

## COUNTY OF FAIRFAX, VIRGINIA

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

MARIA FABIOLA ARAUJO, EL AMANECER DE LOS PITUFOS, INC., SP 2014-MA-049 Appl. under Sect(s). 8-305 and 8-914 of the Zoning Ordinance to permit a home child care facility and to permit reduction in minimum yard requirements based on error in building location to permit addition 1.2 ft. from side lot line. Located at 3221 Hallran Rd., Falls Church, 22041, on approx. 10,255 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((4)) 9. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 16, 2014; and

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

1. The owner of the property is the applicant.
2. The Board has a favorable staff recommendation on the child care, and except for the carport, it appears that the existing violations such as smoke detectors have been resolved.
3. With respect to the carport, it was a very close call. It would be difficult to remove it at this point and would obviously be a hardship to the applicant. The house was purchased with the carport in the wrong place to begin with. The Board would never have approved the carport in the first place, but she bought it and paid for it, and hired a carpenter to enclose it. The carpenter should have gotten a building permit, but she again was relying on someone else who felt it was an enclosure of an existing structure.
4. As discussed with staff with some modifications to the conditions, the Board can approve it and condition the use such that the uninspected room is not used for anything until such time as it is cleared.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

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

in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and

- C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- F. It will not create an unsafe condition with respect to both other property and public streets, and
- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
- H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

- 1. This approval of the child care use is granted to the applicant, Maria Fabiola Araujo and El Amanecer de Los Pitufos, Inc., only and is not transferable without further action of the Board, and is for the location indicated on the application, 3221 Hallran Rd., and is not transferable to other land.

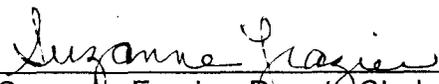
2. This special permit is granted only for the home child care facility and the location of the addition (enclosed carport) as indicated on the special permit plat prepared by Laura L. Scott., dated December 20, 2013 as revised through March 24, 2014 and approved with this application, as qualified by 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 maximum hours of operation of the home child care facility shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
5. The maximum number of children on site at any one time shall be 12, excluding the applicant's own children.
6. The number of non-resident assistants shall be limited to two.
7. All pick-up and drop-off of children shall take place in the driveway.
8. The dwelling that contains the child care facility shall be the primary residence of the applicant.
9. There shall be no signage associated with the home child care facility.
10. All applicable permits and inspections shall be obtained prior to establishment of the use, to be demonstrated to the satisfaction of the Zoning Administration Division, including any electrical or plumbing inspections as may be required.
11. All applicable permits and final inspections shall be obtained for the addition (enclosed carport) within 180 days of approval of this application.
12. Notwithstanding any of the other development conditions, until such time as all applicable permits and final inspections have been obtained for the enclosed carport, the enclosed carport area shall not be used or occupied in conjunction with the home child care use. All entry and exit associated with the home child care use shall go through the front door of the residence until final inspection is passed.

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 automatically expire, without notice, 6 months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were absent from the meeting.

A Copy Teste:

  
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Suzanne Frazier, Deputy Clerk  
Board of Zoning Appeals