



STAFF REPORT COVER SHEET

July 17, 2024

Address	430 Old Courthouse Rd NE	Case Number	PF-1312986-BZA
Regular Meeting Date	7/17/2024	Applicant	Happy Hive Daycare
Board/Commission	Board of Zoning Appeals	Owner	Bahareh Ranjbar
Existing Zoning	RS-12.5	Existing Land Use	Low Density Residential
Brief Summary of Request	Application for a conditional use permit for a Family Day Home to accommodate up to a maximum of twelve (12) children.		
Site Improvements	n/a		
Size of Property	12,698 square feet / 0.30 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. A public ad is scheduled to run on July 5, 2024 and July 12, 2024. • A sign is required to be posted on property at least 10 days prior to the public hearing. Staff posted a sign on the property on June 3, 2024 notifying residents of the upcoming Board of Zoning Appeals meeting. • A certified letter is required to be sent to the County Executive at least 10 days prior to the public hearing. Staff mailed a certified letter to the Fairfax County Executive on July 5, 2024. • A certified letter is required to be sent to the owner at least 10 days prior to the public hearing. Staff sent a certified letter to the applicant on July 5, 2024. • A courtesy letter was sent to surrounding property owners on July 7, 2024. 		
Official Submission Date for Approval:	On May 2, 2024, the application was deemed by staff to be complete.		
Deadline for Action:	The BZA should take action by July 31, 2024, which is 90 days after the application was deemed complete. 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			
The current home was built in 2023. The current owners purchased the site in 2013 and received a permit to operate a "home daycare" for no more than 4 children on May 30, 2024.			

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 regulates Family Day Homes as a 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 is permitted without a CUP. More than 12 children is not permitted under any conditions in this zone.) 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.

<p>Attachments:</p>	<p>01 – Staff Report 02 – Application & Authorization 03 – Applicant Narrative and Documents 04 – Previous Approvals 05 – Relevant Regulations 06 – Planning Commission Recommendation Memorandum 07 – Public Comments 08 – Public Notification Affidavit</p>
<p>Author:</p>	<p>Maggie Costello, Principal Planner</p>

I. EXISTING SITE CONDITIONS:



Figure 1 – Street view of front of home.

Source: Staff Photo of Site 6/4/24

The subject property currently consists of a 4,006 square-foot single-family home built in 2023 and is currently occupied as a single-family home with an existing family day home.

The home is located on State Route 677, Old Courthouse Road NE, in the 400 block. The existing .30-acre lot contains the existing single-family detached home, along with screened-in back porch, and backyard area to be fenced in. There is an existing 4-foot-wide sidewalk across the front of the property.

Figure 2 is an aerial image of the subject site (identified with a blue dot) from 1972 with present day boundary lines outlined in yellow. The original home shown in this image was built in 1964. Figure 3 is an aerial image of the subject site from 2024 showing the newly constructed home on the site. The parcel lines and land use have remained unchanged over the 50-year period, and the only notable change is the increase of the residential square footage on-site.



Figure 2 – 1972 aerial image of site

Source: Fairfax County Aerials

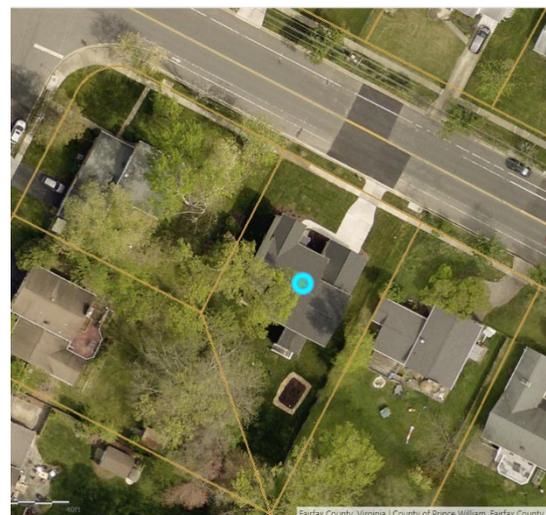


Figure 3 – 2023 aerial image of site

Source: Fairfax County Aerials



Figure 4 – Town of Vienna Future Land Use Map
Source: Town of Vienna 2015 Comprehensive Plan

