

Staff Summary Report



Hearing Officer Hearing Date: August 3, 2010

Agenda Item Number: 3

SUBJECT: This is a public hearing for a request by **BRIGHTER ANGELS DAY CARE CENTER** located at 630 West 17th Place for one (1) use permit.

DOCUMENT NAME: 20100803dsdk01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by **TEMPE 7TH DAY ADVENTIST CHURCH - BRIGHTER ANGELS DAY CARE CENTER (PL100209)** (Ruben Sandoval, Brighter Angels Day Care, applicant; Tempe Seventh Day Adventist Church, property owner) located at 630 West 17th Place in the R1-6, Single Family Residential District for:

ZUP10073 Use permit to allow a childcare facility not ancillary to the main use (place of worship).

PREPARED BY: Diana Kaminski, Senior Planner (480-858-2391)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

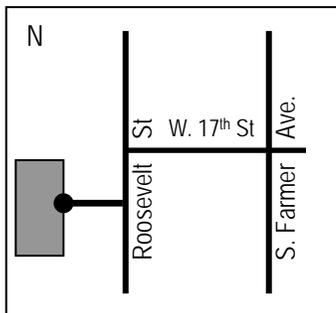
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval, subject to conditions

ADDITIONAL INFO:



The property is located north of Broadway Road, west of Mill Avenue, south of 13th Street and east of Hardy Drive, on the west end of a cul de sac of eight residences. The building was built in 1962 and has been owned by the Seventh Day Adventist Church since construction. Staff was unable to locate building plans for the original structure.

The property is zoned R1-6, which allows Places of Worship and ancillary uses and Public Schools. Childcare and Private Schools owned and operated by entities not affiliated with the Place of Worship are considered non-ancillary uses, and are allowed by use permit only in this zoning. In this case, the place of worship is at another address nearby, the school formerly operated by the church is on this property, which remains in ownership of the church.

The proposed Brighter Angels Day Care would function similarly to a school use on site, and will not be making exterior modifications or additions to the existing building. Tenant improvements are needed to meet childcare licensing requirements. Site plan improvements will be made to meet the programmatic needs of the day care, and any requirements deemed necessary through the entitlement process for this use. A neighborhood meeting is not required for this request.

PAGES:

1. List of Attachments
- 2-3. Comments;
3. Reasons for Approval
4. Conditions of Approval; History & Facts/Description
5. Code/Ordinance Requirements
6. History & Facts; Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map
2. Aerial Photo
- 3-4. Letter of Intent
5. Site plan and Floor plan
- 6-8. Photographs
9. AZ State Statute Title 9 Childcare Facility Requirements excerpt

COMMENTS:

Located on a cul de sac within a Maryann Neighborhood Association, the school building was built in 1962; according to the property owner, it has operated as a school since construction. The building is approximately 4,000 square feet; the size of the classrooms and building limits the total building occupancy to 121 people. The applicant has indicated there would be 100 children ages 1-12 years old, and five employees.

Due to the age of the campus, the applicant and staff were unable to locate original approved plans for this property. Parking requirements for childcare were not listed in Zoning Ordinance 268, schools were parked based on the number of employees (1 space per 3 employees) with additional spaces required for students of driving age. Without an original plan, it is assumed that striping has worn away over 48 years. Current Zoning Code requirements for a building of this size and use would require 15 spaces. With the need to drop off and pick up students on site and provide accessible parking, staff is requiring the lot be restriped to provide 15 parking spaces on site. In lieu of parking islands, staff is conditioning that trees be located within the dirt area to the west of the parking lot, to provide shade to the vehicles and a barrier to the play field.

The applicant does not intend to make significant modifications to the exterior of the building or site. All existing conditions are considered grandfathered in, unless life safety issues are found to exist. Exterior security lighting is non-compliant and presents a significant deficiency. Light switches are available at each door, allowing lights to be turned off at any time by anyone on site. All exterior doors should be lit from dusk to dawn using a photo cell control, to allow surveillance of the site. The gated parking entry and parking lot are also insufficiently illuminated. Since there are no modifications to the site, fully compliant light levels are not being required. However, Community Development and Police staff concur that it is in the best interest of the applicant to provide some level of upgraded lighting at the gated entrance and within the parking lot for the safety of staff and students. A condition to work with staff on appropriate, neighborhood-sensitive lighting levels for increased security of the property has been included.

