

Sept 5, 2013

Dear Mr Lloyd J Jordan, Chairman

I am requesting that the Board waive the 14 days requirements to accept this filling.

Thank you.

Lubetha Payne

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DC OFFICE OF ZONING
2013 SEP -5 PM 3:27

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18541
EXHIBIT NO. 35

RECEIVED
D.C. OFFICE OF ZONING
2013 SEP -5 PM 2:51

Peter B Work
pwork@crowell.com
(202) 624-2575

September 5, 2013

HAND DELIVERY

District of Columbia Board of Zoning Adjustment
441 4th Street, N W
Suite 200 S
Washington, D C 20001

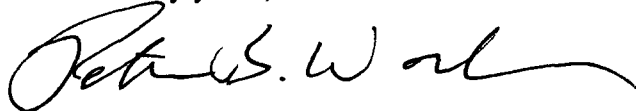
Re: BZA Application No. 18541, 620 Southern Avenue, S.E.

Dear Sir/Madam:

A hearing has been scheduled in the above- captioned matter for September 10, 2013
Please include in the matter file the attached letter from the Applicant's undersigned attorneys to
the Chair and Vice Chair of ANC 8D

Thank you for your assistance

Sincerely yours,



Peter B Work

Peter B. Work
Derya Tokdemir
1001 Pennsylvania Avenue
Washington, DC 20004
pwork@crowell.com
dtokdemir@crowell.com
Tel (202) 508 8834 (Tokdemir)

September 4, 2013

Theresa H. Jones, Chair
Olivia L. Henderson, Vice Chair
Advisory Neighborhood Commission 8D
4601 Martin Luther King, Jr. Avenue, SW
Washington, D.C. 20032

Re BZA Application of Ms. Lubertha Payne for a Special
Exception Pursuant to the Provisions of 11 DCMR § 205

Dear Madam Chair and Madam Vice Chair:

We are counsel for Ms. Lubertha Payne, who has applied to the Board of Zoning Appeals (BZA) for a special exception pursuant to 11 DCMR § 205 so that she may upgrade her licensed "Child Development Home," known as Bert's Family Day Care and located at 620 Southern Avenue, SE, to become an "Expanded Child Development Home" within the meaning of 29 DCMR § 357.

The BZA will hear Ms. Payne's special exception application on Tuesday, September 10, 2013. As reflected in the correspondence attached hereto as Exhibits A, B, and C, respectively, the Office of the State Superintendent of Education, Division of Early Learning, Child Care Licensing Unit (OSSE/DEL/CCLU), the D.C. Department of Transportation, and the BZA staff have all submitted written support for the application. In addition, as reflected in Exhibit D, a number of Ms. Payne's neighbors have supported her application. There has been no opposition to the application.

As you may recall, Ms. Payne has twice appeared before ANC 8D to discuss her BZA application. Her first appearance was on March 28, 2013, and her second appearance was on April 25, 2013. The ANC took no action on either occasion, but, particularly during the second appearance, Commission members rhetorically raised questions about Ms. Payne's plans. We expected to address these questions directly with Commissioner Henderson, who had taken the lead in raising them. But we have been unsuccessful in our ensuing efforts, via both telephone and electronic mail, to contact Ms. Henderson. We will therefore address the Commission's questions, as we understood them, in this letter.

1. Ms. Payne's Objective – Since 2004, Ms. Payne has been licensed to operate Bert's Family Day Care as a "Child Development Home" pursuant to 29 DCMR § 351. Under that license, she may provide care for up to six children, with no more than two children being non-ambulatory or under two years of age. Ms. Payne's objective is to become licensed to operate Bert's Family Day Care as an "Expanded Child Development Home" pursuant to 29 DCMR § 357 so that she may provide care for up to eleven children (twelve children being the maximum allowed under § 357). To achieve her objective, Ms. Payne plans to expand her home and to add a half-bathroom so that she will satisfy the requirement of providing at least 35 square feet of indoor space per child for up to eleven children.

