

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO

**A RESOLUTION OF THE SAN
BENITO COUNTY PLANNING
COMMISSION DISAPPROVING A USE
PERMIT, PLN190017, TO OPERATE A
CHILD CARE CENTER AT 1941
SUNSET DRIVE, APN 020-570-048-0.**

Resolution No. 2019-__

WHEREAS, Barbara Lewis, Xiuya (Ted) Li, and Yi (Teresa) Chen filed an application (PLN190017) for a use permit to operate a child care center (§25.29.106 Day nursery) on the property under their ownership at 1941 Sunset Drive on February 28, 2019; and

WHEREAS, the 1.06-acre subject parcel, APN 020-570-048-0, is on the south side of Sunset Drive, a dead-end street branching west from Holliday Drive, which is the first left turn from Sunnyslope Road when traveling east (340') from Fairview Road; and

WHEREAS, County staff received the child care center proposal and distributed this plan to responsible County and peer agencies for review and comment; and

WHEREAS, the applicants propose to operate what is defined as a child care center (§1596.76) or day nursery (§25.29.106 Day nursery) with Montessori programming at the single-family residence on the subject parcel, making it for all intents and purposes a nursery school (§7.02.020 Definitions; School); and

WHEREAS, the applicants propose a child care center with a 14-child, two-teacher capacity, open from 7:00am to 7:00pm; with one owner residing on the property and two owner-teachers arriving each workday; and

WHEREAS, the subject parcel has a General Plan designation of Residential Mixed (RM) and a Zoning designation of Rural Residential (RR); and

WHEREAS, the County General Plan land use designation of RM Residential Mixed allows residential and commercial uses "*serving the residences*"; and

WHEREAS, the County RR Rural Residential zoning designation (§25.09.042 Conditional Uses) states that "[u]ses listed in §25.29.106 of this title" (H) "are conditional uses in an RR district"; and

WHEREAS, the above-referenced section, §25.29.106 Additional Uses Permitted, states that "where the uses are deemed essential or desirable to the public convenience or welfare, and

are in harmony with the various elements or objectives of the general plan,” the Planning Commission may permit such uses; and

WHEREAS, among the additional uses specified as permitted is a “Day nursery” §25.29.106(E); and

WHEREAS, according to the *California Health and Safety Code*, “Family day care home” means *a home* that regularly provides care, protection, and supervision for 14 or fewer children, *in the provider’s own home*, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home” (§1596.78(a)).

WHEREAS, according to the *California Health and Safety Code*, “Day care center” means any child day care facility *other than* a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers. (§1596.76); and

WHEREAS, “Family day care homes” are permitted by right in residential areas (§1597.43), but “child care centers” are subject to local land use regulations; and (§1596.78(a)); and

WHEREAS, a primary residence electing to operate a day care facility from their existing home defines a “family day care home”; and the owners have applied for a “child care center,” to be operated from the house under their ownership; and

WHEREAS, The property owners maintain primary residences in San Jose and in Hollister, and have indicated their primary living spaces are separated from the proposed commercial activities; and

WHEREAS, owners have expressed a desire to seek approval to increase capacity now and intend to add additional children at a later date; and

WHEREAS, a Large Family Day Care Home is defined to serve 14 or fewer children (§1596.78), but a Child Care Center is not subject to such a ceiling or capacity limit; and

WHEREAS, for land use purposes, the facility type is relevant to zoning determinations (family day care vs. child care center) but the programs offered are not at issue (Head Start, Montessori); nevertheless, a school is specified by County ordinance as “[a]n institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child or day care facility” (§11.15.030 Definitions), and under the County’s Additional Uses Permitted provision, on which potential approval rests, day nurseries are allowed (E), but schools only when “operated by a non-profit or governmental entity” (with a conditional use permit) (§25.29.106 Additional Uses Permitted, lines (E), (G)); and

WHEREAS, the proposed child care center meets the state legal definition and bears attributes of a school, which may be operated by “non-profit or governmental entities” in the RR Rural Residential zoning districts; and