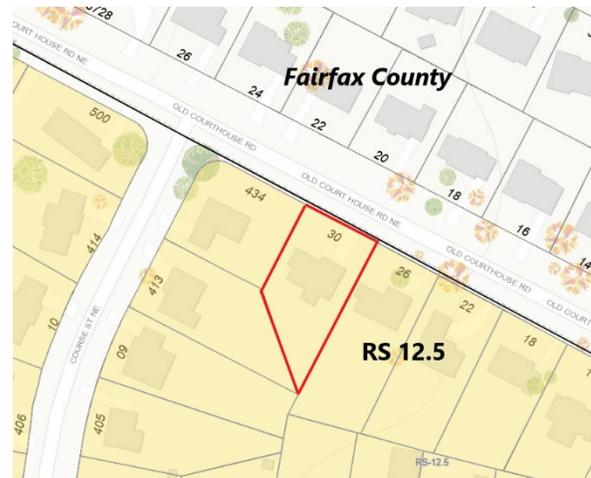


Figure 5 – Town of Vienna Zoning Map
Source: Town of Vienna GIS mapping

The subject site is designated as Low-Density Residential Future Land Use in the Town of Vienna Comprehensive Plan (Figure 4). Low-Density Residential Land Uses are predominately single-family detached dwellings on larger lots in the Town. To the south, east, and west, the site is surrounded by land also designated as Low-Density Residential in the Vienna Comprehensive Plan. The site is bordered to the north by Fairfax County land designated as future residential use in the Fairfax County Comprehensive Plan.

As shown in Figure 5, the lot is zoned RS-12.5, Single-Family Detached Residential, Residential, Single-Unit, on the Town of Vienna Zoning Map. The RS-12.5 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, on lots no less than 12,500 square feet, or a little over a 1/4 an acre. Other uses may be allowed in the RS-12.5 zone as conditional uses, per Section 18-305, Accessory Uses Table, of the Zoning Ordinance. The subject site is surrounded on the east, west and south by land also zoned RS-12.5, single-family detached residential. To the north of the site, land is zoned by Fairfax County as R-3 for single-family detached homes and affordable dwelling unit developments

II. SITE HISTORY

The original structure on the site was a 1,575 square foot tri-level home. The owners of that home added a rear screened-in porch and deck in 1991 and subsequently converted the porch to a four-season room in 2010. In 2013, the home was sold to the current owners and demolished in 2022. The existing home was completed in 2023. The applicant received a certificate of occupancy on May 30, 2024 to operate a family day home (daycare) for no more than four children, in addition to their own children.

III. EXISTING & PROPOSED USE

The applicant is requesting operation hours from 7:30 a.m. to 5:30 p.m., Monday through Friday. No non-resident employee is proposed at this time. The applicant might, however, utilize an employee in the future, based on the needs of the growing daycare.

The applicants state in their narrative that trash and litter generated from class activities and dining will be promptly collected on a daily basis and disposed of with the existing household trash during weekly pick-ups.

The indoor family day home activity will be confined to the basement of the home, which is accessed by utilizing the walk-out basement door, although the front door or garage door may also be offered during inclement weather. The interior area used for the family day home currently is approximately 1,562 square feet. In this space exists a food preparation area, a lunch/snack area, preschooler/nap room, toddler room, infant room, full bathroom, and two entry/exit points (see Attachment 03).

The applicant stated in their narrative that the existing rear yard will serve as the outdoor play area and will eventually be fenced in with a four-foot space-board fencing with two gates. The applicant has plans to install play equipment in the back yard, if approved. It appears there is dense vegetation along the rear property line, and an existing wooden fence along the eastern property line with some existing minimal vegetation on both the eastern and western property lines, which are adjacent to Vienna residences.

The homeowner/operator states that up to 10 parking spaces are available at any given time for drop-off and pick-up of patrons to the site. This estimation includes a total of eight on-street parking spaces and two on-site parking spaces in the existing driveway. The existing two car garage accommodates the owners' two vehicles.

IV. 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 expand their home business. The use is consistent with the Low-Density Residential designation; the density will not change with the expansion of this use to 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 05) 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 is aware of the need for state licensure if awarded the Conditional Use Permit.
 - 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 and is aware of this exclusion.
 - C. *Facility shall be principal residence of the operator.* The applicant is both the homeowner and resident at this location.
 - D. *The facility shall comply with all State and Town codes.* The applicant is aware of and willing to comply with the State and Town codes, as required.
 - E. *One nonresident person may be employed.* The applicant is not committing at this time to a nonresident employee and understands that if needed the Conditional Use Permit is limited to 1 nonresident employee.
 - F. *Hours of operation are limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.* The applicant is proposing operating hours from 7:30 a.m. to 5:30 p.m., Monday through Friday.
 - G. *No exterior evidence of operation shall exist other than the play equipment.* No signs or evidence of the operation exist at this site other than the existing backyard play area to be furnished with play equipment.
 - H. *Adequate space should be provided for drop-off and pickup; staggering may be used.*

The Vienna Zoning Ordinance does not provide minimum required parking spaces for Family Day Homes. In the narrative, the applicant identifies a total of 10 available parking spaces available on and near the site at any given time. After staff's analysis of the site, Figure 8 appears to provide parking for a maximum of up to 2 vehicles on site, which does not include the additional spaces in the two-car garage used for the homeowner's vehicles.

