



# County of Fairfax, Virginia

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January 13, 2016

## STAFF REPORT

**SPECIAL PERMIT NO. SP 2014-SP-116**  
**Concurrent with VC 2015-SP-012**

### SPRINGFIELD DISTRICT

**APPLICANTS:** Salma Nazary dba Salma Daycare  
and Karim Nazary

**OWNERS:** Salma Nazary  
Karim Nazary

**SUBDIVISION:** Parvis Estates

**STREET ADDRESS:** 6301 Travilah Court, Fairfax Station, 22039

**TAX MAP REFERENCE:** 77-3 ((14) 3

**LOT SIZE:** 2.4 acres

**ZONING DISTRICT:** R-1

**ZONING ORDINANCE PROVISIONS:** 3-103, 8-305, 8-914 and 18-401

**SPECIAL PERMIT PROPOSAL:** To permit a home child care facility, and a reduction in minimum yard requirements based on error in building location to permit an accessory structure (playset) to remain 18.9 feet from a side lot line.

**VARIANCE PROPOSAL:** To permit accessory structures (two-story playhouse and patio) to remain in the minimum required front yard.

### STAFF RECOMMENDATIONS:

Staff recommends approval of SP 2014-SP-116 for the home child care with the adoption of the proposed development conditions contained in Appendix 1.

*Laura B. Arseneau*

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Staff recommends denial of VC 2015-SP-012 for the location of the accessory structures (playhouse and patio) in the minimum required front yard. If the Board of Zoning Appeals approves this application staff recommends it be adopted with 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 22035-5505.**



