

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RANIA HALOUL "SHINE N STAR DAYCARE", SP 2016-SP-024 Appl. under Sect(s). 3-503, 8-305, and 8-914 of the Zoning Ordinance to permit a home child care facility, and a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 0.0 ft. from a side lot line and 0.0 ft. from a rear lot line. Located at 9221 Burke Rd., Burke, 22015, on approx. 2,475 sq. ft. of land zoned R-5. Springfield District. Tax Map 78-4 ((12)) 21. Ms. Theodore 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 20, 2016; and

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

1. The owners of the property are Ranis and Mohamad Haloul.
2. The present zoning is R-5.
3. The area of the lot is 2,475 square feet.
4. The applicant has read, understands, and concurs with the proposed development conditions as modified.
5. There is a favorable staff recommendation with respect to the home child care facility. The Board adopts the staff's rationale.
6. The applicant requested approval of twelve (12) children, but the Board is in favor of eight (8). The applicant currently takes care of five (5) children up to five years and eleven months, and this would increase the number by three (3). Young children require more coverage by adults, especially in emergency situations.
7. The home child care approval process has evolved over time, and limiting the number of children to eight (8) seems to be more appropriate in this situation.
8. There is a petition in support of the home child care application.

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 is granted to the applicant, Rania Haloul, only, and is not transferable without further action of the Board, and is for the location indicated on the application, 9221 Burke Road, 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 addition (enclosed deck) as indicated on the plat entitled, "Special Permit on Lot 21, Section One, Heritage Square" prepared by Apex Surveys, LLP on June 13, 2016 as submitted with this application, provided further that this approval is not an implicit approval for any portion of the fence or deck that may be located on Tax Map 78-4 ((12)) 22.

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 6:00 a.m. to 6:00 p.m., Monday through Friday.
5. The dwelling that contains the child care facility shall be the primary residence of the applicant.
6. Excluding the applicant's own children, the maximum number of children on site at any one time shall be eight (8), ages 5 years, 11 months and under.
7. A maximum of one non-resident employee at a time, whether paid or not for their services, may be involved in the home child care facility, limited to the hours of 6:00 a.m. to 6:00 p.m.
8. There shall be no signage associated with the home child care facility.
9. All drop-off and pick-up activities shall occur in the two assigned parking spaces related to the townhome.
10. 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.
11. The home child care facility shall be operated in accordance with Chapter 30 of the County Code, entitled "Minimum Private School and Child Care Facility Standards."
12. The approval of the use is contingent upon maintenance of a state-issued family day home license that permits up to eight (8) children at any one time, ages 5 years, 11 months and under, being cared for at the home child care facility.
13. The Applicant recognizes and acknowledges that the deck and fence in the western side yard of the subject property, that is the subject of this special permit application, encroaches into a 10-foot wide ingress/egress easement. Accordingly, the Applicant shall indemnify, keep, and save harmless the County, its agents, officials, employees, volunteers, and the Board of Zoning Appeals against claims of injuries, death, damage to property, or other suits, liabilities, judgments, cost and expenses, which may otherwise accrue against the county in consequence of the granting of this special permit. The Applicant shall, at his or her own expense,

appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the county and/or the Board of Zoning Appeals in any such action, the Applicant shall, at his or her own expense, satisfy and discharge the same.

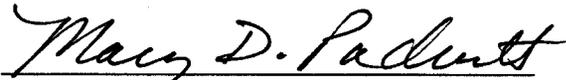
14. The applicant shall obtain all necessary permits for the deck within 30 days and complete and pass all necessary inspections within six months of approval of the special permit. Until such time as the necessary permits and inspections are obtained, no home child care activities shall take place on the deck.

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.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

A Copy Teste:



Mary D. Padrutt, Deputy Clerk
Board of Zoning Appeals