



APPLICATION ACCEPTED: March 7, 2016
BOARD OF ZONING APPEALS: June 8, 2016 @ 9:00 a.m.

County of Fairfax, Virginia

June 1, 2016

STAFF REPORT

SPECIAL PERMIT SP 2016-MA-016
VARIANCE VC 2016-MA-004

MASON DISTRICT

APPLICANT: Uzma Ehtesham Sheikh
Uzma's Family Day Home

OWNERS: Uzma Sheikh
Ehtesham Sheikh

SUBDIVISION: Barcroft Hills

STREET ADDRESS: 6520 Columbia Pike, Falls Church, 22041

TAX MAP REFERENCE: 61-3 ((13)) 227

LOT SIZE: 10,074 square feet

ZONING DISTRICT: R-2

ZONING ORDINANCE PROVISIONS: 8-305, 3-203, 8-914, 18-401

SPECIAL PERMIT PROPOSAL: To permit a home child care facility and to permit a reduction in minimum yard requirements based on error in building location to permit an at-grade deck (patio) to remain 1.1 ft. from a side lot line.

VARIANCE PROPOSAL: To allow an accessory storage structure greater than 200 sq. ft. in size to remain.

Erin M. Haley

STAFF RECOMMENDATION:

Staff recommends approval of SP 2016-MA-016 for the home child care facility with adoption of the proposed development conditions contained in Appendix 1.

Staff recommends denial of VC 2016-MA-004 for an accessory storage structure greater than 200 square feet in size to remain. However, if it is the intent of the BZA to approve the Variance application, the BZA should condition its approval by requiring conformance 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

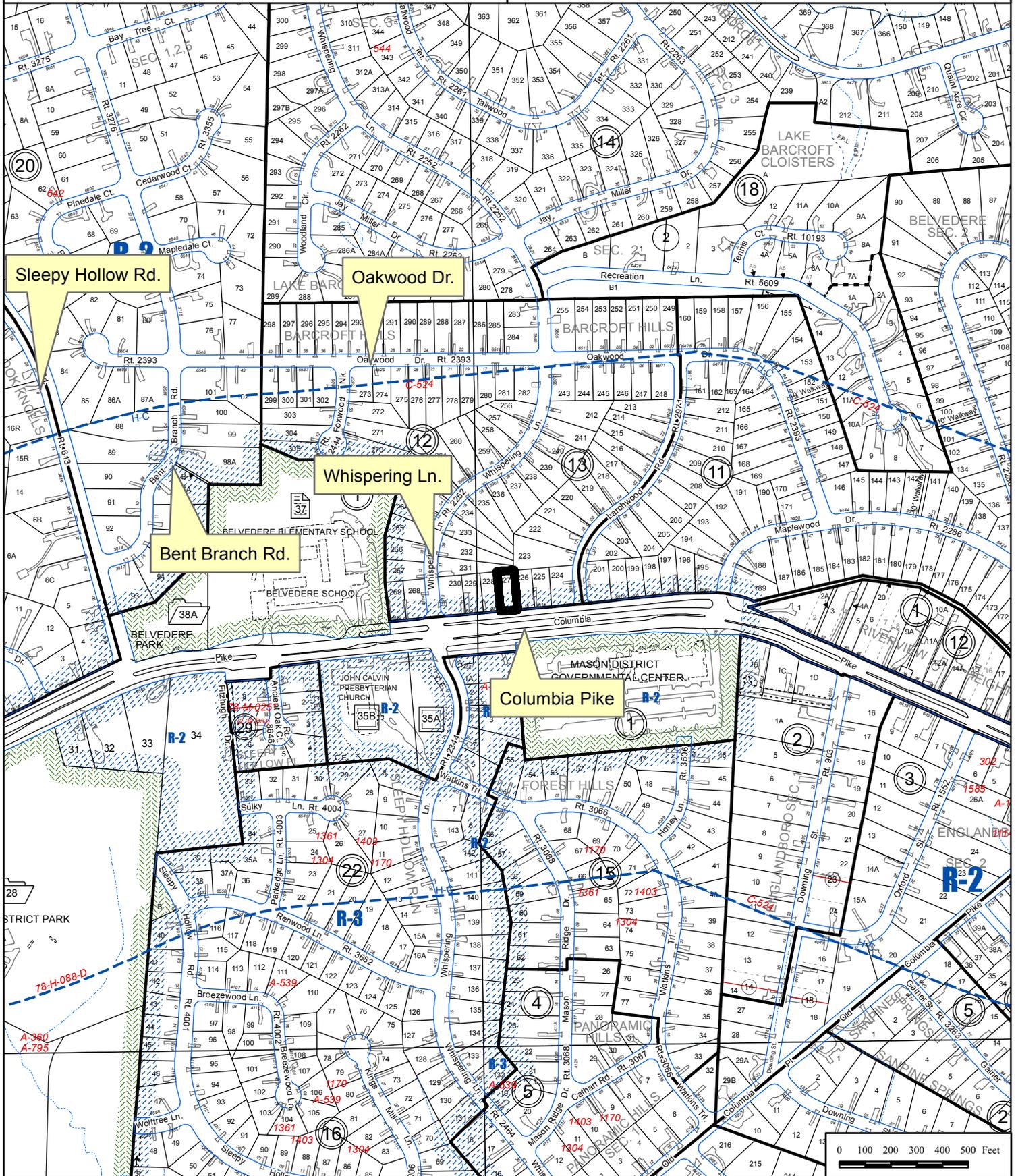
SP 2016-MA-016

UZMA EHTESHAM SHEIKH D/B/A UZMA'S FAMILY DAY HOME

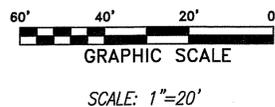
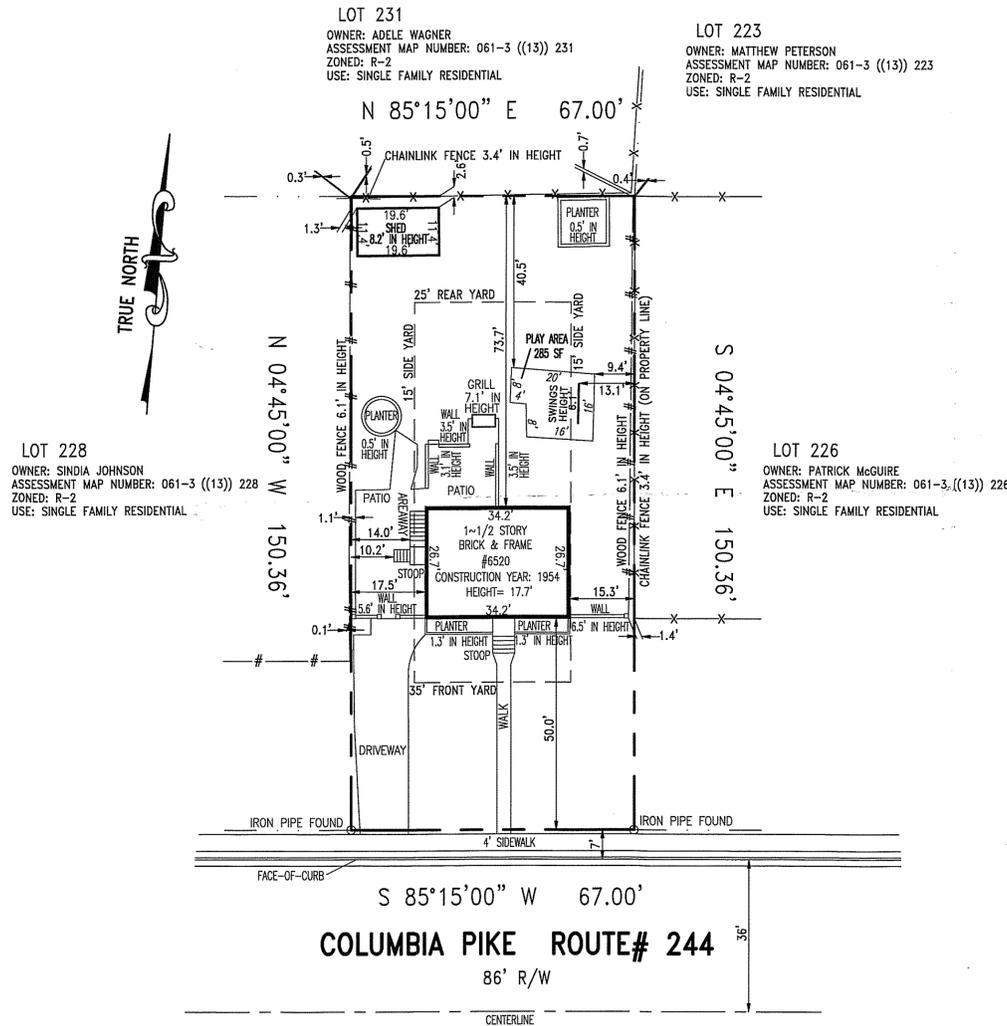
Variance Application

VC 2016-MA-004

UZMA EHTESHAM SHEIKH D/B/A UZMA'S FAMILY DAY HOME



NOTE: ALL IMPROVEMENTS, STRUCTURES AND DWELLING SHOWN ARE AN EXISTING CONDITION.