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

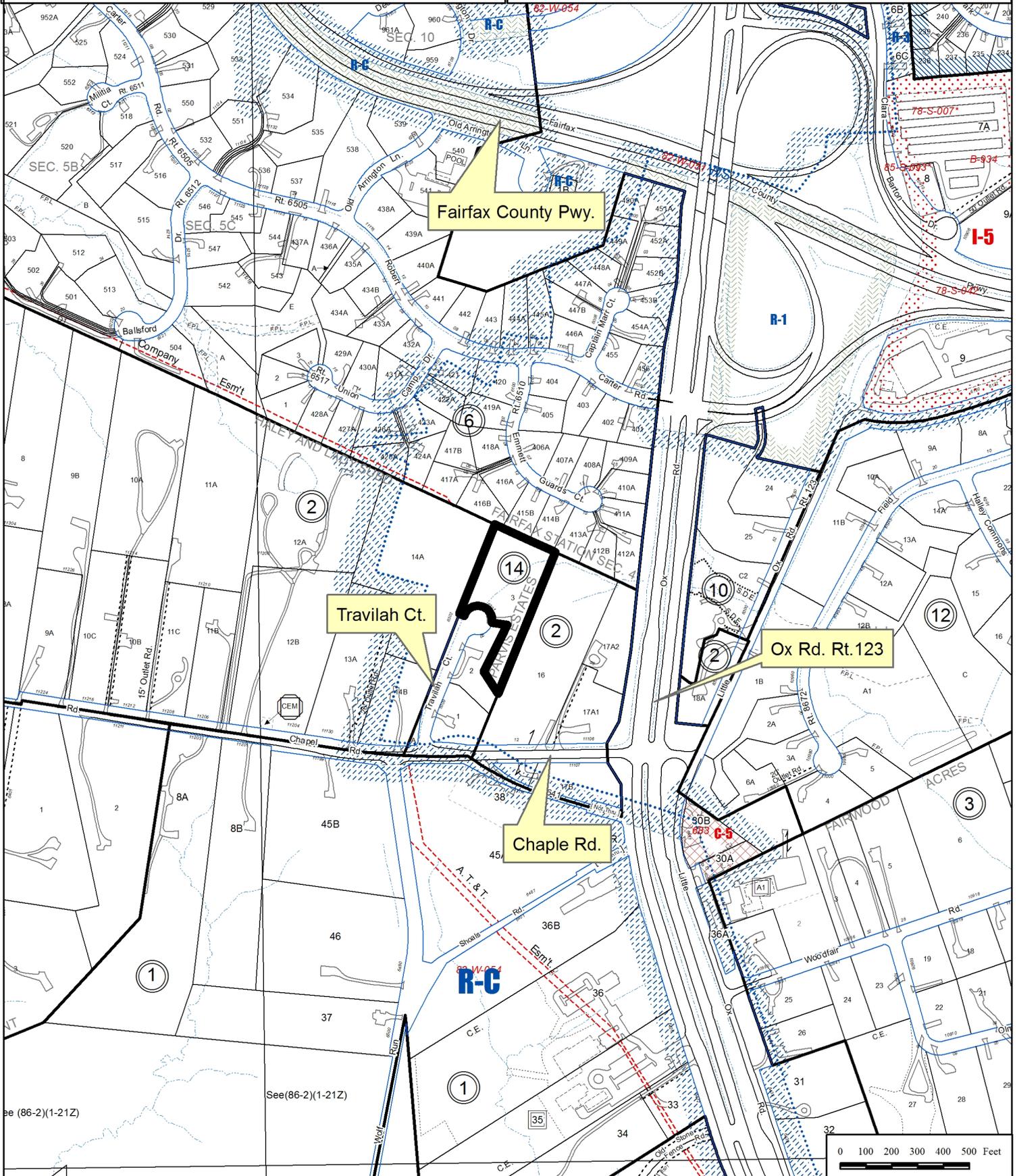
## SP 2014-SP-116

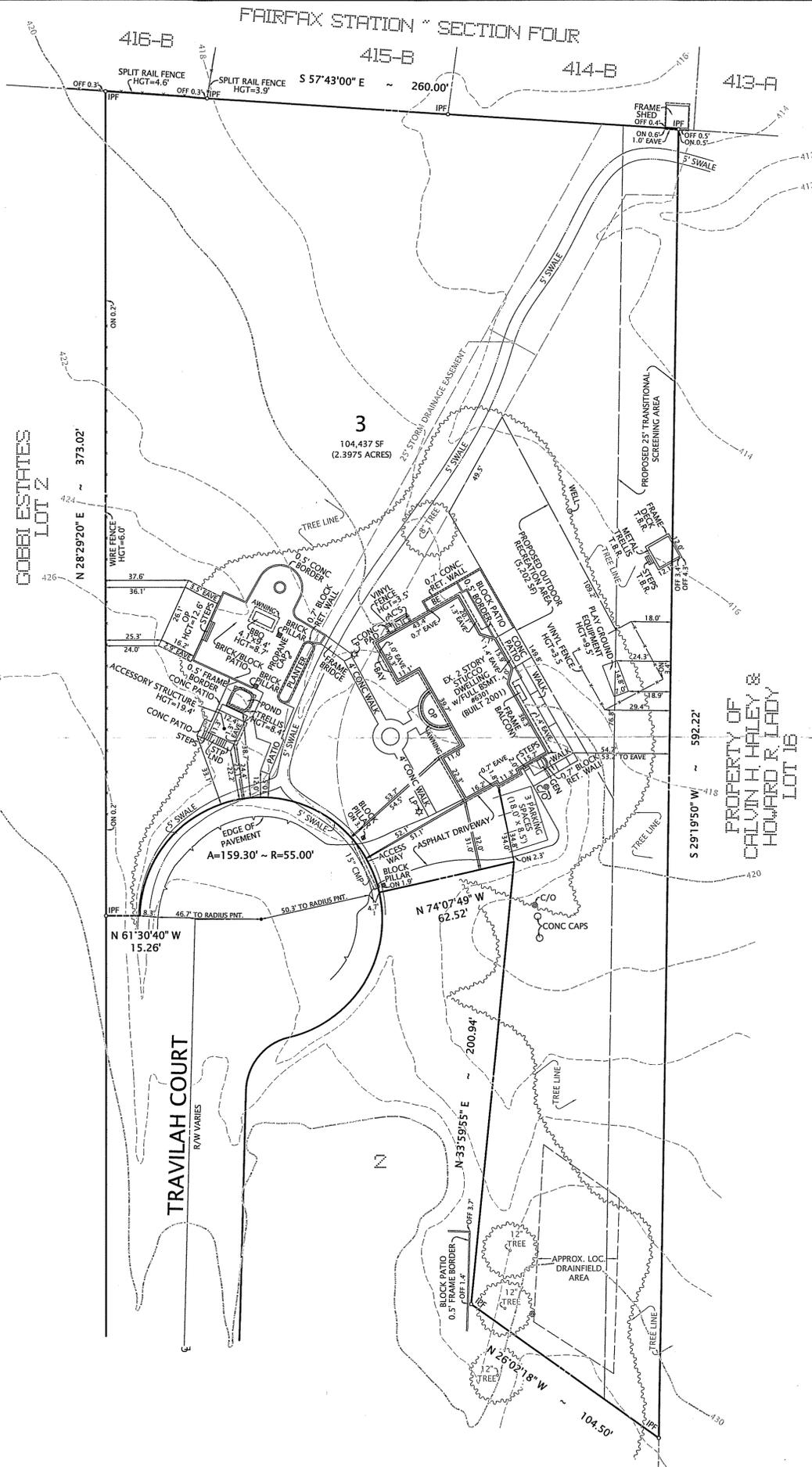
SALMA NAZARY DBA SALMA DAYCARE AND KARIM NAZARY

# Variance Application

## VC 2015-SP-012

SALMA NAZARY DBA SALMA DAYCARE AND KARIM NAZARY





NOTES

1. TAX MAP: 77-3-14-0003
2. ZONE: R-1 (RESIDENTIAL 1 DU/AC)
3. LOT AREA: 104,437 SF (2.3975 ACRES)
4. REQUIRED YARDS:
 

FRONT:	=	40 FEET
SIDE:	=	20 FEET
REAR:	=	25 FEET
5. HEIGHTS:
 

DWELLING	=	33.0 FEET (MIDLINE OF ROOF)
ACCESSORY STRUCTURE	=	19.4 FEET (RIDGELINE OF ROOF)
OP	=	12.6 FEET (RIDGELINE OF ROOF)
PLAYGROUND EQUIP	=	09.5 FEET (TOP OF EQUIP)
FENCES	=	AS NOTED
FRAME DECK & TRELLIS	=	DECK = 2.5' TRELLIS = 7.4'
		TOTAL HGT = 9.9'
6. THIS PROPERTY IS **NOT** SERVED BY PUBLIC WATER AND SEWER.
7. THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
8. ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING.
9. THERE IS A 25' STORM DRAINAGE EASEMENT AFFECTING THIS PROPERTY.
10. THERE ARE NO FLOODPLAINS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
11. AREAS:
 

BASEMENT	=	2,041 SF
FIRST FLOOR	=	3,261 SF
SECOND FLOOR	=	2,779 SF
GROSS FLOOR AREA	=	8,081 SF

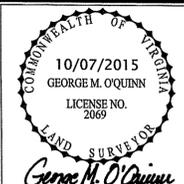
FLOOR AREA RATIO: GFA (8,081) / LOT AREA (104,437) = 0.08
12. TRANSITIONAL SCREENING NOTE:  
FAIRFAX COUNTY ZONING ORDINANCE ARTICLE 13-302, NO. 3A:  
TRANSITIONAL SCREENING 1 SHALL CONSIST OF AN UNBROKEN STRIP OF OPEN SPACE A MINIMUM OF 25 FEET WIDE AND PLANTED WITH (1) ONE LARGE EVERGREEN TREE WITH AN ULTIMATE HEIGHT OF 40 FEET OR GREATER FOR EVERY 10 LINEAR FEET, PLUS ONE MEDIUM EVERGREEN TREE WITH AN ULTIMATE HEIGHT OF 40 FEET OR GREATER FOR EVERY 10 LINEAR FEET, PLUS ONE MEDIUM EVERGREEN TREE WITH AN ULTIMATE HEIGHT OF 20 TO 40 FEET FOR EVERY 5 LINEAR FEET.
13. THERE ARE THREE 8.5' x 18' PROPOSED PARKING SPACES SHOWN HEREON. A CHILD CARE CENTER OR NURSERY SCHOOL REQUIRES 0.19 SPACE PER CHILD. 12 CHILDREN x 0.19 = 2.28 (ROUNDED TO 3). THERE ARE THREE PROPOSED PARKING SPACES PROVIDED BY THIS PLAN.
14. THE SOUTHWEST QUADRANT OF THE FAIRFAX COUNTY TRAILS MAP DOES NOT SHOW TRAILS ON OR NEAR THE SUBJECT PROPERTY.
15. OWNER: KARIM AND SALMA NAZARY  
6301 TRAVILAH COURT  
FAIRFAX STATION, VA 22039  
(DB. 23617, PG. 416)
16. TOPOGRAPHY DELINEATED HEREON WAS TAKEN FROM AVAILABLE RECORDS, IS SHOWN AT 2' INTERVALS, AND IS AERIAL.

PLAT  
SHOWING THE IMPROVEMENTS ON  
LOT 3  
**PARVIS ESTATES**  
(DEED BOOK 10391, PAGE 1036)  
FAIRFAX COUNTY, VIRGINIA  
SPRINGFIELD DISTRICT  
SCALE: 1" = 30'      OCTOBER 07, 2015  
DECEMBER 02, 2015 (REV.)

RECEIVED  
Department of Planning & Zoning  
DEC 07 2015  
Zoning Evaluation Division

I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY AND UNLESS SHOWN THERE ARE NO VISIBLE ENCROACHMENTS AS OF THIS DATE.

THIS PLAT IS SUBJECT TO RESTRICTIONS OF RECORD.  
A TITLE REPORT WAS NOT FURNISHED.  
NO CORNER MARKERS SET.



CASE NAME:  
KARIM NAZARY  
SALMA NAZARY

**DOMINION** Surveyors Inc.  
8808-H PEAR TREE VILLAGE COURT  
ALEXANDRIA, VIRGINIA 22309  
703-619-6555  
FAX: 703-789-5412

## **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 playset, 9.5 feet in height, to remain 18.9 feet from the side property line.

## **VARIANCE REQUESTS**

The applicant is seeking a variance to permit accessory structures to remain in the minimum required front yard of the property. One accessory structure, a 19.4 foot high two-story wood playhouse is located 22.2 feet from the front property line. The other structure, an in-ground brick patio, is 10.5 feet from the front property line.

A copy of the special permit and variance plat, titled "Plat, Showing the Improvements on Lot 3, Parvis Estates," prepared by George M. O'Quinn, L.S., dated October 7, 2015 as revised through December 2, 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 for the special permit, the statement of justification and select file photographs for the variance, and the affidavit are contained in Appendices 1 through 5, respectively.

## **CHARACTER OF THE SITE AND SURROUNDING AREA**

The site is developed with a two story single-family detached dwelling. The property is located at the end of a cul-de-sac and therefore has a front yard the width of the cul-de-sac. An open porch, concrete walkway and asphalt driveway are located in the front yard of the dwelling. A brick patio, pond, trellis, two-story playhouse, and a pavilion exist to the west of the dwelling but also in the front yard. The proposed play area, including fenced-in playground equipment, two patios and a walkway are located in the side yard of the property. A frame deck that straddles the property line, also in the side yard, is to be removed.

A drain field is located in the southeastern portion of the property. A 25 foot wide storm drainage easement bisects the property. The northern portion of the property contains mature wooded vegetation.



Figure 1- Aerial View of Subject Property

The property is located north of the intersection of Travilah Court and Chapel Road. The subject property and surrounding properties to the east, west and south are zoned R-1 and are developed with single family detached dwellings. The properties to the north are zoned R-C and developed with single family detached dwellings.

## BACKGROUND

Fairfax County Tax Records indicate that the owners purchased the property in 1999 and that the single-family dwelling was constructed in 2001.

On August 1, 2001, the applicants applied for a building permit to construct a detached gazebo. The building permit was never approved and a final inspection was never conducted. A proposed development condition will require the applicants to obtain all relevant permits and inspections for this structure.

There are no building permits or inspections in county records related to the two-story playhouse, trellis or the pond on site. It should be noted that the playhouse is not used as part of the home child care operation. A proposed development condition will require the applicants to obtain all relevant permits and inspections for these accessory structures.

## **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 6:00 p.m. Monday through Friday. Currently, there are two assistants.

