COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MALIHEH SHAHRESTANI / MCLEAN DAY CARE, SP 2015-DR-019 Appl. under Sect(s). 3-403, 8-305, 8-914, and 8-918 of the Zoning Ordinance to permit a home child care facility, an accessory dwelling unit, and a reduction in minimum yard requirements based on an error in building location to permit a deck (patio) to remain 0.3 ft. from a rear lot line. Located at 6526 Hitt Ave., McLean, 22101, on approx. 9,333 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-4 ((7)) 2. (Concurrent with VC 2016-DR-007).

Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution with respect to the Home Child Care facility and the accessory dwelling unit:

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 27, 2016; and

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

1. The applicant is the owner of the land.
2. The applicant has read, understands, and concurs with the proposed development conditions as modified.
3. The property is zoned R-4.
4. The lot area is 9,326 square feet.
5. Staff recommends approval of the home child care and accessory dwelling unit.

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

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.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART, with the Home Child Care facility and the accessory dwelling unit being approved,** with the following development conditions:

1. This approval is granted to the applicant, Maliheh Shahrestani nee Haj Abbassi d/b/a as McLean Daycare, only, and is not transferable without further action of the Board, and is for the location indicated on the application, 6526 Hitt Avenue, and is not transferable to other land.

2. This special permit is granted for the home child care use and the accessory dwelling unit prepared by Hamid Matin, P.E. of Professional Design Group, Inc.,

dated April 6, 2016, as modified by Ali A. Haj Abbassi dated April 27, 2016, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit shall be made available to all departments of the County of Fairfax during the hours of operation upon request.

Pursuant to Sect. 8-305 (Home Child Care Facility):

4. The hours of operation of the home child care facility shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday.

5. Excluding the applicant's own grandchildren, the maximum number of children on site at any one time shall be eight. The applicant has sixty (60) days from the date of this approval to comply with the limitation to eight children.

6. A maximum of two nonresident 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 5:00 p.m.

7. There shall be no signage associated with the home child care facility.

8. All drop-off and pick-up activities shall occur in the applicant's carport.

9. The children's outdoor play area shall not include any areas under construction until such construction is completed, inspected, and approved.

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 approval of the use is contingent upon maintenance of a state-issued family day home license that permits the number and ages of children being cared for at the home child care facility.

12. The child care facility shall be operated in accordance with Chapter 30 of the County Code, entitled "Minimum Private School and Child Care Facility Standards".

Pursuant to Sect. 8-918 (Accessory Dwelling Unit):

13. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

14. The layout of the ADU shall be consistent with the depiction in Attachment 1 to these conditions.

15. The applicant shall apply for building permits within thirty (30) days of approval of this special permit for the second kitchen located in the ADU. Final inspections shall be passed within six (6) months of approval.

16. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet applicable regulation for building safety, health and sanitation.

17. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) years periods with prior approval of the Zoning Administrator in accordance with Sect. 8-012 of the Zoning Ordinance.

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 7-0.

Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution with respect to the error in building location.

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

1. The applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction of the Minimum Yard Requirements Based on Error in Building Location.
2. The Board has determined:
    a. Under C: The compliance was not done in good faith. It was specifically through the fault of the property owner. This was done by the property owner. It was done without a building permit, and therefore is not in compliance.
    b. Under D: The Board believes that the Reduction or Modification does impair the purpose and intent of this Ordinance.
    c. Under E: The Board believes that this could be detrimental to the use and enjoyment of other property in the immediate vicinity. Specifically, there has never been any evidence that by adding impervious surface, that it would reduce drainage. Typically, impervious cover would be limited, as it would create issues with regard to other properties.

d. Under G: To force compliance with the minimum yard requirements or relocation regulations would not cause unreasonable hardship upon the owner. The applicant is under a stop-work order. He has not continued to build, so the Board does not think it is an undue hardship on him.

