

1 i. meeting any additional design criteria established in the Land Development Code.

2
3 Policy 1.4.5

4
5 Unless otherwise prohibited or regulated by a Special Area Plan, the development of new
6 free-standing drive-through facilities or expansion of existing free-standing drive-through
7 facilities, not meeting the provisions of Policy 1.4.6, shall be required to obtain a Special
8 Use Permit. These drive-through facilities shall meet the Special Use Permit criteria
9 shown in the Land Development Code and review criteria shown in Policy 1.4.4. In
10 addition, drive-through facilities not developed under the provisions of Policy 1.4.6 or
11 1.4.7 shall also meet the following standards:

12
13 a. There shall be a minimum distance of 400 feet between the driveways of sites with
14 free-standing drive-through facilities on roadways operating at 85 percent or more of
15 capacity. Roadway capacity shall be measured using the latest version of Art-Plan or
16 a method deemed acceptable by the Technical Advisory Committee Subcommittee of
17 the Metropolitan Transportation Planning Organization. Available capacity shall
18 include consideration of reserved trips for previously approved developments and the
19 impacts of the proposed development. The 400 foot distance requirement shall not
20 apply if any of the following criteria are met:

- 21
22 1. Joint driveway access or common access is provided between the sites with free-
23 standing drive-through facilities.
24
25 2. Cross access is provided with an adjoining property.
26
27 3. A public or private road intervenes between the two sites.
28
29 4. The development provides a functional design of such high quality that the
30 pedestrian/sidewalk system and on-site/off-site vehicular circulation are not
31 compromised by the drive-through facility. This determination shall be made as
32 part of the Special Use Permit and development plan review process and shall be
33 based on staff and/or board review and approval.
34

35 b. There shall be no credit for pass-by trips in association with the drive-through facility.
36 Standards which must be met under Policy 1.1.6 shall be based on total trip
37 generation for the use and shall not include any net reduction for pass-by trips.
38

39 Policy 1.4.6

40
41 Unless otherwise prohibited or regulated by a Special Area Plan, new development or
42 expansion of free-standing drive-through facilities shall be permitted, by right, only
43 within shopping centers or mixed-use centers. No direct access connections from the
44 street to the drive-through shall be allowed. Access to the drive-through shall be through
45 the shopping center or mixed-use center parking area. Mixed-use centers shall be defined

1 as developments regulated by a unified development plan consisting of three or more
 2 acres, having a minimum of 25,000 square feet of gross floor area, and providing
 3 centralized motorized vehicle access and a mix of at least three uses which may include
 4 residential or non-residential uses in any combination. Mixed-use centers may include
 5 Planned Developments which meet the criteria listed in this policy. Development plan
 6 approval for the drive-through facility shall be based on the inclusion of appropriate
 7 pedestrian, bicycle and transit features which facilitate and encourage convenience,
 8 safety, and non-motorized use of the site; design of safe internal pedestrian access as
 9 related to the position of the drive-through lane(s); and meeting design criteria established
 10 in the Land Development Code. Drive-through facilities meeting the criteria shown in
 11 this policy shall also receive an internal capture trip credit and credit for pass-by trips.

12
 13 Policy 1.4.7

14
 15 New development of drive-through facilities shall be permitted, by Special Use Permit,
 16 when part of a single, mixed-use building, having more than one business or use at the
 17 site, where the minimum square footage of the mixed-use building is 25,000 square feet.
 18 Only one drive-through use at such sites shall be allowed. In addition to the review
 19 criteria set in the Land Development Code for Special Use Permits, the approval of the
 20 Special Use Permit shall be based on the inclusion of pedestrian, bicycle and transit
 21 features which facilitate and encourage convenience, safety and non-motorized use of the
 22 site; design of safe internal pedestrian access as related to the position of the drive-
 23 through lane(s); and meeting design criteria established in the Land Development Code.
 24 Drive-through facilities meeting the criteria shown in this policy shall also receive an
 25 internal capture trip credit and credit for pass-by trips.

26 Policy 1.4.8

27
 28 By February 2000, the City shall adopt Land Development Regulations which specify
 29 minimum design criteria for drive-through uses in the TCEA.

30
 31 Policy 1.4.9

32
 33 On the road segment of NW 13th Street from University Avenue to NW 29th Road, drive-
 34 through facilities shall only be located within shopping centers, mixed use centers, or
 35 mixed use buildings, as defined in this element. Drive-through facilities on this road
 36 segment shall meet the requirements of Policies 1.4.6 and 1.4.7.

