

INTRODUCED: November 12, 2019

AN ORDINANCE No. 2019-325

To authorize the special use of the property known as 1803 North 28th Street for the purpose of a church, day nursery, office, adult day care, and educational uses within an existing building, upon certain terms and conditions.

Patron – Mayor Stoney (By Request)

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: DEC 9 2019 AT 6 P.M.

WHEREAS, the owner of the property known as 1803 North 28th Street, which is situated in a R-5 Single-Family Residential District, desires to use such property for the purpose of a church, day nursery, office, adult day care, and educational uses within an existing building, which use, among other things, is not currently allowed by section 30-410.1 of the Code of the City of Richmond (2019), as amended; and

WHEREAS, in accordance with section 17.11 of the Charter of the City of Richmond (2019), as amended, it has been made to appear that, if granted subject to the terms and conditions set forth in this ordinance, the special use granted by this ordinance will not be detrimental to the safety, health, morals and general welfare of the community involved, will not tend to create

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: DEC 09 2019 REJECTED: _____ STRICKEN: _____

congestion in streets, roads, alleys and other public ways and places in the area involved, will not create hazards from fire, panic or other dangers, will not tend to overcrowding of land and cause an undue concentration of population, will not adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements, and will not interfere with adequate light and air; and

WHEREAS, (i) the City Planning Commission has conducted a public hearing to investigate the circumstances and conditions upon which the Council is empowered to authorize such use, (ii) the City Planning Commission has reported to the Council the results of such public hearing and investigation and its recommendations with respect thereto, and (iii) the Council has conducted a public hearing on this ordinance at which the person in interest and all other persons have had an opportunity to be heard;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. **Finding.** Pursuant to section 30-1050.1 of the Code of the City of Richmond (2015), as amended, the Council hereby finds that the special use set forth in and subject to the terms and conditions of this ordinance will not (i) be detrimental to the safety, health, morals and general welfare of the community involved, (ii) tend to create congestion in streets, roads, alleys and other public ways and places in the area involved, (iii) create hazards from fire, panic or other dangers, (iv) tend to overcrowding of land and cause an undue concentration of population, (v) adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements, or (vi) interfere with adequate light and air.

§ 2. **Grant of Special Use Permit.**

(a) Subject to the terms and conditions set forth in this ordinance, the property known as 1803 North 28th Street and identified as Tax Parcel No. E012-0427/013 in the 2019 records of the City Assessor, being more particularly shown on a survey entitled “Survey Plat Showing Existing Improvements to #1803 North 28th Street, City of Richmond, Virginia,” prepared by Shadrach & Associates LLC, and dated July 3, 2019, a copy of which is attached to and made a part of this ordinance, hereinafter referred to as “the Property,” is hereby permitted to be used for the purpose of a church, day nursery, office, adult day care, and educational uses within an existing building, hereinafter referred to as “the Special Use,” substantially as shown on the survey entitled “Survey Plat Showing Existing Improvements to #1803 North 28th Street City of Richmond, Virginia,” prepared by Shadrach & Associates LLC, and dated July 3, 2019, hereinafter referred to as “the Plans,” a copy of which is attached to and made a part of this ordinance.

(b) The adoption of this ordinance shall constitute the issuance of a special use permit for the Property. The special use permit shall inure to the benefit of the owner or owners of the fee simple title to the Property as of the date on which this ordinance is adopted and their successors in fee simple title, all of which are hereinafter referred to as “the Owner.” The conditions contained in this ordinance shall be binding on the Owner.

§ 3. **Special Terms and Conditions.** This special use permit is conditioned on the following special terms and conditions:

(a) The Special Use of the Property shall be as an existing building with permitted uses which may include:

- (1) Adult daycare facilities;
- (2) Churches and other places of worship;

(3) Day nurseries licensed by and subject to the requirements of the Virginia Department of Social Services;

(4) Office use, including business, professional and administrative offices, medical and dental offices and clinics, and studios of writers, designers and artists engaged in the graphic arts; provided that no retailing, wholesaling or servicing of merchandise shall be permitted on the premises nor shall the storage or display of merchandise to be serviced or offered for sale elsewhere be permitted on the premises;

(5) Public and private nonprofit business, professional and vocational schools not involving the use of heavy machinery, welding equipment or internal combustion engines; and

(6) Public and private nonprofit schools and educational institutions.

