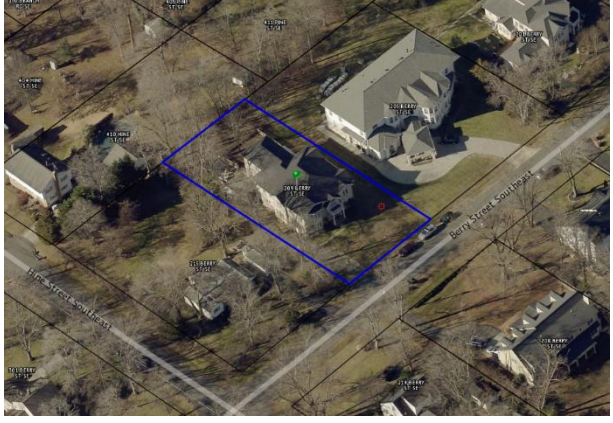




STAFF REPORT COVER SHEET

June 18, 2025

Address	209 Berry St SE	Case Number	PF-1589982-CUP
Regular Meeting Date	6/18/2025	Applicant	Diana Hernandez, The Gift of Language Center
Board/Commission	Board of Zoning Appeals	Owner	John A Russo, Jr.
Existing Zoning	RS-16	Existing Land Use	Low Density Residential
Brief Summary of Request	<p>Application for a conditional use permit for a Family Day Home to accommodate up to a maximum of twelve (12) children.</p> <p>Recommendation to Board of Zoning Appeals.</p>		
Site Improvements	n/a		
Size of Property	16,500 square feet / 0.38 acres		
Public Notice Requirements:	<ul style="list-style-type: none">• Advertisement for two successive weeks in a newspaper having paid general circulation in the Town, announcing upcoming public hearing at Board of Zoning Appeals meeting. The advertisement of the June 18, 2025 meeting will be published on June 4 and June 11, 2025.• Staff posted a sign on the property on June 4, 2025, notifying residents of upcoming Planning Commission and Board of Zoning Appeals meetings.• On June 3, 2025, certified letters were sent to the applicant and Fairfax County Department of Planning & Development. On June 3, 2025, postcard notifications were mailed to the property owner of the subject site and to neighboring properties with dates of the Planning Commission meeting and Board of Zoning Appeals hearing.		
Official Submission Date for Approval:	On May 12, 2025, the application was deemed by staff to be complete.		
Deadline for Action:	The BZA should take action by August 10, 2025, which is 90 days after the application was deemed complete. The BZA will have its June and July meetings in advance of this date. That date is directory, rather than mandatory; the Board does not lose jurisdiction to act after the time period has passed.		
Brief Analysis			
PROPERTY HISTORY <p>The current home was constructed in 2002. According to Fairfax County records, a childcare facility application was submitted for this address in March 2022; however, there are no corresponding approvals from the Town. An earlier application for childcare for up to four unrelated children was submitted in December 2020 by The Classroom LLC. That applicant did not provide a valid childcare license and was never issued a Home Certificate of Occupancy for the business.</p>			

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Future Land Use Plan in Chapter 3 of the [Comprehensive Plan 2015 Update](#) designates the property as Low Density Residential. Family Day Home, as a home business, is consistent with the Low Density Residential designation (P.38). Chapter 4, Economic Development, measures “Growth in business licenses, including home businesses” (p. 55) as an indicator when determining whether identified economic goals, objectives, and implementation strategies for economic development are being met.

COMPATIBILITY WITH THE ZONING ORDINANCE

The Town of Vienna allows Family Day Homes as a conditional use where the primary use is as a residence, in sections 18-305, 18-324 and 18-827 of the 2024 Zoning Ordinance. Section 18-305 of the Zoning Ordinance establishes the requirement that a Conditional Use Permit (CUP) be approved for a Family Day Home to provide care to 5-12 children. Fewer than 4 children are permitted without a CUP. As proposed, the requested Family Day Home use complies with the Town of Vienna’s Zoning Ordinance requirements for Family Day Homes as a Conditional Use.