37
 38 Policy 1.4.10

39
 40 Within the TCEA, retail petroleum sales at service stations and/or car washes, either
 41 separately, or in combination with the sale of food or with eating places, shall be required
 42 to obtain a Special Use Permit. In addition to the review criteria set in the Land
 43 Development Code for Special Use Permits, the following review standards shall be
 44 included:



and II on the west side of the proposed planned use district, so that the connections align with the connections shown on the Palm Grove Phase I and II subdivision plats.

- o. Except as may be established and shown for good cause by the owner/developer and then provided in the planned development zoning ordinance, all sidewalks shall be five-foot minimum in width. A pedestrian network consisting of sidewalks shall be provided on all internal streets. Sidewalk connections shall be made from the internal sidewalk system to the public sidewalk. All retail/commercial uses shall be interconnected by safe pedestrian/bicycle connections. Each use along the Northwest 39th Avenue frontage shall have a sidewalk connection to the public sidewalk.
- p. The planned use district shall maximize cross-access vehicle and pedestrian/bicycle connections between uses and shall maximize pedestrian safety and comfort.
- q. A traffic study shall be provided by the owner/developer as part of the application for the planned development rezoning in order to determine trip generation and trip distribution to and from the development for the purpose of concurrency.
- r. The owner/developer shall construct and transfer to the City of Gainesville a bus shelter located on the Northwest 39th Avenue frontage or an alternative location approved within the planned development zoning ordinance as part of the first phase of development.
- s. The planned use district land use category does not vest the development for concurrency. The owner/developer is required to apply for and meet concurrency management certification requirements, including transportation mitigation if necessary, at the time of application for planned development rezoning.

Objective 2.5

Eliminate uses inconsistent with the adopted Future Land Use Plan.

Policies

- 2.5.1 By June 1992, the City shall adopt Land Development Regulations that eliminate or control those uses that are found to be inconsistent with the Future Land Use Plan. Land Development Regulations shall address the continued existence of legal non-conforming uses, and amortization schedules for signs and street graphics.
- 2.5.2 No legal, nonconforming use at the time this plan is adopted shall be rendered illegal by this plan, except as provided in the Land Development Regulations.



should be located at school property corners, in order to provide the most direct travel path onto school grounds. Auto and school bus access to the site shall be designed to minimize interruption of pedestrian facilities.

Objective 1.4

The City hereby establishes the Central City Transportation Concurrency Management Area (TCMA) which includes those areas of the city most affected by major trip attractors and generators and which provides strategies to address mobility through these areas. The designated area shall have potential for achieving higher usage of mass transit, bicycle and pedestrian modes of transportation.

Policies

- 1.4.1 Upon adoption of this element, the boundaries of the Central City TCMA, depicted in the Transportation Mobility Map Series shall be as described in Exhibit D of this element. The Central City TCMA shall have sub-areas as depicted in Map 36 of the Transportation Mobility Data and Analysis Report, which may have specific standards and policies.
- 1.4.2 The Downtown/University Sub-Area shall be a pedestrian-oriented area. All development and redevelopment within this area shall be designed to maximize pedestrian comfort, security and convenience.
- 1.4.3 The City shall work with FDOT to widen sidewalks and provide traffic control and design features to enhance pedestrian activity along University Avenue from North-South Drive to the Matheson Museum.
- 1.4.4 The Future Land Use Map shall continue to show areas for housing which serve the needs of employees and students within walking distance of the University and the downtown.
- 1.4.5 The City shall limit the development of new and expanded drive-through facilities in the TCMA, which provide service or sales to customers while in their automobiles. Drive-throughs include banking facilities, restaurant, food sales, dry cleaning, express mail services and other services that are extended mechanically or personally to customers who do not exit their vehicle. Exempt from this category are auto fuel pumps and depositories which involve no immediate exchange or dispersal to the customer, such as mail boxes, library book depositories, and recycling facilities.
 - a. New drive-through facilities shall be reviewed by Special Use Permit in order to determine compliance with this element.