2. Ms. Payne's Qualifications as Primary Caregiver – Ms. Payne meets the qualification requirements of 29 DCMR § 358.2 to serve as Primary Caregiver in an Expanded Child Development Home. She has a Child Development Associate credential, dated 27 August 2011 (Exhibit E), 90-hours training on Child Care from Prince George's Community College (Exhibit F), a current Home Occupation Permit from DCMR (Exhibit G). In addition, Ms. Payne has attended trainings provided by different agencies in 2012. Attached as Exhibit H reflects the programs she has attended in 2012: a certificate on Emergency Preparedness Program, First Aid CPR Program, a session on Professional Development provided by OSSE and Early Stages, and a Program provided by Mary's Center on nutrition.

3. Ms. Payne's Staffing Plans – Ms. Payne plans to hire at least one Associate Caregiver meeting the qualification requirements of 29 DCMR § 358.4 for her Expanded Child Care Home. If more than one Associate Caregiver is needed to satisfy the adult/child ratio requirements in 29 DCMR § 359, she will hire additional qualified staff to meet that requirement.

4. Ms. Payne's Plans for Indoor Space and Equipment – Following Ms. Payne's planned construction, the indoor space in her home will be configured as shown in Exhibit I hereto. Ms. Payne will obtain approval of the indoor space, and the equipment to be used therein, in accordance with 29 DCMR § 353.

5. Ms. Payne's Plans for Outdoor Space, Equipment, and Safety – Ms. Payne will utilize her yard, which she expects to enclose, and nearby playgrounds and parks for outdoor play space. In accordance with 29 DCMR § 342, she will ensure that the outdoor play space is free of conditions that are or might be hazardous to the health and safety of children. She will provide adequate means to transport children to and from playgrounds and parks.

6. Ms. Payne's Plans for Meeting Health and Sanitation Requirements – Ms. Payne will satisfy the health and sanitation requirements for Child Development Homes, as set forth in 29 DCMR §§ 356, 370, and 371.

Theresa H. Jones, Chair
Olivia L. Henderson, Vice Chair
Page 3

Please contact either one of the undersigned if either of you or other ANC members have additional questions about Ms. Payne's plans for her Expanded Child Care Home

Respectfully submitted,
CROWELL & MORING LLP

By:

 *Peter B. Work*

Peter B. Work, Senior Counsel

Derya Tokdemir, Dedicated Special Legal Consultant

Attorneys for Ms. Lubertha Payne

cc Richard S. Nero, Deputy Director of Operations, Board of Zoning Adjustment
Joel Lawson, Associate Director, Development Review, Board of Zoning Adjustment
Maxine Brown-Roberts, Project Manager, Board of Zoning Adjustment

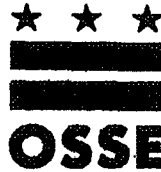


Exhibit A

Memorandum

To: Richard S. Nero, Jr. RN
Deputy Director of Operations
Office of Zoning

From: Valerie A. Ware
Program Manager
Child Care Licensing Unit

Date: February 11, 2013

Subject: BZA #18541

Lubertha Payne
620 Southern Avenue SE
Washington DC 20032

RECEIVED
DC OFFICE OF ZONING
2013 FEB 13 AM 11:00

The Office of the State Superintendent of Education, Division of Early Learning, Child Care Licensing Unit (OSSE/DEL/CCLU) recommends that the applicant be granted special exception, pursuant to Title 11 DCMR §§ 205 9 and 205 10, for the purpose of expanding a licensed Child Development Home.

The facility's licensure capacity will be calculated based on the issued official Certificate of Occupancy and requirement of Title 29 DCMR, Chapter 3, Child Development Facilities Regulations

Special exception is granted in this case, in order to benefit the City's growing demand for licensed child care slots.

Should you have further questions, you may contact me directly on 202-442-4733.

Sincerely,

Valerie A. Ware
Program Manager

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18541

EXHIBIT NO. 23

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION



d. Policy, Planning, and Sustainability Administration

RECEIVED
D.C. OFFICE OF ZONING
2013 MAR -5 AM 8:38

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Samuel Zimbabwe *[Signature]*
District Department of Transportation (DDOT)

DATE: February 21, 2013 *[Signature]*

SUBJECT: BZA Case 18541, 620 Southern Avenue, S.E. (Square 6250, Lot 11)

APPLICATION

Pursuant to 11 DCMR § 3104.1, for a special exception for a child development center (11 children and 2 staff) under section 205, in the R-3 District at premises 620 Southern Avenue, S.E. (Square 6250, Lot 11).