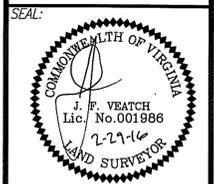
GENERAL NOTES

- 1 THE PROPERTY DELINEATED HEREON IS LOCATED ON FAIRFAX COUNTY TAX MAP 061-3 ((13)) PARCEL 227 AND IS ZONED R-2.
- 2 APPLICANT/OWNER: EHTESHAM SHEIKH
 6520 COLUMBIA PIKE
 FALLS CHURCH, VIRGINIA 22041
 TEL. (703) 862-7258
- 3 PROPERTY AREA: 10,074 SQUARE FEET OR 0.23127 ACRES.
- 4 AREA WITHIN R-2 ZONING DISTRICT: 10,074 SQUARE FEET OR 0.23127 ACRES.
- 5 THIS SITE IS SERVICED BY PUBLIC WATER AND PUBLIC SANITARY SEWER.
- 6 THERE IS NO VISIBLE EVIDENCE OF CEMETERY, GRAVEYARD, GRAVES OR BURIAL GROUNDS ON THE SITE.
- 7 BASED ON THE CHESAPEAKE BAY PRESERVATION ORDINANCE AMENDED BY THE FAIRFAX COUNTY BOARD OF SUPERVISORS NOVEMBER 18, 2003 THIS ENTIRE SITE IS LOCATED WITHIN THE RESOURCE MANAGEMENT AREA (RMA) AND NOT LOCATED WITHIN THE LIMITS OF THE RESOURCE PROTECTION AREA (RPA).
- 8 BASED ON INFORMATION OF RECORD THIS SITE IS LOCATED OUTSIDE ANY FEDERAL, STATE OR COUNTY FLOODPLAIN.
- 9 BASED ON INFORMATION OF RECORD THIS SITE IS LOCATED OUTSIDE OF THE FAIRFAX COUNTY ENVIRONMENTAL QUALITY CORRIDOR (EQC).
- 10 R-2 ZONING BULK REGULATIONS:
 FRONT YARD: 35'
 SIDE YARD: 15'
 REAR YARD: 25'
 MAXIMUM BUILDING HEIGHT: 35' SINGLE FAMILY DWELLINGS
- 11 THERE ARE NO EASEMENTS GREATER THAN 25 FEET WIDTH OR "MAJOR UTILITY EASEMENTS" ON THE PROPERTY UNLESS OTHERWISE SHOWN HEREON.

CRRES

CRRES II, LTD
 CERTIFIED REAL ESTATE
 SERVICES LTD
 1831 WHELFLE AVENUE
 RESTON, VA 20190
 PHONE: (703) 742-9105
 FAX: (703) 742-9104

SPECIAL PERMIT PLAN
 LOT 227
BARCROFT HILLS
 DEED BOOK: 1147 PAGE: 509
 MASON DISTRICT
 FAIRFAX COUNTY, VIRGINIA



PLAN STATUS	
2-29-16	COUNTY COMMENTS
DATE	DESCRIPTION
JAY DESIGN	JAY DRAWN
JAY	CHKD BY
SCALE: AS-SHOWN	
JOB No.:	
DATE: FEBRUARY 11, 2016	
FILE No.:	
SHEET: 1 OF 1	

SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to allow a home child care facility for up to 12 children. The applicant is also requesting a reduction of minimum yard requirements based on an error in building location to permit an at-grade deck (patio) to remain 1.1 feet from a side lot line.

VARIANCE REQUEST

The applicant is seeking a variance to allow an accessory storage structure (shed) approximately 224 square feet in size to remain in the northwestern corner of the property.

A copy of the special permit plat titled, "Special Permit Plat, Lot 227, Barcroft Hills," by J. F. Veach, Land Surveyor, of CRES II, Ltd, dated February 11, 2016, as revised through February 29, 2016, is included in the front of the staff report.

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

CHARACTER OF THE SITE AND SURROUNDING AREA



Figure 1: Aerial Photo of Subject Property

The application property is located on the service drive adjacent to westbound lanes of Columbia Pike. It is developed with a split level single-family detached dwelling with a full basement. An asphalt driveway with room for approximately three vehicles provides access from the service drive. A brick walkway with steps leads from the front stoop to the sidewalk. A gate at the end of the driveway provides access to the walk-out basement entrance on the western side of the house. An at-grade concrete and brick patio in the western side yard wraps around the house to a brick patio in the rear yard that is elevated approximately 6 inches. The rear yard contains planters, a grill, and a play area with a swing set. A shed 8.2 feet in height and approximately 224 square feet in size is located in the northwestern corner of the rear yard. A brick wall ranging in height from 5.6 feet to 6.5 feet extends from the sides of the house to a wood fence 6.1 feet in height. The wood fence runs down the side lot lines and connects to a chain link fence 3.4 feet in height that runs along the rear lot line.

The subject property and properties to the north, east, and west are zoned R-2 and developed with single-family detached houses. Properties across Columbia Pike to the south are zoned R-3 and developed with a single family house and R-2 and developed with the Mason District Supervisor's office.

BACKGROUND

Fairfax County Tax Records and building permit records indicate that the house was constructed in 1954 and purchased by the property owners in 2004.

Records indicate that two other similar special permit applications for errors in building location for decks have been heard by the Board of Zoning Appeals (BZA) in the surrounding area. One was for a property on Larchwood Road and the other was for a property on Oakwood Drive. Details of these applications are included in Appendix 5.

DESCRIPTION OF THE PROPOSED USE

Home Child Care Facility

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 7:30 a.m. and 6:30 p.m., Monday through Friday. The applicant has a staggered drop-off and pick-up time for the children. The applicant currently employs two full-time non-resident assistants.

The applicant holds a current Family Day Home License from the Commonwealth of Virginia, Department of Social Services, valid through October 17, 2016. The license permits a capacity of 7 children, ages three months through 12 years, 11 months. The applicant's current state license permits the facility to operate from 8:00 a.m. to 6:00 p.m. Monday through Friday. A development condition has been proposed to require

the applicant to adjust her state approved hours to those approved with this application. A copy of the license information is included as Appendix 6.

The home child care facility is operated in the walk-out basement of the dwelling which consists of a main childcare room, a sleeping room, and a bathroom. Napping occurs in both the main room and in the room labeled “sleeping area” on the provided floor plan. The main room has adequate emergency egress through a door to the outside and the sleeping room has emergency egress through a recently installed egress window. Building permit information for the egress window is included in Appendix 7. The fenced rear yard is utilized for outdoor play. Pictures provided by the applicant show toys and play equipment located in this area.

Error in Building Location

The applicant requests a special permit for a reduction in yard requirements to allow her at-grade deck (patio) to remain 1.1 from the western side lot line. She states that the patio was in existence at the time she purchased the property.

Variance for Accessory Storage Structure

The applicant requests a variance to permit the accessory storage structure (shed) approximately 224 square feet in area and 8.2 feet in height to remain in the northwestern corner of the property. The Zoning Ordinance limits accessory storage structures to a single family detached dwelling in the R-2 Zoning District to a maximum of 200 square feet in gross floor area.

The applicant states that she increased the size of the shed when she rebuilt it.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area I, Baileys Planning District
Planning Sector: Barcroft Community Planning Sector (B5)
Plan Map: Residential, 2-3 du/ac

Zoning District Standards

Bulk Standards (R-2)		
Standard	Required	Provided
Lot Size	15,000 sf.	10,074*
Lot Width	Interior: 100 feet	67 feet*

Bulk Standards (R-2)		
Standard	Required	Provided
Building Height	35 feet	17.7 feet
Front Yard	35 feet	50 feet
Side Yard	15 feet	Eastern: 15.3 feet Western: 17.5 feet
Rear Yard	25 feet	73.7 feet

* The subject parcel was created and developed prior to the adoption of the current Zoning Ordinance; therefore it is considered a legal, buildable lot under Sect. 2-405.1 of the Zoning Ordinance.

On-Site Parking and Site Circulation

The property is located on the service drive adjacent to the westbound lanes of Columbia Pike. It has an asphalt driveway that provides approximately three parking spaces. On-street parking is available on the service drive.

Parents utilizing the home child care facility conduct drop-off and pick-up activities at staggered times. A condition has been included to require the applicant to keep the driveway clear for the parents to use during all drop-off and pick-up times.

Zoning Inspection Report (Appendix 8)

The memo provided by the Zoning Inspections Branch noted that the entry door for the home child care had a keyed lock that needed to be replaced with a thumb lock and that the drop ceiling impeded the door from fully opening. The applicant has since addressed these issues and provided staff with photographic proof.