The home child care facility is operated in the basement of the dwelling. The play area is located in the side yard of the property and contains a fenced in playset.

The applicant holds a current Family Day Home License, effective for two years and expires on August 31, 2016, 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 6:00 p.m., Monday through Friday. The license permits children from 1 month through 5 years 11 months of age. A copy of the license is included as Appendix 6.

## **ANALYSIS**

### **Comprehensive Plan Provisions**

**Plan Area:** Area III, Pohick Planning District  
**Planning Sector:** Dominion Community Planning Sector (P5)  
**Plan Map:** Residential, 0.2-0.5 dwelling units/acre

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.	2.4 acres
Lot Width	Interior: 150 feet	255.0 feet
Building Height	35 feet max.	< 35 feet
Front Yard	Min. 40 feet	52.1 feet to dwelling
Side Yard	Min. 20 feet	53.2 feet to dwelling
Rear yard	Min. 25 feet	> 25 feet

Accessory Structure Setback Standards				
Structure	Yard	Minimum Yard Required	Existing Location	Permit Status
Two-story playhouse	Front	40 feet	22.2 feet <sup>1</sup>	Permits and inspections to be obtained with this application
Patio	Front	40 feet	10.5 feet <sup>1</sup>	n/a
Gazebo	Side	20 feet	24.0 feet	Permits and inspections to be obtained with this application
Swing set	Side	20 feet	18.9 feet <sup>2</sup>	n/a

1. The locations of these structures as requested by the applicants will be legalized with approval of the variance portion of this application.
2. The location of this structure as requested by the applicants will be legalized with approval of the error in building location portion of this application.

### On-Site Parking and Site Circulation

The existing driveway can accommodate at least eight vehicles. The applicants park their cars in the garage or in the driveway. The assistants park on Travilah Court.

Vehicular access to the site is provided by an asphalt driveway from Travilah Court. A walkway connects the driveway to the basement entrance on the rear of the dwelling, which is the main entrance to the home child care.

### Zoning Inspection Branch Comments (Appendix 7)

Staff found a number of concerns on the property. Firstly, a smoke alarm was not properly installed in the sleeping area; this has been fixed by the applicant. In addition, exposed electric wiring was located in the accessory structures in the front yard. The

applicant is working on fixing the electrical wiring. Since the patio area is not related to the home child care, staff has included a development condition that ensures all the electrical wiring shall be fixed to building code standards within 30 days of approval of this application.

The water feature, labeled as a pond on the plat, has no fence or barrier that would deter entry and the water is stagnant; the applicant has installed fencing around the pond to prevent entry of any children related to the home child care.

Staff also found accessory structures located in the front yard of the dwelling. Upon further analysis it was determined that the patio and the two-story accessory structure were located within the minimum required setback of 40 feet. The applicant has requested a variance to allow these existing structures to remain in their current locations in the front yard. Please refer to the additional analysis of these structures in the variance section of this report.

Furthermore, staff noted that there are no building permits or trade permits for the gazebo, two story accessory structure, pond or trellis located in the front yard. Staff has proposed a development condition that requires all inspections and permits be obtained for these structures.

Staff has also requested that the outdoor storage be removed near the two story playhouse and the gazebo. Since it is not in the play area for the home child care, staff has proposed development condition to ensure that this area is cleaned up within 30 days.

**Special Permit Zoning Ordinance Requirements (Appendix 8)**

- 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. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location
- Sect. 10-103 Par. 6 Location Regulations

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

<p><b>Standards 1 and 2</b> Comprehensive Plan/ Zoning District</p>	<p>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 special permit approval. The proposed use is in harmony with the Comprehensive Plan and the general purpose and intent of the R-1 District.</p>
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<b>Standard 3</b> 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.
<b>Standard 4</b> 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.
<b>Standard 5</b> Landscaping/Screening	There is existing fencing and landscaping that separates the play area from the neighbors. There have been no complaints from the neighbors about the existing home child care use.
<b>Standard 6</b> Open Space	There is no prescribed open space requirement in the R-1 District.
<b>Standard 7</b> 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.
<b>Standard 8</b> Signs	Sect. 10-103 of the Zoning Ordinance prohibits signs for home child care facilities.

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

<b>Standard 1</b> Lot Size and Bulk Regulations	The lot size and bulk regulations were established with the previous development of the lot. No exterior modifications are proposed with this application.
<b>Standard 2</b> Performance Standards	The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.
<b>Standard 3</b> 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)**

<b>Standard 1</b> 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.
<b>Standard 2</b> 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.
<b>Standard 3</b> Landscaping/Screening	There is an existing fence and mature vegetation that provides screening of the outdoor play area.

<p><b>Standard 4</b> Submission Requirements</p>	<p>The applicant submitted a house location survey in lieu of a special permit plat, which is a permissible alternative.</p>
<p><b>Standard 5</b> Code of Virginia, Title 63.2, Chapter 17</p>	<p>The applicant has a valid home child care license through August 31, 2016, for 12 children from 7:00 a.m. to 6:00 p.m., Monday through Friday.</p>

**Provision for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location (Sect. 8-914)**

Staff does not make recommendations on errors in building location; therefore, a staff recommendation is not provided. The applicants request special permit approval to permit a reduction in the minimum yard requirements based on an error in building location to permit an accessory structure, a playset, to remain 18.9 feet from the side lot line.

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

<p><b>Part A</b> Maximum Number of Children</p>	<p>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.</p>
<p><b>Part B</b> Licensed Provider/ Primary Residence</p>	<p>The applicant is a state licensed home child care provider and the subject property is the provider’s primary residence.</p>
<p><b>Part C</b> No Exterior Evidence Except Play Equipment</p>	<p>There is no exterior evidence of the proposed use except play equipment and toys.</p>
<p><b>Part D</b> Non-Resident Employee</p>	<p>The applicant is proposing two non-resident employees.</p>
<p><b>Part E</b> Provider is a Non-Resident</p>	<p>The provider is a resident and owns the property.</p>
<p><b>Part F</b> Code of Virginia, Title 63.2, Chapter 17</p>	<p>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 and a development condition is proposed to ensure the applicant maintains their state license.</p>
<p><b>Part G</b></p>	<p>The maximum number of children permitted by-right at any one time is seven in a single family detached dwelling and can</p>

<p>Increase in Children or Non-Resident Person</p>	<p>be increased to up to twelve children with special permit approval. The applicant requests special permit approval to allow a maximum of twelve children at any one time.</p>
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**Variance Zoning Ordinance Requirements (Appendix 9)**

- 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 two story wood frame structure and the patio, is not driven by a physical characteristic of the property. Although, the property is located at the end of the cul-de-sac on Travilah Court and the entire curved part of the cul-de-sac is considered the front yard of the property, there is adequate room to site these structures outside of the required front yard setback.

From county aerial photography it appears that the gazebo and the brick patio were constructed when the home was developed in 2002. The improvement of this area, including the construction of the two-story playhouse structure, the pond and the patio appears in 2009 (see Figures 2 and 3). The zoning ordinance allows accessory structures in a front yard of properties over 36,000 square feet in size, which this property meets at 2.4 acres. However, it does not allow them in the minimum required 40 foot front yard setback. Therefore it appears that the original patio and accessory structures (gazebo and grill) met the zoning ordinance during at the time of construction. However, the expansion of this area with the construction of a two-story playhouse and a larger patio in 2009 does not meet zoning ordinance requirements. Staff believes that the ordinance does not unreasonably restrict the utilization of the property. Therefore, staff does not believe that the application for the accessory structures in the minimum required front setback satisfies this standard.



Figure 2- 2007 Aerial View



Figure 3- 2009 Aerial View

*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 purchased by the applicants and platted in 1999 and the dwelling was constructed in 2001. The existing dwelling meets all of the R-1 bulk regulations 2009. However, the applicant constructed the two story playhouse and the patio in the front yard. The structures could have been located further back from the front lot line or in the rear yard. Therefore, staff believes the hardship was created by the applicant and does not meet this provision.

