



SP APPLICATION ACCEPTED: June 13, 2014
VC APPLICATION ACCEPTED: November 2, 2015
BOARD OF ZONING APPEALS: December 2, 2015 @9:00 a.m.

County of Fairfax, Virginia

November 25, 2015

STAFF REPORT

**SPECIAL PERMIT NO. SP 2014-PR-112
CONCURRENT WITH VC 2015-PR-011**

PROVIDENCE DISTRICT

APPLICANT: Alice Matthews
dba Alice's Little Angels Family Daycare

OWNER: Alice Matthews
Patrick Matthews

SUBDIVISION: Fairfax Farms

STREET ADDRESS: 3933 Fairfax Farms Road, Fairfax, 22033

TAX MAP REFERENCE: 46-4 ((2)) 11 and 13

LOT SIZE: 26,872 square feet

ZONING DISTRICT: R-1, HC

ZONING ORDINANCE PROVISIONS: 3-103, 8-305, 8-923, 10-104, 18-401

SPECIAL PERMIT PROPOSAL: To permit a home child care facility and to permit an existing fence in a front yard over four feet in height.

VARIANCE PROPOSAL: To permit an accessory storage structure (shed) and accessory structures (gazebo and swingset) to remain in a front yard of a lot containing 36,000 square feet or less.

Laura Arseneau

STAFF RECOMMENDATIONS:

Staff recommends approval of SP 2014-PR-112 for the home child care facility and the fence in the front yard with adoption of the proposed development conditions contained in Appendix 1.

Staff recommends approval of VC 2015-PR-011 to permit an accessory storage structure (shed) in a front yard, and two accessory structures (a gazebo and a swingset) in a front yard, with adoption of the proposed development conditions contained in Appendix 2.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-550**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

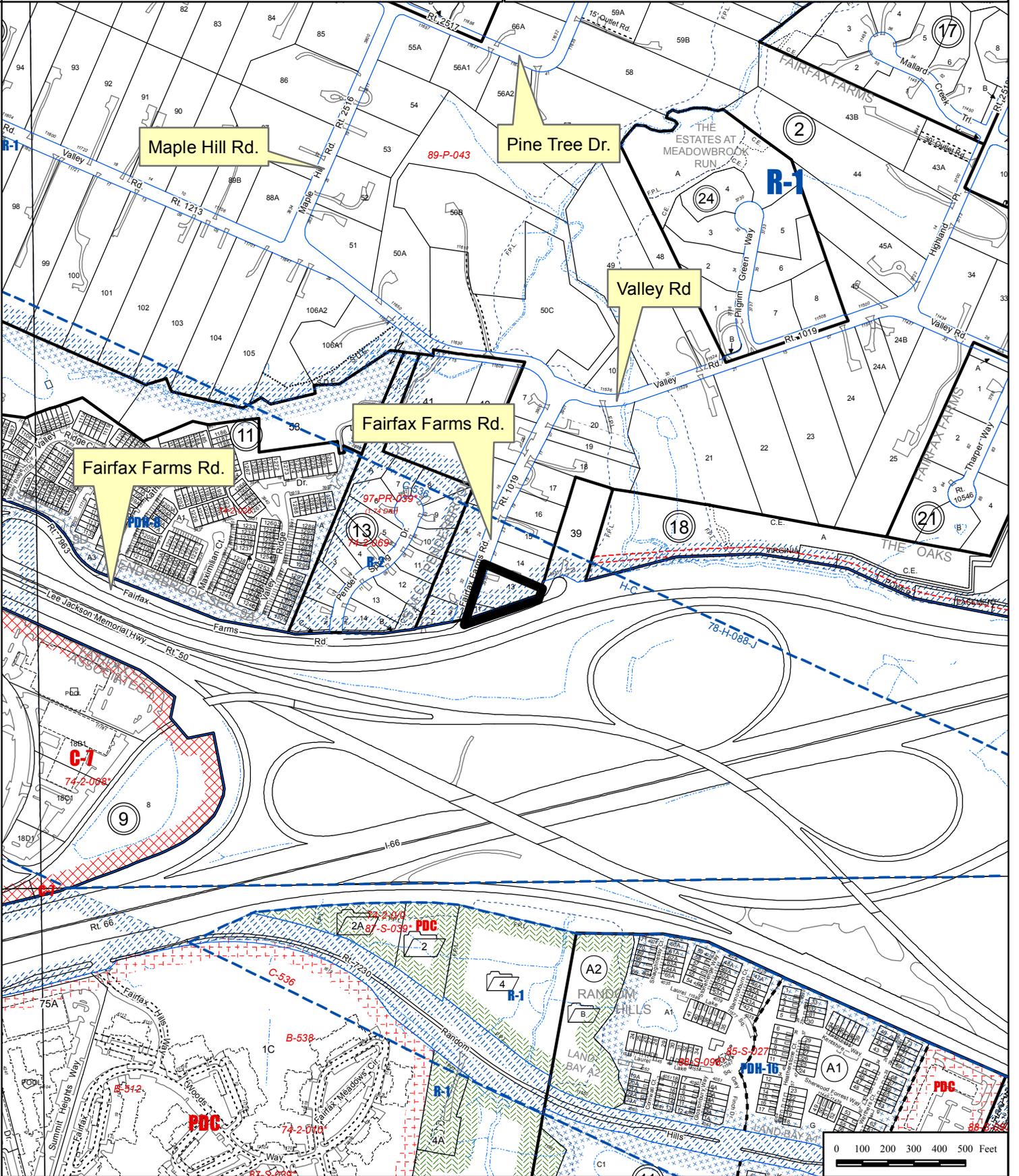
SP 2014-PR-112

ALICE MATTHEWS DBA ALICE'S LITTLE ANGELS FAMILY DAYCARE

Variance Application

VC 2015-PR-011

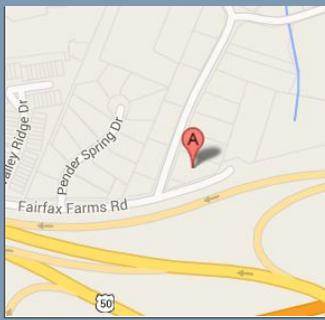
ALICE MATTHEWS DBA ALICE'S LITTLE ANGELS FAMILY DAYCARE



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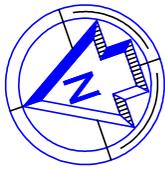
PROPERTY ADDRESS: 3933 FAIRFAX FARMS ROAD FAIRFAX, VIRGINIA 22033

SURVEY NUMBER: 1502.2969-01

FIELD WORK DATE: 10/30/2015

REVISION HISTORY: (REV.2 10/30/2015) (REV.2 10/20/2015) (REV.1 9/15/2015)

1502.2969-01
 SPECIAL PERMIT PLAT
 3933 FAIRFAX FARMS ROAD
 FAIRFAX COUNTY, VIRGINIA
 09-15-2015 SCALE 1"=50'



