified that we received an appeal application and that the BOA hearing date will be selected by Council on 6/1.

Sincerely,
Ryan Foster

From: Stephanie Lenzini-LeBaron <nellal@busybeesak.org>
Sent: Tuesday, May 31, 2022 10:39 AM
To: alex@douthits.com
Cc: Ryan Foster <rfoster@kenai.city>; Brian G. Gabriel, Sr. <bgabriel@kenai.city>; Jim Glendening <jglendening@kenai.city>; Teea Winger <twinger@kenai.city>; Deborah Sounart <dsounart@kenai.city>; Glenese Pettey <gpettey@kenai.city>
Subject: Regarding the permit approved on May 11th for Busy Bees Daycare

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the Planning and Zoning Committee and the City of Kenai:

On May 11th I sat before the Planning and Zoning commissioners and presented my case for the Busy Bees Child Learning Center. On that night majority of commissioners voted in my favor. This alone should allow me to receive my permit that I have rightfully and lawfully earned. The fact that neighbors can, after I've already won the votes of the committee, stop me from even opening is destructive to this community. I should have been able to operate with my permit the very day the commissioners voted 'yes'. By allowing appeals, no matter how ungrounded and illogical, to prevent a daycare from operating at this very moment is not only a disservice to the community but speaks volumes as to where this city's leaders stand in terms of families. By refusing me this permit today you're not just saying "no", or even "not yet", to me. You're telling Mr's Stratton, who is a single mom working to provide for her family, that because of a potential petty appeal her son with autism can't have access to the only childcare facility willing and able to accept her son, who has already been denied childcare by multiple licensed facilities. You're telling her that a single appeal is more important than her going to work and her son having quality care from a facility who is equipped to work with his disability and improve his quality of life.

You'd also be telling Mrs. Larson that she can't go back to work because the only place who has space for an infant is being denied a permit because of a single appeal.

You'd be telling every person in Kenai, Soldotna, and Nikiski that families don't matter. Quality childcare doesn't matter. The wellbeing of our children doesn't matter as much as a single appeal.

I have not yet been given the chance to show the few who don't support my daycare how wrong they are. I haven't been given the chance to show this committee and community what I can offer. The fact that I have to stand before the committee again before even given the opportunity to prove my worth is unjust.

Below you'll find what only some of the members of our community are saying about this matter. Within less than 24 hours I had over 100 supporters signing their name to my cause. I'm not asking you to consider your options, I'm asking you to consider what is right and what is wrong. I'm asking you to consider the families of this community and their voiced needs. I'm asking you to serve the children, parents, and caregivers of Kenai. To do that you simply have to give me the permit I have already been approved for. If I am not able to give the state a permit by this afternoon you'll have denied many families from a service they need now.

"Kenai needs more childcare providers ...Nella is educated in child education and so loving towards all children. If I were to need child care this is where I would take them."

- Kirstee Harper

"When you love kiddos and tell the gov't to loosen up to stop unnecessary barriers to affordable childcare, you sign this."

- Robanne Stading

"This is a FAMILY community!!! It is important to myself and countless families like one that we have access to honest, licensed, clean, caring and affordable childcare. Our town needs to get back to work and become high functioning during these hard times. Why people are choosing to hinder our success and future as a family community baffles me. It's time to look pat your front door and consider your struggling neighbors and our future together. We need more facilities like Busy Bees."

-Chayenne

"I can't even tell you how many calls I get about needing daycare services and I am not able to take on any more children at this time!"

- Monica Jorine Flores

"I see so many people looking for daycare for their kids so anyone willing to take that on is truly a blessing"

-Marsea Walters

""We could not imagine our lives without Nella. Not only is she a fantastic friend, but she has helped my husband and I work with our toddler to live a more harmonious life. Our son loves stopping by 'Miss Nella's daycare' to play with other children or to learn new activities to help him understand his emotions. Nella has done so much to help our family, in such a short time, that I can only imagine how she would be able to help families long term. Approving 'Busy Bees Daycare' with state licensing is a no-brainer. She, and her daycare, have so much to offer our community and its families. By denying a license to her daycare you would be hurting the community."

-Trisha Collins

"It the right thing to do."

-Christy Ericksen

Nella Lenzini-LeBaron

Administrator, Busy Bees Child Learning Center

Busybeesak.org

847-363-0691