In addition to parking availability off-street, public parking is also available to patrons on-street, on Old Courthouse Road NE, a public street. The Vienna Town Code, Section 9-12.3 provides specific restrictions regarding parking on public streets:

Section 9-12.3 – Where stopping, standing or parking prohibited:

- In front of a public or private driveway.
- Within 15 feet, in either direction, of the entrance to a fire station or building housing rescue equipment or ambulances, provided such buildings are plainly designated.
- Within 15 feet, in either direction, of a fire hydrant located on private or public property, or within a fire lane.
- Within 20 feet of the intersection of curblines, or if none, within 15 feet of the intersection of property lines at an intersection of streets.
- On a sidewalk or crosswalk
- On any street for a continuous period of 48 hours.
- Within 30 feet upon the approach to any flashing beacon, stop sign or traffic control device.
- Alongside or opposite any street excavation or obstruction when standing or parking would obstruct traffic.
- On the roadway side of any vehicle stopped or parked at the edge of or curb of a street
- Any place where official signs prohibit parking.
- Spaces reserved for handicapped persons.



Figure 8 – 2023 aerial image of site; parking areas in green.
Source: Fairfax County Aerials and staff illustrations

Using the Town’s parking restrictions above, Figure 9 illustrates possible available off and on-street parking areas on Old Courthouse Road. In this illustration, the possibility exists for on-site parking for a maximum of 2 patron vehicles in the existing driveway. On the same side of the street as the site, a minimum of approximately 10 vehicles can be accommodated using on-street parking on Old Courthouse Road. On street public parking does exist on both sides of Old Courthouse Road. This provides an additional 9 or more available public on-street parking spaces for vehicles, opposite the site. The nearest pedestrian crosswalk across Old Courthouse Road is less than approximately one-tenth of a mile east of the site.



Figure 9 – 2023 aerial image of site; parking areas in green.

Source: Fairfax County Aerials and staff illustrations

As this is an application for Conditional Use, additional conditions specifically to address parking based on the maximum number of vehicles expected to be on-site at any one time may be considered. Staff estimates that, with both on-site and on-street parking availability, the applicant appears to be able to accommodate at least 12 vehicles at any given time, providing adequate parking for this use. Given most arrivals and departures to and from the site will be staggered, and time spent on site by each patron would be minimal, it is also unlikely all 12 vehicles would be arriving and parking simultaneously.

- I. *The Board of Zoning Appeals may require landscaping and screening.* Additional evergreen screening may or may not be necessary for this use, depending on the applicant’s choice of fencing. Previous applications for Conditional Use Permits for family day homes have included 6 foot high solid fencing designs, some with additional evergreen screening, offering mitigation of potential impacts to neighboring properties. Staff is aware that the applicant was considering installing a four-foot high wooden open picket-style fencing around the perimeter of the backyard play area at one time. The site currently has some evergreen screening across the rear property, as well as deciduous trees and shrubs around the remainder of the rear yard.
 - J. *Any changes requiring an amendment.* The applicant has not indicated any future changes to the property or use as presented.
- *Section 18-827 Family Day Home Permit.* Includes the provision that Family Day Homes caring for more than four (4) children requires a Conditional Use Permit.

STAFF CONCLUSION

Staff believes that, as presented, the applicant's proposed increase in children on the site from 4 to 12 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 aligns with the Town's Comprehensive Plan and meets the required standards for Family Day Homes as required in the 2024 Town of Vienna Zoning Ordinance. In addition, performance under the existing Home Occupancy Permit issued in May of 2024, allowing in-home care for up to 4 children, has not led to adverse impacts of which staff is aware. However, as this is an application for a Conditional Use, the Board of Zoning Appeals may consider recommending conditions to address specific concerns which fall under the Conditions for Approval as described in section V. below.

V. PUBLIC COMMENTS

As of July 8, 2024, one written comment was received by the Town from a resident at 426 Old Courthouse Road in opposition to this application. A resident at 8724 Old Courthouse Road attended the Planning Commission meeting on June 12, 2023, and voiced opposition to the size of the proposed family day home, expressing concerns about the volume and speed of traffic in this residential neighborhood. Two signed notifications from the public were received by the Town acknowledging the applicant's proposed home daycare. Please see Attachment 09.

VI. 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 05).

§18- 824.3: The Board of Zoning Appeals may issue a use permit for any of the uses indicated within Article 3, with a "C" (conditional) 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.

VII. PLANNING COMMISSION RECOMMENDATION

The Planning Commission heard the request for a Conditional Use Permit for a Family Day Home at their regular June 12, 2024 meeting. During the public hearing held on June 12, 2024, the applicant indicated their intent to offer care to children of multiple ages, including possible before and after school care for children attending Westbriar Elementary School.

After hearing from the public and the applicant, the PC voted 7-0 to recommend the Board of Zoning Appeals approve a Conditional Use Permit for a Family Day Home to accommodate up to a maximum of twelve children at 430 Old Courthouse Road NE, described as tax map parcel 0293 10 0015, with the condition that the owner install a privacy fence around the backyard play area.

While not recommended as a condition to the CUP, the PC requests that the applicant agree to (i) install additional vegetation screening of the neighboring yards, (ii) utilize a staggered drop-off and pick-up of the children, and (iii) require parents to drop off and pick up children on the southern side of the street.

A memo from the Planning Commission chair is included with this application as Attachment 06.