(7) Signs for the Special Use shall meet the requirements of section 30-507.1 of the Code of the City of Richmond (2015), as amended, concerning signs permitted in the R-63 Multifamily Urban Residential District and the requirements of section 30-505 of the Code of the City of Richmond (2015), as amended, concerning signs permitted in all districts.

(b) If any of the uses above are operated in such a manner as to be classified as a social service delivery use, a management program, pursuant to Sec. 30-1045.6(1)(e) of the Code of Richmond (2015), as amended, shall be approved by the Zoning Administrator prior to such operation.

(c) All mechanical equipment serving the Property shall be located or screened so as not to be visible from any public right-of-way.

(d) No off-street parking shall be required for the Special Use.

(e) Bicycle storage for four bicycles shall be provided on the Property, substantially as shown on the Plans.

§ 4. **Supplemental Terms and Conditions.** This special use permit is conditioned on the following supplemental terms and conditions:

(a) All required final grading and drainage plans, together with all easements made necessary by such plans, must be approved by the Director of Public Utilities prior to the issuance of the building permit.

(b) Storm or surface water shall not be allowed to accumulate on the land. The Owner, at its sole cost and expense, shall provide and maintain at all times adequate facilities for the drainage of storm or surface water from the Property so as not to adversely affect or damage any other property or public streets and the use thereof.

(c) Facilities for the collection of refuse shall be provided in accordance with the requirements of the Director of Public Works. Such facilities shall be located or screened so as not to be visible from adjacent properties and public streets.

(d) Any encroachments existing, proposed on the Plans or contemplated in the future shall require separate authorization and shall be subject to the applicable provisions of the Code of the City of Richmond (2015), as amended.

(e) The Owner shall make improvements within the right-of-way, including the installation of a street tree along North 28th Street, substantially as shown on the Plans, which improvements may be completed in one or more phases as approved by the Director of Public Works. All improvements and work within the public right-of-way shall be (i) completed in accordance with the requirements of the Director of Public Works, (ii) considered completed only upon written confirmation by the Director of Public Works, pursuant to a transfer of interest

document approved as to form by the City Attorney and accepted by the Chief Administrative Officer or the designee thereof on behalf of the City. The Chief Administrative Officer or the designee thereof, for and on behalf of the City, is hereby authorized to accept in the manner for which this subsection provides, all improvements and work required by and meeting the requirements of this subsection. The final certificate of occupancy shall not be issued for the Property until all requirements of this subsection are fully satisfied.

(f) In all other respects, the use of the Property shall be in accordance with the applicable underlying zoning regulations.

§ 5. **General Terms and Conditions.** This special use permit is conditioned on the following general terms and conditions:

(a) No permit implementing this special use permit shall be approved until satisfactory evidence has been presented to the Zoning Administrator that any delinquent real estate taxes applicable to the Property have been paid.

(b) The Owner shall be bound by, shall observe and shall comply with all other laws, ordinances, rules and regulations applicable to the Property, except as otherwise expressly provided in this ordinance.

(c) Words and phrases used in this ordinance shall be interpreted to have the meanings ascribed to them by section 30-1220 of the Code of the City of Richmond (2015), as amended, unless the context clearly indicates that a different meaning is intended.

(d) Notwithstanding any other provision of law, this special use permit is being approved due, in part, to the mitigating effects of each and every condition attached hereto; consequently, if any portion of this ordinance is determined to be invalid for any reason by a final,

non-appealable order of any Virginia or federal court of competent jurisdiction, the invalidity shall cause the entire ordinance to be void and of no further effect from the effective date of such order.

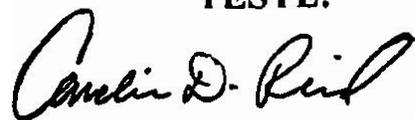
(e) The privileges granted by this ordinance may be revoked pursuant to the provisions of sections 30-1050.7 through 30-1050.11 of the Code of the City of Richmond (2015), as amended, and all future amendments to such laws. Failure to comply with the terms and conditions of this ordinance shall constitute a violation of section 30-1080 of the Code of the City of Richmond (2015), as amended, and all future amendments to such law, or any other applicable laws or regulations.