*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. There is existing mature evergreen vegetation that screens the accessory structures from other dwellings on Travilah Court. Therefore, the structures do not provide a significant visual detriment to neighboring properties to the east and south and there have been no

complaints. In addition there is a substantial stand of mature vegetation that provides a visual buffer between the neighbors to the west and north. 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 the property's shape is not a hardship generally shared by the neighboring properties. The shape of the lot is unique in that the entire front yard is on a cul-de-sac and the relating 40 foot setback is a semicircular shape to align with the cul-de-sac. However, the accessory structures could have been located in another area, for example in the rear yard of the existing home, which do not infringe on the front yard setbacks and therefore would not require a variance. Therefore staff does not believe this provision has been met, as the shape of this lot is not generating the need for a variance in this instance.

*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 two story playhouse and patio are 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-SP-116 for the home child care facility and the location of the playset with the adoption of the proposed development conditions contained in Appendix 1.

Staff believes the request for the accessory structures with the variance application, including the two-story playhouse and the patio in the front yard are not driven by a physical characteristic of the property and that the hardship related to the variance was created by the applicants. In addition there are other locations on the property in which the accessory structures could be constructed by-right and without the need of a special permit or variance application.

Staff notes that the playhouse and the patio in the front yard were identified as violations during application acceptance review and were added as a variance. The variance portion of this application is separate from the special permit requests for the home child care and location of the playset in the rear yard.

Therefore, staff recommends denial of VC 2015-SP-012 for the accessory structures (two-story playhouse and patio) in a front yard. If the Board of Zoning appeals chooses to approve this application, staff recommends 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 for Special Permit with Select File Photographs
4. Applicant's Statement of Justification for Variance with Select File Photographs
5. Applicant's Affidavit
6. State Family Day Home License
7. Zoning Inspections Branch Comments
8. Applicable Zoning Ordinance Provisions
9. Variance Provisions

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**PROPOSED DEVELOPMENT CONDITIONS****SP 2014-SP-116****January 13, 2016**

If it is the intent of the Board of Zoning Appeals to approve SP 2014-SP-116 located at Tax Map 77-3 ((14)) 3 to permit a home child care facility and to permit a playset to remain 18.9 feet from the side yard line, pursuant to Sects. 3-103, 8-305, and 8-914 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, Salma Nazary dba Salma Daycare and Karim Nazary, and is not transferable without further action of the Board, and is for the location indicated on the application, 6301 Travilah Court, and is not transferable to other land.
2. This special permit is granted only for the home child care use and the playset as indicated on the plat entitled "Plat, Showing the Improvements on Lot 3, Parvis Estates," prepared by George M. O'Quinn, L.S., dated October 7, 2015 as revised through December 2, 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 6:00 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.

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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 (shed) shall remain locked during the hours of operation of the home child care facility.
  14. The applicants shall obtain all relevant building and trade permits and inspections permits for the accessory structures on the property including the gazebo, pond, trellis and other structures.
  15. The applicants shall clean up outdoor storage items and place them in an appropriate area according to the zoning ordinance within 30 days of approval of this application.
  16. The applicants shall clean up outdoor wiring according to building code standards within 30 days of approval of this application.

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.

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**PROPOSED DEVELOPMENT CONDITIONS****VC 2015-SP-012****January 13, 2016**

If it is the intent of the Board of Zoning Appeals to approve VC 2015-SP-012 located at Tax Map 77-3 ((14) 3 to permit accessory structures (two-story playhouse and patio) in the minimum required front yard, 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 structures (two-story playhouse and patio) in the minimum required front yard as indicated on the plat entitled "Plat, Showing the Improvements on Lot 3, Parvis Estates," prepared by George M. O'Quinn, L.S., dated October 7, 2015 as revised through December 2, 2015, and approved with this application, as qualified by these development conditions.
2. The applicants shall obtain all relevant building permits and inspections for the two story playhouse.

STATEMENT OF JUSTIFICATION  
FOR A HOME CHILD CARE FACILITY

RECEIVED  
Department of Planning & Zoning

MAR 20 2014

Zoning Evaluation Division

Name: Salma Nazary  
Address: 6301 Travilah Ct.  
Fairfax Station, VA 22039  
Phone #: (703) 978-4025  
E-mail: Salmarangeen@hotmail.com

Date \_\_\_\_\_

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

Re: Special Permit Application

Applicant: Salma Nazary  
Zoning Ordinance Section 8-305 for Home Child Care Facility  
Section 8-004 of General Standards

\* Tax Map #: 0773 14 0003  
Zoning District: R-1  
Lot Size: 104,437

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 attached (detached) (circle one) dwelling at 6301 Travilah Ct. Fairfax Station VA 22039 (your address). The property is zoned \_\_\_\_\_ 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 open from 7:00 AM to 6:00 PM, Monday through Friday

Number of Children. I care for up to 12 children at any one time. This number does not include my own ~~two~~ child (children)

Employees. I have ~~1~~ assistant(s) who work part-time and 1 assistant(s) who work full-time.

Arrival Schedule. 10 of the children arrive between 7:00 AM and 8:30 AM.  
2 children comes from 10:00<sup>am</sup> to 11:00<sup>am</sup>

Departure Schedule. 6 of the children are picked up at 4:15 PM. 4:45 PM.  
4 from 4:45 PM to 5:30 PM two from 5:30 to 6:00

Area Served. \_\_\_\_\_  
(what neighborhood/general area do the children live in?)

Operations. As I stated, my house is a single-family attached (detached (circle one) dwelling. It has (explain the general layout of the house):

It has a walk out basement, where the children spend the time. I use my floor for meals & snacks. Attached is a floor plan that indicate the area where the daycare locate. the day care area located at the basement  
The house has 7,000 square feet. The following rooms are where I conduct the day care:

Play room, bed room, dining floor, room  
These rooms are \_\_\_\_\_ square feet total.

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

05/20/14  
05/20/14

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

Outdoor Play Area. I use my backyard yard for outdoor play for the children. The area is approximately \_\_\_\_\_ square feet. The outdoor play area consists of: There is swing set with slide and fence around this area.

Parking. I use my garage to park my family cars (cars). My parents park Provides enough parking for eight cars. the drive way is more than

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

In conclusion, I am proposing no changes to the cur side appearance of my brick and vinyl sided home. I propose no addition and no signs regarding the daycare. Adequate parking is available for parents, employees, and my family. For this reason, I believe that my proposed home daycare facility will not impact my neighbors in any negative way.

Sincerely,

Salma Nazary  
Owner of Salma's daycare

MAR 20 2014

Zoning Evaluation Division

### Arrival Schedule and Departure Schedule

#### Arrival Schedule

10:00 - 11:00

Child	7:00 - 7:45 AM	7:45 - 8:00 AM	8:00 - 8:30 AM	9:00 - 9:15 AM
1	X			
2	X			
3	X			
4	X			
5	X			
6	X			
7		X		
8		X		
9			X	
10			X	
11				X
12				X

#### Departure Schedule

Child	2:45 - 4:15 PM	4:15 - 4:30 PM	4:30 - 5:00 PM	5:00 - 5:30 PM
1		X		
2		X		
3		X		
4			X	
5			X	
6			X	
7			X	
8			X	
9				X
10				X
11				X
12				X

Statement of Justification  
8-914 for location of playset  
Salma Nazary  
12/21/2015

The BZA determines that:

A. The error exceeds ten (10) percent of the measurement involved, or

B: The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved,

All of the errors exceed 10% of the measurement

c. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and

I was unaware of the Zoning regulations

D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and

It will not regulate the Zoning set Backs

E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

This is in no range affecting any of my neighbors

F. It will not create an unsafe condition with respect to both other property and public streets, and

It is in no sight of the neighbors.

G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.