- i. Drive-throughs in the Downtown-University Sub-area shall not gain access directly from any collector or arterial roadway in the GUATS system, nor from any roadway adjacent to property designated Single Family on the FLUM, except as provided below. Land development regulations shall provide performance criteria to ensure that ingress and egress from such facilities does not degrade the GUATS System.
 - ii. Such facilities shall be designed to gain access internally from existing or proposed shopping centers or mixed use development parking whenever it is available.
 - iii. Development plan design shall direct auto traffic to areas of the site that will have the least conflict with pedestrian and bicycle travel routes;
 - iv. Sidewalks shall be provided on-site to ensure safe pedestrian access from public sidewalks to buildings.
 - v. Drive-through facilities shall be separated by a minimum 400 feet unless such access is restricted through the use of directional driveways or raised medians, or is internally accessed through a shopping center or other multi-use development.
 - vi. Driveway widths at the right-of-way shall not accommodate multiple drive-through lanes.
- 1.4.6 Gasoline service stations and/or car washes either separately or in combination with the sale of food or with eating places in the TCMA shall be reviewed by Special Use Permit for compliance with this element.
- a. The site design shall enhance access to any retail or restaurant facilities on-site by pedestrians.
 - b. The number and width of driveways shall be minimized.
 - c. On-site circulation shall be designed to maintain a continuous alignment of buildings and to minimize gaps in building frontage along the street.
- 1.4.7 Whenever redevelopment or reuse of a site would result in the combination of one or more parcels of land that had previously operated as separate uses, having separate driveways and parking, which are now proposed to operate jointly or to share parking facilities, the total number and location and width of driveways shall be reviewed. In order to reduce access points on the roadway system, driveways shall be eliminated when the area served can be connected within the site.

ZONING COMPLIANCE PERMIT (Ordinance # 3386)

NOTE: Check with the Building Division for Building Code compliance requirements.

Applicant Name: Robert J. Denson & Patricia J. Denson

Number: 4ZCP93

Mailing Address: 6210 NW 60 PL Gainesville, FL 32606

Phone Number: 904-377-0370 Home Office 904-375-7030 Date: 12-20-92

Address of location for which Zoning Compliance determination is requested: 1807 NW 13 PL (ST)

Building gross square footage: 2100 sf; Unit square footage: _____ sf

Present or last use of building or unit: Crossland Savings Bank

Proposed use of building or unit: Robert J. Denson, PA Law Offices

Parking presently provided for this building or unit: 5 (will be expanded for 10-12)

I have supplied the above information and it is true and correct

(Signature of Applicant)

The information contained herein (and any attachments) supplied by the applicant has been determined to comply with Zoning Code Regulations.

Zoning Administrator

Comments: Some use no change in parking. (Date) 11/7/93

/ Parking required: _____; deficient: _____

PERMIT #: 93-00181 APPLIED DATE 01-12-93

COMMERICAL REMODEL ISSUED DATE 01-25-93

ADDRESS: 1807 NW 13 STREET

LOT #: 11 ZONING: MU-1

MAP PAGE: 375 PARCEL #: 9982-1



OWNER NAME: FIRST FLORIDA S/L ASSOCIATION
ADDRESS: 1807 NW 13 STREET

CITY: GAINESVILLE

STATE: FL ZIP: 32601

PROPOSED USE: OFFICES

OCCUPANCY TYPE: B TYPE OF CONSTRUCTION: VU
SQUARE FOOTAGE: # OF STORIES:
SUBDIVISION: ILEX PARK

HEIGHT:
VALUATION: 12000.00

DESCRIPTION OF WORK
REMOVING TWO WALLS AND PUTTING UP TWO NEW WALLS
INSPECTIONS NEEDED B.E, FIRE, CC

CONTRACTOR: STARK, MARSHALL WAYNE
ADDRESS: 3523 SW 15 STREET
CITY: GAINESVILLE

STATE: FL ZIP: 32608

COMPANY NAME: MARSHALL W. STARK, BUILDING CONTRACTOR PHONE: (904)-376-3307

STATE REGISTRATION NUMBER: RB0053106

BASE FEE: 116.00 RADON FEE: TOTAL FEE: 116.00

FOR INSPECTIONS * * * * * NOTICE * * * * * CALL 334-3111

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED, OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I AGREE THAT I WILL IN ALL RESPECTS CONSTRUCT THE ABOVE DESCRIBED BUILDING IN ACCORDANCE WITH THIS STATEMENT AND THE PLANS AND SPECIFICATIONS HEREWITH FILED, AND IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF GAINESVILLE, FLORIDA. I ALSO AGREE TO REMOVE ALL BUILDING MATERIALS AND DEBRIS UPON COMPLETION OF THE JOB.