Community Development and Police staff field verified conditions of the site. The existing 4-5' chain link fence meets State requirements for fencing a childcare facility, however there are sections that do not touch the ground or that are in disrepair. An ideal solution would be removal of all chain link and replacement with a new 6' wrought iron fence. This was discussed with the applicant and determined beyond fiscal capabilities at this time. Because this is continuation of an existing use, the chain link fencing is grandfathered in, but must be replaced or repaired as necessary to provide a safe environment. A condition has been included that in such time that funding is available, or that calls for police service indicate security issues with the site, a wrought iron fence will replace the existing chain link fencing.

The existing school grounds have several storage sheds and shade canopies on site, which have not received development plan review or building safety approval. Existing non-conforming structures will be required to get building safety approval, or be removed. The applicant indicated that the Daycare wishes to replace the shade structure over the playground with a new canopy that complies with building code when funding becomes available. State childcare requirements indicate provision of shaded outdoor play area is a requirement of licensure. There are no City requirements for shaded playground equipment except that if shade is provided, it must comply with building safety codes. Conditions pertaining to building code compliance have been included.

Use Permit

The Zoning and Development Code requires a use permit for a Daycare not-ancillary to a Place of Worship, to operate in the R1-6 zoning district. (ZDC Table 3-102 Permitted Land Uses)

Section 6-308 E Approval criteria for Use Permit:

1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code. The school building was built in 1962 and has operated as a school for decades. The building is less than 4,000 square feet and has a large buffer on the sides and rear. The proposed use as an childcare facility serving children from one to twelve years of age; this use is similar to prior use and fits

the intended design of the building with limited interior modifications.

2. Any significant increase in vehicular or pedestrian traffic. The maximum building occupancy on site is 122 people; based on student/adult ratios for the proposed ages, there would be no more than 100 children on site, plus the staff and administrators of the facility. Some of the children may be from within the neighborhood that may walk or be biked to school; others may be families with multiple children, reducing the vehicle impacts. Based on parking requirements for educational and childcare facilities, it is expected that no more than 15 vehicles would need parking on site at one time; however the paved area on site could accommodate more vehicles if necessary. Hours of operation are 6am to 6pm. Traffic engineering staff has indicated that the street is designed to take the level of traffic created by a school, but as a small dead-end street, expressed concern about the traffic impacts on this street during peak times. The school has been at the location for forty years, but has been vacant for more than a year. Depending on prior attendance, the school may have experienced periods of similar or greater traffic; the ages of children at the proposed facility dictates a higher area requirement, which limits the number of students per classroom for building safety occupancy.
3. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. A school or childcare will create no additional nuisances exceeding the potential ambient conditions. The area was very quiet at the time of the staff visit; this may be due to summer vacation and less outdoor activity. A school serving small children will require outdoor playtime and therefore associated noise from playground activities, but this is allowed in any school or church use in residential neighborhoods.
4. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan. The property owner has had difficulty using the site since the school vacated the property. The site is in need of maintenance and the neighborhood will benefit from the revitalization of the site for a continued educational use.
5. Compatibility with existing surrounding structures and uses. The building is designed as a low roof-line ranch style building, similar to many nearby residences. The building matches the character and upkeep of the surrounding area and provides a large open area within a relatively compact neighborhood form.
6. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public. Reintroducing an active use on the site will control destructive behavior caused by vandalism, and will help upkeep the property to prevent visual blight. A licensed childcare provider will be required to comply with state regulations, which will help provide a safe environment for children in the neighborhood and provide more eyes on the street for increased security of the neighborhood.

Conclusion

Based on the information provided by the applicant, and the above analysis, staff recommends approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions listed.

REASON(S) FOR APPROVAL:

1. The project meets the General Plan Projected Land Use for this site.
2. The proposed project meets the approval criteria for a Use Permit:
 - a. There will be no significant increase in vehicular or pedestrian traffic in adjacent areas;
 - b. The proposed daycare/preschool is less intense than schools for older students, and will not cause any nuisance (odor, dust, gas, noise, vibration, smoke, heat or glare, etc.) exceeding that of ambient conditions;
 - c. The day care/preschool will not contribute to the deterioration of the neighborhood or be in conflict with the goals, objectives and policies of the City;
 - d. The proposed daycare/preschool is compatible with existing surrounding residential uses and structures; and
 - e. The use will not result in disruptive behavior or create a nuisance to the surrounding area or general public.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S)