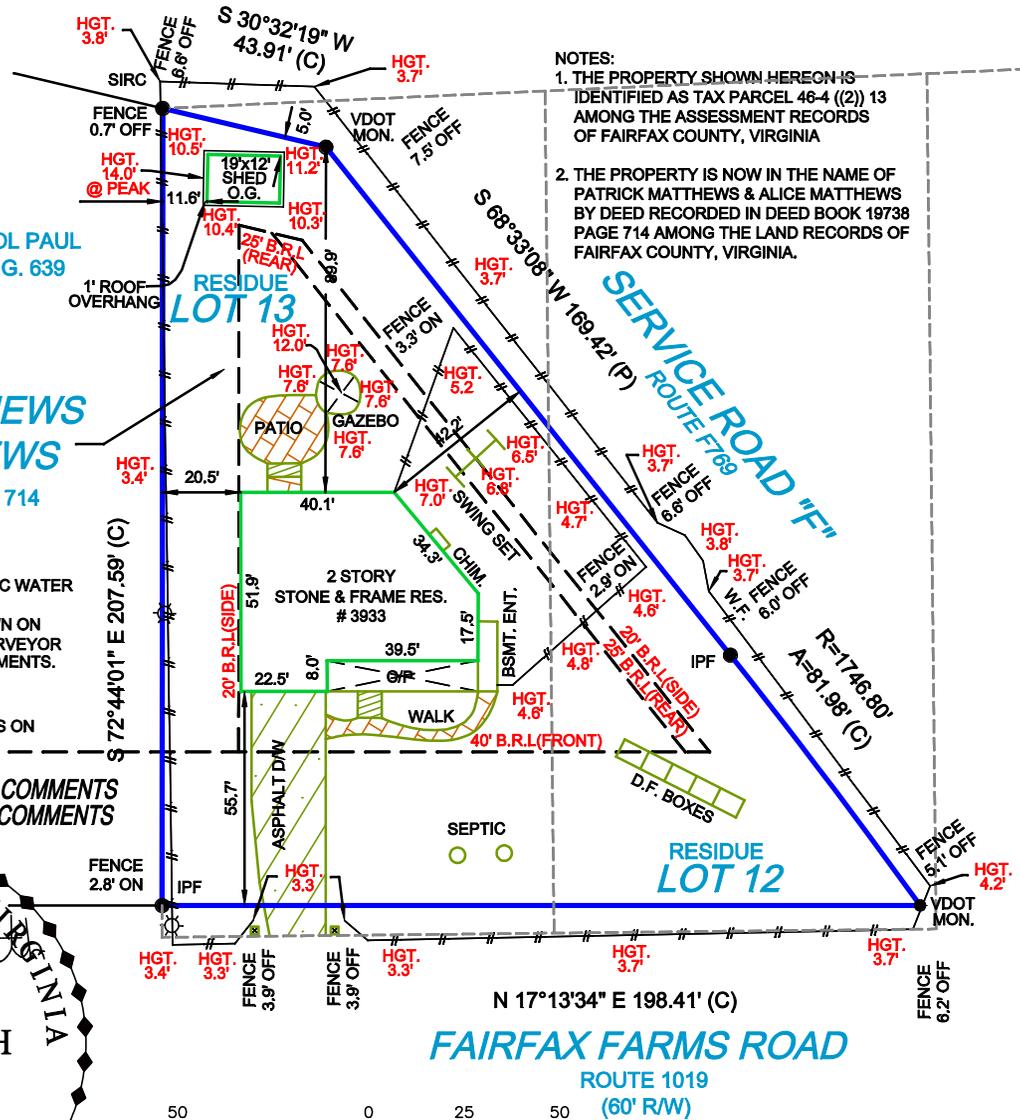
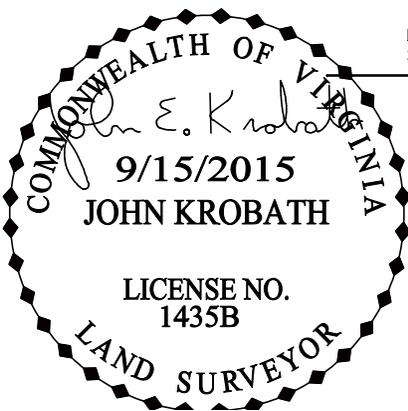
N/F
 GENE & CAROL PAUL
 D.B. 5026 P.G. 639

PROPERTY OF
PATRICK MATTHEWS
ALICE MATTHEWS
 DEED BOOK 19738, PAGE 714

24568 S.F. P.A.
 25810 S.F. CALC

1. THE PROPERTY IS SERVED BY PUBLIC WATER AND PRIVATE SEPTIC SYSTEM.
2. THERE WERE NO EASEMENTS SHOWN ON THE SUBDIVISION PLAT AND THE SURVEYOR IS NOT AWARE OF ANY OTHER EASEMENTS.
3. THE PROPERTY DOES NOT LIE IN A RESOURCE PROTECTION AREA.
4. THERE ARE NO KNOWN BURIAL SITES ON THE PROPERTY.

10-30-2015 ADDRESSED COUNTY COMMENTS
 10-20-2015 ADDRESSED COUNTY COMMENTS



NOTES:
 1. THE PROPERTY SHOWN HEREON IS IDENTIFIED AS TAX PARCEL 46-4 ((2)) 13 AMONG THE ASSESSMENT RECORDS OF FAIRFAX COUNTY, VIRGINIA
 2. THE PROPERTY IS NOW IN THE NAME OF PATRICK MATTHEWS & ALICE MATTHEWS BY DEED RECORDED IN DEED BOOK 19738 PAGE 714 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

POINTS OF INTEREST:
 NONE VISIBLE



CLIENT NUMBER:

DATE: 9/15/2015

BUYER: Alice Matthews

PREPARED BY:

SELLER:

CERTIFIED TO: ALICE MATTHEWS



THE MAP OF SURVEY OF THE HEREON DESCRIBED PROPERTY IS A TRUE AND CORRECT REPRESENTATION OF A SURVEY MADE UNDER THE SUPERVISION AND DIRECTION OF A VIRGINIA LICENSED SURVEYOR AND SAID SURVEY MEETS OR EXCEEDS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYS SET FORTH BY THE VIRGINIA BOARD OF PROFESSIONAL LAND SURVEYORS.

THIS IS A TWO PAGE DOCUMENT. THE ADVICE FOUND ON THE AFFIXED PAGE (PAGE 2 OF 2) IS AN INTEGRAL PART OF THE PLAT.

This document is not valid without all pages.

LEGAL DESCRIPTION:

PART OF LOTS 11, 12 AND 13, FAIRFAX FARMS, AS RECORDED IN DEED BOOK 459, AT PAGE 320 AND BEING MORE PARTICULARLY DESCRIBED IN DEED BOOK 19738 AT PAGE 714 BOTH AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

JOB SPECIFIC SURVEYOR NOTES:

THE BEARING SYSTEM SHOWN HEREON HAS BEEN REFERENCED TO A PLAT AS RECORDED IN DEED BOOK 459 AT PAGE 320 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA

GENERAL SURVEYOR NOTES:

LEGEND:

SURVEYOR'S LEGEND

<p>BOUNDARY LINE</p>  <p>STRUCTURE</p>  <p>WALL OR PARTY WALL</p>  <p>EASEMENT</p>  <p>EDGE OF WATER</p> 	<p>WOOD</p>  <p>ASPHALT</p>  <p>WATER</p>  <p>CALC. PNT.</p>  <p>FLY-O</p> 	<p>CONCRETE</p>  <p>BRICK or TILE</p>  <p>COVERED AREA</p>  <p>BENCH MARK</p>  <p>CALCULATED POINT</p>  <p>CENTRAL ANGLE or DELTA</p>  <p>CONTROL POINT</p>  <p>CONCRETE MONUMENT</p>  <p>CATCH BASIN</p>  <p>ELEVATION</p>  <p>FIRE HYDRANT</p>  <p>MANHOLE</p>  <p>TREE</p>  <p>UTILITY OR LIGHT POLE</p>  <p>WELL</p>  <p>COMMON OWNERSHIP</p>  <p>GUYWIRE OR ANCHOR</p> 	<p>A/C AIR CONDITIONING B.R. BEARING REFERENCE BLK. BLOCK B.C. BLOCK CORNER BLDG. BUILDING BFP BACKFLOW PREVENTOR B,R,L BUILDING RESTRICTION LINE B5MT. BASEMENT BAW BAYBOX WINDOW (C) CALCULATED C CURVE CATV CABLE TV. RISER C.B. CONCRETE BLOCK CHIM. CHIMNEY C.L.F. CHAIN LINK FENCE C.O. CLEAN OUT CONC. CONCRETE CL CENTER LINE C/S CONCRETE SLAB C/P COVERED PORCH COR. CORNER (D) DEED DAW DRIVEWAY D.F. DRAIN FIELD EUB ELECTRIC UTILITY BOX ENCL. ENCLOSURE ENT. ENTRANCE E.O.P. EDGE OF PAVEMENT E.O.W. EDGE OF WATER (F) FIELD F.F. FINISHED FLOOR F/DH FOUND DRILL HOLE FIFC FOUND IRON PIPE & CAP FIRC FOUND IRON ROD & CAP FIR FOUND IRON ROD FIP FOUND IRON PIPE FCM FND. CONCRETE MONUMENT FN FOUND NAIL FN#D FOUND NAIL & DISC FND. FOUND GAR. GARAGE GM GAS METER ID. IDENTIFICATION INST. INSTRUMENT INT. INTERSECTION</p>	<p>L LENGTH LB# LICENSE # - BUSINESS LS# LICENSE # - SURVEYOR (M) MEASURED MES. MITERED END SECTION M.F. METAL FENCE N.R. NON RADIAL N.T.S. NOT TO SCALE O.C.S. ON CONCRETE SLAB O.G. ON GROUND O.H.L. OVERHEAD LINE O.R.B. OFFICIAL RECORD BOOK OH. OVERHANG O/A OVERALL O/S OFFSET PKN PARKER-KALON NAIL PSM PROFESSIONAL SURVEYOR AND MAPPER PLS PROFESSIONAL LAND SURVEYOR (P) PLAT P/E POOL EQUIPMENT FLT PLANTER PP PINCHED PIPE P.B. PLAT BOOK P.I. POINT OF INTERSECTION P.O.B. POINT OF BEGINNING P.O.C. POINT OF COMMENCEMENT P.T. POINT OF TANGENCY P.C. POINT OF CURVATURE P.C.C. POINT OF COMPOUND CURVATURE P.R.C. POINT OF REVERSE CURVATURE P.C.P. PERMANENT CONTROL POINT P.R.M. PERMANENT REFERENCE MONUMENT R RADIUS or RADIAL (R) RECORD RES. RESIDENCE R/W RIGHT OF WAY (S) SURVEY S.B.L. SETBACK LINE S.C.L. SURVEY CLOSURE LINE SCR. SCREEN SDH SET DRILL HOLE SEP. SEPTIC TANK SEW. SEWER S.F. SQUARE FEET</p>	<p>S/GD SET GLUE DISC S/DH SET DRILL HOLE SIR SET IRON ROD SIRC SET IRON ROD & CAP SN SET NAIL SN#D SET NAIL & DISC STY. STORY S.T.L. SURVEY TIE LINE SV SEWER VALVE SW SIDEWALK S.W. SEAWALL TEL. TELEPHONE FACILITIES T.O.B. TOP OF BANK TX TRANSFORMER TYP. TYPICAL U.R. UTILITY RISER W/C WITNESS CORNER W/F WATER FILTER W.F. WOODEN FENCE WM WATER METER/VALVE BOX WV WATER VALVE V.F. VINYL FENCE</p>	<p>A.E. ANCHOR OR ACCESS EASEMENT C.M.E. CANAL MAINTENANCE ESMT. C.U.E. COUNTY UTILITY ESMT. D.E. DRAINAGE EASEMENT ESMT. EASEMENT I.E./E.E. INGRESS/EGRESS ESMT. IRR.E. IRRIGATION EASEMENT L.A.E. LIMITED ACCESS ESMT. L.B.E. LANDSCAPE BUFFER ESMT. L.E. LANDSCAPE ESMT. L.M.E. LAKE OR LANDSCAPE MAINTENANCE EASEMENT M.E. MAINTENANCE EASEMENT P.U.E. PUBLIC UTILITY EASEMENT R.O.E. ROOF OVERHANG ESMT. S.W.E. SIDEWALK EASEMENT S.W.M.E. STORM WATER MANAGEMENT ESMT. T.U.E. TECHNOLOGICAL UTILITY ESMT. U.E. UTILITY EASEMENT</p>
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ELECTRONIC SIGNATURE:

In order to "Electronically Sign" all of the PDFs sent by STARS, you must use a hash calculator. A free online hash calculator is available at <http://www.fileformat.info/tool/md5sum.htm>

To Electronically Sign any survey PDF:

1. Save the PDF onto your computer.
2. Use the online tool at <http://www.fileformat.info/tool/md5sum.htm> to browse for the saved PDF on your computer.
3. Select the Hash Method as SHA.
4. Click Submit.

Your PDF is electronically signed if all of the characters in the SHA-1 code submitted by STARS matches the code which is produced by the hash calculator. If they match exactly, your PDF is electronically signed. If the codes do not match exactly, your PDF is not authentic.

PRINTING INSTRUCTIONS:

1. While viewing the survey in Adobe Reader, select the "Print" button under the "File" tab.
2. Select a printer with legal sized paper.
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4. Under the "Page Handling" section, select the number of copies that you would like to print.
5. Under the "Page Scaling" selection drop down menu, select "None."
6. Uncheck the "Auto Rotate and Center" checkbox.
7. Check the "Choose Paper size by PDF" checkbox.
8. Click OK to print.

TO PRINT IN BLACK + WHITE:

1. In the main print screen, choose "Properties".
2. Choose "Quality" from the options.
3. Change from "Auto Color" or "Full Color" to "Gray Scale".

OFFER VALID ONLY FOR THE BUYER LISTED ON PAGE 1.

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25% off
 (UP TO \$500)

ANY FUTURE SURVEYING SERVICES ON THIS PROPERTY

Offer valid only for the buyer as listed on the first page of the survey. Total discount not to exceed \$500.

SPECIAL PERMIT REQUESTS

The applicant is seeking a special permit to allow a home child care facility for up to 12 children. A more detailed description of the home child care proposal is provided on page two.

The applicant is also seeking a special permit to allow an existing fence over four feet in height to remain in a front yard along Service Road “F”. The white picket fence is a maximum of 5.2 feet in height and encloses the play area.

VARIANCE REQUESTS

The applicant is seeking a variance to permit an accessory storage structure (a 14 foot tall shed) and two accessory structures, a 12 foot tall gazebo and a 7 foot tall swingset, to remain in the front yard of a property less than 36,000 square feet. These structures are located in the front yards adjacent to Service Road “F”.

A copy of the special permit and variance plat, titled “Property of Patrick Matthews, Alice Matthews,” prepared by John E. Krobath, L.S., dated September 15, 2015 as revised through October 30, 2015, is included in the front of the staff report.

Copies of the proposed special permit development conditions, proposed variance development conditions, the statement of justification with select file photographs and the affidavit are contained in Appendices 1 through 4, respectively.

CHARACTER OF THE SITE AND SURROUNDING AREA

The site is developed with a two story single-family detached dwelling. The property has three front yards: one along Fairfax Farms Road and two along Service Road “F” to the south and east. Service Road “F” is an extension of Fairfax Farms Road that runs along the northern side of the off-ramp from I-66 to Route 50, but provides no access to those roadways. A covered porch, walkway and asphalt driveway are located in the front yard adjacent to Fairfax Farms Road. A



Figure 1- Aerial View of Subject Property

fenced-in play area with a swingset, a basement entrance, patio and a gazebo are located in the front yards along Service Road “F.”

A four foot tall white picket fence is located on the perimeter of the entire property. A separate white picket fence, a maximum of 5.2 feet tall, encloses the play area and is located in the front yard along Service Road “F”.

The property is located north of the intersection of Route 50 and Interstate I-66. The subject property and surrounding properties to the north, east and west are zoned R-1 and are developed with single family detached dwellings. The property to the south is VDOT right-of way and an exit ramp from I-66.

BACKGROUND

Fairfax County Tax Records indicate that the single-family dwelling was constructed in 2007, purchased by the property owner in 2008.

The only building permits in county records related to the property include the demolition permit of the former residence on the lot and the permit for the construction of the new dwelling.

DESCRIPTION OF THE PROPOSED USE

The applicant requests approval of a special permit for a home child care facility for up to 12 children on-site at any one time, between the hours of 7:00 a.m. and 5:30 p.m. Monday through Friday. Currently, there are two assistants.

The home child care facility is operated in the basement of the dwelling. The enclosed play area is located in a front yard of the property.

The applicant holds a current Family Day Home License, effective for three years and expires on April 22, 2018, from the Commonwealth of Virginia, Department of Social Services. The license permits a capacity of twelve children, with the hours of operation from 7:00 a.m. through 5:30 p.m., Monday through Friday. The license permits children from six weeks through 10 years of age. A copy of the license is included as Appendix 5.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area II, Fairfax Planning District
Planning Sector: Fox Lake Community Planning Sector (F4)
Plan Map: Fairfax Center Area –C2

Site Specific Language:

“Land Use

Sub-units C1, C2, C3

These sub-units contain the stable Fairfax Farms subdivision which should be buffered and preserved. The easternmost part of Sub-units C1 and C3 contain low density residential areas adjacent to Fairfax Farms and should reflect that land use, density and character. West and north of Difficult Run the area is planned for .5-1 dwelling unit per acre. East of Difficult Run it is planned for .5-1 and .1-.2 dwelling unit per acre, private open space or stream valley park. The area adjacent to Fairfax Farms Road is planned for private open space or stream valley park and 1-2 dwelling units per acre. Redevelopment to higher densities or intensities should not occur. Infill of vacant lots in the subdivision and in adjacent areas should be compatible with existing development in terms of use, intensity, and dwelling unit type. Fairfax County should continue to exercise its best efforts to protect the residential neighborhood of Fairfax.”

Staff believes that the application meets the Comprehensive Plan Provisions as the property is already developed as R-1 and no new construction is being proposed.

Bulk Standards (R-1)		
Standard	Required	Provided
Lot Size	36,000 sf.	26,872 sf. ¹
Lot Width	Corner: 175 feet	198.41 feet
Building Height	35 feet max.	< 35 feet
Front Yard	Min. 40 feet	55.7 feet, 42.2 feet, 89.9 feet
Side Yard	Min. 20 feet	20.5 feet

1. The lot was developed in 1947 and therefore is deemed an allowable, but non-conforming according to Sect. 2-405.1 of the Zoning Ordinance.

Accessory Structure Setback Standards				
Structure	Yard	Minimum Yard Required	Existing Location	Permit Status
Shed	Front (Service Road F)	40.0 feet	5.0 feet ¹	Permits to be obtained with this application
	Side	20 feet	11.6 feet	n/a
Patio	Side	20 feet	< 21 feet	n/a
Gazebo	Front	40 feet	Approx. 25 feet ¹	If needed
Swing set	Front	40 feet	Approx. 13 feet ¹	n/a

1. The locations of these structures are being requested by the application to be will be brought into conformance with approval of the variance portion of this application.

On-Site Parking and Site Circulation

The existing two car garage and existing driveway combined can accommodate six vehicles. The applicant parks their car in the garage. The assistants park on Fairfax Farms Road.

Vehicular access to the site is provided by an asphalt driveway from Fairfax Farms Road. A walkway connects the driveway and front porch to the basement entrance on the side of the dwelling, which is the entrance to the home child care.