Attachments:	01 – Staff Report 02 – Application & Authorization 03 – Applicant Narrative and Documents 04 – Plat 05 – Applicant Photos 06 – Relevant Regulations 07 – Planning Commission Memorandum
Author:	Kelly O’Brien, Deputy Director

I. EXISTING SITE CONDITIONS:

The subject property currently consists of a 2-story, 2,546-square-foot single-family home built in 2002 and is currently occupied as a single-family home rental. The applicant is the tenant and has obtained permission from the homeowner to operate a family day home at this location. (See Attachment 2 – Application & Authorization Form)

The applicant has included photos of both the interior and exterior of the property (Attachment 5). The property includes a fenced backyard designated for outdoor play.

The subject site is designated as Low-Density Residential Future Land Use in the Town of Vienna Comprehensive Plan (Figure 2). Low-Density Residential land use primarily consists of single-family detached dwellings on larger lots within the Town. The site is surrounded to the north, south, east and west by land also designated as Low-Density Residential.

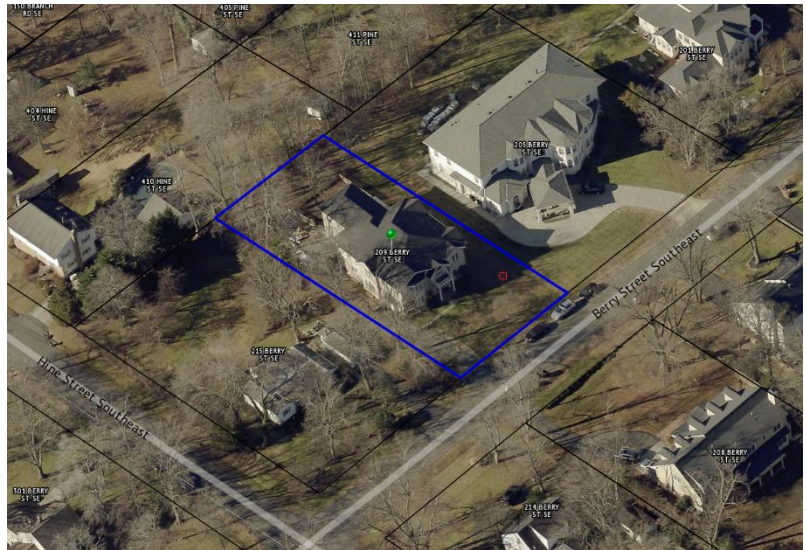


Figure 1 – Aerial view of home. Source: Eagleview Dec 2023-Feb 2024

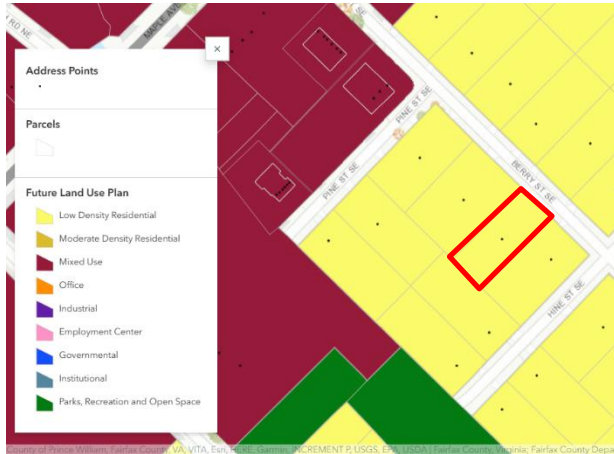


Figure 2 – Town of Vienna Future Land Use Map
Source: Town of Vienna 2015 Comprehensive Plan