Zoning Ordinance Requirements (Appendix 9)

- 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. 10-103 Par. 6 Location Regulations
- Sect. 8-903 Standards For All Group 9 Uses
- Sect. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

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

Standards 1 and 2 Comprehensive Plan/ Zoning District	The Comprehensive Plan recommends residential uses and the property is developed with a residential use. The R-2 District permits a home child care facility as an accessory use with special permit approval.
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<p>Standard 3 Adjacent Development</p>	<p>No new construction is proposed. An outdoor play area with play equipment is found in the rear yard. In staff's opinion, the proposed use will not hinder or discourage the use or development of neighboring properties or negatively affect value.</p>
<p>Standard 4 Pedestrian/Vehicular Traffic</p>	<p>Arrival and departure times of the children are staggered. There is room in the driveway for approximately three vehicles. The proposed use is not hazardous and does not conflict with existing and anticipated traffic in the neighborhood. The service drive allows parents to enter and exit the site away from the high traffic volume of Columbia Pike.</p>
<p>Standard 5 Landscaping/Screening</p>	<p>There is an existing fence and mature vegetation that provides screening to the outdoor play area.</p>
<p>Standard 6 Open Space</p>	<p>There is no prescribed open space requirement for residential lots in the R-2 district.</p>
<p>Standard 7 Utilities, Drainage, Parking, and Loading</p>	<p>There are no changes to the utilities and drainage serving the property. As previously discussed, the driveway would be used for parking for the home child care facility.</p>
<p>Standard 8 Signs</p>	<p>Sect. 10-103 of the Zoning Ordinance prohibits signs for home child care facilities.</p>

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

<p>Standard 1 Lot Size and Bulk Regulations</p>	<p>The property meets the bulk regulations for the R-2 District. The lot was created before the adoption of the current zoning ordinance and therefore though it does not meet the lot size or lot width requirements it is considered a legal, buildable lot under Sect. 2-405.1 of the Zoning Ordinance. No new construction or exterior modifications are proposed.</p>
<p>Standard 2 Performance Standards</p>	<p>The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.</p>
<p>Standard 3 Site Plan</p>	<p>Home child care facilities are not subject to the provisions of Article 17, Site Plans.</p>

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

<p>Standard 1 Maximum of 12 Children & Non-Resident Employee</p>	<p>The applicant is proposing a maximum of 12 children at any one time and two full-time non-resident employees.</p>
<p>Standard 2 Access and Parking</p>	<p>Arrival and departure times of the children are staggered and parking is available in driveway. In staff's opinion the proposed use is not hazardous and does not conflict with existing and anticipated traffic in the neighborhood.</p>

<p>Standard 3 Landscaping/Screening</p>	<p>There is an existing fence and mature vegetation that provides screening to the outdoor play area.</p>
<p>Standard 4 Submission Requirements</p>	<p>The applicant met all submission requirements for a home child care facility.</p>
<p>Standard 5 Code of Fairfax, Chapter 30 and Code of Virginia, Title 63.2, Chapter 17</p>	<p>The applicant has a valid home child care license.</p>

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

<p>Part A 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 permit a maximum of 12 children at any one time.</p>
<p>Part 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>Part C No Exterior Evidence Except Play Equipment</p>	<p>There is no exterior evidence of the proposed use except play equipment.</p>
<p>Part D Non-Resident Employee</p>	<p>The applicant is proposing two full-time non-resident employees.</p>
<p>Part E Provider is a Resident</p>	<p>The provider is a resident.</p>
<p>Part F Code of Fairfax, Chapter 30 and 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.</p>
<p>Part G Increase in Children or Non-Resident Employee</p>	<p>The maximum number of children permitted by-right at any one time is seven in a single family detached dwelling and can be increased up to 12 children with special permit approval. The applicant requests special permit approval to permit a maximum of 12 children at any one time and two full-time non-resident employees.</p>

Variance Requirements (Appendix 10)

Code of Virginia Sec. 15.2-2309, as amended

In addition to meeting the definition of 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:

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 a shed greater than 200 square feet in size is not driven by a physical characteristic of the property, nor would disallowing the shed unreasonably restrict the utilization of the lot. The property is 67 feet in width, and 10,074 square feet in size, which though it does not conform to the standards of the R-2 district it also does not create such a restrictive physical condition that it causes a hardship that would relate to the size of an accessory storage structure, in staff's opinion. The lot is rectangular in shape, 150 feet deep, and has a level topography. Staff finds that the conditions of the property do not preclude the applicant from reducing the size of the accessory storage structure or installing multiple sheds that are 200 square feet in area or less within the required setbacks without unnecessary hardship. As a result, staff believes the situation or condition of the property does not present an extraordinary challenge to accommodating a conforming shed.

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 hardship for which the variance is being requested was created by the applicant when she rebuilt the shed to a larger size after acquiring the property. Staff does not believe the applicants satisfy this standard.

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 accessory storage structure currently exists on the property in the northwest corner of the rear yard which abuts two adjacent properties. The rear yard is enclosed by a wood fence 6.1 feet in height on the western side and a chain link fence 3.4 feet in height along the rear yard lot line, which provides inadequate

screening for a structure that is 8.2 feet in height and 224 square feet in size. The shed is also located only 1.3 feet from the western side lot line and 2.6 feet from the rear lot line. Also, the shed is larger and taller than most other structures in the rear yards of neighboring properties. Staff believes this provides a detrimental visual impact to adjacent properties, although it is noted that the neighbor immediately to the west also has several large accessory structures in the rear yard.

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))

The residential lots in the vicinity of the subject property are zoned R-2 and contain single family detached dwellings with accessory structures. Staff finds that the condition or situation of the subject property is of a general and recurring nature. If the Board of Supervisors wants to permit larger sheds, the Zoning Ordinance could be amended to increase the maximum size allowed in residential districts.

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 request for a shed greater than 200 square feet in size would not result in a use that is otherwise permitted or cause a change in the zoning classification of the property.

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.

CONCLUSION / RECOMMENDATION

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

Staff recommends approval of SP 2016-MA-016 for the home child care facility with adoption of the proposed development conditions contained in Appendix 1.

Staff recommends denial of VC 2016-MA-004 for the accessory storage structure greater than 200 square feet in size (224 square feet) to remain. In staff's opinion, the applicants have not sufficiently justified the granting of a variance to allow a larger than normally permitted shed. The purpose of a variance is to provide a reasonable deviation from Zoning Ordinance standards when there is a certain exceptional or

extraordinary characteristic of the property and the application of such standards would result in an unnecessary or unreasonable hardship to the property owner. Staff does not believe that such is the case with the subject application. Based on staff's review of the surrounding neighborhood, the subject property is similar to others in terms of shape, width, depth, and area. In addition, it would be possible for the applicants to install multiple accessory storage structures that comply with the maximum size limitation of 200 square feet on the property without the approval of the variance thereby achieving additional accessory storage. Staff believes that the financial hardship that the applicants may suffer to bring the structure into compliance or the fact that the applicants were unaware of the Zoning Ordinance requirements when they built the shed do not constitute an unnecessary or unreasonable hardship as required by the variance standards. In staff's opinion, the applicants have not sufficiently demonstrated that they meet all of the standards necessary to grant a variance.

However, if it is the intent of the BZA to approve the Variance application, the BZA should condition its approval by requiring conformance with 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 and Select File Photographs
4. Applicant's Affidavit
5. Similar Case History
6. State Family Day Home License Information
7. Building Permit information
8. Zoning Inspections Branch Comments
9. Applicable Zoning Ordinance Provisions
10. Code of Virginia Sec. 15.2-2309, as amended

PROPOSED DEVELOPMENT CONDITIONS**SP 2016-MA-016****June 1, 2016**

If it is the intent of the Board of Zoning Appeals to approve SP 2016-MA-016 located at Tax Map 61-3 ((13)) 227 to permit a home child care facility pursuant to Section 8-305 and 3-203, and to permit reductions of the minimum yard requirements based on an error in building location to permit a deck (patio) to remain 1.1 feet from the side lot line pursuant to Section 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, Uzma Ehtesham Sheikh, d/b/a Uzma's Family Day Home, only, and is not transferable without further action of the Board, and is for the location indicated on the application, 6520 Columbia Pike, and is not transferable to other land.
2. This special permit is granted only for the home child care use, and the location of the deck (patio), as indicated on the plat titled, "Special Permit Plat, Lot 227, Barcroft Hills," by J. F. Veach, Land Surveyor, of CRES II, Ltd, dated February 11, 2016, as revised through February 29, 2016, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation of the home child care facility shall be limited to 7:30 a.m. to 6:30 p.m., Monday through Friday.
5. The applicant shall amend her state-issued family day home license to make the approved hours of operation consistent with the hours of operation in Development Condition 4.
6. The dwelling that contains the child care facility shall be the primary residence of the applicant.
7. Excluding the applicant's own children, the maximum number of children on site at any one time shall be 12.
8. A maximum of two full-time non-resident employees, whether paid or not for their services, 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.
9. There shall be no signage associated with the home child care facility.

10. All drop-off and pick-up activities shall occur in the driveway located on the subject property.
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 approval of the use is contingent upon maintenance of a state-issued family day home license that permits the number and age of children being cared for at the home child care facility.
13. 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".
14. The accessory storage structure shall remain locked at all times during the hours of operation of the home child care facility.