(f) When the privileges granted by this ordinance terminate and the special use permit granted hereby becomes null and void, whether as a result of the Owner relinquishing this special use permit in a writing addressed to the Director of Planning and Development Review or otherwise, use of the Property shall be governed thereafter by the zoning regulations prescribed for the district in which the Property is then situated.

§ 6. **Implementation.** The Zoning Administrator is authorized to issue a certificate of zoning compliance subject to the terms and conditions set forth in this ordinance. An application for the certificate of zoning compliance shall be made within 730 calendar days following the date on which this ordinance becomes effective. If the application for the certificate of zoning compliance is not made within the time period stated in the previous sentence, this ordinance and the special use permit granted hereby shall terminate and become null and void.

§ 7. **Effective Date.** This ordinance shall be in force and effect upon adoption.

**A TRUE COPY:
TESTE:**



City Clerk

City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.richmondgov.com

Item Request
File Number: PRE.2019.386

Received

OCT 15 2019

Office of the
Chief Administrative Officer

4-9289

OFFICE OF THE CITY ATTORNEY

O & R Request

DATE: October 11, 2019

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor (Patron: Mayor, by request)
(This in no way reflects a recommendation on behalf of the Mayor.)

THROUGH: Lenora G. Reid, Acting Chief Administrative Officer

THROUGH: Sharon L. Ebert, Deputy Chief Administrative Officer for Economic Development and Planning

FROM: Mark A. Olinger, Director, Department of Planning and Development Review

RE: To authorize the special use of the property known as 1803 North 28th Street for the purposes of a mixed-use building, upon certain terms and conditions.

ORD. OR RES. No. _____

PURPOSE: To authorize the special use of the property known as 1803 North 28th Street for the purposes of a mixed-use building, upon certain terms and conditions.

REASON: The applicant is proposing to use a vacant building at 1803 North 28th Street for the purposes of a variety of uses that are not permitted as principal uses within this zone. A special use permit is therefore required.

RECOMMENDATION: In accordance with the requirements of the City Charter and the Zoning Ordinance, the City Planning Commission will review this request and make a recommendation to City Council. This item will be scheduled for consideration by the Commission at its December 2, 2019 meeting. A letter outlining the Commission's recommendation will be forwarded to City Council following that meeting.

BACKGROUND: The subject property consists of a parcel totaling 4,529 SF, or .10 acres, of land. The property is a part of the Church Hill North neighborhood in the East Planning District. The property is located at the northeast corner of Y Street and North 28th Street.

The property was previously used as an educational facility and subject to Special Use Permit Ordinance No. 1988-277-248, which has lapsed due to the building being vacant for more than two years.

The City of Richmond's current Master Plan designates the subject property for Single-Family Medium Density (SF-MD). Primary uses are single family and two family dwellings, both detached and attached, at densities of 8 to 20 units per acre. Includes residential support uses such as schools, places of worship, neighborhood parks and recreation facilities, and limited public and semi-public uses.

Surrounding properties are within the same R-5 Single-Family Residential District. A mix of residential, vacant, institutional, and commercial land uses are present in the area.

FISCAL IMPACT / COST: The Department of Planning and Development Review does not anticipate any impact to the City's budget for this or future fiscal years.

FISCAL IMPLICATIONS: Staff time for processing the request; preparation of draft ordinance; and publishing, mailing and posting of public notices.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: \$1,800 application fee

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: November 12, 2019

CITY COUNCIL PUBLIC HEARING DATE: December 9, 2019

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: None

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: City Planning Commission
December 2, 2019

AFFECTED AGENCIES: Office of Chief Administrative Officer
Law Department (for review of draft ordinance)
City Assessor (for preparation of mailing labels for public notice)

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Draft Ordinance, Application Form, Applicant's Report, Survey, Map

STAFF: Jonathan Brown, Senior Planner, Land Use Administration (Room 511) 646-5734



Application for **SPECIAL USE PERMIT**

Department of Planning and Development Review

Land Use Administration Division

900 E Broad Street, Room 511

Richmond, Virginia 23219

(804) 646-6304

<http://www.richmondgov.com/>

SUP-053736-2019

Application is hereby submitted for. (check one)