NOTICE In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other government entities such as water management districts, state agencies, or federal agencies. Additional restrictions, not of record, may also exist!

(SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT)

DATE
1/25/93
DATE

APPROVED BY) _____
A CERTIFICATE OF OCCUPANCY (CO) OR CERTIFICATE OF COMPLETION (CC) SHALL BE REQUIRED FOR ALL PERMITS ISSUED.

FAILURE TO COMPLY WITH THE MECHANICS' LIEN LAW CAN RESULT IN THE PROPERTY OWNER PAYING TWICE FOR BUILDING IMPROVEMENTS

From the Law Office of
COFFEY & MCPHERSON

HAILE VILLAGE CENTER
5346 S.W. 91ST TERRACE
GAINESVILLE, FLORIDA 32608

5/15/00

To: Jim Saunders

From: CW

Date: May 15, 2000

To: Mayor Paula M. DeLaney
City of Gainesville
Phone: (352) 334-5015
Fax: (352) 334-2036

From: C. David Coffey
Phone: (352) 335-8442
Fax: (352) 376-0026
E-Mail: coffeypa@bellsouth.net

Pages: 5 (including cover sheet)

Subject: Millennium Bank

Note: Thank you for allowing my client, Millennium Bank, to address the City Commission this evening. Our purpose is to seek clarification from the current commission of its intent when adopting ambiguous language contained within the recently approved TCEA. Attached is a letter we sent to Mr. Saunders outlining the issue for his consideration. I will do everything possible to present this issue in a straightforward manner, devoid of too much legal analysis, so that it may be acted upon by the commission in 15 minutes.

Please provide copies to each commissioner.

cc: CCOM
C/Mgr.

MAY. 15. 2000 8:15AM

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COFFEY AND McPHERSON
ATTORNEYS AT LAW

C. DAVID COFFEY, P.A.
Email: coffeypa@bellsouth.net

JOHN K. MCPHERSON, P.A.
Email: mcphersonpa@aol.com

Haik Village Center
5346 S.W. 91st Terrace
Gainesville FL 32608-7124
Phone: (352) 335-8442
Fax: (352) 376-0026

VIA FACSIMILE & U.S. MAIL

May 3, 2000

Thomas Saunders,
City of Gainesville
222 E. University Avenue
Gainesville, FL 32602

1807

Re: Drive-Through on Proposed 13th Street Millennium Bank Location
Dear Mr. Saunders:

We decided at the meeting held on this issue that we would think further about the issues raised and revisit the issue prior to Millennium Bank having to file for a variance. As you know, the deadline for submitting an application for a variance for this cycle is Monday, May 8. We remain convinced that a variance should not be needed for this drive-through since neither the TCEA nor any other City regulation prohibits its use.

The City's conclusion that Millennium Bank may not use the existing drive-through is based, as we understand it, on Policy 1.4.9 of the TCEA. That policy provides as follows:

On the road segment of NW 13th Street from University Avenue to NW 29th Road, drive-through facilities shall only be located within shopping centers, mixed use centers, or mixed use buildings, as defined in this element. Drive-through facilities on this road segment shall meet the requirements of Policies 1.4.6 and 1.4.7.

After further consideration of this policy, we are unable to make sense of it. The first sentence purports to limit drive-throughs to three locations: "shopping centers, mixed use centers, or mixed use buildings." This, however, is superfluous since Policy 1.4.6 and 1.4.7 already limit drive-throughs to these locations. Since property along the subject stretch of 13th Street would already be subject to 1.4.6 and 1.4.7, there is no apparent need for the first sentence of Policy 1.4.9.

Likewise, the second sentence of Policy 1.4.9 is equally superfluous. It provides that development along the subject stretch of 13th Street is subject to Policy 1.4.6 and Policy 1.4.7. But, of course, property along the subject stretch of 13th Street is already subject to 1.4.6 and

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Thomas Saunders
May 3, 2000
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1.4.7 because it is within the area covered by the TCEA.

Thus, Policy 1.4.9 seems to merely repeat the requirement that drive-throughs on the subject stretch of 13th Street comply with Policy 1.4.6 and Policy 1.4.7. The only other way to read Policy 1.4.9 is that it makes existing drive-throughs not located at a shopping center, mixed use center, or mixed use building immediately illegal. Surely it was not the intent of the City to require long-standing uses in the area such as McDonald's and El Indio to immediately cease using their drive-throughs. Indeed, the City, as far as we know, has taken no action to stop the use of these longstanding drive-throughs.