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

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

PROPOSED DEVELOPMENT CONDITIONS**VC 2016-MA-004****June 1, 2016**

If it is the intent of the Board of Zoning Appeals to approve VC 2016-MA-004 located at Tax Map 61-3 ((13)) 227, to permit an accessory storage structure (shed) greater than 200 square feet (224 square feet) in size to remain, pursuant to Section 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 approved for the accessory storage structure greater than 200 square feet in size (224 square feet) shown on the plat titled, "Special Permit Plat, Lot 227, Barcroft Hills," by J. F. Veach, Land Surveyor, of CRES II, Ltd, dated February 11, 2016, as revised through February 29, 2016, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

SPECIAL PERMIT STATEMENT OF JUSTIFICATION

Uzma's Family Day Home

I am operating Family Home Day Care at subject property at 6520 Columbia Pike, Falls Church, Virginia since June of 2004 when we bought this property, at that time I was licensed through Infant and Toddler Family Daycare Inc. and operating Daycare at an apartment from 1995 to June 2004. In October 2011 switched to Commonwealth of Virginia, Department of Social Services under License Number FDH 1108295-L103. Presently I am taking care of 7 children with one helper. I am submitting this application for an increased number of 12 children. Following are operating details of existing and proposed Daycare

- A. Hours of Operation 7:30 am to 6:30 pm, MONDAY TO FRIDAY
- B. Estimated Number of Children :12, largest number present from 9:30 am to 4:30 pm.
- C. Proposed Number of Helpers :2, arrive at 7:30 am, depart at 6:30 pm
- D. Estimated Drop Off and Pick Up schedule is attached in tabular form as Figure 1.
- E. Subject property is located on 25 feet wide service road of Columbia Pike in Barcroft Hill area. Most of my clients live in neighborhood. Some of them come from nearby neighborhoods like Lincolnia, Bailleys Crossroads and Annandale.
- F. Presently 4 parents walk to Daycare to drop off and pick up children. 3 cars parking spaces are mostly available in front of property. Two cars parking is available entire day on driveway. There are always parking spaces available in 300 ft area during day time, never had any complaints from neighbors and parents so far.
- G. This property is a single family 3 stories house with a total dwelling area of 2318 sq. ft. entire basement is dedicated to Daycare with an area of 918 sq. ft. which included a room of 130 sq. ft. with 2 half windows, designated for infant sleep area, can handle 7 cribs. An area of 416 sq. ft. is designated as welcome, meal, activity, indoor play and toddlers sleep area. An area of 152 sq. ft. utility room is designated for daily storage of sleep mattresses, children's bags and supplies .64 sq. ft. Full Bathroom is available with a diapers changing area. Further elaborate by attached plan of basement as figure 2.
- H. Outdoor play area is on the property in backyard and west side of dwellings. Total play area is 3775 sq. ft. an area of 256 sq. ft. is dedicated to slides and swings with rubber mulch and bounded by 1ft. high recycled plastic timber. East side of dwellings is also secured by brick wall. West, North and East sides of backyard are secured by fences.



Uzma E. Sheikh

Date: 02/12/2016

UZMA'S FAMILY DAY HOME
OPEN MONDAY TO FRIDAY
7:30 AM TO 6:30 PM

FEB 12 2016

Zoning Evaluation Division

Arrival Schedule

FIGURE: 1

Child	7:30-8:00 A.M	8:00-8:30 A.M	8:30-9:00 A.M	9:00-9:30 A.M
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	4:30-5:00 P.M	5:00-5:30 P.M	5:30-6:00 P.M	6:00-6:30 P.M
1	X			
2	X			
3	X			
4		X		
5		X		
6		X		
7		X		
8			X	
9			X	
10				X
11				X
12				X

- H. A listing, if known, of all hazardous or toxic substances as set forth in Title 40, Code of Federal Regulations Parts 116.4, 302.4 and 355; all hazardous waste as set forth in Virginia Department of Environmental Quality Hazardous Waste Management Regulations; and/or petroleum products as defined in Title 40, Code of Federal Regulations Part 280; to be generated, utilized, stored, treated, and/or disposed of on site and the size and contents of any existing or proposed storage tanks or containers.

Hazardous or Toxic Substances. There are no known hazardous or toxic substances. No hazardous materials will be generated, utilized, stored, treated, and/or disposed of onsite.

Uzma Sheikh
Applicant's Signature

2/12/2016
Date

- I. A statement that the proposed use conforms to the provisions of all applicable ordinances, regulations, adopted standards and any applicable conditions, or, if any waiver, exception or variance is sought by the applicant from such ordinances, regulations, standards and conditions, such shall be specifically noted with the justification for any such modification.

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.

Uzma Sheikh
Applicant's Signature

2/12/2016
Date

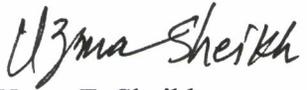
RECEIVED
Department of Planning & Zoning

FEB 12 2016

Zoning Evaluation Division

STATEMENT OF MEETING GENERAL AND SPECIAL STANDARDS

Since I am operating Family Day Home in existing dwellings and not proposing any addition to property, which can change the neighborhood appearance and daily activity. Vehicular and pedestrian traffic cannot be impacted since we have ample parking spaces available on service road. Moreover drop off and pick up times are elapsed for two hours, mostly maximum two parents show up at one time. I believe this satisfy General and Special standards.



Uzma E. Sheikh

Date: 01/19/2016

RECEIVED
Department of Planning & Zoning

JAN 19 2016

Zoning Evaluation Division

STATEMENT OF JUSTIFICATION
STANDARDS SET FORTH IN SECT. 18-404

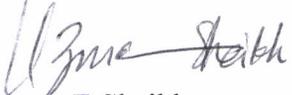
Uzma's Family Day Home

RECEIVED
Department of Planning & Zoning

MAR 01 2016

Zoning Evaluation Division

When we bought and moved to subject property in May of 2004 these errors were already exist. However when condition of shed started bad and unsafe we rebuild it. Patio is an area between west edges of dwellings and neighboring property boundary. It starts from side entrance gate after crossing the whole driveway. It is not a raised structure and is on the same level as of driveway. Since we moved it seemed as original building plan. No addition or reduction was done by us. However we resurface it by concrete to ease the snow removal. We do not use this area as patio, no fancy furniture. This pre-existed patio will not impair the purpose and intent of this ordinance. It is not detrimental to use and enjoyment or creating any hardship to immediate vicinity as it is not a raised structure and not blocking view. This is inside the brick wall and gate which comes after crossing the 50 feet long driveway. In this way it is not adjacent to public streets and not causing any hardship to public. A forced compliance will cause a lot of hardship both financial and use of property. We are not proposing any reduction or modification. A copy of plat is attached which was provided to us at the time of closing when we bought this house in May 2004, Which shows that when we bought the subject property the patio was already exist.


Uzma E Sheikh

Date: 3/01/2016

Enclosure :1

APPLICATION FOR A VARIANCE-STATEMENT OF JUSTIFICATION

UZMA'S FAMILY DAY HOME

Part A: Since this area (patio) is located just after the side entrance and is only way to directly enter to backyard. It is not unreasonably restrict the use of property. This area is on ground level and not an elevated structure. Strict application of the zoning ordinance will cause hardship as it will restrict the entrance to property. This is the only way to get to the entrance of family day home which will restrict its utilization.

Part B:

I: When we bought this house it was like this we did not made any changes or additions, we did not created any hard ship to neighbors and their property it was acquired in good faith.

II: Granting of the variance will not be of substantial detriment to adjacent and nearby properties since it is not a raised structure and not restricting the view and use of adjacent/nearby properties.

III: The subject property is in a residential area. We are not looking for substantial change in situation and condition of property which result in the formulation of a general regulation to be adopted as an amendment to the ordinance.

IV: Granting of variance will not change residential status of property, use as a family day home will not change its zoning classification.

V: The relief sought by the variance application is not available through a special permit and not require a modification of the zoning ordinance. We are not seeking any change to zoning classification of subject property.