RECOMENDATION

DDOT has reviewed the Applicant's request and determined that, based on the information provided; this proposed project will have no adverse impacts on the travel conditions of the District's transportation network. While an approved project may lead to more vehicular, transit, pedestrian, and bicycle trips, DDOT does not foresee additional trips to impact travel conditions for the network.

The project has the potential to generate minor impacts to on-street parking conditions in the area. With the additional increase the private school student enrollment to 11 children, and to increase the staff to 2 employees, vehicle parking demand may increase slightly, resulting in a higher level of parking utilization in the immediate area. Despite this minor potential impact, DDOT has no objection to the approval of the requested special exception.

BOARD OF ZONING ADJUSTMENT
District of Columbia

District Department of Transportation | 55 M Street, SE, Suite 400, Washington, DC 20003 | 202.673.6813 | ddot.dc.gov

CASE NO. 18541
APPROVAL 28

This review pertains only to zoning issues and does not consider potential impacts to District owned public space. DDOT's lack of objection to the zoning variance/special exception should not be viewed as approval of public space elements. If any portion of the project has elements in the public space, the Applicant may be required to pursue a public space permit through DDOT's permitting process. Guidance on the treatment of public space can be found in DDOT's Public Realm Manual.

SZ:gs

**MEMORANDUM**

TO: District of Columbia Board of Zoning Adjustment
FROM: Maxine Brown-Roberts, Project Manager
 Joel Lawson, Associate Director Development Review
DATE: September 3, 2013
SUBJECT: BZA 18541, 620 Southern Avenue, S E.

I. APPLICATION AND RECOMMENDATION

Ms Lubertha Paye, on behalf of Bert's Family Day Care (applicant) request, pursuant to § 3104.1, § 302.1 and § 205, special exception for the expansion of an existing child development home, permitted by-right, to a child development center. The applicant will continue to use the building as her home. The applicant proposes to increase the enrollment from six to eleven (11) children and increase the number of staff from one to two (2). The hours of operation would be 6:30 am to 5:00 pm.

The proposal also stated that in order to accommodate the expansion to the child development center, an existing rear porch would be demolished and replaced with a new one-story addition. From the information provided by the applicant, it seems that the proposed addition would meet the Zoning Regulations relating to lot width, lot area, lot occupancy, and side yard requirements.

The Office of Planning (OP) recommends **approval** of the requested special exception subject to the following conditions:

1. Approval shall be for a period of seven (7) years.
2. The hours of operation shall be from 6:30 AM to 5:00 PM.
3. The number of enrolled children shall not exceed 11.
4. The number of staff shall not exceed 2.

II. LOCATION AND SITE DESCRIPTION

Address	620 Southern Avenue, SW
Legal Description	Square 6250, Lot 11
Ward	8, 8D
Lot Characteristics	The subject property is a rectangular, 1,967.36 square foot lot (21.83 feet x 70.0 feet) along Southern Avenue, SE. The lot abuts a 16-foot wide public alley to its rear.
Zoning	R-3 – semi-detached single family dwellings. A child development center is permitted by special exception in this zone.



Existing Development	The lot is developed with a single-family, semi-detached, residence with the main building having two stories and a one-story rear addition. Since 2004, the owner has operated a child development home for six children.
Adjacent Properties	Adjacent properties are all single-family, semi-detached homes on lots of approximately the same area.
Surrounding Neighborhood Character	Mostly single-family semi-detached homes in the R-3 District.