The Errors that exceed this application and to correct the mistakes will result in severe Financial difficulty

H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

It will not increase

# Photograph of Surrounding Properties

RECEIVED  
Department of Planning & Zoning  
MAR 20 2014  
Zoning Evaluation Division



#1 Front the house



#2 cross the house



#3 right edge (front)



#4 right edge (back)

RECEIVED  
Department of Planning & Zoning

MAR 20 2014

Zoning Evaluation Division



#5 backyard left corner



#5 backyard left corner

RECEIVED  
Department of Planning & Zoning  
MAR 20 2014  
Zoning Evaluation Division



# 6 back yard



# 7 back yard gazebo

RECEIVED  
Department of Planning & Zoning  
MAR 20 2014  
Zoning Evaluation Division



# 8 back yard playground



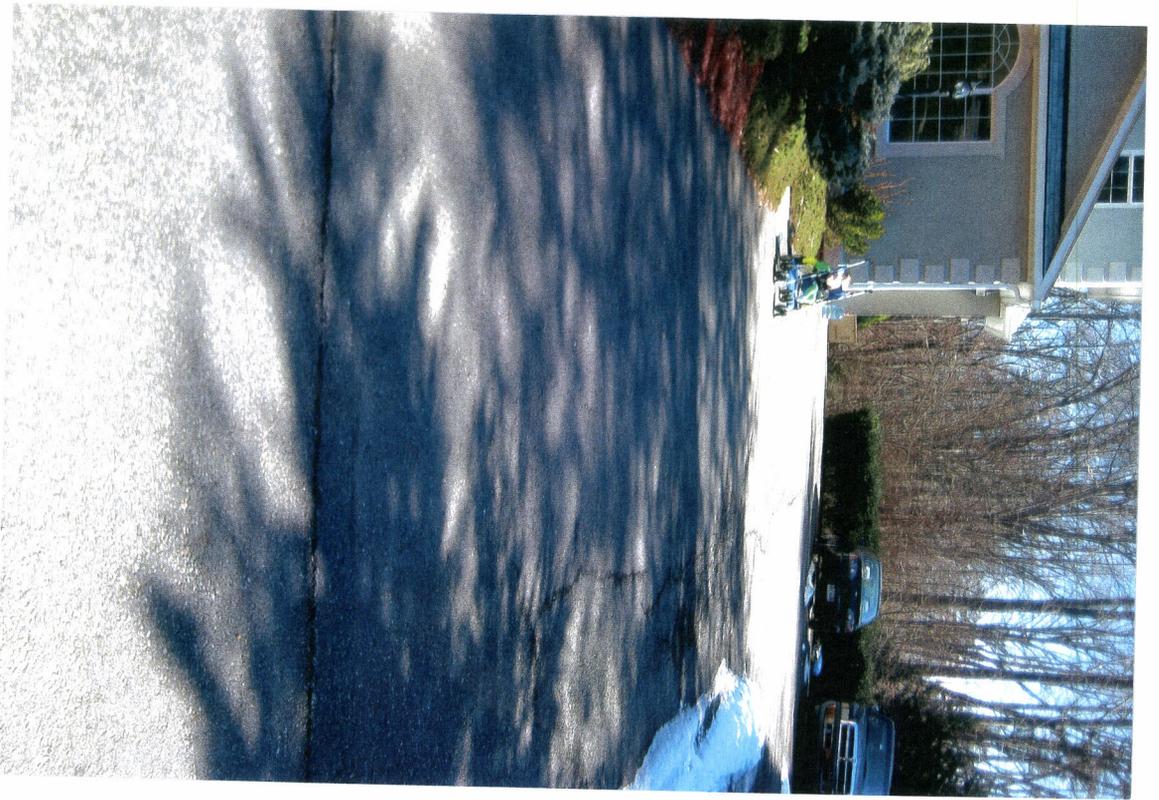
RECEIVED  
Department of Planning & Zoning

MAR 20 2014

Zoning Evaluation Division



#10 Childcare facility



#9 Side driveway

RECEIVED  
 Department of Planning & Zoning  
 MAR 20 2014  
 Zoning Evaluation Division

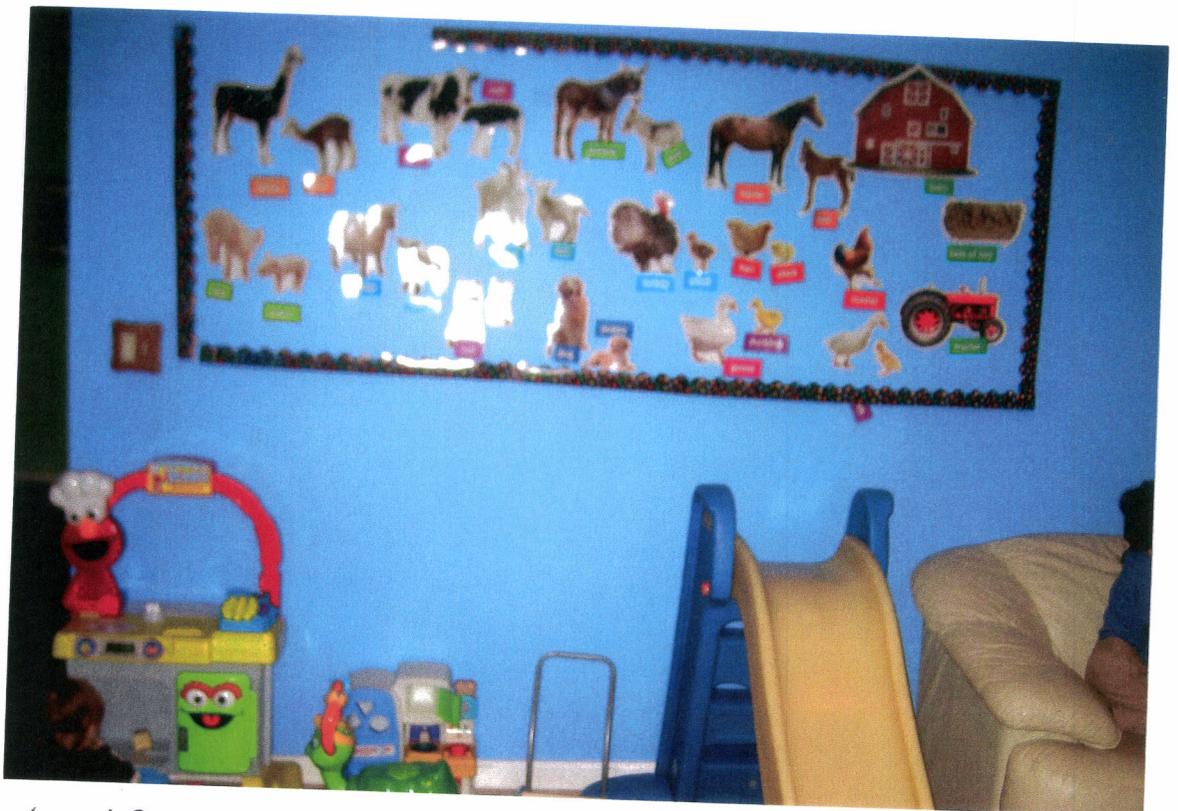


# 11 childcare facility

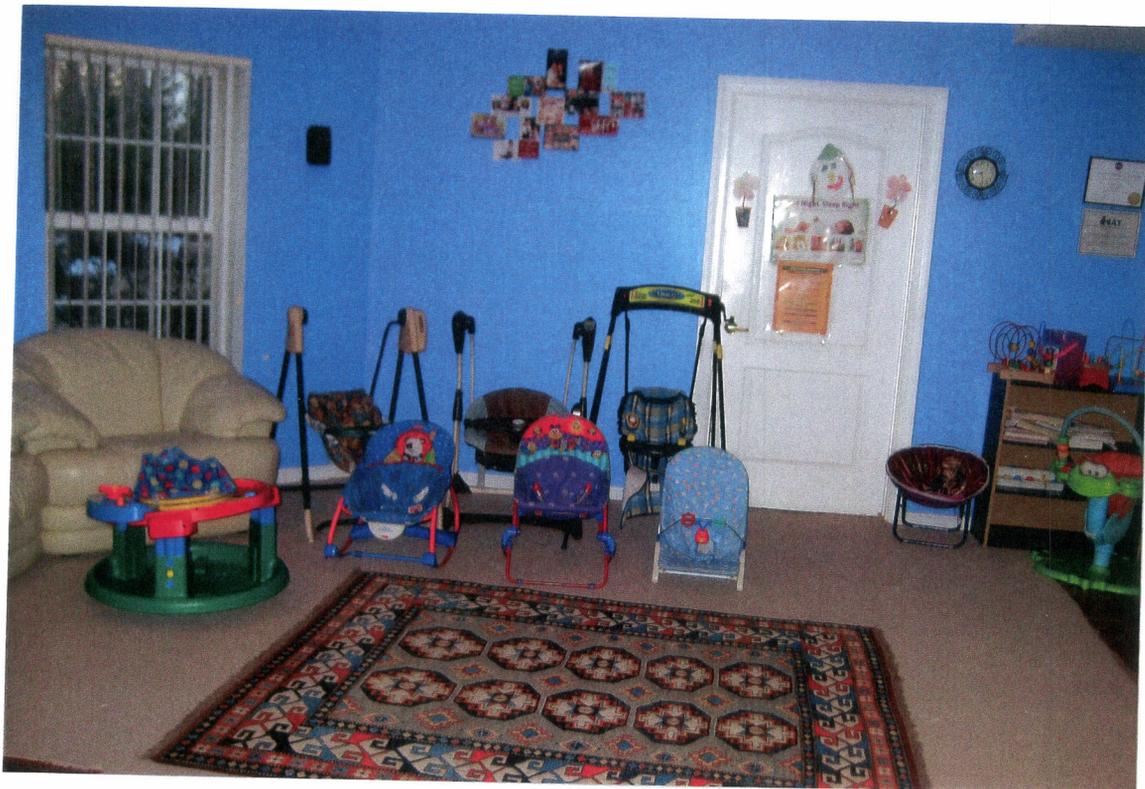
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Department of Planning & Zoning