UZMA E. SHEIKH

DATE:03/01/2016

RECEIVED
Department of Planning & Zoning

MAR 01 2016

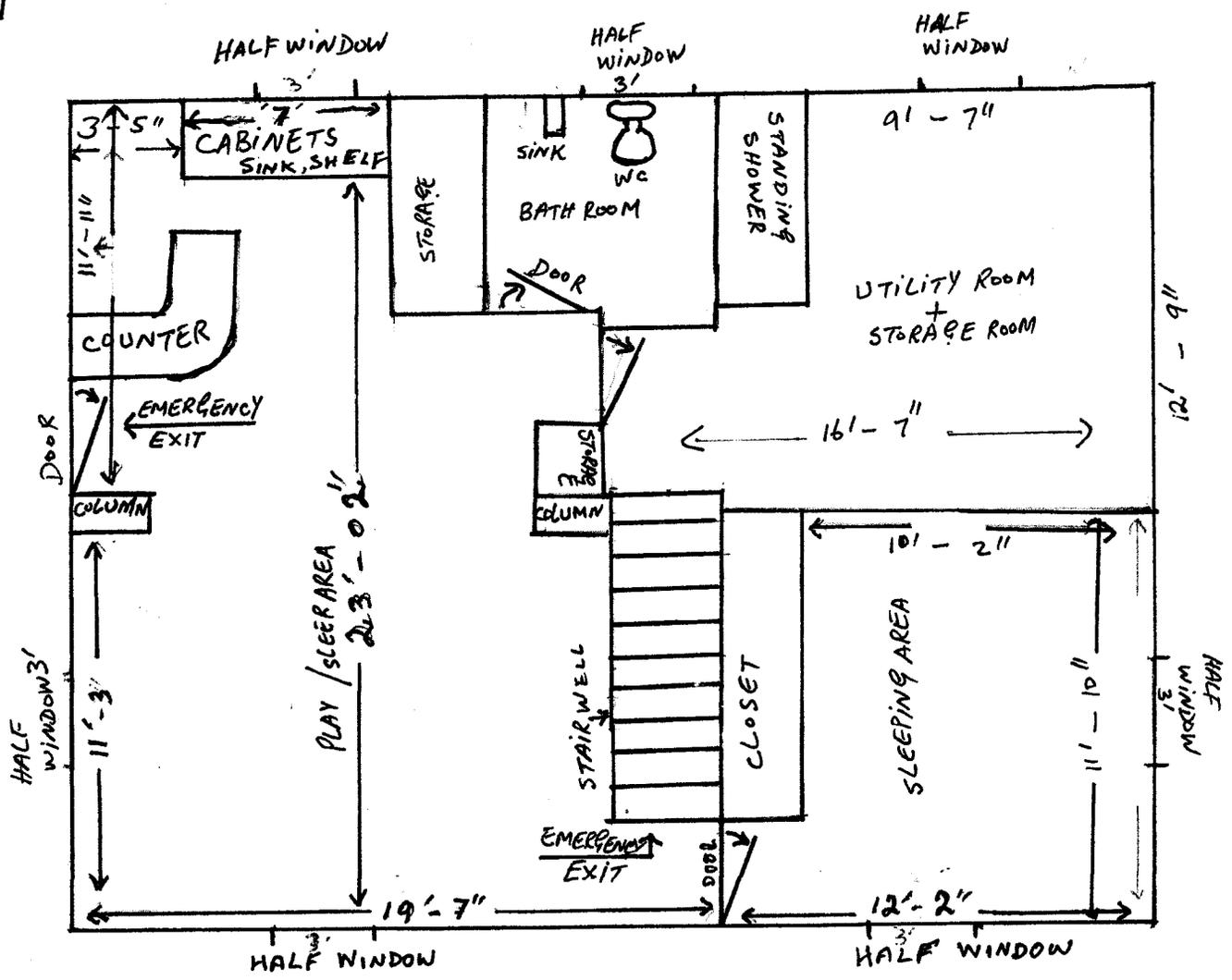
Zoning Evaluation Division

PLAN SHOWING INDOOR

FAMILY HOME DAY CARE AREA OF PROPERTY

SCALE 1" = 5'

OUTSIDE DIMENSIONS OF DWELLING ARE 34' BY 27'



DRAWN BY ENTESHAM H. SHEIKH
 Date 1-10-2016

RECEIVED
 Department of Planning & Zoning
 JAN 19 2016
 Zoning Evaluation Division

