




# STAFF REPORT COVER SHEET

June 5, 2019

<b>Addresses:</b>	305 Jade Court NW	<b>Case Number:</b>	PF-25-19-CUP
<b>Public Meeting Date:</b>	6/5/2019	<b>Applicant:</b>	Zeinab Salem of Zeinab Home Daycare
<b>Board/Commission:</b>	Board of Zoning Appeals	<b>Owners:</b>	Yi Bian
<b>Application Date:</b>	April 15, 2019	<b>Existing Zoning:</b>	RS-12.5
<b>Deadline for Action:</b>	July 12, 2019	<b>Existing Land Use:</b>	Low Density Residential
<b>Brief Summary of Request:</b>	Recommendation to Board of Zoning Appeals for a conditional use permit for a Family Day Home for a maximum of twelve (12) children		
<b>Site Improvements:</b>	n/a		
<b>Size of Property:</b>	10,757 square feet / 0.25 acres		
<b>Public Notice Requirements:</b>	<ul style="list-style-type: none"> <li>- Written notice of hearing date sent to the applicant by registered mail on May 25, 2019</li> <li>- Placard sign on property advertising the application and meeting date</li> <li>- Advertisement of meeting for two successive weeks in a newspaper having paid general circulation in the Town prior to Board of Zoning Appeals. Meeting published in Washington Times on May 22, 2019 and May 29, 2019.</li> </ul>		
<b>Brief Analysis</b>			
<p><b>PROPERTY HISTORY</b></p> <p>The subject property currently consists of a split foyer style, 1,276 square foot home built in 1969. The home has a walkout basement to the backyard. The applicant rents the property from the owner and has permission from the owner to operate a family childcare business out of the home. The applicant received a home occupation permit to care for a maximum of seven children on October 26, 2017.</p> <p><b>COMPATIBILITY WITH THE COMPREHENSIVE PLAN</b></p> <p>One of the Economic Development indicators listed in the Comprehensive Plan (Page 55) is "Growth in business licenses, including home businesses." Home daycares are considered a home business.</p> <p><b>COMPATIBILITY WITH THE ZONING ORDINANCE</b></p> <p>The Town of Vienna's Zoning Ordinance is silent on regulations for family day homes. In June 2013, the Zoning Administrator made a determination for family day homes in accordance with State and Fairfax County regulations at the time. Although the applicant received a home occupancy permit for 8 children, any family day homes caring for more than 7 but no more than 12 children in a residential home requires CUP approval.</p>			
<b>Attachments:</b>	Applications <input checked="" type="checkbox"/> Applicant Statement <input checked="" type="checkbox"/> Record Plat <input checked="" type="checkbox"/> Floor Plan <input checked="" type="checkbox"/> Applicant Site Photos <input checked="" type="checkbox"/> Sample of Drop-off and Pick-up Times <input checked="" type="checkbox"/> State License <input checked="" type="checkbox"/> Letters of Support from Property Owner and Neighbors <input checked="" type="checkbox"/> Home CO <input checked="" type="checkbox"/> Zoning Determination Memo - Family Day Home <input checked="" type="checkbox"/> Planning Commission Recommendation Memo <input checked="" type="checkbox"/>		
<b>Author:</b>	Kelly O'Brien, AICP, Principal Planner		

ITEM NO. 2:

Consideration by the Board of Zoning Appeals for a conditional use permit to establish a family day home up to twelve (12) children on property located at 305 Jade Court NW, in the RS-12.5, Single Family Detached Residential zone. Application filed by Zeinab Salem, business owner of Zeinab Home Daycare.

***Introductory Comments & Background:***

The subject property currently consists of a split foyer style, 1,276 square foot home built in 1969. The home has a walkout basement to the backyard. The applicant rents the property from the owner and has permission from the owner to operate a family childcare business out of the home. The applicant received a home occupation permit to care for a maximum of seven children on October 26, 2017.

The childcare operation is primarily located in the lower level of the split-level home, with a full bathroom downstairs for the use of the daycare. The total indoor space used for the home childcare is approximately 550 square feet, or 43% of the living space, including the bathroom. The property also has a large fenced back yard, approximately 2,800 square feet in size, with play equipment for the childcare.