Zoning Inspection Branch Comments (Appendix 6)

Staff found an accessory storage structure (shed) located in the front yard of a property less than 36,000 square feet. The applicant is requesting approval of the location of the shed with the variance portion of this application.

Special Permit Zoning Ordinance Requirements (Appendix 7)

- Sect. 8-006 General Special Permit Standards
- Sect. 8-303 All Group 3 Uses
- Sect. 8-305 Additional Standards for Home Child Care Facilities
- Sect. 8-923 Standards for a Fence in a Front Yard
- Sect. 10-103 Par. 6 Location Regulations

General Standards for Special Permit Uses (Sect. 8-006)

Standards 1 and 2 Comprehensive Plan/ Zoning District	The Comprehensive Plan recommends residential uses and the property is developed with a residential use. The R-1 District permits a home child care facility as an accessory use with
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	special permit approval. The proposed use is in harmony with the Comprehensive Plan and the general purpose and intent of the R-1 District.
Standard 3 Adjacent Development	No new construction is proposed. In staff’s opinion, the proposed use will not hinder or discourage use or development of neighboring properties or value.
Standard 4 Pedestrian/Vehicular Traffic	Arrival and departure times of the children are staggered and staff has proposed a development condition for the driveway to be made available for the home child care use. In staff’s opinion, the proposed use is not hazardous and does not conflict with existing and anticipated traffic in the neighborhood.
Standard 5 Landscaping/Screening	There is existing fencing that separates the play area from the neighbors. There have been no complaints from the neighbors about the existing home child care use.
Standard 6 Open Space	There is no prescribed open space requirement in the R-1 District.
Standard 7 Utilities, Drainage, Parking, and Loading	There are no changes to the utilities and drainage serving the property or use. As previously discussed, the driveway would be used for parking for the home child care use.
Standard 8 Signs	Sect. 10-103 of the Zoning Ordinance prohibits signs for home child care facilities.

Standards for all Group 3 Uses (Sect. 8-303)

Standard 1 Lot Size and Bulk Regulations	The lot size and bulk regulations as the lot is grandfathered and was developed prior for the establishment of the Zoning Ordinance. No exterior modifications are proposed with this application.
Standard 2 Performance Standards	The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.
Standard 3 Site Plan	Home child care facilities are not subject to the provisions of Article 17, Site Plans.

Additional Standards for Home Child Care Facilities (Sect. 8-305)

Standard 1 Maximum of 12 Children & Non-Resident Employee	The applicant is proposing a maximum of 12 children at any one time, which does not exceed the maximum number of children permitted at any one time. The applicant requests two non-resident employees.
Standard 2 Access and Parking	Arrival and departure times of the children are staggered and parking is available on the driveway. In staff’s opinion, the proposed use is not hazardous and does not conflict with

	existing and anticipated traffic in the neighborhood.
Standard 3 Landscaping/Screening	There is an existing fence in the front yard that provides screening of the outdoor play area.
Standard 4 Submission Requirements	The applicant submitted a house location survey in lieu of a special permit plat, which is a permissible alternative.
Standard 5 Code of Virginia, Title 63.2, Chapter 17	The applicant has a valid home child care license through April 22, 2018, for 12 children from 7:00 a.m. to 5:30 p.m., Monday through Friday.

Provisions for Increase in Fence in Any Front Yard (8-923)

Standard 1 Fence Shall Not Exceed 6 feet in Height	The tallest point of the fence does not exceed six feet in height.
Standard 2 Meet Sight Distance Requirements	The six foot high fence is not located in any areas that may affect sight distance.
Standard 3 Proposed Fence Height is Warranted	The property has three front yards. The applicants are requesting the additional fence height to enclose the play area for the home child care to increase the safety of the children.
Standard 4 Fence is in Character with On-site and Off-site Uses	The properties directly to the east and south are undeveloped VDOT right-of-way and the existing fence would not be considered visually intrusive. The fence is visible from the properties to the west, but the fence is similar in color and style to other fences on the property and in the neighborhood.
Standard 5 Fence Will Not Adversely Impact Other Properties	Staff believes the fence will not adversely impact other properties.
Standard 6 BZA May Impose Conditions	Proposed development conditions are included in Appendix 1.
Standard 7 Meet Submission Requirements	A copy of the plat is included in the beginning of this report.
Standard 8 Architectural Depictions Provided	Pictures of the existing fence have been included in Appendix 2.

Use Limitations (Par. 6 of Sect. 10-103)

Part A Maximum Number of Children	The maximum number of children permitted by-right at any one time is seven in a single family detached dwelling. The applicant requests special permit approval to allow a maximum of twelve children at any one time.
Part B Licensed Provider/ Primary Residence	The applicant is a state licensed home child care provider and the subject property is the provider’s primary residence.
Part C No Exterior Evidence Except Play Equipment	There is no exterior evidence of the proposed use except play equipment and toys.
Part D Non-Resident Employee	The applicant is proposing two non-resident employees.
Part E Provider is a Non-Resident	The provider is a resident and owns the property.
Part F Code of Virginia, Title 63.2, Chapter 17	Chapter 30 of the Code of the County of Fairfax addresses home child care facilities and Title 63.2, Chapter 17 of the Code of Virginia addresses licensure and registration procedures. The applicant has a valid state home child care license.
Part G Increase in Children or Non-Resident Person	The maximum number of children permitted by-right at any one time is seven in a single family detached dwelling and can be increased to up to 12 children with special permit approval. The applicant requests special permit approval to allow a maximum of twelve children at any one time.

Variance Zoning Ordinance Requirements (Appendix 8)

- Code of Virginia Sec. 15.2-2309, as amended

In addition to meeting the definition of a variance, an application must satisfy a specific set of criteria in order for the Board to grant a variance. According to the recently amended Virginia state code in Sec. 15.2-2309, a variance meeting the definition shall be granted if the following elements are met:

1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance (Sect. 15.2-2309.2)

In staff's opinion, the request for the accessory structures, the shed, swingset and gazebo is driven by a physical characteristic of the property. The lots were originally platted in 1947, redeveloped in 2007 and Lot 13 has three front yards, one along Fairfax Farms Road and two front yards along Service Road "F." The Zoning Ordinance does not allow any accessory structures in a front yard of a property under 36,000 square feet. The current property is 26,872 square feet. The only by-right location for these structures is in the side yard of the property. However, the side yard of the property is only 20.5 feet wide. The Zoning Ordinance requires a side yard setback of 20 feet. Therefore the location of any structure over 7.5 feet in height, including the existing accessory structures would require a special permit. The granting of the variance would permit typical utilization of the property by allowing a storage structure, a gazebo and a swingset to remain in what is effectively the backyard.

Therefore, staff believes that the application for the accessory structures satisfies this standard.

2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Sect. 15.2-2309.2(i))

Staff believes the property was acquired in good faith based on the information contained in the applicants' statement of justification. The lot was platted in 1947 and has continued three front yards since the construction of the I-66 and Route 50 interchange. In addition, the placement of the northern side of the house located almost directly on the building restriction line setback, greatly limits the area available for by-right accessory structures in a side yard.

3. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area (Sect. 15.2-2309.2(ii))

The applicant is requesting that the accessory structures remain in their existing location. The structures do not provide a significant visual detriment to neighboring properties and there have been no complaints. Additionally there are no neighbors adjacent to, or across from the Service road. Therefore the accessory structure are not visible from adjoining properties. Therefore, staff believes that the application meets this provision.

4. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general reduction to be adopted as an amendment to the ordinance (Sect. 15.2-2309.2(iii))

Staff believes a property with three front yards is not a hardship generally shared by any of the neighboring properties. It was created in part by the construction of the I-66 and

Route 50 interchange. The placement of the dwelling on the lot, coupled with the three front yards greatly limits the by-right placement of any accessory structures. The only location to place an accessory structure without a variance would be in the side yard of the dwelling.

5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property (Sect. 15.2-2309.2(iv))

Staff finds that variance requests for the accessory structures in a front yard would not result in a use that is not otherwise permitted or cause a change in the zoning classification of the property. The shed, gazebo and swingset are all accessory structures to the primary dwelling.

6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application (Sect. 15.2-2309.2(v))

The variance application is the only mechanism to provide the relief requested for accessory structures a front yard.

CONCLUSION/ RECOMMENDATION

Staff believes that the subject application is in conformance with the applicable Zoning Ordinance provisions.

Staff recommends approval of SP 2014-PR-112 for the home child care facility and the fence in the front yard with the adoption of the proposed development conditions contained in Appendix 1.

Staff believes the request for the accessory structures with the variance application, is driven by the physical characteristic of property which has three front yards. The location of the dwelling, with a shallow side yard, limits the by-right placement of any accessory structures on the lot. In addition the accessory structures are screened from the view of the adjacent properties. There are no complaints related to the accessory structures on file.