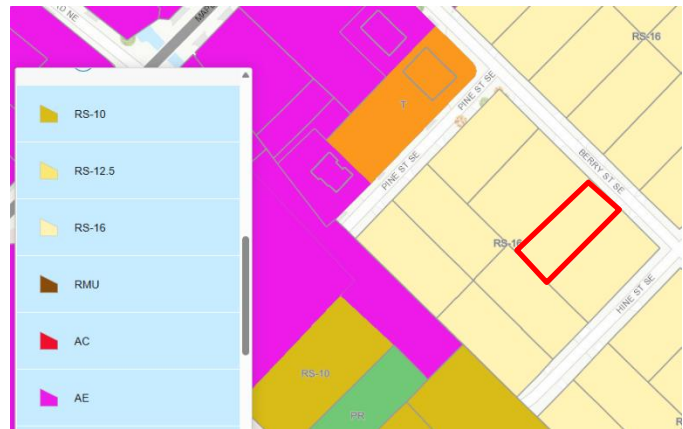


Figure 3 – Town of Vienna Zoning Map
Source: Town of Vienna GIS mapping

As shown in Figure 3, the lot is zoned RS-16, Residential Single-Unit, 16,000 sf Zone, on the Town of Vienna Zoning Map. The RS-16 zone is one of the implementing zones within the Low-Density Residential Future Land Use designation. This zone primarily allows for single-family detached dwellings, along with associated accessory buildings. Other uses may be allowed in the RS-16 zone as conditional uses, per Section 18-305, Accessory Uses Table, of the Zoning Ordinance. The subject site is surrounded by land also zoned RS-16.

II. PROPOSED USE

The applicant is requesting, while continuing to use the home as primary residence, to operate a home childcare center with a focus on Spanish immersion learning. Operating hours are proposed from 7:00 a.m. to 6:00 p.m., Monday through Friday, with holidays to be determined. In the applicant's narrative, she states that there will be a total of three staff members including herself. The two additional staff members will work alternating shifts, ensuring that no more than two staff are present at any given time.

The children and parents will enter the home through the front door. The childcare use will take place predominately in the front half of the first floor in the three rooms shown in the images in Attachment 5. Meals will also be served to the children in one of the designated rooms. Safety gates have been installed to restrict access to the upstairs and other areas of the home not used for child care, except when transitioning to the backyard play area.

The play area in the rear yard behind the home encompasses most of the backyard, which is surrounded by a 4-foot wooden privacy fence that has an entry point/gate on the left side to the driveway and a second near the rear of the house where the kids will be entering from. There is some vegetative buffering on site along the perimeter of the backyard. The play area will include various pieces of equipment suitable for multiple age groups.

The applicant proposes using a combination of on-site driveway parking and on-street parking along Berry Street SE. The applicant states that loading will occur in front of the home and that family drop-off and pickup will be staggered from 7 to 9 a.m. and 5 to 6 p.m. In addition, the applicant states "There are 6 spots available in the driveway. Parking will be side by side in front of the garage, and single file along the driveway."

III. STAFF ANALYSIS

Town of Vienna 2015 Comprehensive Plan

The Town of Vienna Comprehensive Plan is used as a guide for future land use within the Town. The following Chapters contain objectives and indicators relative to the proposed Family Day Home as a Conditional Use:

- *Chapter 3: Land Use. Objective 1: Implementation Strategy:* Keep the current residential zoning classifications and densities in effect.

The site is designated as Low Density Residential on the Town's Future Land Use Map. The applicant is proposing to operate a home business. As home businesses are designed to create a similar character to typical residential uses, the use is consistent with the Low-Density Residential designation; the property's density will not change with the continuation of this use on the site.

- *Chapter 4: Economic Development. Indicators p. 55.* "Growth in business licenses, including home businesses" is identified as an indicator in determining if identified economic goals, objectives, and implementation strategies for economic development are being met.

The operation of a family day home is a type of home business and supports economic goals, objectives, and implementation strategies for economic development within the Town.

Town of Vienna Zoning Ordinance

The Town of Vienna Zoning Ordinance provides regulations based on the Town's Comprehensive Plan and other state or federal regulations, which impact this proposed use (see Attachment 6 for full text of relevant Zoning Ordinance regulations):

- *Section 18-824 Conditional Use Permit:* Regulations include submission requirements, process, and conditions for approval for all uses allowed through a Conditional Use Permit.

The applicant has provided the required materials, including a site plan, a narrative description of the current operation on site, along with detailed supporting documentation and photographs of both the interior and exterior of the property.