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

1. That the granting of this special permit will impair the intent and purpose of the Zoning Ordinance, and it will be detrimental to the use and enjoyment of other properties in the immediate vicinity.

2. That the granting of this special permit may create an unsafe condition with respect to other properties and public streets, and to force compliance with setback requirements will not cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application, with respect to the error in building location to permit a deck (patio), is **DENIED.**

Mr. Hart seconded the motion, which carried by a vote of 7-0.

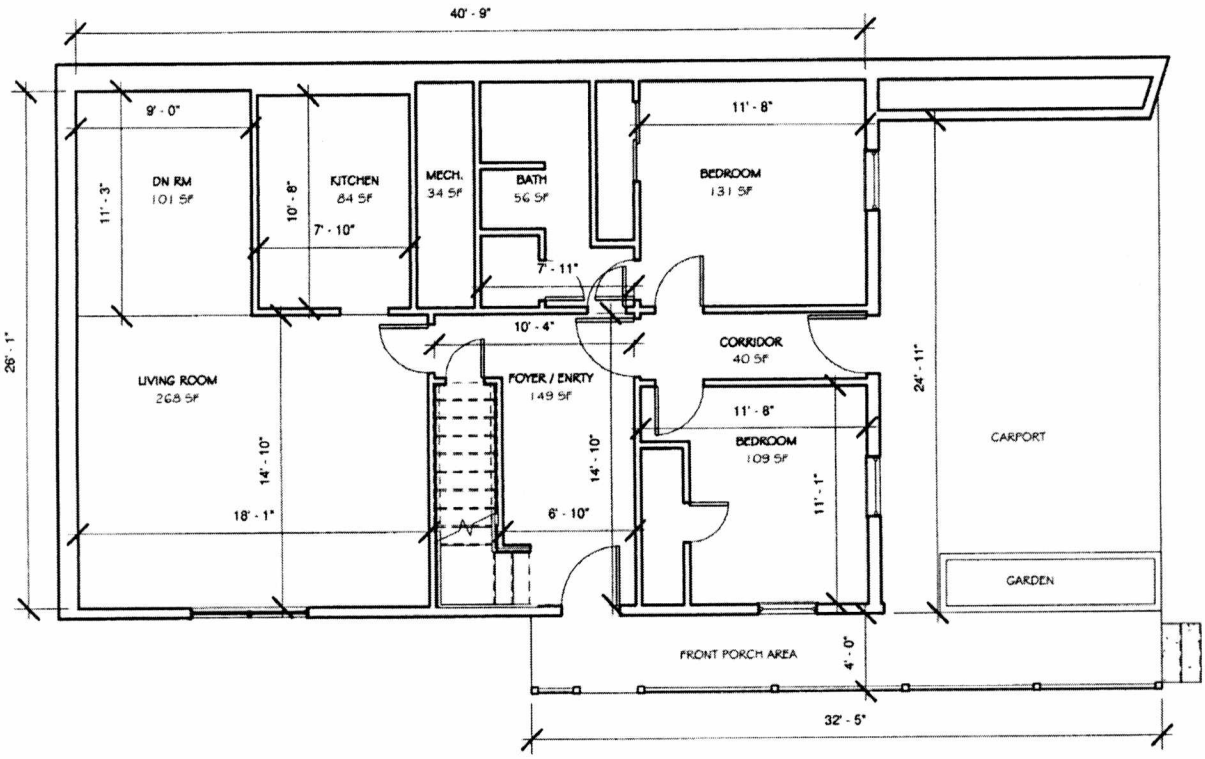
A Copy Teste:

Emily Armstrong

Emily J. Armstrong, Deputy Clerk
Board of Zoning Appeals

SP 2015-DR-019/VC 2016-DR-007

Attachment 1: Accessory Dwelling Unit Layout



Accessory Dwelling Unit: Bedroom, Bedroom, Bath, Kitchen, Living Room, Dining Room.