- special use permit, new
- special use permit, plan amendment
- special use permit, text only amendment

Project Name/Location

Property Address: 1803 N 28th Street

Date: April 17, 2019

Tax Map #: E0120427013 Fee: \$1,800

Total area of affected site in acres: 0.104 acres

(See page 6 for fee schedule, please make check payable to the "City of Richmond")

Zoning

Current Zoning: R-5 Single-Family Residential

Existing Use: Vacant, former educational use

Proposed Use

(Please include a detailed description of the proposed use in the required applicant's report)

Nonresidential uses including the church, day nursery, office, adult day care, and educational uses as detailed in the applicant's report

Existing Use: Vacant, former educational use

Is this property subject to any previous land use cases?

Yes

No



If Yes, please list the Ordinance Number: SUP, Ordinance No 89-168-221 (expired)

Applicant/Contact Person:

Company: Baker Development Resources

Mailing Address: 11 South 12th Street, suite 500

City: Richmond

State: VA

Zip Code 23219

Telephone: (804) 874-6275

Fax: ()

Email: markbaker@bakerdevelopmentresources.com

Property Owner: PERNIK LLC

If Business Entity, name and title of authorized signee: Aleksander Aleksandrov (member)

(The person or persons executing or attesting the execution of this Application on behalf of the Company certifies that he or she has or have been duly authorized and empowered to so execute or attest.)

Mailing Address: 3006 Lincoln Avenue

City: Henrico

State: VA

Zip Code 23228

Telephone: (804) 873-9135

Fax: ()

Email: alex@fxandpaint.net

Property Owner Signature: BY: [Signature] MEMBER PERNIK, LLC

The names, addresses, telephone numbers and signatures of all owners of the property are required. Please attach additional sheets as needed. If a legal representative signs for a property owner, please attach an executed power of attorney. **Faxed or photocopied signatures will not be accepted.**

NOTE: Please attach the required plans, checklist, and a check for the application fee (see Filing Procedures for special use permits)

APPLICANT'S REPORT

April 26, 2019

*Special Use Permit Request
1803 North 28th Street, Richmond, Virginia
Map Reference Number: E012-0427/013*

Submitted to:	City of Richmond Department of Planning and Development Review Land Use Administration 900 East Broad Street, Suite 511 Richmond, Virginia 23219
Submitted by:	Baker Development Resources 11 South 12 th Street, Suite 500 Richmond, Virginia 23219

Introduction

The property owner is requesting a special use permit ("SUP") for 1803 North 28th Street ("the Property"). The SUP would reauthorize the use of an existing commercial building for uses that do not conform to the underlying R-5 Single-Family Residential district zoning requirements applicable to the Property.