The hours of operation are between 7:00 a.m. and 6:00 p.m. The applicant has provided documentation of two weeks of staggered drop-off and pick up times. Currently the applicant and her husband are the only employees for the childcare. They have two vehicles parked in the two-car garage. The driveway has space to park two additional vehicles. Jade Court is restricted to residential permit parking only from 7:00 am to 3:00 pm, Monday through Friday, except holidays. The applicant stated that the parents park in the driveway and bring the children around to the rear of the house, through a gate in the fence to the left of the house.

***Current Proposal:***

The applicant is requesting approval for a conditional use permit to expand the childcare business from a maximum of seven (7) children to a maximum of twelve (12) children. The increase in children will require an additional staff member per state regulations. The applicant has stated they intend to sell one of their vehicles to make room in the garage for the employee vehicle. The parents of the day care children are encouraged to park in the driveway for drop-off and pick-up. There are no proposed changes to the existing residence or yard.

***Required Commission/Board approvals:***

A June 2013 Zoning Administrator's determination found that the family day home serving up to 12 children does not meet the home occupancy provision as established at § [18-173-Home occupation](#) of the Vienna Town Code and a conditional use permit is required (in accord with the provisions of § [18-31](#) – and by reference from § [18-13](#)).

Review of the application (as established at §§ 18-[209:216](#) 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.

The Town of Vienna Code of Ordinances (Article 21. § 18-31) states conditional use permits must have a decision by the Board of Zoning Appeals within 90 days of the submission of a complete application.

### ***Relevant Regulations:***

#### **Town Code**

##### [Sec. 18-209. - Use permit subject to certain conditions.](#)

The board of zoning appeals may issue a use permit for any of the uses enumerated in section 18-210 in response to an application therefor, provided the use for which the permit is sought:

- (1) Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- (2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- (3) Will be in accord with the purposes of the Town's master plan.

In granting any use permit, the board of zoning appeals may impose such conditions as it may deem in the public interest, including limiting the duration of a permit, and as will ensure that the use will conform to the foregoing requirements and that it will continue to do so, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with. The board may revoke a use permit if the board determines that there has not been compliance with the terms and conditions of the permit. No permit may be revoked except after notice and hearing as provided by Code of Virginia, § 15.2-2204.

##### [Sec. 18-173. Home occupation.](#)

In any residential zone a home occupation is permitted, including the use of the home as an office, provided that the occupation complies with all the following conditions:

- A. Is operated in its entirety within the single unit dwelling and only by the person maintaining a dwelling therein.
- B. Does not display or create outside the building any external evidence of the home occupation, including any method of advertisement other than a dwelling nameplate as permitted in [section 18-185](#).
- C. Does not utilize more than 25 percent of the gross livable floor area including the basement.
- D. No person is employed other than a member of the immediate family residing on the premises. Provided, however, that in the event any such family member so employed in any home occupation dies or becomes physically incapacitated, and such incapacitation is certified by a medical doctor as preventing said family member from performing such employment thereby

causing a hardship to the proper conduct of said home occupation, the board of zoning appeals may grant a variance to permit temporary employment of not more than one person for a period not to exceed six months following a public hearing, pursuant to section 18-234.