OF APPROVAL:

1. The parking area shall be restriped to meet minimum parking requirements of 15 spaces on existing paved surface.
2. Shade trees shall be planted 1 tree per 20' on center for the length of the restriped parking spaces on the west side of the parking lot.
3. Provide 4 secure bicycle parking spaces on site.
4. All structures on site must obtain a building permit prior to occupancy or use of the site: shade canopies or storage sheds unable to comply with safety standards shall be removed.
5. Illuminate building entrances from dusk to dawn to assist with visual surveillance at these locations using photocell controls.
6. Eliminate existing exterior switches for exterior security lighting to prevent lights from being turned off.
7. Work with staff on appropriate neighborhood sensitive lighting levels for increased security of the property.
8. At such time that funding is available, or there calls for service indicate security issues with the site, a wrought iron fence will replace the existing chain link fencing.
9. The use permit is valid for Brighter Angels Day Care and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
10. The use permit for an R1-6 single-family zoned property to be used for a Day Care not ancillary to a place of worship is valid only with property ownership by a place of worship. Sale of this property will not constitute allowance of this site for a commercial use. Separate planning entitlement processes are required for zoning amendment to allow this use without affiliation with a place of worship.
11. All business signs shall receive a Sign Permit. Please contact Planning staff at 480-350-8331.
12. The building is permitted for a total occupancy of 122 people, with no more than 100 children less than 30 months old. Any intensification or expansion of use will require a new use permit.
13. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLETED ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any modifications to the site or structure. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through www.tempe.gov/planning/documents.htm or purchase from Development Services.
- **SITE PLAN REVIEW:** Verify all comments by the Public Works Department, Development Services Department, and Fire Department given on the Preliminary Site Plan Reviews dated July 21, 2010. If questions arise related to specific comments, they should be directed to the appropriate department, and any necessary modifications coordinated with all concerned parties, prior to application for building permit. Construction Documents submitted to the Building Safety Department will be reviewed by planning staff to ensure consistency with this Design Review approval prior to issuance of building permits.
- **BUILDING SAFETY:** All structures shall be brought into code compliance either by: Alteration, Repair, or Demolition. Applicant shall obtain all required permits before beginning work. All work must be completed and approved by the City of Tempe prior to a Certificate of Occupancy being granted. No occupancy will be permitted until such Certificate of Occupancy is issued.
- **HISTORIC PRESERVATION:** State and federal laws apply to the discovery of features or artifacts during site excavation (typically, the discovery of human or associated funerary remains). Contact the Historic Preservation Officer with general questions. Where a discovery is made, contact the Arizona State Historical Museum for removal and repatriation of the items.
- **REFUSE:**
 - Use of 300 gallon alley accessed refuse containers is permitted, as previously used on this site.
 - Develop strategy for recycling collection and pick-up from site with Sanitation. Roll-outs may be allowed for recycled materials. Coordinate storage area for recycling containers with overall site plan.
- **PARKING SPACES:**
 - Verify conformance of accessible vehicle parking to the Americans with Disabilities Act of 1990 (42 U.S.C.A. §12101 ET SEQ.) and the Code of Federal Regulations Implementing the Act (28 C.F.R., Part 36, Appendix A, Sections 4.1 and 4.6). Refer to Standard Detail T-360 for parking layout and accessible parking signs.
 - At parking areas, provide demarcated accessible aisle for disabled parking.
 - Distribute bike parking areas nearest to main entrance(s). Provide 2'-0" by 6'-0" individual bicycle parking spaces. Provide clearance between bike spaces and adjacent walkway to allow bike maneuvering in and out of space without interfering with pedestrians, landscape materials or vehicles nearby.
- **LIGHTING:**
 - Indicate the location of all exterior light fixtures on the site plan. Avoid conflicts between lights and trees or other site features in order to maintain illumination levels for exterior lighting.
- **SIGNS:** Separate Development Plan Review process is required for signs in accordance with requirements of ZDC Part 4 Chapter 9 (Signs). Obtain sign permit for identification signs. Directional signs (if proposed) may not require a sign permit, depending on size. Directional signs are subject to review by planning staff during plan check process.

HISTORY & FACTS:

August 2, 1962 Building Permit issued for Seventh Day Adventist Church School at 630 W. 17th Place.

March 1-16, 1989 Permits and inspections on fire damage to school building.