Existing Conditions

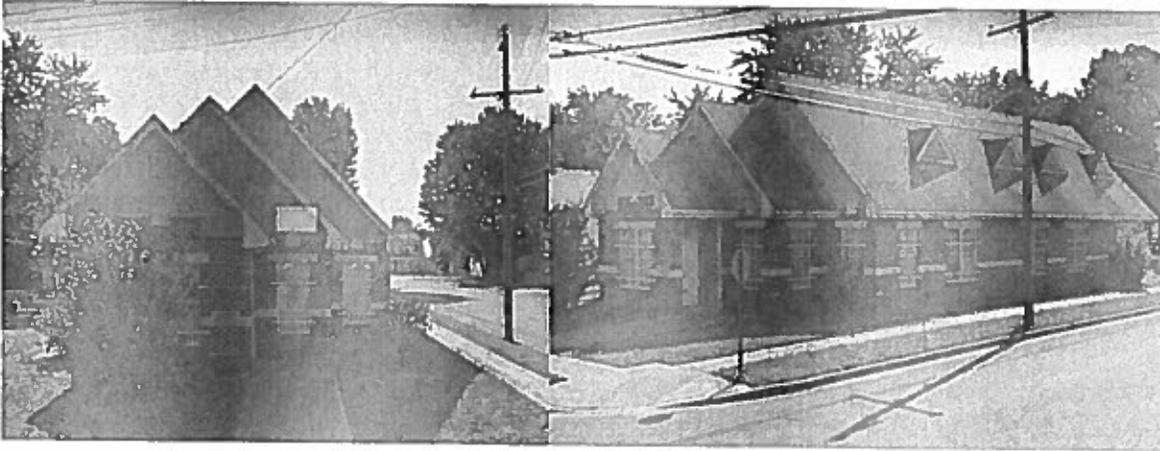
SITE DESCRIPTION AND EXISTING LAND USE

The Property is located at the northeast corner of North 28th Street and Y Street. The Property is referenced by the City Assessor as tax parcel E012-0427/013. Per the assessment, The Property is an irregularly shaped parcel that is roughly 35' wide by 108' in depth. The Property contains approximately 4,529.38 square feet of lot area, and is not afforded alley access due to an a triangular-shaped parcel which abuts both the Property and the alley to the rear.



The Property is improved with a single-story brick building, which includes approximately 1,966 square feet of floor area and was completed in 1992. The building was constructed pursuant to a Special Use Permit adopted in 1988 (Ord. 88-277-248), which authorized the use of the building as a non-profit learning center for children in kindergarten through fifth grade. The building is vacant and has not been legally occupied for a number of years. Because the property has been vacant for over 24 consecutive months, the

original SUP is now null and void. A new special use permit is now needed to authorize any reasonable reuse of the Property.



Properties in the immediate vicinity are either vacant or improved with single-family detached dwellings. Within the broader vicinity, there are also a mix of other uses present including two-family dwellings, multi-family dwellings, educational and institutional uses, and commercial uses.

EXISTING ZONING

The Property is zoned R-5 Single-Family Residential. The Property was subject to a Special Use Permit (Ord. 88-277-248) which authorized the existing building on the Property but is no longer valid. The surrounding properties are also zoned R-5, while other more intense zoning districts, such as R-53 and B-2, can be found nearby to the south and to the east.

MASTER PLAN DESIGNATION

The Master Plan recommends "Single-Family (Medium Density)" for the Property. The Master Plan describes this land use category as follows: "Primary uses are single-family and two-family dwellings, both detached and attached, at densities of 8-20 units per acre. Includes residential support uses such as schools, places of worship, neighborhood parks and recreation facilities, and limited public and semi-public uses," (*Master Plan*, p.133).

With regard to the re-use of this purpose-built building for non-residential uses the Master Plan generally indicates: "Existing Land Uses and land use patterns should generally continue as they currently exist," (*Master Plan*, p.123); "Most of what currently exists is correct and appropriate" (*Master Plan*, p.166); and "The few institutional uses located within the district are appropriately sited and serve as assets to the community." (*Master Plan*, p.170).

Proposal

PROJECT SUMMARY

The SUP would reauthorize the use of an existing commercial building for uses that do not conform to the underlying R-5 Single-Family Residential district zoning requirements applicable to the Property.

PURPOSE OF REQUEST

The current R-5 zoning does not permit the original and proposed use of the Property. The SUP that authorized the construction and use of the existing building on the Property has expired as the building has been vacant for over two years. The owner is now proposing a range of neighborhood serving uses that would allow for flexibility while remaining consistent with the original use of the Property and compatible with the existing building configuration. A new special use permit is necessary in order to reauthorize the use of the building for these uses.

PROJECT DETAILS

The existing one-story structure would be retained in its current configuration including approximately 1,966 square feet of floor area. The existing building's exterior would not be changed. The commercial tenant space would be marketed for occupancy by uses that are intended to serve the day-to-day needs of neighborhood residents. Consistent with the original approval and based on the building's modest size, the proposed potential commercial uses would be limited in type and scale and would be intended to provide for the convenience of neighborhood residents within walking distance, to respect the primary residential character of the neighborhood, and to avoid traffic, parking, noise and other impacts that typically result from uses that draw patrons from outside a neighborhood. To ensure compatibility and allow flexibility for continuous future occupancy of the building, the use of the tenant space would be limited to the following uses:

- (1) Churches and other places of worship;
- (2) Day nurseries licensed by and subject to the requirements of the State of Virginia Department of Social Services.
- (3) Offices, including business, professional and administrative offices, medical and dental offices and clinics, and studios of writers, designers and artists engaged in the graphic arts; provided that no retailing, wholesaling or servicing of merchandise shall be permitted on the premises nor shall the storage or display of merchandise to be serviced or offered for sale elsewhere be permitted on the premises;
- (4) Professional, business and vocational schools;
- (5) Public and private nonprofit schools, learning centers and educational institutions
- (6) Adult day care facilities.