If Policy 1.4.9 is read to simply restate the requirement that uses along the subject stretch of 13th street comply with the policies at 1.4.6 and 1.4.7, the question is then whether the Millennium Bank proposal complies with these two policies. In fact it does comply with both, because neither policy addresses existing drive-throughs.

Policy 1.4.6 begins with: "Unless otherwise prohibited or regulated by a Special Area Plan, new development or expansion of free-standing drive-through facilities..." The Millennium Bank proposal is neither "new development" nor "expansion of a free-standing drive-through facility." Thus, Policy 1.4.6 does not apply to the proposal and does not prohibit use of the drive-through.

Policy 1.4.7 likewise applies only to "new development of drive-through facilities." Millennium Bank is not proposing new development of a drive-through facility. The subject facility already exists. Thus, Policy 1.4.7 does not apply to the proposal and does not prohibit use of the drive-through.

Even if it is assumed, for the sake of argument, that the subject drive-through were considered to be nonconforming under the TCEA, the TCEA would not prohibit its use. The TCEA specifically addresses nonconformities in Policy 1.1.15, which provides:

Developments approved prior to the adoption of the TCEA shall be required to provide any transportation improvements...required as part of the development plan approval unless an amendment is made to the development plan and the previously approved improvements...are inconsistent with current design standards or other adopted policies.

Since Millennium Bank is not proposing an amendment to the existing development plan, then the previously approved development plan controls.

Thomas Saunders
May 3, 2000
Page 3

A final issue is whether this should be treated as a new drive-through and thus subject to Policy 1.4.6 and Policy 1.4.7 of the TCEA. It was the City's position at our meeting that the drive-through was nonconforming under the TCMA which was in effect prior to the adoption of the TCEA. Because the drive-through was apparently inactive for more than nine months while it was nonconforming under the TCMA, then it ceased to exist for purposes of land use regulations and any attempt to reactivate it would be the creation of a "new" drive-through.

At the meeting I questioned whether it really was nonconforming under the TCMA, and now that I have had more time to consider the issue and look at the TCMA more closely, I remain convinced that the drive-through was not rendered nonconforming by the TCMA.

If the TCMA had said that all drive-throughs shall comply with the standards in the TCMA, and then provided a grandfather clause for existing drive-throughs, then existing drive-throughs, such as the one at issue, would have been lawful, nonconforming uses. The TCMA did not, however, use this type of regulatory language. Instead, Policy 1.4.5 of the TCMA provides: "The City shall limit the development of *new and expanded* drive-through facilities in the TCMA...." Thus, the TCMA did not purport to regulate *existing* drive-through facilities, only new or expanded ones. Since the TCMA did not purport to regulate existing drive-throughs, then existing drive-throughs could not have been nonconforming under the TCMA.

There is a fundamental difference between, on the one hand, regulating all drive-throughs and grandfathering the existing ones, and on the other hand, not regulating existing drive-throughs at all. The TCMA language is clearly of the latter type, i.e., it did not regulate existing drive-throughs and thus did not render them non-conforming. If a use is not covered by a regulation, it cannot be nonconforming under the regulation.

Because the subject drive-through has always been conforming, under both the plans and regulations of the City of Gainesville, there is no basis for saying that it ceased to exist for regulatory purposes. If it did not cease to exist, then it is an existing drive-through rather than a new one.

To summarize:

1. Policy 1.4.9 of the TCEA merely reiterates that uses along the subject stretch of 13th Street must comply with Policy 1.4.6 and Policy 1.4.7 of the TCEA.
2. The Millennium Bank proposal is not prohibited by the applicable drive-through policies in the TCEA, i.e., 1.4.6 and 1.4.7, because the subject drive-through is

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Thomas Saunders
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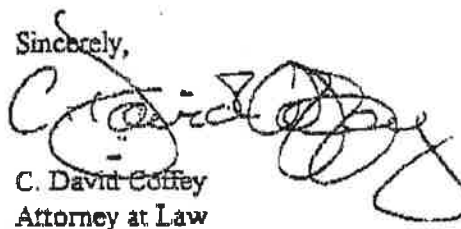
neither new nor expanded. Only new or expanded drive-throughs are covered by policies 1.4.6 and 1.4.7.