WHEREAS, in considering Conditional Use permit applications the Planning Commission is required to reach a determination that a proposed use (A) “is properly located in relation to the general plan and to the community as a whole”; and (B) “will not adversely affect other properties in the vicinity or cause any damage, hazard or nuisance to person or property, “if it complies with all conditions up on which approval is made contingent” §25.43.004(A), §25.43.004(B); and

WHEREAS, the California Environmental Quality Act (CEQA) states in Section 15270 that “CEQA does not apply to projects which a public agency rejects or disapproves”; and

WHEREAS, on November 20, 2019, the Planning Commission, in considering Use Permit PLN190017, and having heard and received all oral and written testimony and evidence; and after deliberating and considering the merits of the proposal; and

NOW THEREFORE BE IT RESOLVED that based on the evidence in the record, the Planning Commission of the County of San Benito hereby finds as follows:

California Environmental Quality Act (CEQA) Findings

The California Environmental Quality Act (CEQA) Section 15270 states that “CEQA does not apply to projects which a public agency rejects or disapproves.”

BE IT FURTHER RESOLVED that the Planning Commission of the County of San Benito hereby finds as follows:

Use Permit Findings

Finding 1: That the proposed use is not properly located in relation to the General Plan, and the community as a whole and to other land uses, transportation, and service facilities in the vicinity.

Evidence: *The General Plan Land Use Element designation for the site is Residential Mixed (RM) the purpose of which is to:*

allow areas of unincorporated urban uses where circulation and utility services exist. This will provide individuals with the opportunity to live in an unincorporated village or neighborhood atmosphere composed primarily of residential land uses with some commercial uses *serving*

the residences. This designation applies to areas that are largely developed and have public infrastructure and services necessary to support the increased density.

The proposed child care center is a commercial use that does not conform to the Residential Mixed land use designation in that it would not be “serving the residences of the subdivision,” but instead proposes to serve customers arriving from the surrounding Hollister community. As such, the proposed site is not properly related to other land uses as defined by the Residential Mixed (RM) land use designation.

Evidence: *The proposed project site is not properly located in relation to transportation infrastructure, in that it is located at or near the terminus of the road network, toward the subdivision cul-de-sacs. County and RMA policy would advise property owners to locate proposed commercial land uses, where the operations of that business is the primary land use proposed, on or in closer proximity to collector or arterial roads such as Sunnyslope Road.*

Evidence: *Land markets are thought to allocate uses of property through a self-sorting process in which the buying and selling of land results in families locating deeper into subdivisions, and commercial businesses locating on or closer to main roads intended to handle more traffic. In practice, this occurs when policy implementation encourages locating in suitable land use context.*

Evidence: *The project application for a “Child Care Center” or “Day Care Center” and the owners maintain separate primary residences, though Xiuya (Ted) Li would return to 1941 Sunset Drive each working day to make use of the dwelling unit as a secondary residence. An existing primary residence that elected to operate a “family day care home” would be permitted by right anywhere in this or any subdivision; in this analysis, however, a dwelling unit selected to run a “child care center” as a non-home-based facility is subject to local land use regulations.*

Finding 2: That the proposed use, if it complies with the conditions upon which approval is made contingent, has the potential to adversely affect other properties in the vicinity or potentially cause hazard or nuisance to persons or property.

Evidence: *The proposed project would generate unpredictable traffic patterns that have the potential to conflict with expected traffic movements relating to the T-intersection where Sunrise Drive opens onto Sunset Drive, directly across the eastern portion of the subject property.*

Day care or school drop-off/pick-up locations are hot-spots for chaotic traffic patterns and unpredictable driver behavior. Few drivers navigate drop-offs the same way, and here drivers must execute a U-turn or Y-turn in a driveway to reverse direction to drop-off their child with the passenger side door facing the subject property on the south side of Sunset Drive. These maneuvers could be further complicated, as children ages 2yo to 6yo might require some parental assistance in delivering to or retrieving their child from child care staff. As such, project design has not yet accounted for adequate “parking, loading” arrangements (§25.43.005(B) to alleviate unpredictable vehicle movements at peak traffic hours.