III. MAPS



Photograph of Property



Site Location

IV. APPLICATION IN BRIEF

The applicant has requested special exception under § 302.1 and § 205 to allow a child development center for up to 11 children (6 months to 12 years) and two staff persons

V. ZONING

	Regulation	Existing ¹	Proposed ¹	Relief
Height § 400.1	40 ft., 3 stories	25.3 ft.	25.3 ft.	None Required
Lot Width § 401.3	30 ft. minimum	21.83 ft	21.83 ft	Existing non-conformity
Lot Area § 401.3	3,000 sq. ft. minimum	1,528.1 sq ft	1,528.1 sq ft.	Existing non-conformity
Lot Occupancy § 403.1	40% maximum	26%	35%	None Required
Rear Yard § 404.1	20 ft	36.7	24.4 ft.	None Required
Side Yard § 405.8	For a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft) wide, an extension or addition may be made to the building, provided, that the width of the existing side yard shall not be decreased, and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft)	5.53 ft.	6.6 ft	Existing non-conformity

¹ Information provided by Applicant

VI. ANALYSIS

Section 205, Special Exception for the Child Development Center

The proposal meets the requirements of Section 205 for the child development center as follows.

205.1 Use as a child/elderly development center or adult day treatment facility shall be permitted as a special exception in an R-3 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

205.2 The center or facility shall be capable of meeting all applicable code and licensing requirements.

The Office of the State Superintendent of Education, Division of Early Childhood Education, Compliance and Integrity Division, Child Care Licensing Unit (OSSE/ECE/CID/CCLU) in its February 11, 2013 memorandum recommends that the requested increase in the number of children and staff be granted

205.3 The center or facility shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance.

According to the applicant, the children would continue to be generally dropped off between the hours of 6:30 AM and 8:00 AM and picked up between 3:30 PM and 5:00 PM. The children would be dropped off on Southern Avenue, except in cases when there may be activities which necessitate that they enter from the alley. The children would be taken into the center by their parents and therefore would not create any unsafe drop off and pick up conditions. Southern Avenue has parking on both sides with no restrictions. In their report dated February 21, 2013, the DC Department of Transportation (DDOT) states that the proposal will have no adverse impacts on the travel conditions of the District's transportation network.

205.4 The center or facility shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors.

The parking requirement for a child development center is 1 space per 4 teachers/employees, with two staff persons, one parking space is required. Two parking spaces are provided on-site which would meet the requirement. When a parking space is needed by a visitor or parent it would be provided in the driveway of the property or on the street. Street parking is available along Southern Avenue without the need for a parking permit. Parking in the area is further addressed in the DDOT Report

205.5 The center or facility, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions.

The applicant states that outdoor play time on the subject property will be limited as the children would be taken off-site to public play areas/parks where there is a variety of play equipment available. Since the children are taken off-site for more intense play, there would be minimal objectionable impact on the adjacent or nearby properties due to noise, activity and other visual impact

205.6 The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs or other requirements as it deems necessary to protect adjacent and nearby properties.

The application does not propose any new signs, screening of the building, plantings or new parking areas and therefore OP does not recommend any special treatment or screening.

205.7 Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at center or facility in traveling between the play area and the center or facility itself.

The children would be transported to off-site play areas via cars instead of walking and therefore there would be no endangerment between the center and the play areas.

205.8 *The Board may approve more than (1) child/elderly development center or adult day treatment facility in a square or within one thousand feet (1,000 ft.) of another child/elderly development center or adult day treatment facility only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.*

According to GIS records, there are no other child development centers within the square or within 1,000 feet of the property

205.9 *Before taking final action on an application for use as a child/elderly development center or adult day treatment facility, the Board shall submit the application to the D.C. Departments of Transportation and Human Services, the D.C. Office on Aging, and the D.C. Office of Planning for review and written reports.*

The application was submitted to the appropriate agencies and DDOT and OSSE have submitted reports under separate cover

205.10 *The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center or facility can meet all licensing requirements set forth in the applicable laws of the District of Columbia.*

The Office of the State Superintendent of Education, Division of Early Childhood Education, Compliance and Integrity Division, Child Care Licensing Unit (OSSE/ECE/CID/CCLU) recommends that the applicant be granted. The January 22, 2013 memorandum has been submitted to the record.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

The District Department of Transportation and OSSE have submitted comments under separate cover. Both agencies recommended approval of the proposed child development center.