Therefore, staff recommends approval of VC 2015-PR-011 for the accessory storage structure (shed) and accessory structures (gazebo and swingset) in a front yard with the adoption of the proposed development conditions contained in Appendix 2.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

APPENDICES

1. Proposed Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Statement of Justification with Select File Photographs
4. Applicant's Affidavit
5. State Family Day Home License
6. Zoning Inspections Branch Comments
7. Applicable Zoning Ordinance Provisions
8. Variance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2014-PR-112****November 25, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2014-PR-112 located at Tax Map 46-4 ((2)) 11 and 13 to permit a home child care facility and a fence in a front yard, pursuant to Sects. 3-103, 8-305, and 8-923 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This approval is granted to the applicant, Alice Matthews dba Alice's Little Angels Family Daycare, and is not transferable without further action of the Board, and is for the location indicated on the application, 3933 Fairfax Farms Road, and is not transferable to other land.
2. This special permit is granted only for the home child care use and the fence in the front yard over four feet in height as indicated on the plat entitled "Property of Patrick Matthews, Alice Matthews," prepared by John E. Krobath, L.S., dated September 15, 2015 as revised through October 30, 2015, and approved with this application, as qualified by these development conditions.
3. A copy of the special permit conditions 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 applicant shall continue to operate with the approved hours of operation, 7:00 a.m. to 5:30 p.m., Monday through Friday.
5. The dwelling that contains the child care facility shall be the primary residence of the applicant.
6. Excluding the provider's own children, the maximum number of children on-site at any one time shall not exceed twelve.
7. A maximum of two nonresident employees may be involved in the home child care facility, limited to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.
8. All pick-up and drop-off of children shall take occur in the driveway.
9. There shall be no signage associated with the home child care facility.

-
10. The approval of the use is contingent upon maintenance of a state-issued family day home license that permits the number and ages of children being cared for at the home child care facility.
 11. Any portions of the dwelling associated with the home child care facility that are used as a children's sleeping or rest area shall be located in a room with an operable exterior window, door or similar device that provides for a means of escape and access for rescue in the event of an emergency. Such emergency escape and rescue openings shall be of the dimension and size specified by the Virginia Uniform Statewide Building Code.
 12. The child care facility shall be operated in accordance with Chapter 30 of the County Code, entitled "Minimum Private School and Child Care Facility Standards".
 13. The accessory storage structure shall remain locked during the hours of operation of the home child care facility.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall take effect upon adoption of a resolution of approval by the Board of Zoning Appeals.

PROPOSED DEVELOPMENT CONDITIONS**VC 2015-PR-011****November 25, 2015**

If it is the intent of the Board of Zoning Appeals to approve VC 2015-PR-011 located at Tax Map 46-4 ((2)) 11 and 13 to permit an accessory storage structure (shed) and accessory structures (gazebo and swingset) in a front yards of a corner lot, pursuant to Sects. 18-401 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This variance is granted only for the accessory storage structure (shed) and the accessory structures (gazebo and swingset) in the front yard as indicated on the plat entitled Property of Patrick Matthews, Alice Matthews,” prepared by John E. Krobath, L.S., dated September 15, 2015, as revised through October 30, 2015, and approved with this application, as qualified by these development conditions.

STATEMENT OF JUSTIFICATION
FOR A HOME CHILD CARE FACILITY

RECEIVED
Department of Planning & Zoning
MAR 21 2014
Zoning Evaluation Division

ALICE MATTHEWS
3933 FAIRFAX FARMS RD
FAIRFAX, VA 22033
703-218-1608
alicesangels@verizon.net

March 10, 2014

Fairfax County Department of Planning & Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035

Re: Special Permit Application

Applicant: Alice Matthews

Zoning Ordinance Section 8-305 for Home Child Care Facility and
Section 8-004 of General Standards

Tax Map #: 0464-02-0013

Zoning District: R-1

Lot Size: .564

To whom it may concern,

Please accept the following as my statement of justification for a special permit for a home child care facility in my home. I own and live in a single-family detached dwelling at 3933 Fairfax Farms Road in Fairfax, Virginia with my husband and adult daughter. The property is zoned R-1 and I understand I need to seek approval of a special permit in order to operate a child care facility within my home. I am currently licensed by the State of Virginia to have 12 children in my child care facility in my home. Below is information about my child care facility's operations:

Hours. The child care is opened from 7:00 AM to 5:30 PM, Monday through Friday.

Number of Children. I care for up to 12 children at any one time.

Employees: I have two assistants who work full-time.

Arrival Schedule. Four of the children arrive between 7:00 AM and 7:45 AM. Three of the children arrive between 8:00 AM and 8:30 AM; five of the children arrive between 8:30 AM and 9:00 AM. (See attachment #1)

Departure Schedule. Two of the children are picked up between 3:15 PM and 4:15 PM. Three of the children are pick up between 4:15 PM and 4:45 PM. Five of the children are pick up between 4:45 PM and 5:15 PM . Two of the children stay until 5:30 PM. (see attachment #1)

Area Served . Currently, most of the children live within the immediate area and general vicinity of my neighborhood. Also, when weather permitting; some of children walk from their home to my day care with their parent. Some of the children live in neighborhoods off of Lee Jackson Memorial Highway (Rt.50). These parents drive their children to my house.

Operations. As I stated, my house is a single-family detached dwelling. The daycare is located in the basement of the house that has space, where the children spend all of their time. The Interior of the daycare; is well-ventilated, sunny and well lite. It has a large play area, for toddlers, and a separate area for infants. A small kitchen is used to prepare meals and snacks on a daily basis. It also contains an area for eating meals; it includes a full bathroom and a separate room for sleeping. (See attachment # 2 for floor layout and interior photos) The basement area, where I conduct the day care consists of approximately 1,512 square foot.

Hazardous or Toxic Substances. The house and yard are free from hazardous or toxic substances. No hazardous material will be generated, utilized, stored, treated, and/ or disposed of onsite.

Zoning Ordinance Compliance . The proposed development conforms to the provisions of all applicable ordinances, regulations and adopted standards or, if any waiver, exceptions or variance is sought, such request has been specifically noted with the justification for such modifications.

Outdoor Play Area: I use my side yard for outdoor play for the children. This area is approximately 3,600 square feet. The outdoor play area consists of a fenced in area containing a swing set with slide, a playhouse, basketball hoop and a variety of ride-on toys. I have drawn a swing set with slide, and a fenced-in play area on my location plot which is included.

Parking. I use my garage to park my family car. My driveway provides enough parking for six cars; the driveway is 61 feet long and 17 feet wide and could hold six cars side by side. In addition, ample parking is available for my employee and parents in front of my house and side-street without obstructing traffic and the neighbors.

For these reasons, I believe that my proposed home day care facility will not impact my neighbors in any way.

In conclusion, I am proposing no changes to the outside appearance of my stone and vinyl sided home. I propose no addition and no sign regarding the daycare. Adequate parking is available for my parents, employee and my family. For these reasons, I believe that my proposed home daycare facility will not impact my neighbors in any negative way.

Sincerely,

A handwritten signature in cursive script that reads "Alice Matthews".

Alice Matthews

Owner of Alice's Little Angels Family Daycare

RECEIVED
Department of Planning & Zoning

MAR 21 2014

Zoning Evaluation Division

(Attachment #1)

Arrival Schedule and Departure Schedule

Arrival Schedule

Child	7:00 AM- 7:45AM	8:00 AM-8:30 AM	8:30AM-9:00AM
1	✓		
2		✓	
3	✓		
4		✓	
5	✓		
6		✓	
7	✓		
8			✓
9			✓
10			✓
11			✓
12			✓

Departure Schedule

Child	3:15PM-4:15 PM	4:15PM-4:45PM	4:45PM-5:15PM	5:15PM-5:30PM
1	✓			
2			✓	
3	✓			
4			✓	
5			✓	
6		✓		
7			✓	
8		✓		
9			✓	
10		✓		
11				✓
12				✓

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SEP 09 2015

Zoning Evaluation Division

Application for Variance

ALICE MATTHEWS
3933 FAIRFAX FARM RD
FAIRFAX, VA 22033
(703)218-1608
alicesangels@verizon.net

September 8, 2015

Fairfax County Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, VA 20035

Re: Application for Variance
Applicant: Alice Matthews

To whom it may concern,

I Alice Matthews (applicant, joint owner) and Patrick B. Matthews (joint owner) we hereby own the single-family detached home at 3933 Fairfax Farms Rd Fairfax, VA 22033. The applicant; Alice Matthews and her husband and daughter reside in the home. In which we have an in- home family daycare.

The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant. The storage shed is needed for lawn and gardening equipment and storage for out of season play-yard toys.

The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area. There is no adjacent property located near to the property in question. The property has three front yard.

The condition or situation of the property concerned in not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the ordinance. Being that the property in question; has three front yards there is no other location for the shed.

The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property. The property in question, will remain in use for storage and lawn equipment and play-yard toys.

The relief sought by the various application thru a special permit will allow us to maintain all items in a secure location.