MAR 20 2014

Zoning Evaluation Division



# 12 childcare facility



# 13 childcare facility

RECEIVED  
Department of Planning & Zoning

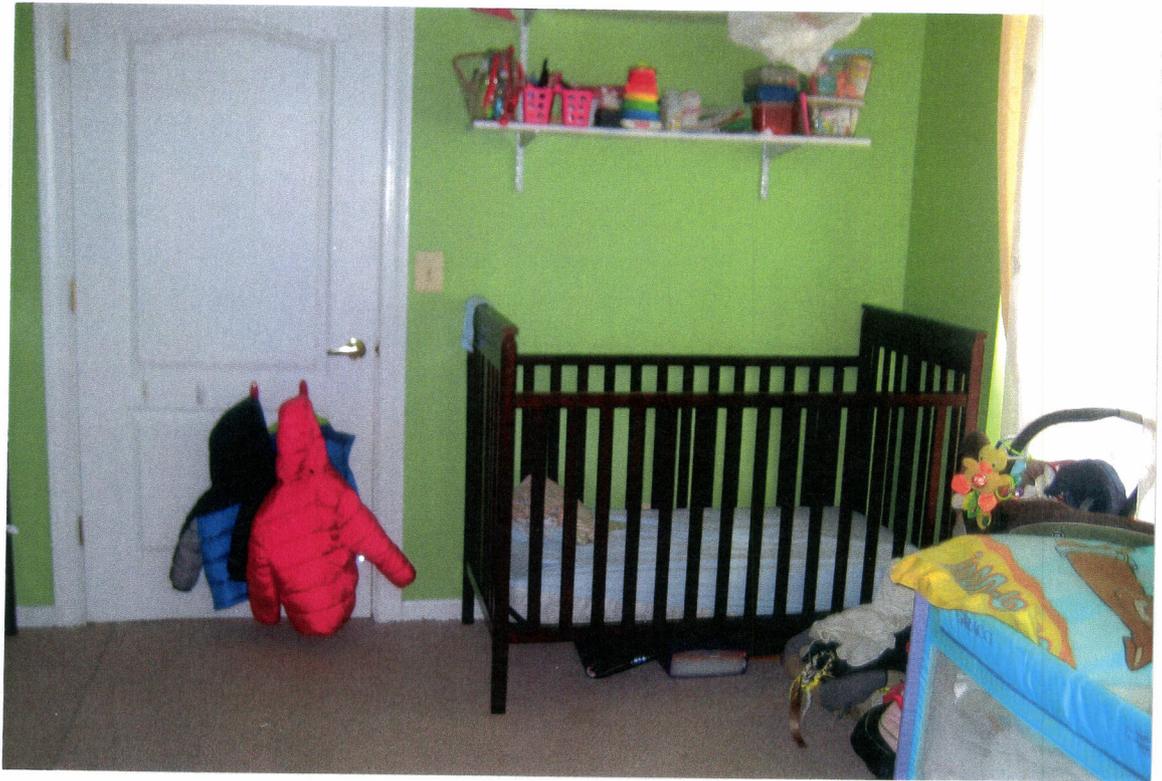
MAR 20 2014

Zoning Evaluation Division

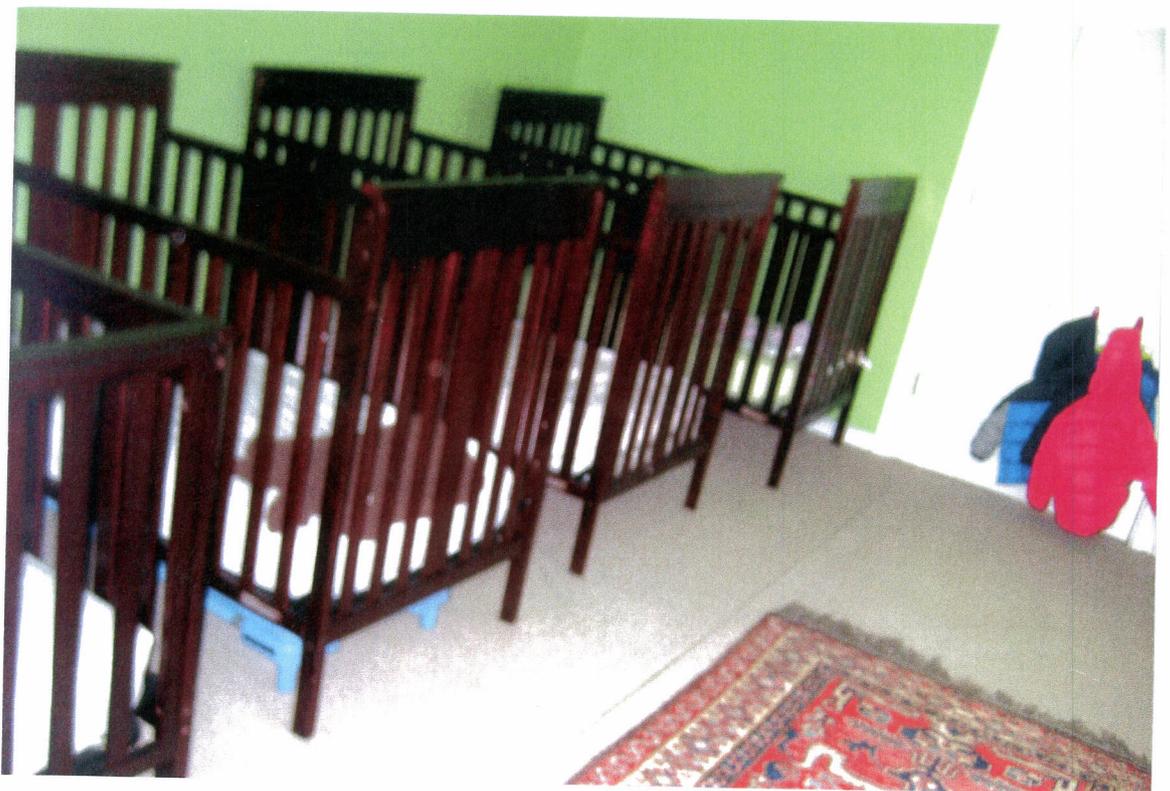


# 14 childcare facility

RECEIVED  
Department of Planning & Zoning  
MAR 20 2014  
Zoning Evaluation Division