VIII. COMMUNITY COMMENTS

The application was reviewed by ANC-8D at a meeting on April 25, 2013. The applicant stated that the ANC requested additional information on the proposed addition. The applicant has also provided letters of support for the child development center from the adjacent neighbor at 618 Southern Avenue, SE.

Exhibit D

Bert's Family Child Care

620 Southern Avenues, Southeast

Washington, D.C. 20032

August 7, 2012

Bert's Family Child Care will be expanding to 12 children in the future. I need your help and support for the approving of zoning, in order to expand of my family childcare. At this time I need you to sign your name, address and phone number, so zoning will know that I have your approval and support of my Daycare in the neighborhood.

1. Mamie Johnson 618 Southern Ave
2. Tim Johnson 618 Southern Ave
3. Lila Calvert 610 Southern Ave.
4. Andre Ford 701- Bowin Rd. S.E.
5. Yvonne 1109 South U St Dr.
6. Doreen Kennedy 809 Southern Ave. S.E
7. Jacqueline S. Rutherford 4508 Livingston Rd S.E
8. Mattie B. O'Neal 4918 Wallflower way, Oxon Hill, MD
9. Kevin Arnold Sr 4501 3rd St Apt D Wash DC 20032
10. Heather Gandy 4293 6th St Wash. DC 20032
11. Daris B. Stafford 644 Southern Ave Wash. DC 20032
12. Roy Robin 640 Southern Ave. S.E Wash DC 20032
12. S. L. L. 625 Southern Ave; SE DC 20032
13. Dorine Redman 4416 Barnaby Rd. D.E. 20032
- 14.
- 15.
- 16.
- 17.