March 12, 1990 Inspections for second fire damage to school building indicated need for electrical permits, no record of permits pulled for repairs.

Sometime in the past 40+ years, storage sheds and shade structures were added without planning review or approval and without building safety review or permits.

DESCRIPTION:

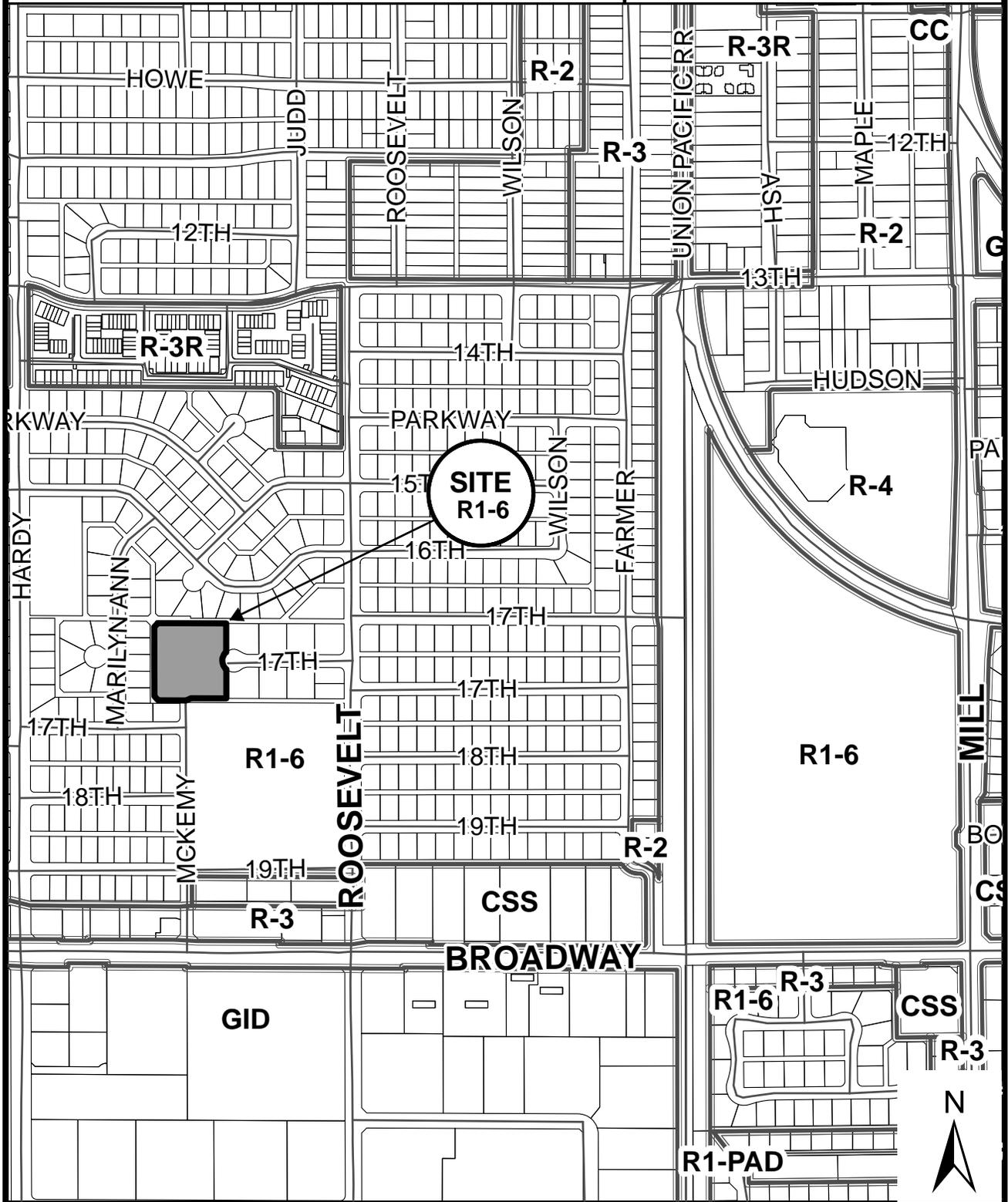
Owner – Tempe Seventh Day Adventist Church
Applicant – Ruben Sandoval, Brighter Angels Day Care
Existing Zoning – R1-6, Single Family Residential District

**ZONING AND
DEVELOPMENT
CODE REFERENCE:**

Section 6-308, Use Permit

BRIGHTER ANGELS DAY CARE CENTER
630 W. 17TH PL.