Understanding that there may be a need for any such use to operate on a not-for-profit basis and with no compensation or greatly reduced compensation being paid by persons receiving such service, this request also would allow the above uses to be provided on a social service delivery basis, where applicable. Consistent with normal zoning requirements where social service delivery uses are contemplated, any such use would be subject to the following:

- a) A management program, addressing not less than the following elements shall be submitted as part of the plan of development application. The director of planning and development review may include as conditions, elements of the management program as part of the approval of a plan of development. If a particular element listed below is not applicable to a specific type of use because of the characteristics of that use, the management program shall include a statement of why the element is not applicable:

- b) Detailed description of the managing entity, including the organizational structure, names of the board of directors, mission statement, and any by laws;
- c) Detailed description of programs offered on the premises, including operating procedures and characteristics, the intent of the programs and a description of how the programs support a long term strategy for meeting the clients' needs;
- d) Detailed description of off-site programs offered, and/or description of linkages to programs operated by others;
- e) Detailed description of the number and type of clients to be served, including an outline of program objectives, eligibility criteria, and requirements for referrals to other programs;
- f) Operational details for on-site programs including: hours of operation, number and type of staff, staff qualifications, and typical hours worked by staff; method of client supervision; operating procedures including procedures for orienting a new client to the facility's programs; expectations for clients; prerequisites for continued client enrollment such as a requirement that the client participate in programs; rules of behavior for clients; the location and nature of any security features and arrangements; and names and telephone numbers of persons to contact in emergencies and any emergency procedures;
- g) Annual operating budget, including sources of funding.

In exchange for the SUP, the intent of this request is to allow for the reasonable re-use of this building for which no use is currently authorized. The project would remain consistent with original SUP that previously authorized the use of the Property. The proposed range of uses would allow for an appropriate, small-scale, neighborhood-serving use while allowing flexibility for continued occupancy on a tenant-by-tenant basis. This would prevent the potential negative impacts of a vacant structure in the area and provide a reasonable stream of revenue for the Property's future upkeep and maintenance. The assurances conditioned through the SUP would guarantee an appropriate re-use of the building that is complementary to the surrounding residential neighborhood.

Findings of Fact

The following are factors included in Section 17.11 of the Charter and Section 114-1050.1 of the Zoning Ordinance relative to the approval of special use permits by City Council. The proposed special use permit will not:

- *Be detrimental to the safety, health, morals and general welfare of the community involved.*

The proposed special use permit will not impact the safety, health, morals and general welfare of the nearby neighborhoods.

- *Tend to create congestion in streets, roads, alleys and other public ways and places in the area involved.*

The proposed special use permit will not result in significant traffic impacts to nearby residential neighborhoods. The traffic generation associated with the proposed uses is negligible and in keeping with the original use of the Property.

- *Create hazards from fire, panic or other dangers.*

The property was developed in a manner consistent with the requirements of the building code and in accordance with the requirements of Fire and Emergency Services. The City's codes applicable to this development are designed to eliminate such hazards.

- *Tend to overcrowding of land and cause an undue concentration of population.*

The proposed special use permit will not tend to over crowd the land or create an undue concentration of population. No expansions to the existing building are proposed.

- *Adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements.*

The proposed special use permit would not adversely affect the above referenced City services. To the contrary, the proposal could provide positive fiscal (tax) benefits that would enhance the City's ability to provide these services to the proposed development.

- *Interfere with adequate light and air.*

The light and air available to the subject and adjacent properties will not be affected. No expansions to the existing building are proposed.

Summary

In summary we are enthusiastically seeking approval for this SUP, which would allow for the reasonable re-use of this building for which no use is currently authorized. The proposal is consistent with the Master Plan in that it would be consistent with original use of the property as authorized by the previous SUP. The proposed uses offer compatibility with surrounding residential uses while allowing for flexibility in use, as needed, for continued future occupancy. This request would allow for the continued stewardship of the property based on its occupancy and eliminate any concerns that can be attributed to vacant structures. The assurances conditioned through the SUP would guarantee an appropriate re-use of the building that is complementary to the surrounding residential neighborhood.