Date 1-3-2016 at 12:45 PM

①



F

FRONT VIEW OF PROPERTY TAKEN FROM 25' OF SIDE WALK

② DATE. 1-3-2016 AT 1:00 PM



FRONT VIEW SHOWING WEST SIDE NEIGHBOR HOUSE, 25' OF SIDEWALK

3

Right side of House taken from 25' of brick wall on 1/3/2016 1:30 pm

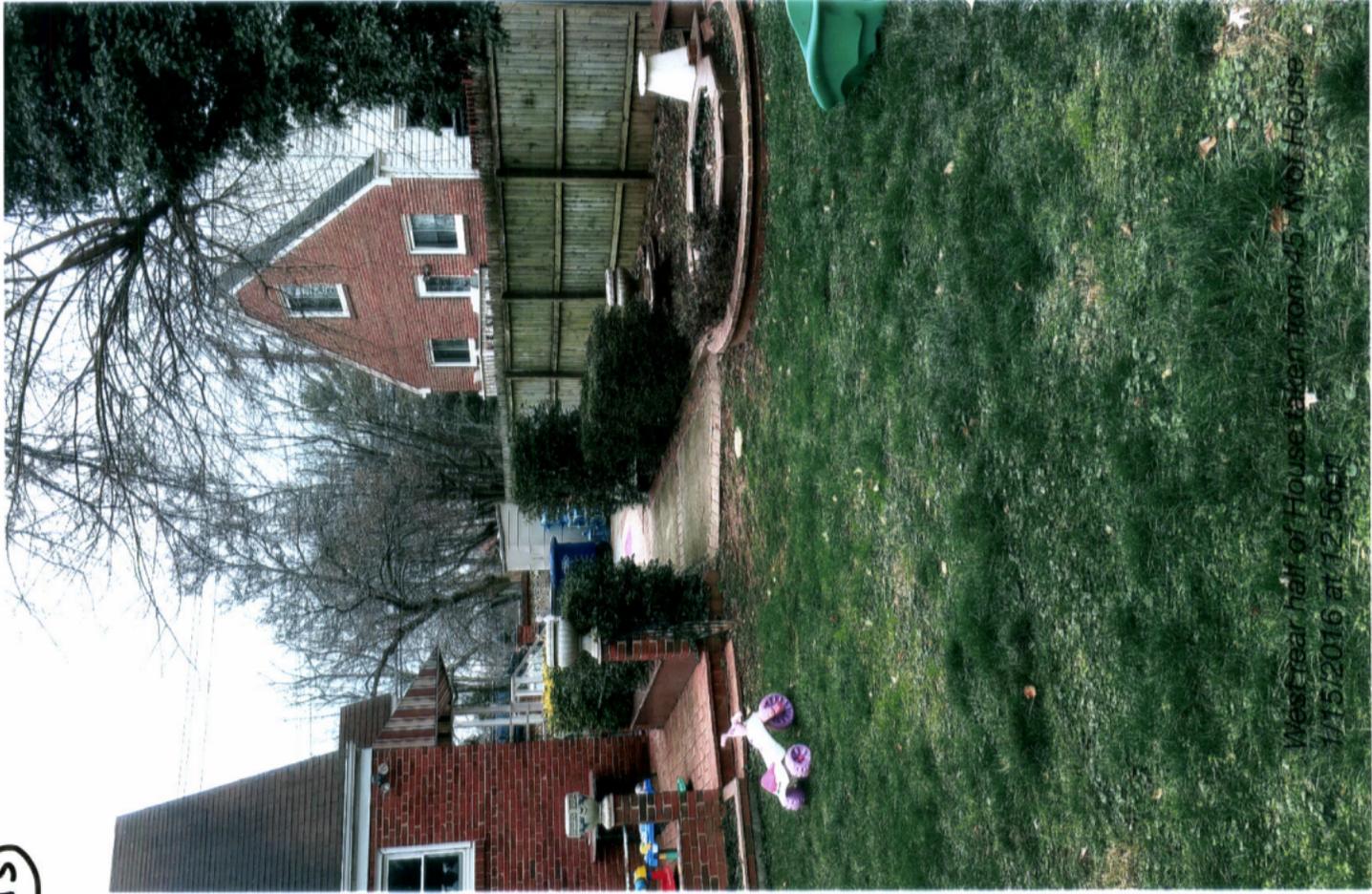


⑦ DATE 1-15-2016 AT 12:35PM



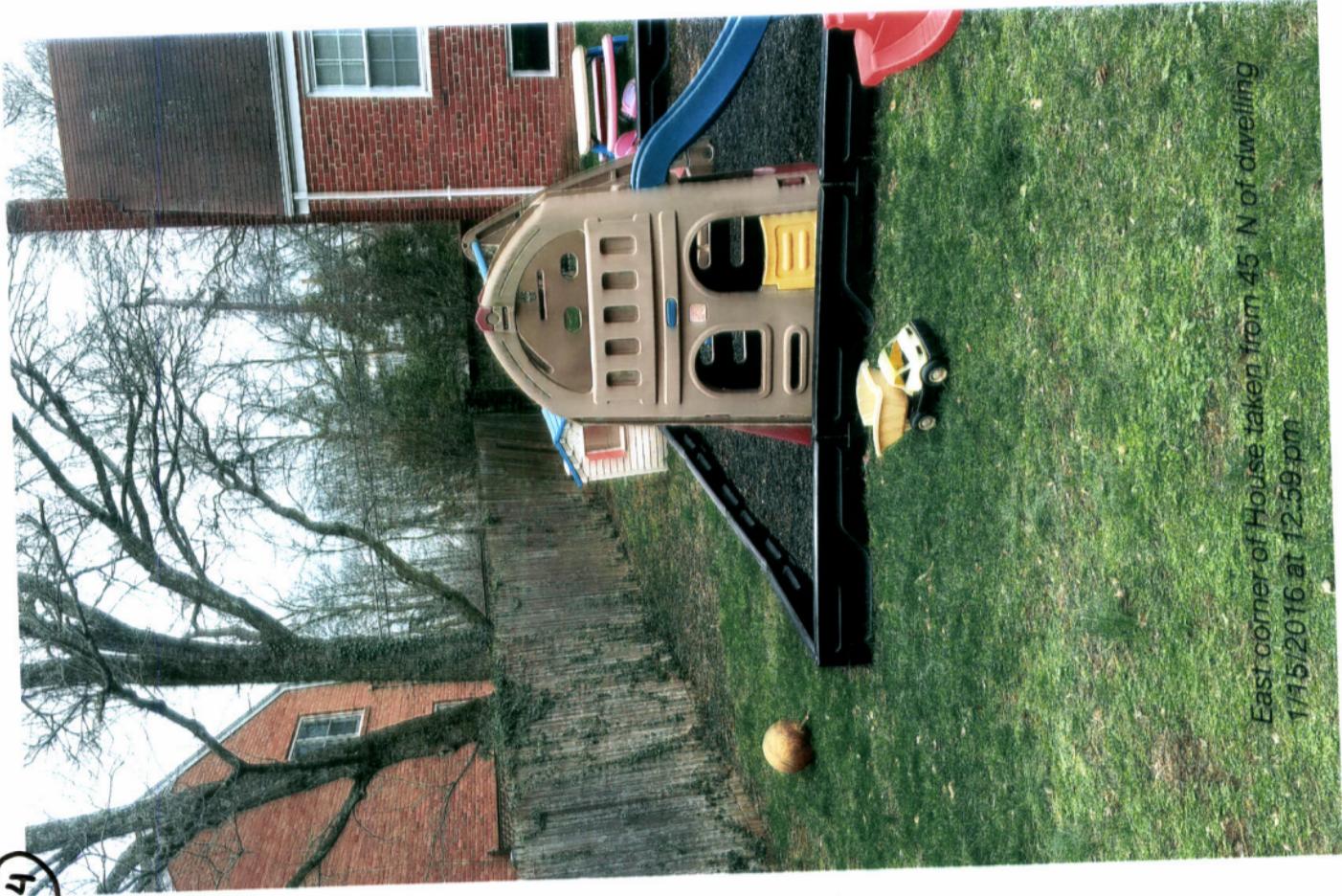
15' FROM NW CORNER OF HOUSE
WEST SIDE OF HOUSE SHOWING ENTRANCE OF DAYCARE AREA

13



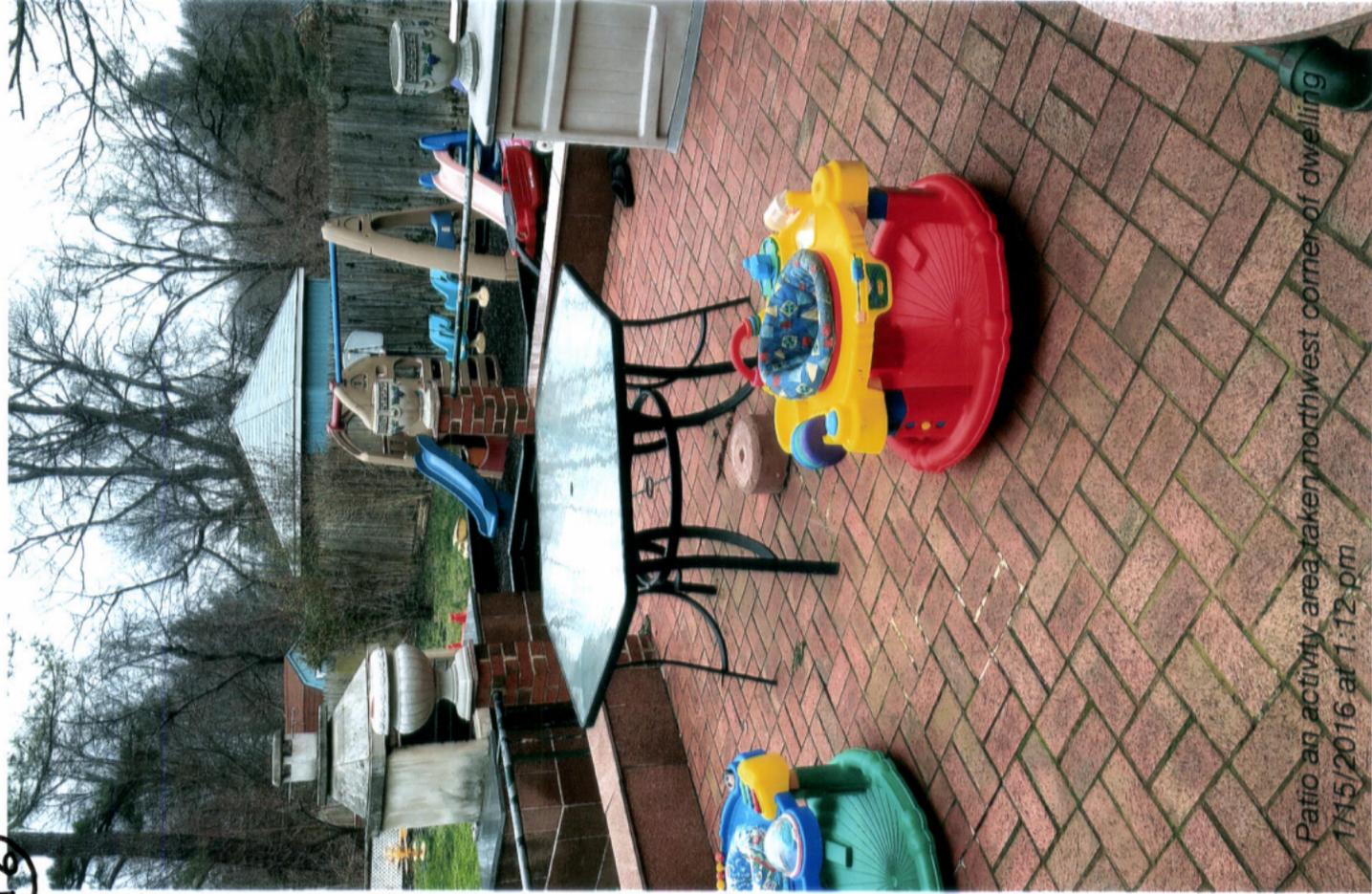
West rear half of House taken from 45' W of House
1/15/2016 at 12:56pm