**Sec. 9-12.3.1. - Parking prohibited on certain residential streets.**

1. Town Council discretion.

- A. Whenever the Town Council shall determine that any street or streets, or portions thereof located in one or more residential (RS) zones are being used for the parking of vehicles while the operators of such vehicles are elsewhere, so that the average number of such vehicles so parked occupies more than 25 percent of the total parking spaces on such street or streets or portions thereof, while the total number of parking spaces then occupied by all vehicles parked on such streets or portions thereof exceeds 65 percent of the total parking spaces on such streets or portions thereof on a significant number of weekdays, except holidays, of any month between the hours of 7:00 a.m. and 6:30 p.m., as disclosed by a Police Department survey, the Town Council may prohibit parking during such hours on any or all of any such streets or portions thereof and on streets in proximity thereto as the council determines necessary to effectuate the purpose of this section.
- B. In addition to the provisions of subsection 1.A. of this section, the Town Council may prohibit parking on streets, or portions thereof, at such time or times and during such hours as it deems necessary to effectuate the purpose of this section upon a finding that all of the following exist:
  - a. Such streets or portions thereof are located in one or more single-family detached residential (RS) zones, which zones are adjacent to, or abut upon, one or more multifamily (RM-2) zones wherein which are located one or more multifamily structures which do not comply with the parking space requirements of [section 18-130](#).
  - b. Such streets are being used for the parking of vehicles owned, or in the care, custody, or control of residents, or guests of residents, of said RM-2 zones.
  - c. On-site parking facilities for multifamily residential dwelling units located in such RM-2 zone, or zones, existed prior to the December 3, 1990, amendment of the parking regulations pertaining thereto as contained in [section 18-130](#).
  - d. The average number of such vehicles so parked occupies more than 25 percent of the total parking spaces on such street, or streets or portions thereof, while the total number of parking spaces then occupied by all vehicles parked on such street, or streets or portions thereof, exceeds 65 percent of the total parking spaces on such street, or streets or portions thereof, on a significant number of days per week including Sundays and holidays.

2. The prohibition of parking on certain streets as set forth in subsections 1.A and B of this section shall not apply to holders of parking permits provided for in sections [9-12.3.2](#) and [9-12.3.3](#); to police, fire, rescue, or utility service vehicles parked or stopped in the performance of emergency service to public utility facilities or vehicles bearing public use license plates issued by the commonwealth, or to service or delivery vehicles while in use to provide service or make deliveries to nearby dwellings.

3. All parking permits issued pursuant to sections [9-12.3.2](#) and [9-12.3.3](#) shall be displayed at such location on vehicles as specified by the Town Manager or his designee and indicated on the permit. Such permits shall be issued by the Town Manager or his designee, and are not transferable. No such permit shall be construed to authorize the parking in any residential (RS) zoned area of any vehicle prohibited from such parking by any other section of this Code.

[§ 15.2-2309. Powers and duties of boards of zoning appeals.](#)

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

***Staff Analysis:***

Any application for family day home use should consider possible impacts upon surrounding residences, specifically the introduction of a day care business into the Town's residential neighborhoods, with a rise in the overall intensity of use and traffic.

The applicants currently has a Home Certificate of Occupancy (Home CO) to care for up to seven (7) children in the home. The day care use occupies approximately 43% of the gross livable floor area, which exceeds the maximum 25% allowed for a Home CO. Conditional Use Permits for family day homes do not have a maximum percentage of livable floor area per the Town Code.

There are currently no outside employees, which is in compliance with the requirements of a Home CO. If the CUP application is approved, additional assistance with the added children will be necessary. (State regulations for home day care determine the number of staff required based on a points system.) Currently the family has two vehicles, which park in the garage, leaving the driveway open for parents. The applicant stated they plan to sell one of their vehicles to make room in the garage for the employee parking. If the CUP is granted, parking space will need to be provided for employees, parents and resident use on site. There are residential parking restrictions and permits required to park on Jade Court NW during specified hours. The applicants as residents have the ability to park their vehicles on the street at any time provided they have the proper parking permit.

Staff discussed the residential parking restrictions with Vienna Police to inquire about what happens if a parent arrives to drop-off or pick-up a child or children between the restricted permitted parking hours and there are no spaces available in the driveway. If the parent is stopped in front of the house, does not park or leave the vehicle, and someone from the business comes out to get the child from the car or bring a child to the car, then the parent is not in violation of the parking restrictions. If the parent parks the car and leaves the car for only a few minutes during the restricted permitted parking hours, it is technically a parking violation. The need for the residential parking restriction for this area is due to the proximity to James Madison High School and is meant to discourage school visitor parking in the neighborhood. Police do not routinely inspect these areas for violations unless there are complaints from the residents.

Staff compiled the applicant's submitted drop-off and pick-up times for two weeks into charts showing overlaps of vehicle arrivals within ten-minute increments. During the two weeks of information provided there was only one instance during the restricted parking times in the morning that more than two vehicles arrived within 10 minutes of each other. The applicant's information does not indicate how long each vehicle is there. Staff chose 10 minutes as a reasonable amount of time that could be spent during arrivals and departures.