Sincerely,


Alice Matthews
Alice Matthews

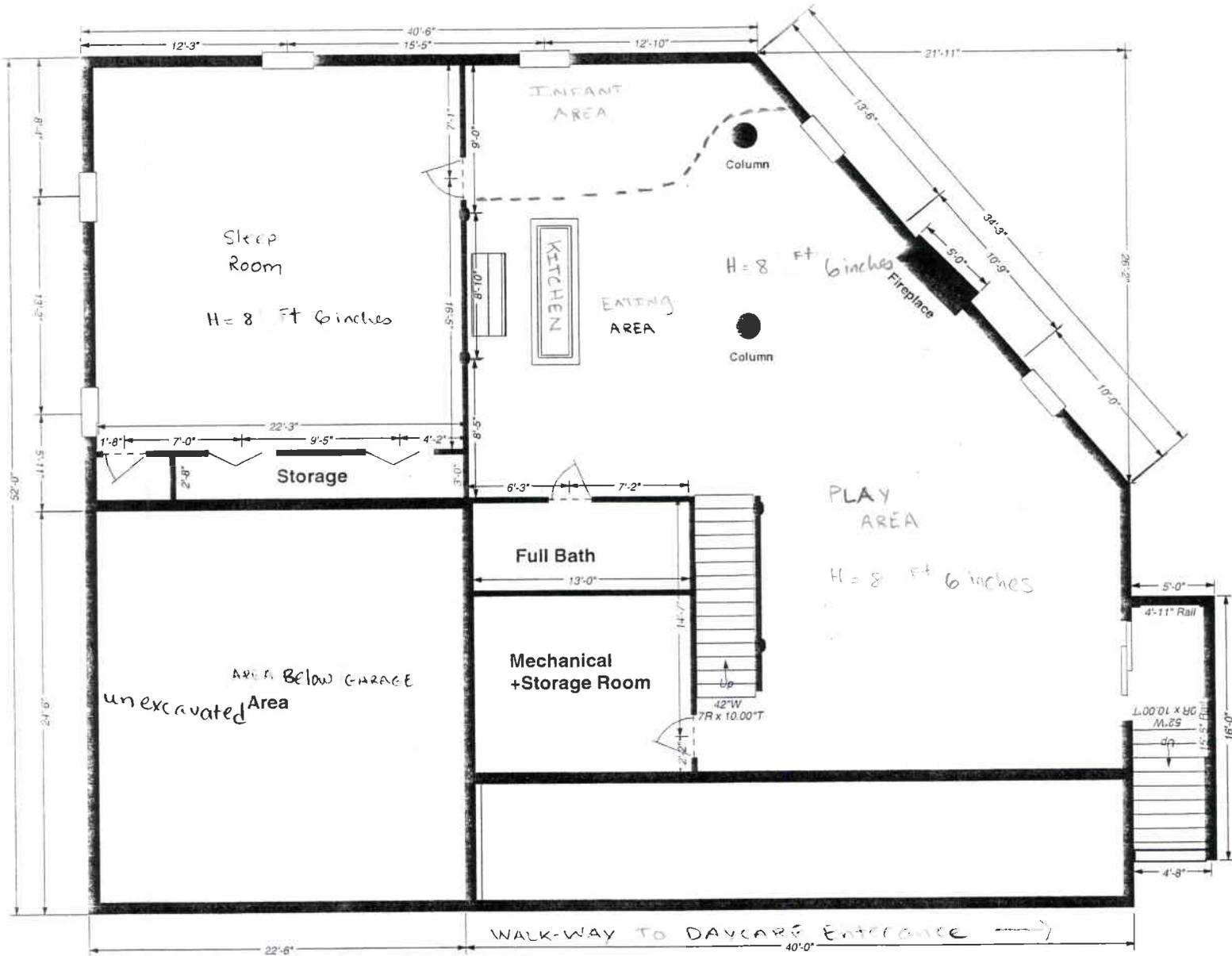
RECEIVED
Department of Planning & Zoning

MAR 21 2014

Zoning Evaluation Division

(ATTACHMENT #1/2)

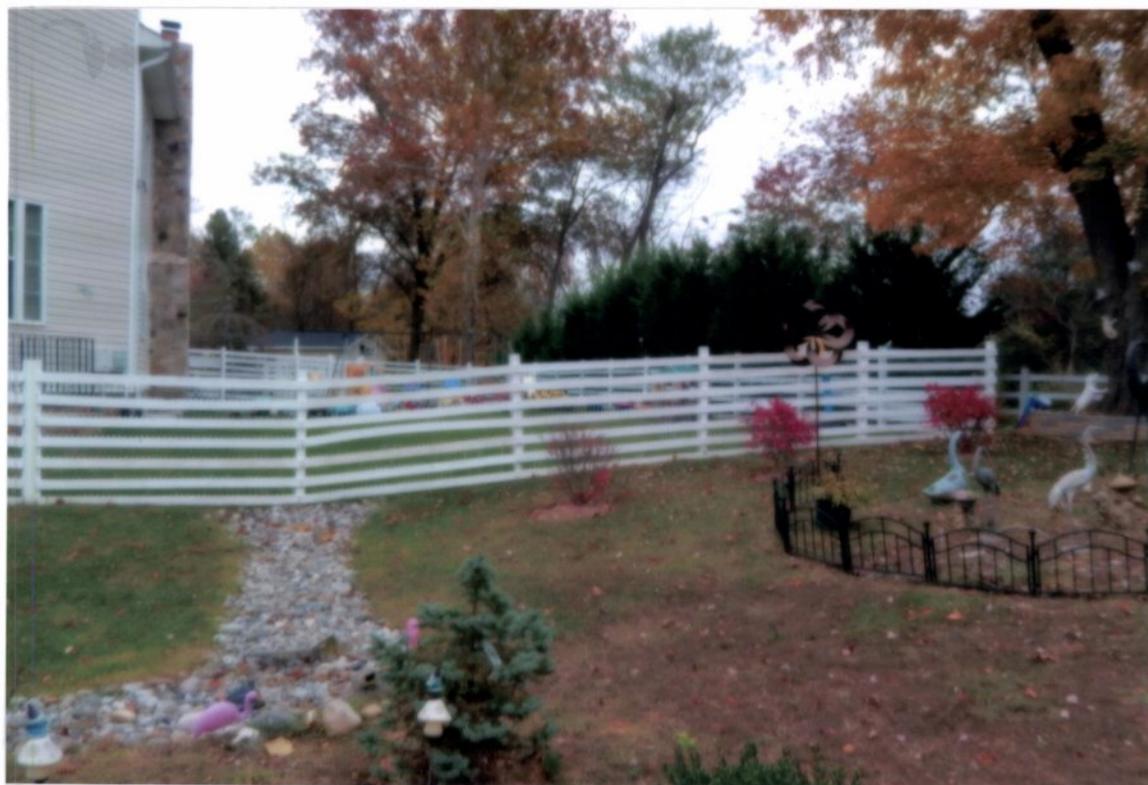
FLOOR LAYOUT OF DAYCARE



Basement Floor Plan

3933 Fairfax Farms Rd. Fairfax, VA 22033

Photo of Property



Part of Front Lawn and Play YARD



Back view of Play yard

Photo of Property

(6)