3. The fact that the subject drive-through has been inactive for some time is irrelevant because it has never been nonconforming, either under the TCMA or TCEA. It has therefore never ceased to exist for regulatory purposes.
4. Even if it is assumed, for the sake of argument, that the subject drive-through is nonconforming under the TCEA, that does not prevent it from being used. Policy 1.1.15 of the TCEA is a grandfather provision that exempts previously approved development plans from the transportation improvement policies of the TCEA.

We thus remain firmly convinced that there is no city regulation or policy that prevents the subject drive-through from being used. The proposed use of this building is consistent with the City's policies in favor of maintaining the economic viability of the older parts of town. Millennium Bank's plans should be allowed to proceed without further delay by the City.

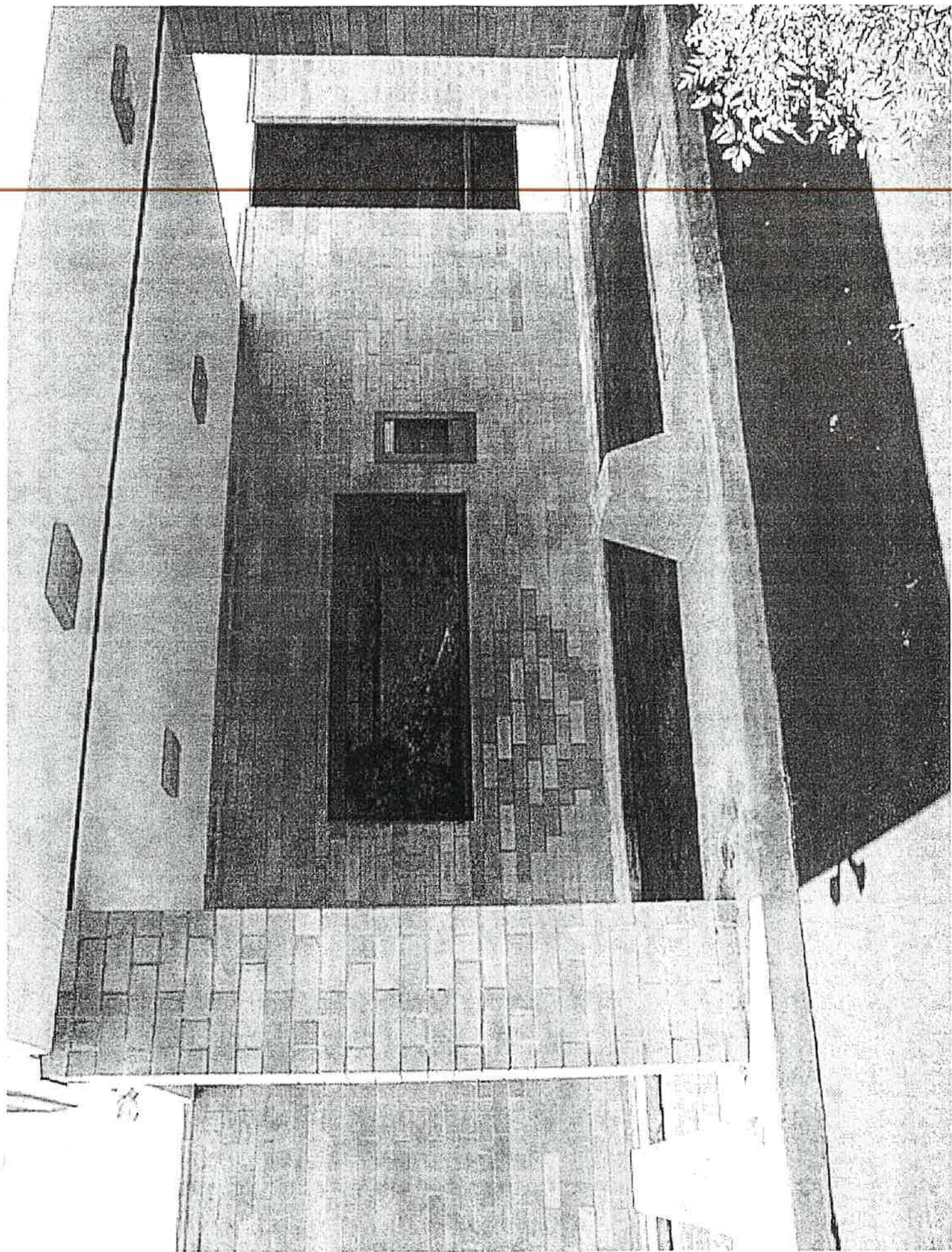
After you have had a chance to review and think about this, please give me a call to discuss. We need to come to some resolution of this by Thursday morning so that there is time to prepare the variance application, if necessary.