Evidence: *Projecting traffic using the ITE Trip Generation Manual’s estimated trip generation rates provides the following results: The subdivision as a whole generates 42.84 trip ends from the 42 homes with access onto the Holliday subdivision road network during the peak weekday commute. Land Use 565: Day Care Center would be projected to generate 11.76 trip ends/peak weekday commute using a 0.84 trip generation rate (per student, average rate, pp. 932-936). Land Use 210: Single-Family*

Detached Housing indicates that one single-family residence would be projected to generate 1.02 trip ends/peak weekday commute using a 1.02 trip generation rate (per dwelling unit, p. 267). Over the course of entire weekday, a fourteen-child day care center would generate about 31.64 trips (4.52 trip ends/child, p. 932)—or 63.57 ‘trip ends’.

Evidence: *Parking requirements specify one parking stall for each employee, plus two stalls, plus one loading space for every five children (§25.31.022 Institutional Uses), or seven total spaces (4 parking, 3 loading). In the absence of a settled or final parking/circulation plan the proposed project is not ripe for approval.*

BE IT FURTHER RESOLVED by the Planning Commission of the County of San Benito that based on the foregoing findings and evidence in the record, including the staff report, public comment, that the proposal to operate a child care center or day nursery at 1941 Sunset Drive, APN 020-570-048-0, is hereby denied.

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO THIS 20TH DAY OF NOVEMBER 2019 BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

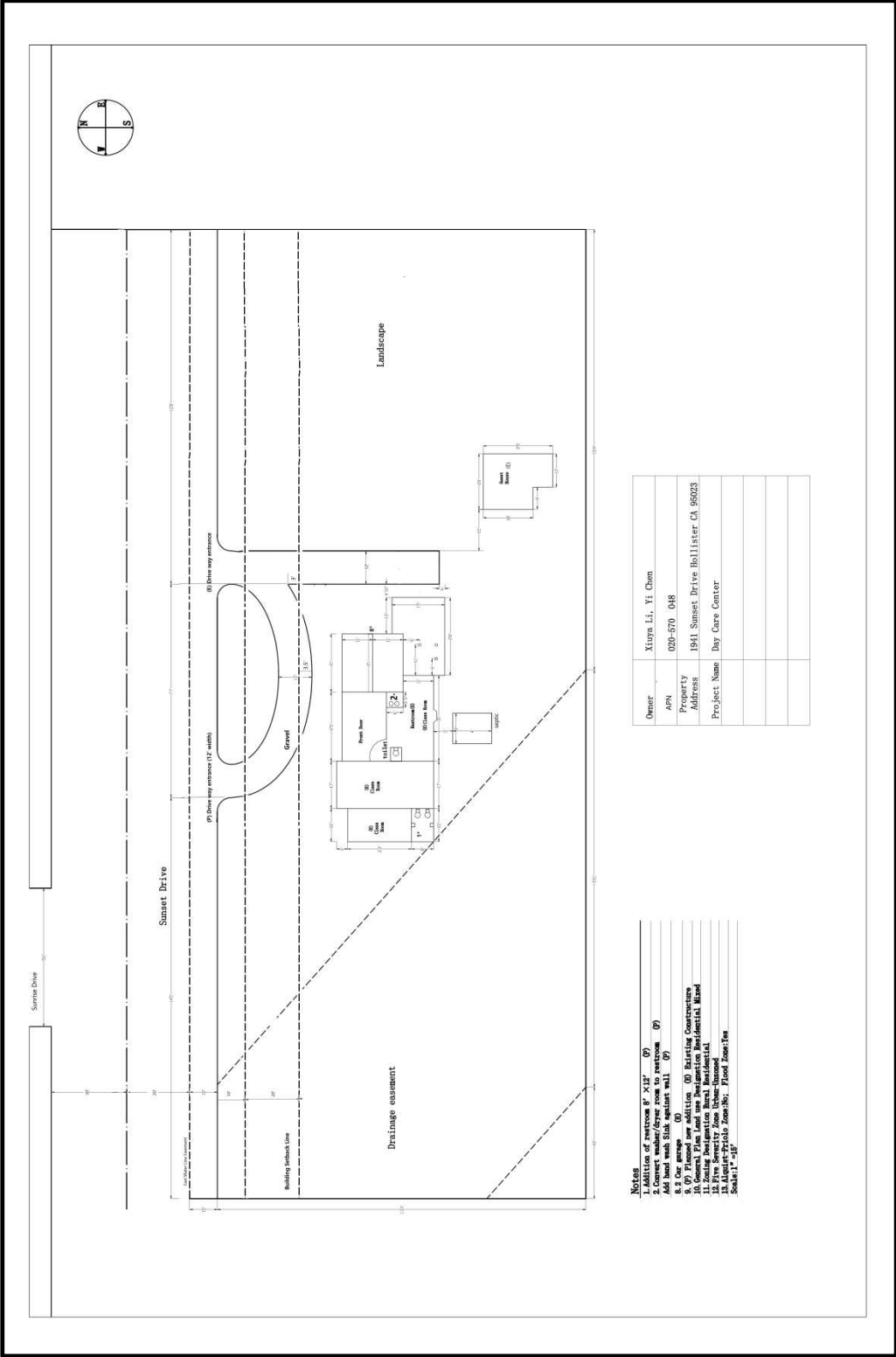
ABSTAIN:

Robert Rodriguez, Chair
San Benito County Planning Commission

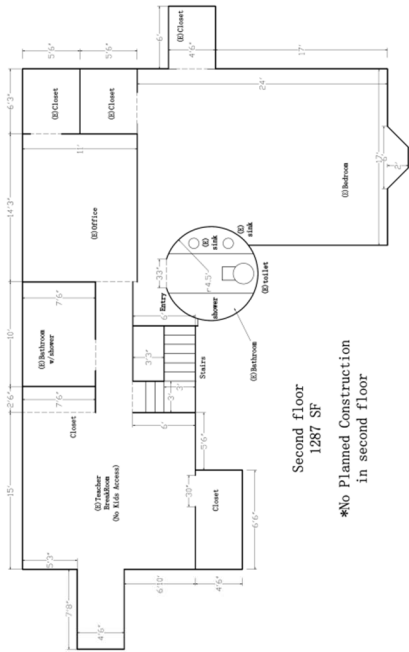
ATTEST:

Taven M. Kinison Brown, Principal Planner
Resource Management Agency San Benito County

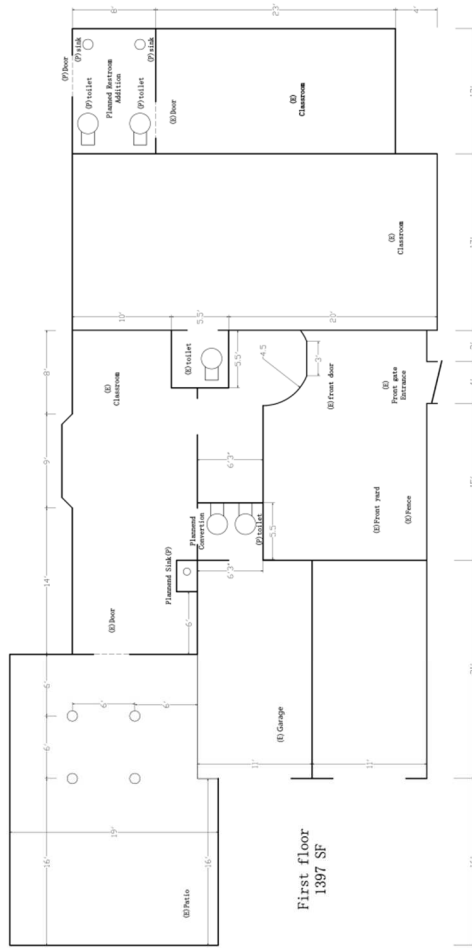
ATTACHMENT 1: Revised Site Map & Floor Plan, PLN190017



Owner	Xiuya Li, Yi Chen
APN	020-570 048
Property Address	1941 Sunset Drive Hollister CA 95023
Project Name	Day Care Center
Scale	1" = 4'



Second floor
1287 SF
*No Planned Construction
in second floor



First floor
1397 SF