14



East corner of House taken from 45° N of dwelling
1/15/2016 at 12:59 pm

16



Patio an activity area taken northwest corner of dwelling
1/15/2016 at 1:12 pm

17



Ride enclosure taken from east side of patio
1/15/2016 at 1:15 pm

19

DATE: 1-15-2016 AT 1:21 PM



Entire backyard showing shed and plantation

TAKEN FROM NW CORNER OF DWELLING

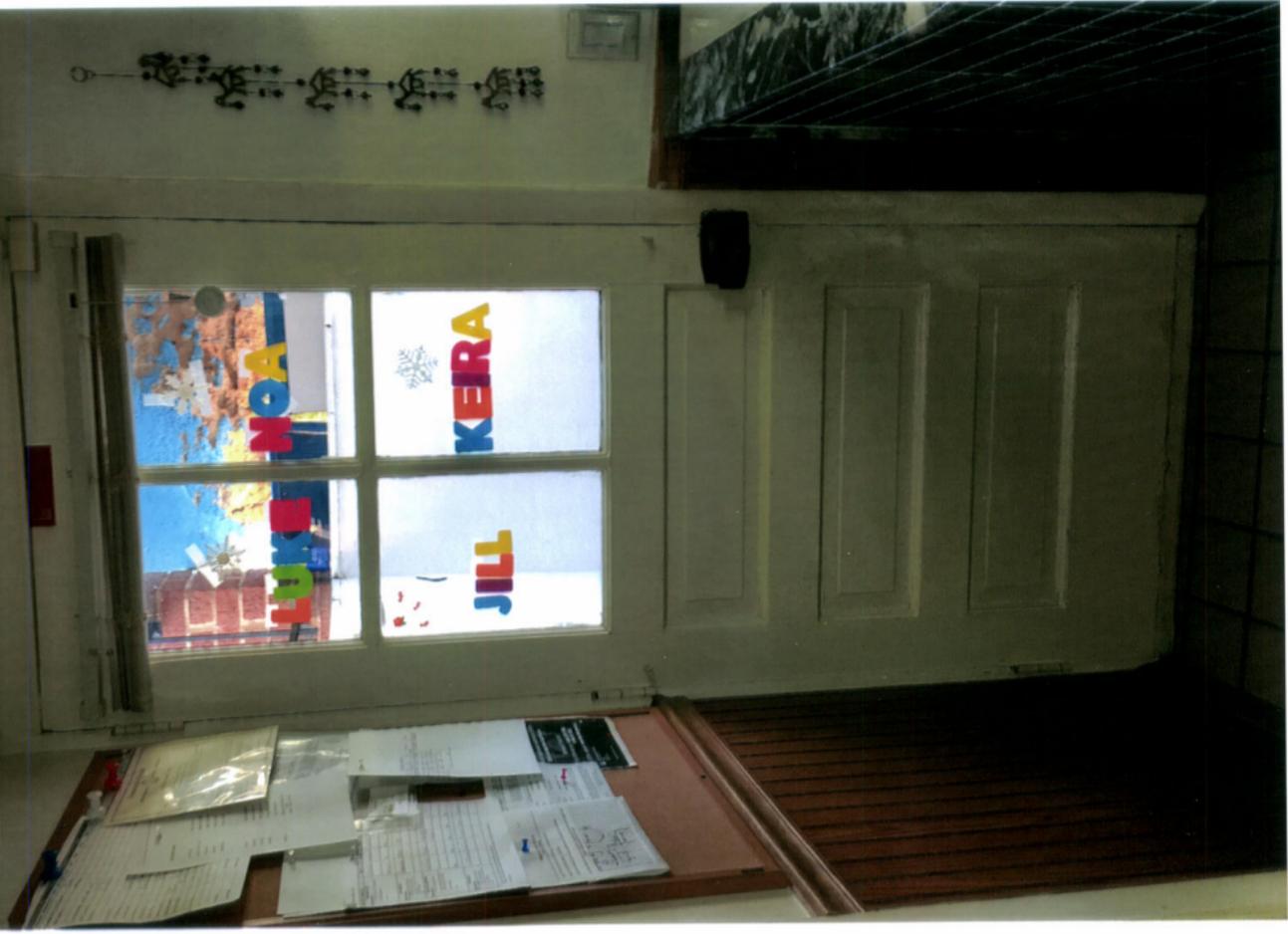
128



of backyard taken from 8' west of NW corner of dwelling
6 at 1:30 pm

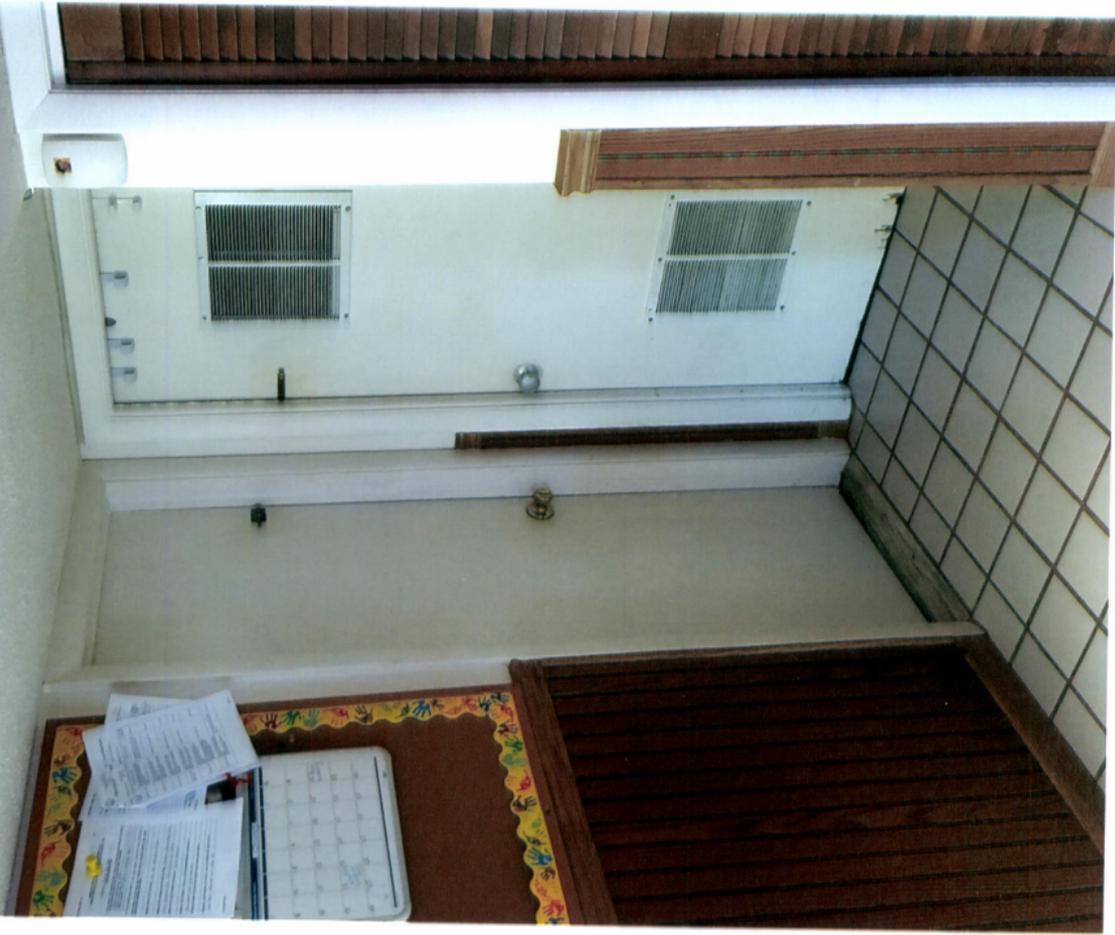
23

Entrance to daycare area taken from 8' of door
1/16/2016 at 10:57 am



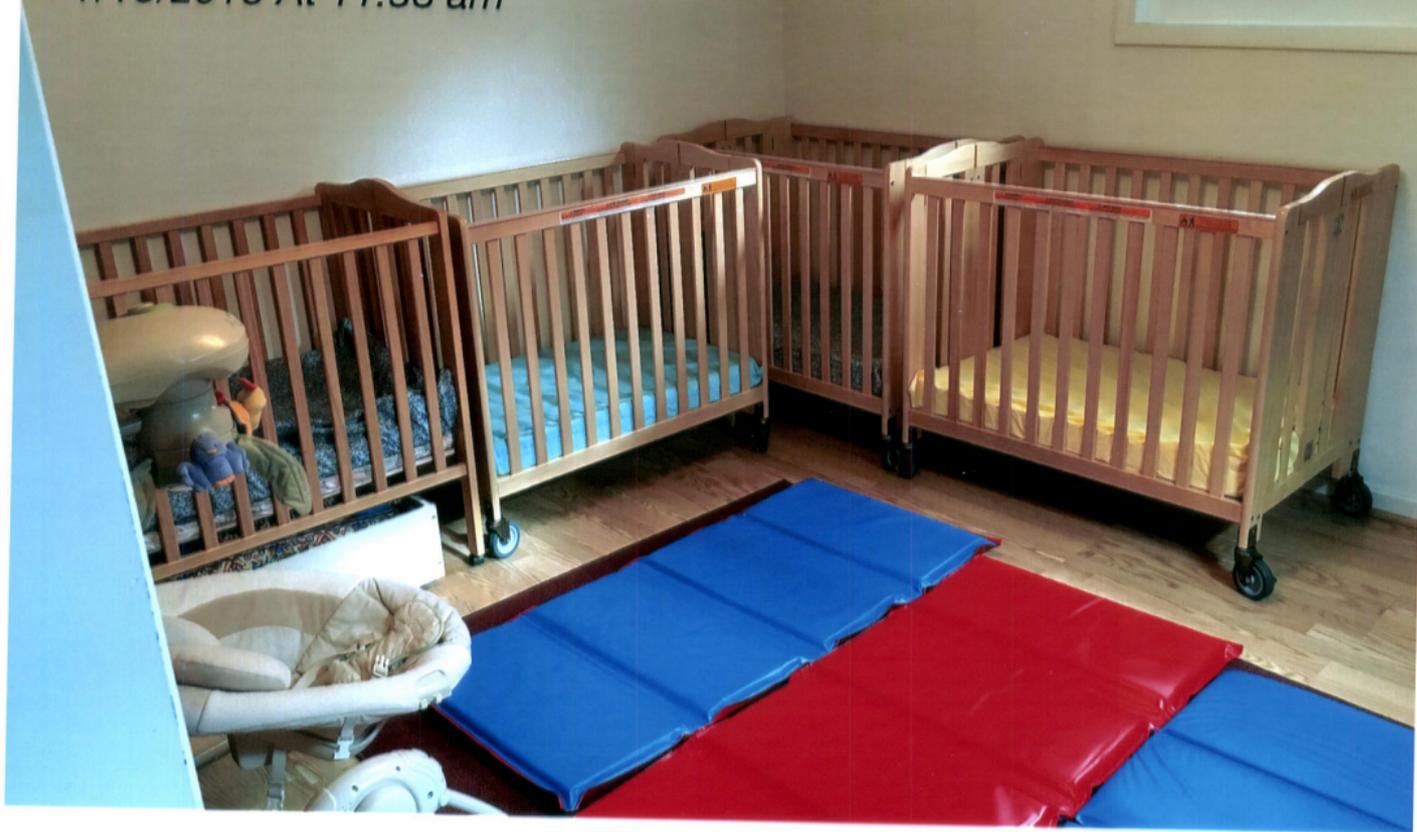
26

NE corner of daycare area showing doors to utility room/ storage
And bathroom entrance
1/16/2016 at 11:08am



31

NE corner of sleeping area taken from entrance 12' from NE corner
1/16/2016 At 11:58 am



23

West side of sleeping area showing closet taken from
10' of closet

7/16/2016 at 12:08 pm



35

Entire activity/ sleeping area of daycare taken from 22'
Of south wall
1/16/2016 at 11:28 am



36

west side of daycare taken from 13 of west wall
1/16/2016 at 11:35 am



(37)

Endside of daycare area taken from 13' of cabinets
7-16/2016 at 11:38 am

MimNO





SP2016-MA-016
Replaced Door open
Position inside view



SP2016-MA-016
Replaced Door Inside
Close position highlights locks



SP2016-MA-016
Replaced Sleeping Area
Window inside view



SP2016-MA-016
Replaced Sleeping Area
Window from outside

Application No.(s): SP 2016-MA-004
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 5/3/2016
(enter date affidavit is notarized)

133306

I, UZMA E SHEIKH, 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 BOLD above)
UZMA SHEIKH	6520 Columbia Pike Falls Church VA 22041	Applicant Title owner
EHTESHAM H SHEIKH	6520 Columbia Pike Falls Church VA 22041	Co Title owner

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

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 5/3/2016
(enter date affidavit is notarized)

133306

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

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

CORPORATION INFORMATION

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

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 5/3/2016
(enter date affidavit is notarized)

133306

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

PARTNERSHIP INFORMATION

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

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 5/3/2016
(enter date affidavit is notarized)

1333256

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

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

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

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

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

NONE

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 5/31/2016
(enter date affidavit is notarized)

133300

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)

Uzma Sheikh
[X] Applicant [] Applicant's Authorized Agent

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

Subscribed and sworn to before me this 3 day of May, 2016, in the State/Comm. of Fairfax VA, County/City of Fairfax.