PL100209



Location Map



**TEMPE 7TH DAY ADVENTIST CHURCH -
BRIGHTER ANGELS DAY CARE CENTER (PL100209)**

Letter of Intent

RE: BRIGHTER ANGELS DAY CARE CENTER

The Tempe Seventh-day Adventist Church is applying for a usage permit for Brighter Angels Day Care Center at 630 W. 17th Place, Tempe, 85281. This property is owned by the Tempe Seventh-day Adventist Church and is located approximately 2 miles from the church. Said property has been a parochial school since 1952 and in continual operation until 2007. For 55 years, the neighborhood has been privileged to have a K-8 school in their midst, offering the finest education and imparting a wonderful atmosphere to its surroundings. Unfortunately, due to budget issues, the school was closed in 2007.

The Tempe Seventh-day Adventist Church is now renting this school property to Brighter Angels Day Care Center, an established day care that has other centers in Phoenix and Avondale. This day care center will function in a very similar way when the school was in operation with the following particulars:

1. Days of Week: Monday through Friday.
 2. Hours of Operation: 6 a.m. to 6 p.m.
 3. Drop off: children will be dropped off by their parents/guardians on the school premises in the parking lot. Bright-colored traffic cones will be used to facilitate traffic direction in the lot with an adult to control passage at all times. This adult will be wearing a traffic vest.
 4. Number of children: 100, ages 1 through 12 years.
 5. Employees: five.
- A. The school property is located at the end of a cul-de-sac, W. 17th Place, thus the proposed use for a day care center will not hinder thru-traffic in any way. The only increase in traffic would be the typical drop off and pick up interchange, nothing unusual. This is similar to what the neighborhood has experienced for the last five decades. Pedestrian traffic would mostly, if not exclusively, be confined to the actual property, off the streets and/or sidewalk (point #3 above).
- B. Said usage will not cause any nuisance such as odor, dust, gas, noise, vibration, smoke, heat or glare, etc. except for "noise" that is common on school grounds when children are playing. This has been typical for the neighborhood since 1952.
- C. The proposed day care center will by no means contribute to any deterioration of the neighborhood. Regular maintenance. On the contrary, the small building is well preserved and painted on the outside, and complements the neighborhood. The building itself corresponds to the architecture of the surrounding homes (i.e., brick structure, building height, color, landscaping, etc.). Admittedly the school is in R1-6 zoning; however, a long history in this neighborhood, good relations with neighbors, and no City of Tempe objection to its existence on record (55 years!) speaks of the positive contribution this property makes.
- D. Impacts to public services should be minimal with the type of use that will be occurring within the facility; no unusual loads will be placed on any utilities as a result of this proposed usage. Outdoor activities that will be occurring on the site include a small outdoor eating area located on the west

side of the building and a fenced outdoor play area at the southeast end of the building. There will be no effect on the current landscape with the proposed usage. Existing fencing is provided as a barrier between the playground and the residential neighborhood. The proposed usage should have no negative impact on the surrounding neighborhood.

For questions, please call Ray Navarro, pastor of Tempe Seventh-day Adventist Church, at (480) 735-1867, or Denise Sandoval, (623) 907-8911.

Thank you.

