

## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MAYSA K. MOULHEM, SP 2007-SP-147 Appl. under Sect(s). 3-503, 8-914 and 8-923 of the Zoning Ordinance to permit a home child care facility, reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6126 Glen Oaks Ct. on approx. 7,493 sq. ft. of land zoned R-5. Springfield District. Tax Map 79-3 ((23)) 22A. (Decision deferred from 2/12/08, 4/8/08, 4/29/08, and 5/20/08) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 10, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has discussed how difficult this case is.
3. The prior operation, the history of the facility has got to be a factor in the analysis.
4. Taking into account the case's history, the approval of the child care with some modifications to the development conditions adequately addresses any question of negative impacts.
5. This is a very close call and the applicant is taking some risk with the condition that is dependent on approval of something else, but that is essential to addressing the parking situation.
6. Going against staff's recommendation is not taken lightly, but the Board has given this application a thorough bedding, and it is not known what else further could be done.
7. The Board does not like the idea of even more pavement or other driveways, but at the same time the Board must identify how to deal with the parking rather than just having people park on the street.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914 of the Zoning Ordinance, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;

- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This approval is granted to the applicant, Maysa K. Moulhem, only and is not transferable without further action of this Board, and is for the location indicated on the application, 6126 Glen Oaks Court, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Lawrence H. Spilman III, dated October 4, 2007 as revised through November 21, 2007, and approved with this application, as qualified by these development conditions. Notwithstanding the foregoing, the third parking space to the east of the driveway is approved as depicted on the sketch dated April 23, 2008, included as Attachment 1 to the development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday. (Does not pertain to the childcare facility)
5. The maximum number of employees shall be limited to three (3) on-site at any one time in addition to the applicant.
6. The dwelling that contains the child care facility shall be the primary residence of the applicant.
7. Parking shall be limited to two spaces for the dwelling, and three (3) spaces in the driveway for the child care facility. All parking shall be on-site.
8. A maximum of ten (10) children shall be on site at any one time.
9. There shall be no signage associated with the home child care facility.

10. All contracts will specify that clients are to use the additional space for temporary parking solely for drop-off and pickup. If the third parking space in the driveway is not approved by the appropriate review authorities, the special permit approval for the child care facility is null and void.
11. A notice will be posted in the facility reminding clients of the contractual obligation to park in accordance with these development conditions, and the applicant will enforce that provision.
12. Employee shifts shall be staggered such that no more than two employee vehicles will be at the site at any one time.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hammack voted against the motion.

A Copy Teste:

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Paula A. McFarland, Deputy Clerk  
Board of Zoning Appeals