Photo taken From Front side of House



Play YARD photo take from Back of YARD

PHOTOGRAPHS OF THE PLAY YARD

3



PHOTO OF PLAY YARD & PLAY EQUIPMENT TAKEN FROM FRONT

3



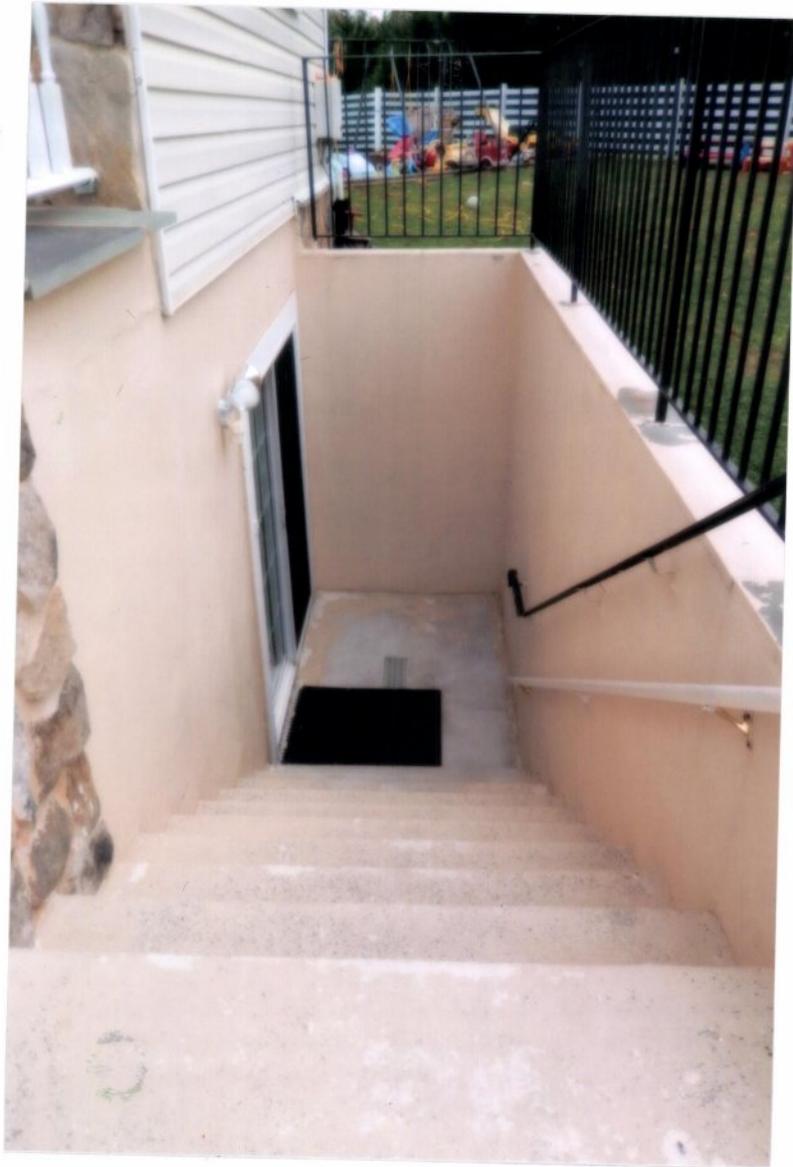
PHOTO OF PLAY YARD & PLAY EQUIPMENT TAKEN FROM BACK

PHOTOGRAPH OF WALKWAY TO DAY CARE STAIRWAY

②



PHOTOGRAPH OF
STAIRWAY GOING
DOWN TO DAY
CARE



(PAGE 9)

Photo of PROPERTY



4

Photo taken From Back



5

Photo taken From back of House

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MAR 21 2014

Zoning Evaluation Division

PHOTOGRAPHS OF PLAY YARD AREA & EQUIPMENTS

3



PHOTO OF SWING AREA & PLAY EQUIPMENTS
TAKEN FROM SIDE FENCE

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Department of Planning & Zoning

MAR 21 2014

Zoning Evaluation Division

3



PHOTO OF PLAY YARD & PLAY EQUIPMENTS
TAKEN FROM SIDE OF HOUSE

PHOTOGRAPH OF PROPERTY & DRIVEWAY



①

PHOTOGRAPH OF WALKWAY PROPERTY & DAY CARE



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MAR 21 2014

Zoning Evaluation Division

PHOTOGRAPH OF SLEEP ROOM FROM INSIDE



11

PHOTOGRAPH OF SLEEP ROOM FROM INSIDE

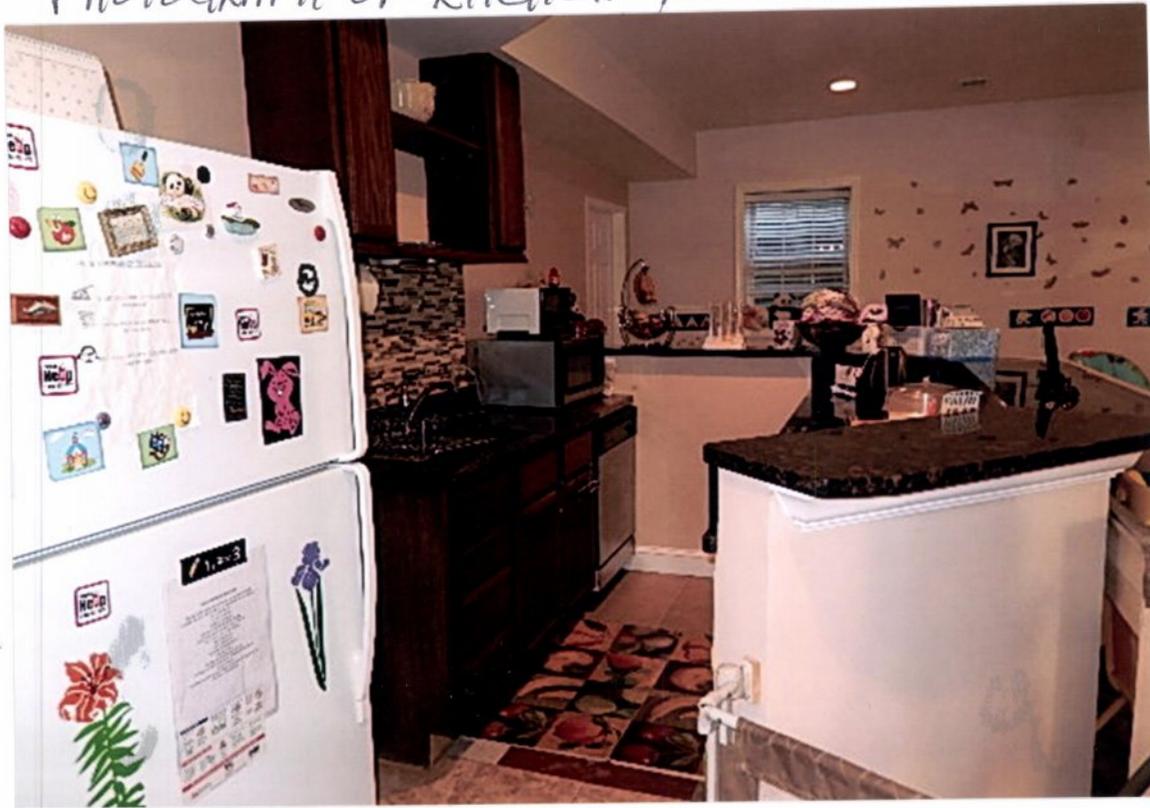


T2

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 MAR 21 2014
 Zoning Evaluation Division

PHOTOGRAPH OF KITCHEN FROM DINING AREA

7



PHOTOGRAPH OF DINING AREA FROM PLAY AREA

8



PHOTOGRAPH OF ACTIVITY AREA

3



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MAR 21 2014

Zoning Evaluation Division

PHOTOGRAPH OF PLAY AREA

4



PHOTOGRAPH OF SLEEP AREA FROM INSIDE

9



PHOTOGRAPH OF SLEEP ROOM FROM ENTRANCE DOOR

10



PHOTOGRAPH OF PLAY AREA ENTRANCE INTO DAYCARE

①



(ATTACHMENT # 2/2

RECEIVED
Department of Planning & Zoning
March 12, 2014
Zoning Evaluation Division

RECEIVED
Department of Planning & Zoning
MAD
Zoning Evaluation Division

PHOTOGRAPH OF PLAY AREA

②



Application No.(s): SP 2014-PR-112/VC 2015-PR-011
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 06/23/2014
 (enter date affidavit is notarized)

I, Alice Matthews, do hereby state that I am an
 (enter name of applicant or authorized agent)

(check one) applicant
 applicant's authorized agent listed in Par. 1(a) below

and that, to the best of my knowledge and belief, the following is true: 124865

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS and REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Alice Matthews dba "Alice's Little Angels Family Daycare	3933 Fairfax Farms Rd Fairfax, VA 22033	Applicant / title owner
Patrick Matthews	3933 Fairfax Farms Rd Fairfax, VA 22033	co - title owner

(check if applicable) There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.
 ** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

CMB

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 06/23/14
(enter date affidavit is notarized)

124865

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

N/A

(check if applicable) There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 06/23/2014
(enter date affidavit is notarized)

124865

1(c). The following constitutes a listing*** of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. **General Partner, Limited Partner, or General and Limited Partner**)

(check if applicable) There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 06/23/2014
(enter date affidavit is notarized)

124865

1(d). One of the following boxes **must** be checked:

In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

none

(check if applicable) There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No.(s):

(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 06/23/2014 (enter date affidavit is notarized)

624865

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)

None

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) [] There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one)

Alice Matthews

[x] Applicant

[] Applicant's Authorized Agent

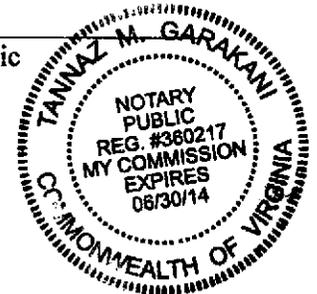
ALICE MATTHEWS - OWNER

(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 23rd day of June, 2014, in the State/Comm. of Virginia, County/City of Fairfax.

Notary Public

My commission expires: 6/30/2014



CAB

OWNER CONSENT STATEMENT

To Whom It May Concern:

I, PATRICK B. MATTHEWS the undersigned title owner of the property identified below, do hereby authorize ALICE MATTHEWS to apply for a VARIANCE APPLICATION on my property located at: 3933 FAIRFAX FARMS RD FAIRFAX, VA 22033
Tax Map No. 46-4-2-13

Thank you in advance for your cooperation.