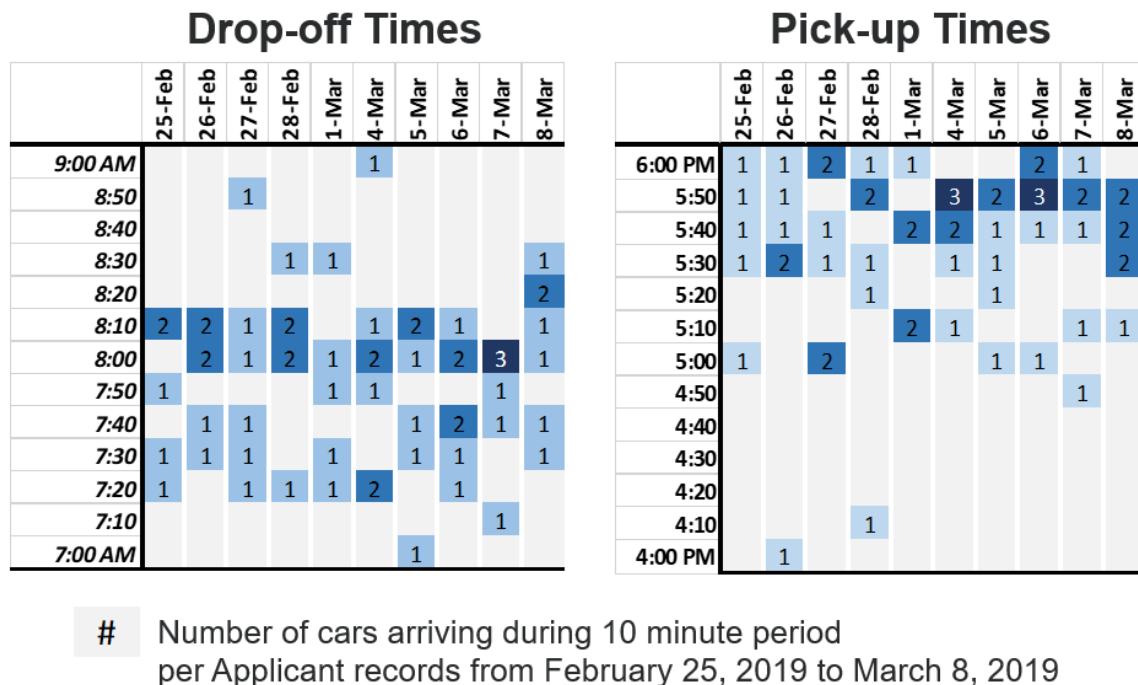


Figure 1: Staff compiled chart of drop-offs and pick-ups

The applicant has provided letters of support from all eight (8) of the neighbors stating their understanding of the business details and proposal to increase the number of children on site. The owner of the home, from whom the applicant rents, has also submitted a letter stating no objection to the increase in the number of children watched. Staff notes that the neighbor to the rear of the applicant, 437 Knoll St NW, also operates a childcare business.

At the Planning Commission meeting, a neighbor inquired if it would be possible that the daycare could have children playing in the front yard. Virginia Department of Social Services Standards for Family Day Home states that a "nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of hazards such as, but not limited to, streets with speed limits in excess of 25 miles per hour". It does not preclude the children from playing in the front yard, however, it would require a fence if proposed. The applicant is not proposing to have children playing in the front yard.

#### ***Planning Commission CUP Recommendations:***



The Planning Commission considered this matter at its regular meeting on May 22, 2019. Upon the conclusion of their analysis, Commissioner Basnight made a motion for recommendation to the Board of Zoning Appeals for approval of a Conditional Use Permit for a Family Day Home with a maximum of 12 children at the home located at 305 Jade Court, NW. Commissioner Baum made a friendly amendment to add a time limit for the conditional use permit. After discussion on the appropriate amount of time, either 12, 18 or 24 months, Commissioner Basnight amended the motion to include a 12-month time limit. For more information, please reference the memo from the Planning Commission Chair included as an attachment.

Motion: Basnight

Second: Merren

Carries: 7-0 (1 absent)