My commission expires: 12/31/2019



Ellen Merrill
Notary Public

90

Application No.(s): VC 2016-MA-016
(County-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02-11-2016
(enter date affidavit is notarized)

13366

I, UZMA E. SHEIKH, UZMA'S FAMILY DAY, do hereby state that I am an
(enter name of applicant or authorized agent) HOME D/B/A

(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 BOLD above)
EHTESHAM H. SHEIKH	6520 COLUMBIA PIKE FALLS CHURCH, VA 22041	TITLE OWNER
UZMA E. SHEIKH	6520 COLUMBIA PIKE FALLS CHURCH, VA 22041	CO TITLE OWNER/ APPLICANT

(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.

* List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).



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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02-11-2016
(enter date affidavit is notarized)

133666

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

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

CORPORATION INFORMATION

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

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02-11-2016
(enter date affidavit is notarized)

1336666

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

PARTNERSHIP INFORMATION

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

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02-11-2016
(enter date affidavit is notarized)

133646

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

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

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

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

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

NONE

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02-11-2016
(enter date affidavit is notarized)

135466

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)

UZMA
 Applicant [] Applicant's Authorized Agent

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

Subscribed and sworn to before me this 11 day of FEBRUARY 2016, in the State/Comm. of VIRGINIA, County/City of Fairfax.

[Signature]
Notary Public

My commission expires: 10/31/2016



Similar Case History

Group: 2011-MA-066

SP 2011-MA-066

APPLICANT: LUCIO SEJAS
STATUS: APPLICATION APPROVED
STATUS/DECISION DTE: 10/26/2011
ZONING DISTRICT: R- 2
DESCRIPTION: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ADDITION TO REMAIN 9.5 FEET FROM SIDE LOT LINE AND OPEN DECK 1.42 FEET FROM SIDE LOT LINE AND REDUCTION OF CERTAIN YARD REQUIREMENTS TO PERMIT CONSTRUCTION OF SECOND STORY ADDITION 8.0 FEETFROM SIDE LOT LINE
LOCATION: 3911 LARCHWOOD ROAD
TAX MAP #5:
 0613 11 0203

Group: 2013-MA-037

SP 2013-MA-037

APPLICANT: GARY J SCHWARTZ
STATUS: APPLICATION APPROVED
STATUS/DECISION DTE: 10/23/2013
ZONING DISTRICT: R- 2
DESCRIPTION: ERROR IN BUILDING LOCATION TO PERMIT DECK AND STAIRS TO REMAIN 12 FEET FROM SIDE LOT LINE
LOCATION: 6459 OAKWOOD DRIVE, FALLS CHURCH, VA 22041
TAX MAP #5:
 0613 11 0167

VIRGINIA DEPARTMENT OF
SOCIAL SERVICES**Uzma Sheikh**

6520 Columbia Pike

FALLS CHURCH, VA 22041

(703) 642-1694

Facility Type:

[Family Day Home](#)

License Type:

[One Year](#)[Expiration Date:](#)

Oct. 17, 2016

Business Hours:

8:00 AM - 6:00 PM, Monday - Friday

Capacity:

7

Ages:

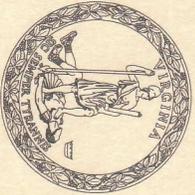
3 months - 12 years 11 months

Inspector:

Brenda Kuhlman: (703) 304-9609

Commonwealth of Virginia

DEPARTMENT OF



SOCIAL SERVICES

FAMILY DAY HOME LICENSE

Issued to:

Uzma Sheikh, d.b.a. Uzma's Family Day Home

Address:

6520 Columbia Pike, Falls Church, Virginia 22041

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:

CAPACITY	
<u>GENDER</u>	<u>AGE</u>
Both	3 months through 12 years

This license is not transferable and will be in effect October 18, 2015 through October 17, 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
3701 Pender Drive, Suite 125
Fairfax, VA 22030

Telephone: (703) 934-1505

FDH 1108295-L103
LICENSE NUMBER

MARGARET ROSS SCHULTZE
COMMISSIONER OF SOCIAL SERVICES

By

James J. Parcelli
James J. Parcelli

Title _____
LICENSING ADMINISTRATOR

Date _____
September 23, 2015



Land Development Information History: FIDO - MISC R - 161100165

Permit Information

Permit Number:	161100165	Application Date:	
Permit Type:	MISCELLANEOUS BUILDING WK RES	Tax Map:	061-3 ((13)) 0227
Job Address:	006520 COLUMBIA PI FALLS CHURCH, VA 22041- 1126	Permit Status:	Finalized
		Bldg:	Floor: Suite:
		Permit Fee:	
Location:			
Subdivision:	BARCROFT HILLS		
Magisterial District:	MASON		
Subcensus Tract:			
AP (Tenant) Name:			
Work Description:	ENLARGE WINDOW FOR EGRESS AND ADD WELL (HEADER SIZE TO REMAIN THE SAME)		
Type of Work:	MISCELLANEOUS		
Building Use:	SFD - SINGLE FAMILY DWELLING		
Standard:	IR12 - IRC 2012		
Plan Number:	W-16-2416		
Parent Permit:			
ISIS Permit:			
Type of Const:	VB		
Use Group:	R5		
Comments:			

Link to FIDO record : [161100165](#)

Owner Information

Owner: SHEIKH EHTESHAM
Address: 6520 COLUMBIA PI
City: FALLS CHURCH State: VA
Zip: 22041

Contractor Information

Name: OWNER IS CONTRACTOR BPOL License:
Address: State License:
City: State: VA Zip: Trade Reg.:

Applicant Information

Applicant:
Address:
City: State: Zip:

Other Contact Information

Contact:

Address:

City: State: Zip:

Inspections**Inspection - R FINAL - FINAL INSPECTION - 7085024**

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R FINAL	2016-05-17	MICHAEL CRAWFORD	N	Passed	NO	

Inspection - R FINAL - FINAL INSPECTION - 7070643

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R FINAL	2016-05-02	MICHAEL CRAWFORD	N	Failed	NO	inside ok well not to code R310.2 Window wells. The minimum horizontal area of the window well shall be 9 square feet (0.9 m2), with a minimum horizontal projection and width of 36 inches (914 mm). The area of the window well shall allow the emergency escape and rescue opening to be fully opened. Exception: The ladder or steps required by Section R310.2.1 shall be permitted to encroach a maximum of 6 inches (152 mm) into the required dimensions of the window well. R310.2.2 Drainage. Window wells shall be designed for proper drainage by connecting to the building's foundation drainage system required by Section R405.1 or by an approved alternative method. Exception: A drainage system for window wells is not required when the foundation is on well-drained soil or sand-gravel mixture soils according to the United Soil Classification System, Group I Soils, as detailed in Table R405.1.

Inspection - R ROUTINE - ROUTINE INSPECTION - 7098367

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R ROUTINE			N	None	NO	Auto Finalization

Reviews**Review - BUILDING - (BUILDING REVIEW) - 2526396**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2016-04-19	JACK KELLUM	Y	Approved

Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2526397

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT	2016-04-19	JACK KELLUM	Y	Approved

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County of Fairfax, Virginia

MEMORANDUM

Date: April 22, 2016

To: *Maria* Erin Haley, Senior Staff Coordinator
Zoning Evaluation Division

From: Mavis Stanfield
Deputy Zoning Administrator/Chief Zoning Inspector
Zoning Inspection Branch

Subject: Home Child Care – SP 2016-MA-004

Applicant: Uzma Ehtesham Sheikh d/b/a Uzma's Family Day Home
6520 Columbia Pike, Falls Church, Virginia 22041
Barcroft Hills, Lot 227
Tax Map Ref.: 61-3 ((13)) 227
Zoning District: PDH-2
Magisterial District: Mason
ZIB # 2016-0070
Date of Inspection: April 14, 2016

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

- Rooms used for sleeping must provide two means of exit, one which leads directly to the outside, as required by the Virginia Uniform Statewide Building Code. (32-12-30.)
- 2. An operable smoke alarm shall be provided outside of each sleeping area, with at least one such device on each floor.
- 3. 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.
- 4. 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.

- The main entry to the home child care has a keyed deadbolt. The door lock should be replaced with a thumb lock. This door opening is impeded by a drop ceiling (shown in the attached photograph). This must be addressed to allow adequate egress.
-
- 5. Electrical hazards identified shall be abated in accordance with the Virginia Uniform Statewide Building Code.

 - 6. 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.

 - 7. 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.

 - 8. Structures comply with the Zoning Ordinance.

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.

8-903 Standards For All Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
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, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

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, and
 - B. 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
 - C. Such reduction will not impair the purpose and intent of this Ordinance, and
 - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - E. It will not create an unsafe condition with respect to both other property and public streets, and
 - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
 - G. The reduction 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.

CHAPTER 597

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

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

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

§ 15.2-2201. Definitions.

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

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

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

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

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

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

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

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of

Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

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

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

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

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

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

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

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

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

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

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

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

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the **shape, size, or area** of a lot or parcel of land; or the size, **height, area, bulk,** or location of a building or structure

when the strict application of the ordinance would ~~result in unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and~~ purpose of the ordinance, ~~and would result in substantial justice being done~~. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

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

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

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

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

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for* the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board *and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing*

body. Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~a. That the strict application of the ordinance would produce undue hardship relating to the property;~~

~~b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and~~

~~c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

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

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

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

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

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

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

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

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately

across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

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

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

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

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

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

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

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

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the~~

~~determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

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

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance~~ *proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.*

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

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

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