TITLE OWNER

Date: 10-07-15

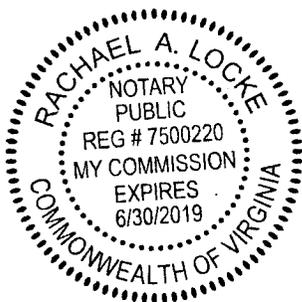
By: Patrick Matthews
(Signor)

COMMONWEALTH/STATE OF: Virginia
CITY/COUNTY OF: Fairfax, TO WIT:

The foregoing instrument was acknowledged before me this 7th day of October, 2015,
by Patrick Matthews
(Signor)

Rachael A. Locke
Notary Public (Signature)
Notary Registration No. 7500220
My Commission Expires: 6/30/2019

AFFIX NOTARY SEAL/STAMP



Commonwealth of Virginia



DEPARTMENT OF SOCIAL SERVICES

FAMILY DAY HOME LICENSE

Issued to: Alice Matthews, d.b.a. Alice's Little Angels Family Daycare

Address: 3933 Fairfax Farms Road, Fairfax, Virginia 22033

This license is issued in accordance with provisions of Chapters 1, 17 and 18, Title 63.2, Code of Virginia and other relevant laws, the regulations of the State Board of Social Services and the specific limitations prescribed by the Commissioner of Social Services as follows:

<u>CAPACITY</u>	
12	
<u>GENDER</u>	<u>AGE</u>
Both	6 weeks through 10 years

This license is not transferable and will be in effect April 23, 2015 through April 22, 2018 unless revoked for violations of the provisions of law or failure to comply with the limitations stated above.

ISSUING OFFICE:

Virginia Department of Social Services
Division of Licensing - Fairfax Licensing Office
3701 Pender Drive, Suite 125
Fairfax, VA 22030

Telephone: (703) 934-1505

FDH 1107560 - L107
LICENSE NUMBER

MARGARET ROSS SCHULTZE
COMMISSIONER OF SOCIAL SERVICES

Jennifer H. Nalli

By

Title LICENSING ADMINISTRATOR

Date April 17, 2015



County of Fairfax, Virginia

MEMORANDUM

Date: November 24, 2014

To: Laura Gumkowski, Planner II
Zoning Evaluation Division

From: Dawn Curry
Senior Zoning Inspector
Zoning Inspection Branch

Subject: Home Child Care

Applicant: Alice Matthews – Alice’s Little Angels
3933 Fairfax Farms Road, Fairfax, Virginia 22033
Fairfax Farms, Lot 13, PT 12
Tax Map# 46-4 ((02)) 0013
Zoning District: R-1(Residential 1 DU/AC)
Magisterial District: Providence
Mail Log # 2014-0509
Date of Inspection: November 24, 2014

KEY: A “✓” mark in a box indicates that the item was deficient. An unmarked box indicates that no violation was found.

- Rooms used for sleeping must provide two means of exit, one which leads directly to the outside, as required by the Virginia Uniform Statewide Building Code. (32-12-30.)
- An operable smoke alarm shall be provided outside of each sleeping area, with at least one such device on each floor.
- All exit stairs, interior or exterior, shall be in good repair and shall be provided with handrails and guard rails as required by the Virginia Uniform Statewide Building Code.

- All egress pathway and exit doors shall be unlocked in the direction of egress and free from obstructions that would prevent their use, including debris, storage, and accumulations of snow and ice.
- Electrical hazards identified shall be abated in accordance with the Virginia Uniform Statewide Building Code.
- Extension cords, temporary wiring, and flexible cords shall not be substituted for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, or floors, or under doors or floor coverings, or be subject to environmental or physical damage.
- A working space of not less than 30 inches in width, 36 inches in depth, and 78 inches in height shall be provided in front of the electrical service equipment. Where the electrical service equipment is wider than 30 inches, the working space shall not be less than the width of the equipment. No storage of any materials shall be located within the designated working space.
- Structures comply with the Zoning Ordinance.

**The property has a 12' x 18' accessory storage structure which is 13 feet in height and is 12' from the left lot line and 2' from the rear lot line.*

8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-303 Standards for all Group 3 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 3 special permit uses shall satisfy the following standards:

1. Except as may be qualified in the following Sections, all uses shall comply with the lot size and bulk regulations of the zoning district in which located; however, subject to the provisions of Sect. 9-607, the maximum building height for a Group 3 use may be increased.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, except home child care facilities, shall be subject to the provisions of Article 17, Site Plans.

8-305 Additional Standards for Home Child Care Facilities

1. The number of children that may be cared for in a home child care facility may exceed the number of children permitted under Par. 6A of Sect. 10-103, but in no event shall the maximum number of children permitted at any one time exceed twelve (12), excluding the provider's own children. The BZA may also allow more than one nonresident person to be involved with the use. Except as described above, home child care facilities shall also be subject to the use limitations of Par. 6 of Sect. 10-103.
2. The BZA shall review access to the site and all existing and/or proposed parking, including but not limited to the availability of on-street parking and/or alternative drop off and pick up areas located in proximity to the use, to determine if such parking is sufficient. The BZA may require the provision of additional off-street parking spaces based on the maximum number of vehicles expected to be on site at any one time and such parking shall be in addition to the requirement for the dwelling unit.
3. The provisions of Article 13 shall not apply to home child care facilities, however, the BZA may require the provision of landscaping and screening based on the specifics of each application.
4. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plan drawn to scale. The plan, which may be prepared by the applicant, shall contain the following information:
 - A. The dimensions, boundary lines and area of the lot or parcel.
 - B. The location, dimensions and height of any building, structure or addition, whether existing or proposed.
 - C. The distance from all property lines to the existing or proposed building, structure or addition, shown to the nearest foot.
 - D. The dimensions and size of all outdoor recreation space and the location of such space in relation to all lot lines.
5. All such uses shall be subject to the regulations of Chapter 30 of The Code or Title 63.2, Chapter 17 of the Code of Virginia.

Sect. 10-103 Use Limitations

6. The following use limitations shall apply to home child care facilities:

- A. The maximum number of children permitted at any one time shall be as follows:
- (1) Seven (7) when such facility is located in a single family detached dwelling.
 - (2) Five (5) when such facility is located in a single family attached, multiple family or mobile home dwelling.

The maximum number of children specified above shall not include the provider's own children.

- B. A home child care facility shall be operated by the licensed or permitted home child care provider within the dwelling that is the primary residence of such provider, and except for emergency situations, such provider shall be on the premises while the home child care facility is in operation. Notwithstanding the above, a substitute care provider may operate a home child care facility in the absence of the provider for a maximum of 240 hours per calendar year.
- C. There shall be no exterior evidence, including signs, that the property is used in any way other than as a dwelling, except that play equipment and other accessory uses and structures permitted by this Part shall be allowed.
- D. In addition to the persons who use the dwelling as their primary residence, one (1) nonresident person, whether paid or not for their services, may be involved in the home child care use on the property, provided that there is only one (1) such person on the property at any one time and the hours of such attendance shall be limited to 7:00 AM to 6:00 PM, Monday through Friday.
- E. Notwithstanding the provisions of Par. B above, a child care provider may care for the maximum number of children permitted in Par. A above in a dwelling other than the provider's own, as long as the dwelling is the primary residence of at least one of the children being cared for by the provider. Such child care provider shall comprise the one nonresident person allowed under Par. D above.
- F. All such uses shall be subject to the regulations of Chapter 30 of The Code or Title 63.2, Chapter 17 of the Code of Virginia.

G. An increase in the number of children permitted under Par. A above or the involvement of more than one nonresident person as permitted under Par. D above may be permitted in accordance with the provisions of Part 3 of Article 8.

8-923 *Provisions for Increase in Fence and/or Wall Height in Any Front Yard*

The BZA may approve a special permit to allow an increase in fence and/or wall height in any front yard subject to all of the following:

1. The maximum fence and/or wall height shall not exceed six (6) feet and such fence and/or wall shall not be eligible for an increase in fence and/or wall height pursuant to Par. 3I of Sect. 10-104.
2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.
3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards, and concerns related to safety and/or noise.
4. The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.
5. The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.
6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.
7. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.

- C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. The location, dimension and height of any building or structure, to include existing or proposed fences and/or walls.
 - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of a well and/or septic field.
 - I. If applicable, existing gross floor area and floor area ratio.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. The location, type and height of any existing and proposed landscaping and screening.
 - L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
 - M. Seal and signature of professional person certifying the plat.
8. Architectural depictions of the proposed fence and/or wall to include height, building materials and any associated landscaping shall be provided.

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 597

An Act to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable

statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the *intended spirit and purpose of the ordinance, and would result in substantial justice being done*. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board

may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.* Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. *The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.*

B. *Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.*

C. *For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.*

D. *This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.*

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. *The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* The board shall consider ~~the purpose and intent~~ of any applicable ordinances, laws, and regulations in making its decision. *For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

2. ~~To authorize~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship;* provided that the spirit of the ordinance shall be observed and substantial justice done; ~~as follows:~~ *the burden of proof shall be on the*

applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

~~When a property owner can show that his~~ Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and ~~where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.~~ (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be ~~authorized~~ considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In ~~authorizing~~ granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest; and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, *general or special*, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law *de novo*.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning~~

appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.