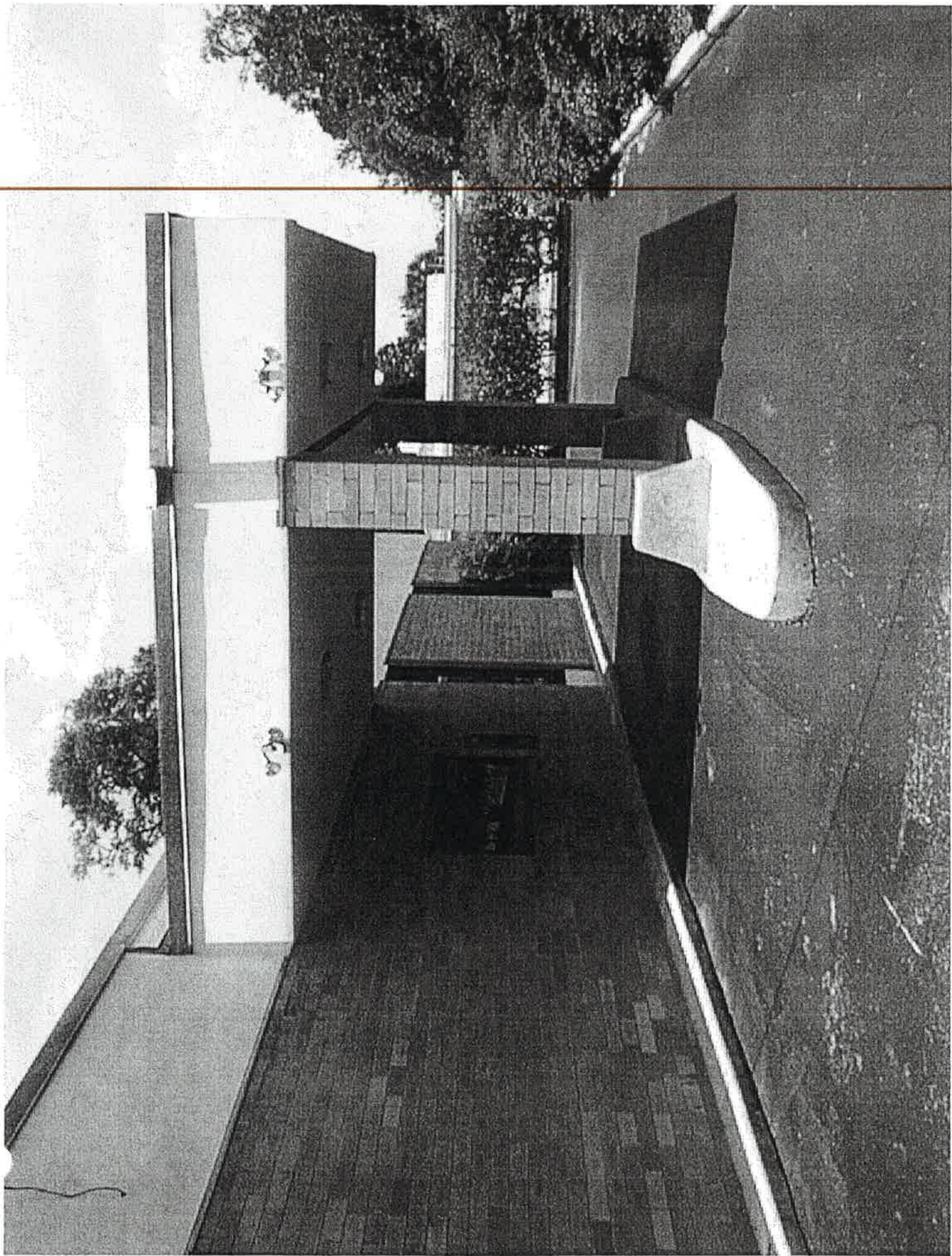
Sincerely,

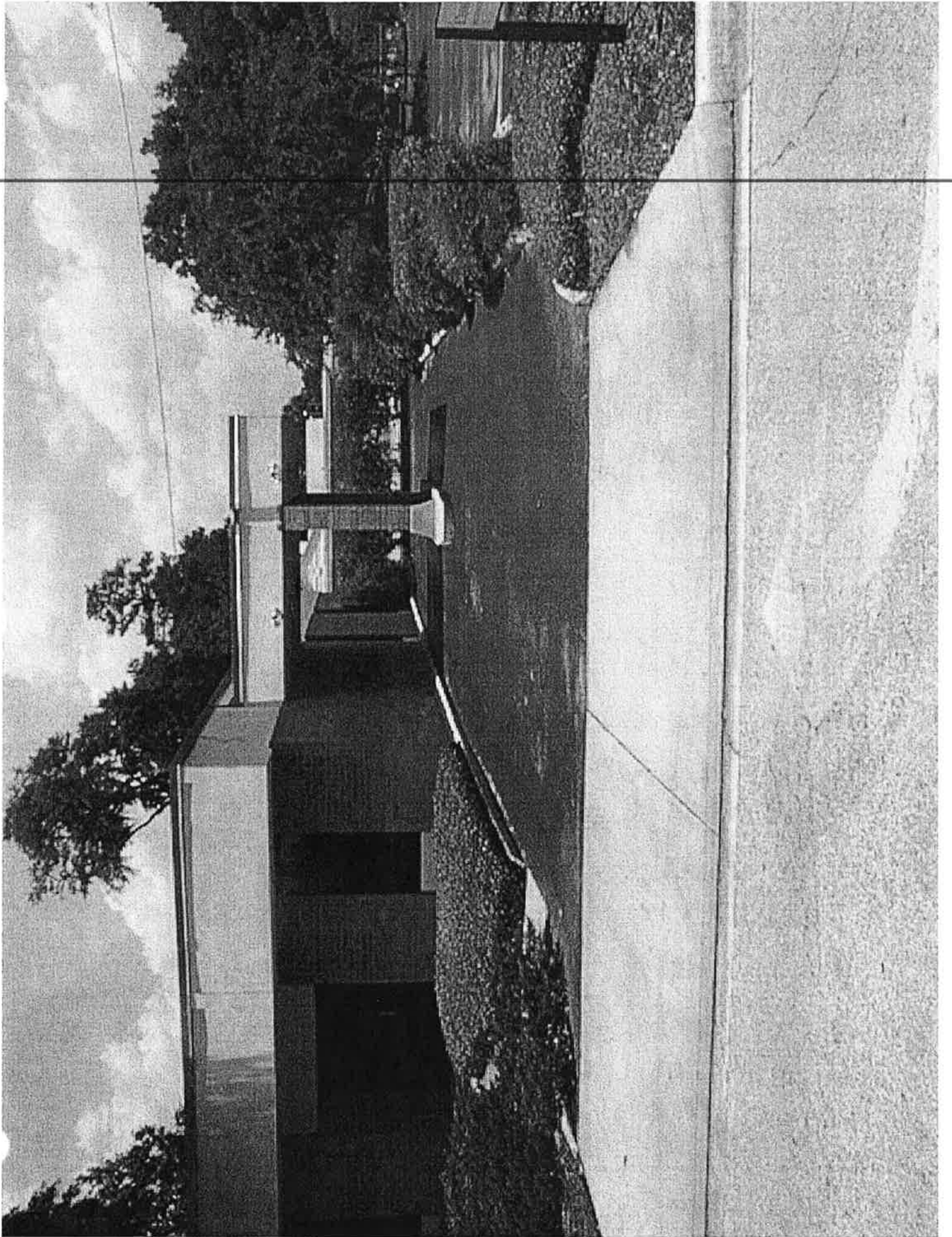


C. David Coffey
Attorney at Law

copy: Pat Miller, City Attorney's Office
Andy Williams, Millennium Bank







Planning staff
trips calculations

Existing Use at Site

2,200 square ft. law office

$\frac{2,200}{1,000} \times 11.57 = 25.45$ Average Daily Trips

$2,200 \times 1.72 = 3.78$ p.m. peak hour trips (adj. Street traffic)

Proposed Drive-Through Bank Use

$\frac{2,200}{1,000} \times 265.21 = 583.6$ Average Daily Trips

$\frac{2,200}{1,000} \times 54.77 = 120.5$ p.m. peak hour trips

Pass-by trip rate: 47%

Pass-by trip credit for ADT = 274 trips

Pass-by trip credit for p.m. peak hours = 57 trips

Net trips for Bank use (w/drive-throughs) with pass-by trips

$583.6 - 274 = 309.6$ Average Daily Trips

$120.5 - 57 = 63.5$ p.m. peak hour trips