# 15 childcare facility bedroom



# 16 childcare facility bedroom

RECEIVED  
Department of Planning & Zoning

MAR 20 2014

Zoning Evaluation Division

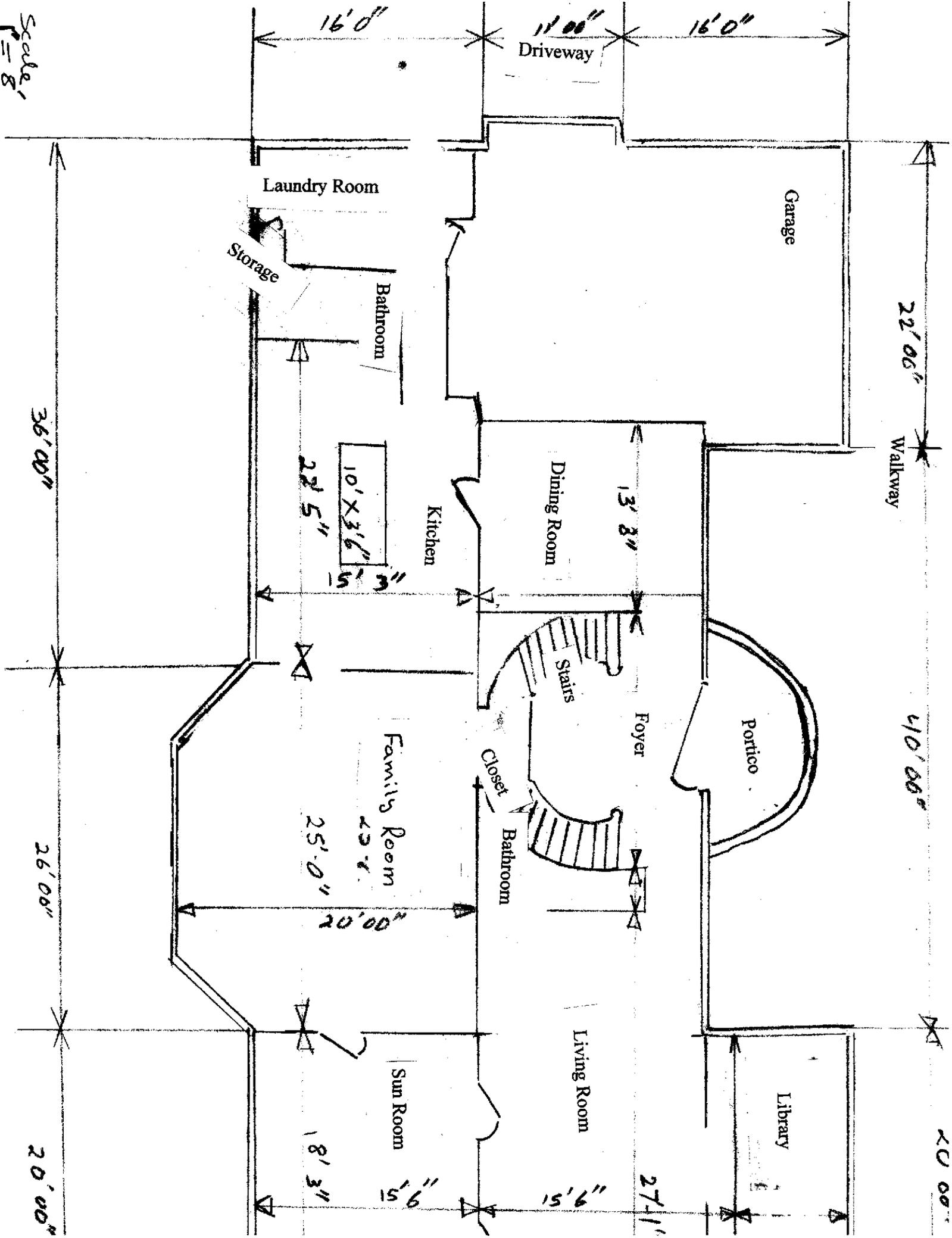


~~#~~ 10 backyard

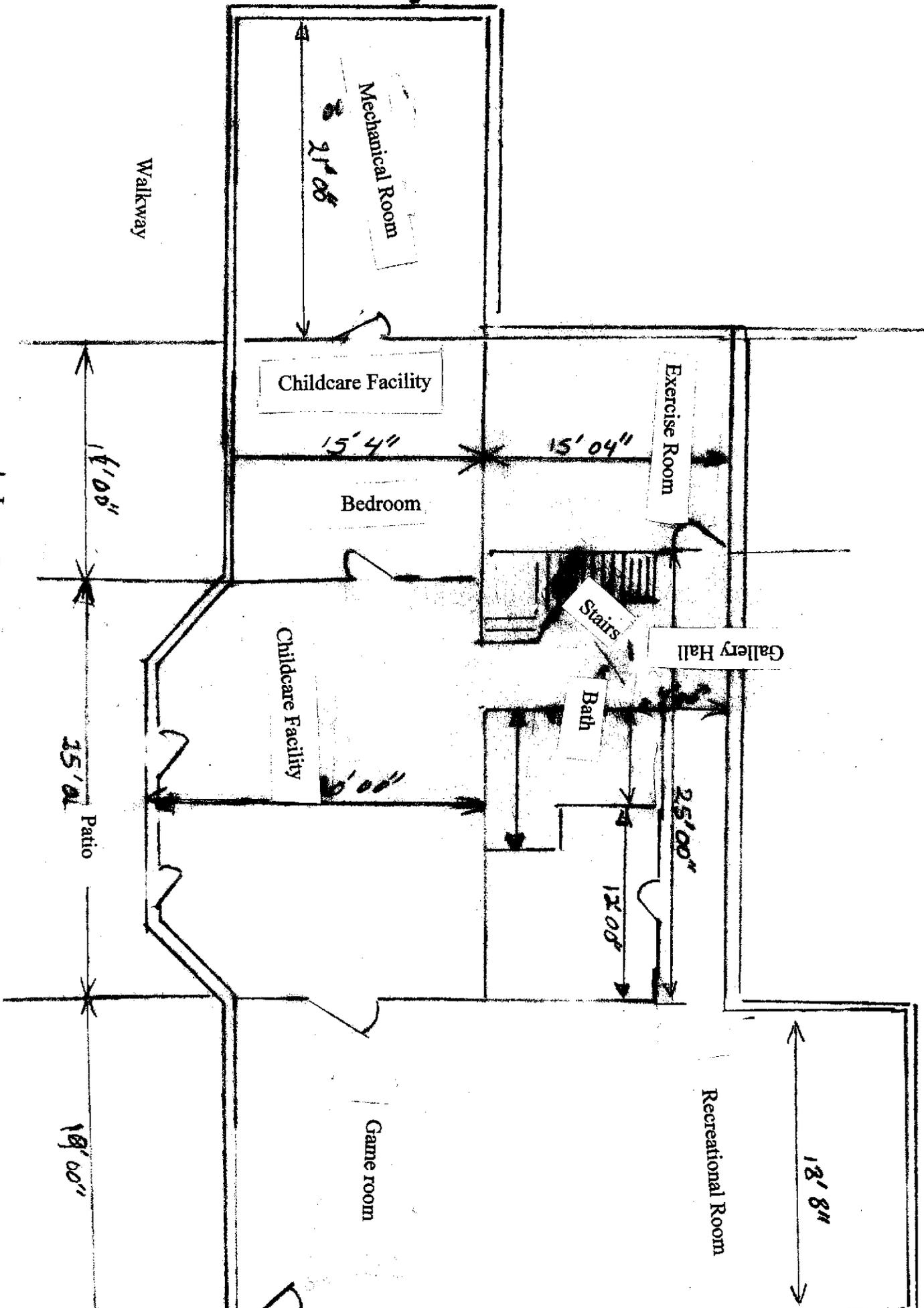


# 11 left edge corner (neighbor)

Scale  
1" = 8'



L Lower Level P1



Walkway

Mechanical Room

21'08"

Childcare Facility

15'4"

14'00"

Bedroom

15'04"

Exercise Room

Stairs

Gallery Hall

Bath

Childcare Facility

20'00"

25'00"

35'00" Patio

12'00"

Recreational Room

18'84"

Game room

18'00"

SDE, INC  
7777 Leesburg Pike  
Suite 305N  
Falls Church, VA 22043



SUBURBAN DEVELOPMENT ENGINEERING

ENGINEERS • PLANNERS • LANDSCAPE ARCHITECTS • SURVEYORS

## 6301 TRAVILAH COURT

### VARIANCE STATEMENT OF JUSTIFICATION

The owner of the property located @ 6301 Travilah ct has constructed an existing two story vinyl accessory structure on the above referenced property.. The existing accessory structure encroaches into the front yard building restriction line approximately 20 feet. The structure is partially screened by a series of evergreen trees screening the structure from the Travilah Court cul- de- Sac. The existing structure is not visible from the surrounding houses.

The structure is made of wood with green color vinyl sidings as shown on the attached photos being submitted as part of the variance application package.