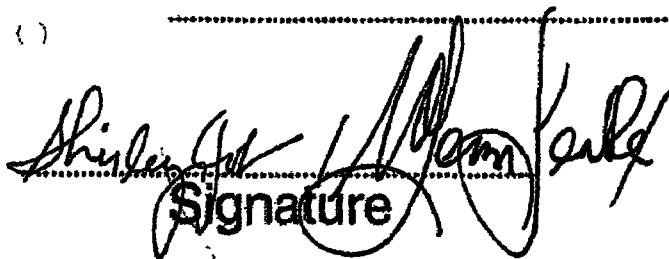
Certificate of Completion

is presented to

Lubertha Payne

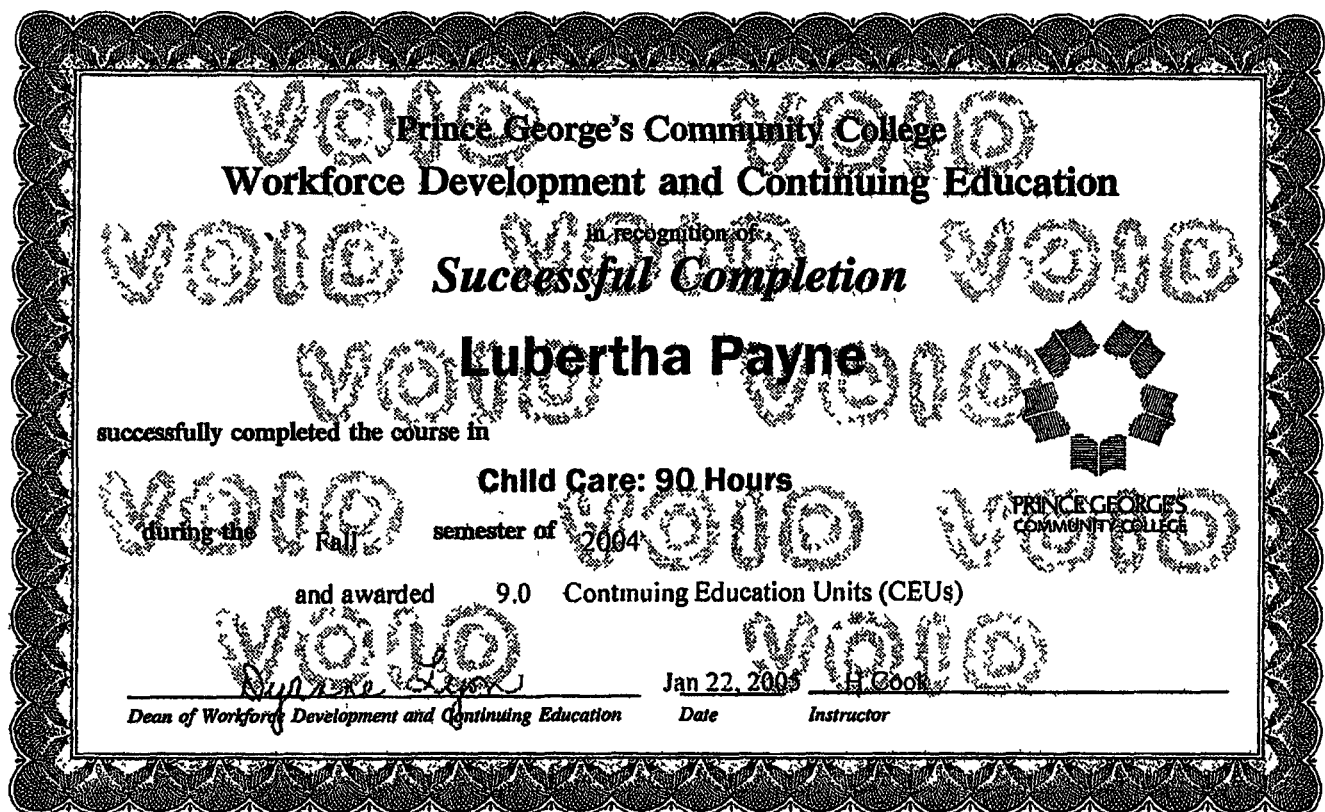
for

Satisfactory completion of 120 CDA Clock hours of formal training in
early childhood education: Family Child Care Setting Endorsement

()

Signature

August 27, 2011
Date

District of Columbia School Age Care Alliance-Certification#054-08/011



Department of Consumer and Regulatory Affairs

Permit Operating Division

1100 4th Street SW

Washington, DC 20024

Tel: (202) 442-4866

Fax: (202) 442-4862

HOP**HOME OCCUPATION PERMIT**THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

PERMIT NO. HO1000827

Date 07/26/2010

Address of Project 620 SOUTHERN AVE SE		Zipcode 20032	Zone	Ward 8	Square 6250	Suite	Lot 0011
Owner Name Luberna Payne		Owner Address 620 SOUTHERN AVE SE WASHINGTON, DC 20032-3403					
Permission is Hereby Granted To Sole Proprietorship		BZA No	Issue Date 7/26/2010		PERMIT FEE APPL: \$32.00 FEE: \$32.00		
Bus Owner/Tenant		Business Address		Business Type Tutoring (Not more than 5 students at one time)			
Total Sq. Footage 674.5	% of Use 21-25	Sign No	Sign Size and Name				
Employees 0	No Employees	Leased Parking No	Parking Type Provided NONE		Off Street Parking No		
Bed & Breakfast No	Meals Served	# Sleeping Rooms	No. Residents		Other Residents		
Days of Operation M-F		Hours of Operation From 7:00AM AM To 5:00PM PM					
Conditions/Restrictions HOP FOR A CHILD DEVELOPMENT CENTER WITH A MAXIMUM OF 6 CHILDREN As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund.							
Director Linda K. Argo		Permit Clerk Lucretia Jackson		Expiration Date			
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1636 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 462-6667 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-8567							

Certificate of Training

This Certifies that

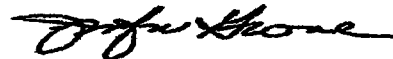
Lubertha Payne

has demonstrated a continuing commitment
to the Homeland Security and Emergency Management Agency's
Goal's of "Saving Lives and Protecting Property"

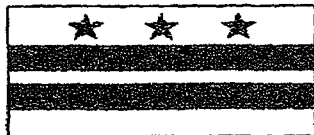
by Successfully Completing
Community-Based
Emergency Preparedness Program

(3 hrs) 11-1200pm

3/10/2012



Jennifer Greene
Director



HSEMA
HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY
DISTRICT OF COLUMBIA

HEARTSAVER FIRST AID CPR AED

Heartsaver®
First Aid CPR AED



American
Heart
Association.