- *Section 18-324 Family Day Home:* Regulations include the following:
 - A. *State licensure is required when caring for 5-12 children.*
The applicant has spoken with the appropriate County agencies and will be applying for licensure if the conditional use permit is approved.
 - B. *Maximum number of 12 children allowed; resident children shall be excluded (this aligns with State Code requirements).*
The applicant is proposing to care for a total of 12 children.
 - C. *Facility shall be principal residence of the operator.*
The applicant is leasing the residence, which will continue to serve as her primary residence along with her two children, ages 13 and 17.
 - D. *The facility shall comply with all State and Town codes.*
The applicant is aware of both State and Town code requirements.
 - E. *One nonresident person may be employed.*
There will be three staff employed by the business, two at any given time, the two non-resident employees with alternate times on site.
 - F. *Hours of operation are limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.*
The applicant is proposing operating the business from 7:00 a.m. to 6:00 p.m., Monday through Friday. Holidays to be determined.
 - G. *No exterior evidence of operation shall exist other than the play equipment.*
No signs are proposed and currently, there is no evidence of the operation at this site, other than the existing backyard play area.
 - H. *Adequate space should be provided for drop-off and pickup; staggering may be used.*
Drop off times will range from 7:00 a.m. to 9:00 a.m. in the morning, pick up times in the afternoon will range from 5:00 p.m. to 6:00 p.m. The applicant states "There is a long

driveway that families will be able to utilize for pick up and drop off. We plan to use the long concrete section as a designated space for children who require additional support due to mobility challenges or injuries. Ensuring accessibility for all is a top priority, and this space will help provide a safe and accommodating environment for every child.”

The Vienna Zoning Ordinance does not provide minimum required parking spaces for Family Day Homes. The applicant states that they can fit up to six vehicles in the driveway. Parking will be side by side in front of the garage, and single file along the driveway.

Summary

Staff finds that the applicant’s request to operate a family day home serving up to 12 children at 209 Berry Street SE will not adversely affect the health or safety of persons residing or working in the neighborhood and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood. The proposed use generally aligns with the Town’s Comprehensive Plan.

As this is an application for a Conditional Use, the Board of Zoning Appeals may consider conditions to address specific concerns which fall under the Conditions for Approval, as described in Section IV below.

Staff proposes the following conditions for consideration by the Board of Zoning Appeals, should the conditional use be granted:

- The Conditional Use Permit shall be declared null and void if the lease permitting the applicant to reside in the house expires.
- A copy of the active lease will be provided to Town staff in advance of receiving the occupancy permit and kept on file by the applicant, the property owner, and the Town.
- Each active lease must list the operator of the family day home as a resident Tenant.

These conditions are consistent with those applied to similar family day home operations in Town where the operator is not the property owner.

IV. REQUIRED COMMISSION/BOARD APPROVALS

Review of the application (as established at §18-824 of the Vienna Town Code) requires initial consideration and recommendation by the Planning Commission and a subsequent public hearing with sworn testimony before the Board of Zoning Appeals, where the application will be acted upon.

§18-824.6.E. states that the Planning Commission shall make a recommendation on the application based on Conditions for Approval outlined in §18- 824.3, and applicable Use Standards outlined in Article 3 (see Attachment 08). On June 11, 2025, the Planning Commission voted 4-0 in favor of recommending approval of the Conditional Use Permit to the Board of Zoning Appeals.

§18- 824.3: The Board of Zoning Appeals may issue a Conditional Use Permit for any use listed with a “C” designation in Article 3 on the Use Table, provided the use for which the permit is sought:

Conditions for Approval:

- A. Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
- C. Will be in accordance with the purposes of the Town's comprehensive plan; and
- D. Meets use-specific standards outlined in Article 3 of this chapter (§18-324 Family Day Home applies).

The Town of Vienna Code of Ordinances §18-824.4 states The Board of Zoning Appeals shall fix a reasonable time for the hearing of an application, within ninety (90) days of the application being deemed complete. This time period is directory, rather than mandatory; the Board does not lose jurisdiction to act after the time period has passed.

V. RECOMMENDED MOTION

I move to *(approve)* *(deny)* *(table the request for)* a Conditional Use Permit, per Section 18-304, to allow a Family Day Home for up to 12 children (ages 2–5), The Gift of Language Center, at 209 Berry St SE, in the RS-16 Residential Single-Unit, 16,000 sq. ft. zone. (For the following reasons....)

Or, other language as recommended by the Board of Zoning Appeals.