The existing accessory structure is being used by the children and the owner wishes to maintain the existing accessory structure. The owner also proposes to screen the structure fully by planting evergreen trees all the way around where is needed to screen the structure from views by the adjacent property owners as shown on the variance plat. This variance application will be submitted as part of the special permit to the existing home childcare as stated in the attached letter from Mrs. Laura Gumkowski, The Fairfax County DPZ-ZED planner II.

The existing structure does not conform to the provisions of all applicable ordinances, regulation adopted standards and any applicable conditions. However in accordance with section 18-404 standard, the authorization of the variance will not be detriment to adjacent property. The character of the zoning district will not be changed by granting the variance. The variance will be in harmony with the intended spirit and purposes of this ordinance and will not be contrary to the public street. The structure façade and architectural is in harmony with the surrounding trees and houses.



EXISTING TREE HOUSE (VIEW FROM SOUTHWEST LOT 16)



EXISTING TREE HOUSE (VIEW FROM LOT 14A (SOUTHEAST) 30°)



EXISTING TREE HOUSE (SCREENED) VIEW FROM TRAVILAH COURT CU-DE-SAC



EXISTING TREE HOUSE (VIEW FROM SOUTH) / LOT 16



EXISTING TREE HOUSE (VIEW FROM SOUTHEAST 60°)



EXISTING TREE HOUSE (VIEW FROM TRAVILAH CT CU-DE-SAK)

Application No.(s): SP 2014-SP-116  
 (county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 05/05/14  
 (enter date affidavit is notarized)

124842

I, Salma Nazary, 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:

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 <b>BOLD</b> above)
Salma Nazary	6301 Travilah Ct. Fairfax St. VA 22039	applicant title owner
d/b/a Salma Daycare	6301 Travilah Ct. Fairfax St. VA 22039	Co-title owner
Karim Nazary		

(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).

CAPD

Application No.(s): SP 2014-SP-116  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 05/05/14  
(enter date affidavit is notarized)

124842

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)

NA

**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)

NA

(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): SP 2014-SP-116  
(county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 05/05/14  
(enter date affidavit is notarized)

124842

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**)

NA

(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):

SP 2014-SP-116  
(county-assigned application number(s), to be entered by County Staff)

Page Four

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 05/05/14  
(enter date affidavit is notarized)

124842

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):

SP 2014-SP-116

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 05/05/14  
(enter date affidavit is notarized)

124842

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)

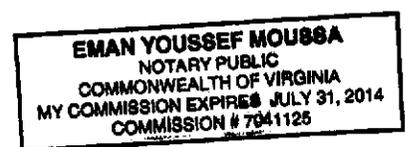
Salma Nazeri [X] Applicant [ ] Applicant's Authorized Agent

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

Subscribed and sworn to before me this 5th day of May 2014, in the State/Comm. of Fairfax, County/City of Virginia.

Eman Youssef Mousa Notary Public

My commission expires: 7/31/2014



CMB

DEPARTMENT OF SOCIAL SERVICES



FAMILY DAY HOME LICENSE

Issued to: Salma Nazary, d.b.a. Salma Daycare  
Address: 6301 Travilah Court, Fairfax Station, Virginia 22039

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	5 weeks through 5 years

This license is not transferable and will be in effect September 1, 2014 through August 31, 2016 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  
7301 Powder Mill Road, Suite 125  
Fairfax, VA 22030  
Telephone: (703) 934-1505

MARGARET ROSS SCHULTZE  
COMMISSIONER OF SOCIAL SERVICES

By: *James J. Parcelli*  
James J. Parcelli

Title: LICENSING ADMINISTRATOR

Date: August 11, 2014

FORM 1159-011-1.118  
LIC 8/2009 91-5464-10



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax C

Date: November 14, 2014

To: Laura Arseneau  
Zoning Evaluation Division

From: Chuck Cohenour  
Zoning/Property Maintenance Inspector  
Zoning Inspection Branch

Subject: Home Child Care Facility SP 2013-SP-0116

Applicant: Salma Nazary  
6301 Travilah Court (formerly Parvis Court), Fairfax, Virginia 22039  
Parvis Estates, Lot 3  
Tax Map Ref. #: 77-3 ((14)) 3  
Zone: R-1  
Mail Log: 2014-SP-0459

*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.
- An operable smoke alarm shall be provided outside of each sleeping area, with at least one such device on each floor.

*A smoke alarm in the sleeping room of this child care facility was not anchored to the ceiling. This dwelling had ten (10) foot ceilings and a test of the smoke alarm was not possible. The smoke alarm power light was illuminated.*

- 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.

**Department of Planning and Zoning**  
Zoning Administration Division  
Zoning Inspections Branch  
12055 Government Center Parkway, Suite 829  
Fairfax, Virginia 22035-5508  
Phone 703-324-4300 FAX 703-324-1343  
[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)

6301 Travilah Court  
November 14, 2014

- Electrical hazards identified shall be abated in accordance with the Virginia Uniform Statewide Building Code.

*This property has at least four accessory structures, plus a ground level patio, that are located in the left side of the front yard.*

*Electrical wiring was observed throughout the area where these accessory structures are located that has been installed, above and below ground, with some of this wiring being concealed and other wiring being exposed.*

*This wiring appears to supply electrical power to the freestanding structures listed as "barbeque", a large pavilion listed as "gazebo", a freestanding accessory structure that is listed as a "tree house" and the water feature that is not shown on the plat.*

- 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.

- Other

*The property has an accessory structure that the applicant advised was a "water fountain" and is not labeled on the plat. This accessory structure is approximately 12 feet in diameter and contains water that is approximately 36 inches in depth water and this water fountain is covered by a pergola.*

*The "water fountain" has no fence or barrier that would deter entry. This water feature is not in use and the water collected there has become stagnant.*

- Structures comply with the Zoning Ordinance.

*This property is at the end of a cul-de-sac and has at least four accessory structures located in what is believed to be the minimum required front yard. One of these accessory structures is the water feature that was described above.*

*A second accessory structure is hand labeled on the grading plan as a "gazebo" and is approximately 26' x 16' or 416 square feet in area and is approximately 10 feet in height. This accessory is believed to be in the minimum required side yard.*

*A freestanding accessory structure is listed as a "tree house" on the plat. The submitted plat has a hand labeled entry that indicates that the structure is approximately 10' x 10' (100 square feet in area) and is 8' 6" in height. This freestanding accessory structure was found to be two stories, in excess of the stated 8' 6" in height, and is divided into upper and lower sections.*

*The lower section of this freestanding accessory structure is a storage area for tools and equipment.*

*The upper section of the freestanding accessory structure is accessed via an outside stair case. The upper section is habitable space which contains two windows, a sliding patio door and has an exterior deck. This room also is supplied with electrical components.*

*The immediate area surrounding the "tree house" has various items of outdoor storage such as cement mixers, ladders, section of lattice work, plywood, siding, and scraps of discarded wood. Other items of outdoor storage were observed around the accessory structure labeled as "gazebo".*

*A review of the Building Permits DPWES records indicate no for the accessory structures, it is unclear if the trade permits for the plumbing and electric were approved for the plumbing and electrical improvements in and around these accessory structures.*

*This property is zoned R-1. The submitted plat is insufficient to determine if any of the four accessory structures are located in the minimum required yards. If a more professionally prepared plat/grading plan had been submitted that accurately depicted the locations of the accessory structures that exist on the property, the answer to the location requirements could be more effectively and accurately answered.*

*In addition, other improvements such as the absence of the circular driveway and the location of the accessory structures in relation to the storm water easement are not detailed on the submitted plat, plus the number and size of the accessory structures, located in either the minimum required front yard or the front yard, an updated plat prepared by a licensed professional in that field must be provided with this application.*

cc: Street Files

**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.

**8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location**

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) 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 and 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. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
  - E. All required minimum yards to include front, side and rear, and 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 well and/or septic field.
  - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
  - 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. Seal and signature of professional person certifying the plat.

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:
  - A. The error exceeds ten (10) percent of the measurement involved, or
  - B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
  - C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
  - D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
  - E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - F. It will not create an unsafe condition with respect to both other property and public streets, and
  - G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
  - H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.

4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

**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
- e. 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.