Lubertha Payne

This card certifies that the above individual has successfully completed the objectives and skills evaluations in accordance with the curriculum of the AHA Heartsaver First Aid CPR AED Program. Optional completed modules are those NOT marked with an X.

Child CPR AED

Infant CPR

X Adult CPR

11/23/2012

11/23/2014

Issue Date

Recommended Renewal Date



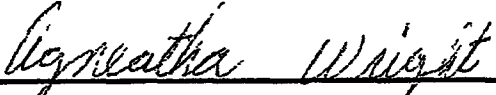
Division of Early Learning Certificate of Training

Lubertha Payne

Has completed one and a half (1.5) clock hours of training
in

“Professional Development Registry information Session”

Core Knowledge Areas: Professionalism and Advocacy


Approved By: Agneatha Wright
Professional Development Manager

September 20, 2012
Date

Trainer: Veronica Collier, Registry Coordinator

E A R L Y

S T A G E S

Certificate of Training

This is to certify that

LUBENTHA PAYNE

has successfully completed an Early Stages professional development session on

Early Childhood Developmental Milestones

and has earned 2.0 hours of professional development credit.

Date 4/14/12



Heather Elliott, Executive Director

*Early Stages is approved to conduct these professional development trainings by the Office of the State Superintendent of Education,
Division of Early Childhood Education. Trainer number: E105-S10*



DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

CERTIFICATE OF PARTICIPATION

MARY'S CENTER FOR MATERNAL AND CHILD CARE, INC.

—
This certificate is awarded to

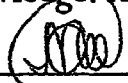
Lubertha Payne

On 7/21/12

In recognition of 3 clock hours of training in

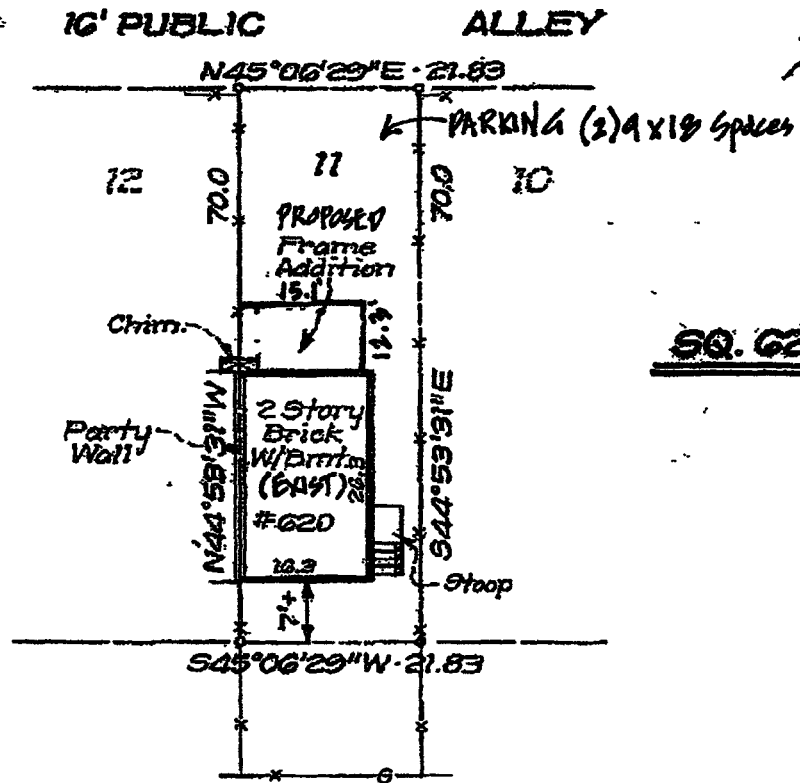
Nutrition

Core Knowledge: Health


—
Gracia de Paula
Trainer

DC Certified Early Care and Education Trainer #. 036-03/06

Exhibit 1



SQ. 6250

SOUTHERN AVENUE, S.E.

PROPOSED ADDITION