Ray Navarro

SITE PHOTOS

PL100209 BRIGHTER ANGELS DAYCARE



View looking west at front (east) elevation





View south west



View north west at entry drive to parking lot



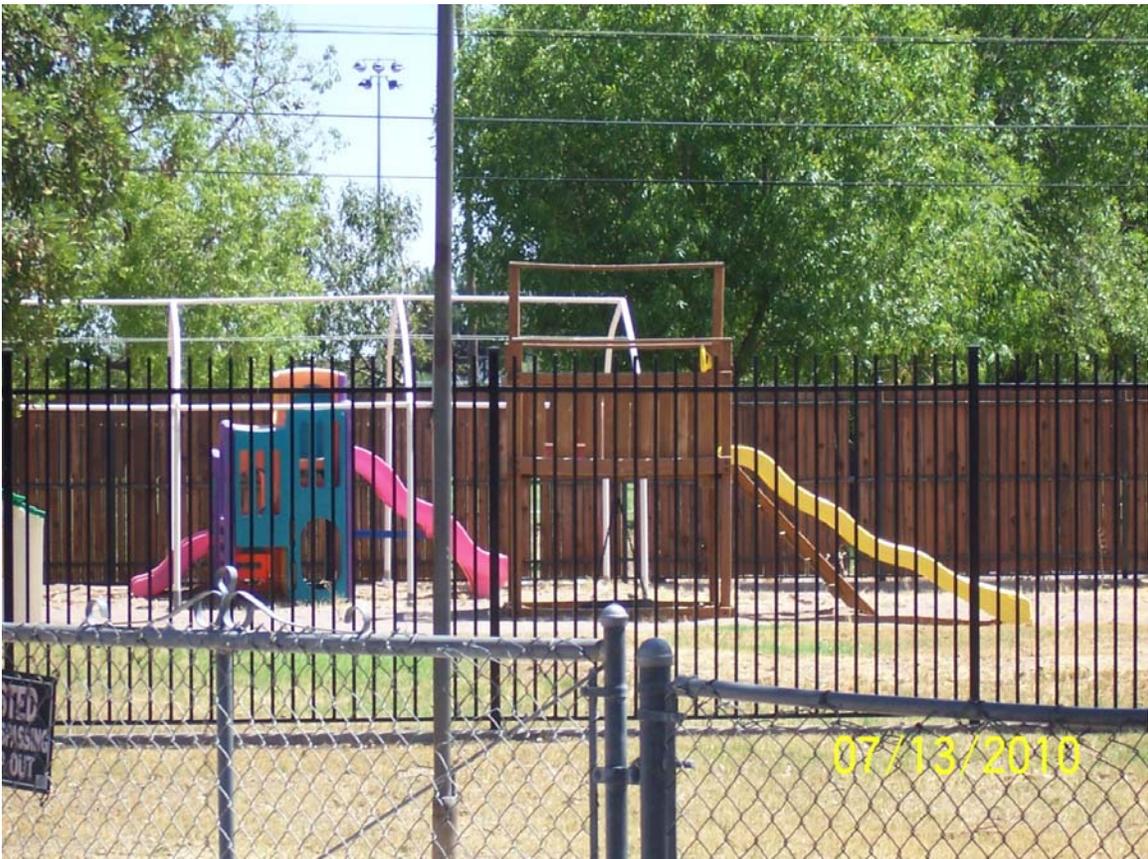
View north into parking lot (above)

View south into playground (below)





View west at north west corner of lot, swing sets in field and storage shed. (above)
View south into south east corner of lot, playground equipment and remnant shade canopy (below)



TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES CHILD CARE FACILITIES

R9-5-604. Outdoor Activity Areas

- A. A licensee shall provide an outdoor activity area on facility premises.
1. A licensee shall not permit a child to cross a driveway or parking lot to access an outdoor activity area on the facility premises or a school campus unless the licensee obtains written approval from the Department.
 2. If a licensee requests approval from the Department for enrolled children to cross a driveway or parking lot to access an outdoor activity area, the Department shall inspect the facility premises or school campus to determine whether the health, safety, or welfare of enrolled children would be endangered. The Department shall notify the licensee of approval or disapproval within 30 days of receipt of the request. If disapproved, the Department shall provide the licensee with the requirements necessary to approve the proposed crossing.
- B. Except as provided in subsection (C), a licensee shall ensure that an outdoor activity area:
1. Is enclosed by a fence:
 - a. A minimum of 4 feet high;
 - b. Secured to the ground; and
 - c. With either vertical or horizontal open spaces on a fence or gate that do not exceed 4.0 inches;
 2. Is maintained free of hazards; and
 3. Has gates that are kept closed while a child is in the outdoor activity area.
- C. A licensee shall ensure that a playground used only for school age children at a facility operating at a public or private school meets the fencing requirements of the public or private school. If the Department determines by inspection that a facility fence on a public or private school does not ensure the health, safety, or welfare of enrolled children, the licensee shall meet the fencing requirements of subsection (B).
- D. A licensee shall ensure that the following is provided and maintained under swings and climbing equipment in an outdoor activity area:
1. A shock-absorbing rubber unitary surfacing material manufactured for such use in outdoor activity areas; or
 2. A minimum depth of 6 inches of a nonhazardous, resilient material such as fine loose sand or wood chips.
- E. A licensee shall ensure that hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for a rubber surfacing.
- F. A licensee shall provide a shaded area for each child occupying an outdoor activity area at any time of day.