

WRITTEN SUBMISSION FOR THE RECORD FOR THE TOWN OF VIENNA PLANNING COMMISSION MEETING
ON SEPTEMBER 25, 2019

Dear Members of the Planning Commission:

My name is Darlene Hough and my family lives at 106 Yeonas Circle, SE, immediately adjacent to the applicant, Tania and Kambiz Faris, who are seeking to renew a conditional use permit for a home daycare at 108 Yeonas Circle, SE. We oppose the renewal of the applicant's conditional use permit for all the reasons set forth in our submission to the Board of Zoning Appeals last November (copy is attached for your convenience). We note that Page 5 of the Planning and Zoning Staff Report for this meeting indicates that "The applicant has been operating the business with the increased number of children for nearly one year and staff has not received any complaints." We were not aware that we should file a "complaint" every time an issue with the daycare occurs. Please consider the following as our list of complaints since last November:

Parking remains an issue. The driveway for each residence can only hold one car without the second car hanging over the apron and risking the chance of getting a parking ticket (which has happened). Most of residents that park on the street don't depart until 8:30 to 9:00 am on weekdays. Here is a breakdown of the normal daily parking on the cul-de-sac:

1. 108 Yeonas has 3 vehicles, one is a white van; one is a white land or range rover and the 3rd vehicle varies from day to day because Kambiz works for a car dealership and drives a different vehicle home each day. The white van is the only vehicle that parks in the area behind the gate. The white land or range rover is generally parked in the drive way or on the street in the one spot immediately in front of the house. Kambiz is off every Wednesday and the 3rd car he drives home from work is generally parked on the street across from the house on Wednesdays. In addition, Kambiz has told my husband that they intend to buy another car for his other child that will be driving soon.
2. 107 Yeonas has 1 car that is parked in the driveway that belongs to the resident, who is retired and another car is parked on the street.
3. 106 Yeonas Circle (we have 1 car in the driveway; 1 car in front of the house; 1 car on the street in the summer and during college holidays and breaks).
4. 105 Yeonas has 3 vehicles; 2 of which were parked on the street until the family moved out of their house in August 2018 prior to last year's public meetings in anticipation of their house being torn down. The driveway to their new house has been changed into a double wide driveway (including apron) causing the loss of ½ of a car space on either side of driveway since last August. Not sure if the residents will actually use their garage and driveway for all of their vehicles or whether some of the vehicles will end up parking on the street since they have not yet moved into their new house.
5. 104 Yeonas has 1 car that is always parked in the street. This resident is retired.
6. 103 Yeonas has 2 cars; 1 is parked in the driveway (and two cars can fit in this driveway) and 1 is on the street. However, they too have moved out to renovate their house so it is unclear whether their parking habits or the size of their driveway will change.
7. 102 Yeonas has 3 cars; 1 is in the driveway and 2 are on the street.
8. 101 Yeonas has 2 vehicles; 1 is in the driveway and 1 is on the street.
9. 100 Yeonas has 3 or 4 cars with 1 car in the driveway.

In 2018 the applicant expanded their driveway and the general consensus after last year's meetings was that 3 cars could be parked comfortably in that expanded driveway and not 5 as alleged by the applicant. The applicant further expanded their driveway to add parking for four (4) vehicles behind a gate on the side of their house. To date, we have only witnessed the white van parking there. It is never used by the customers of the business and the applicant's other 2 vehicles generally remain in the driveway and on the street as described above on weekdays when the vehicles are home. Accordingly, it is unclear how this alleviates the parking and traffic issues caused by the business.

Constant traffic continues to exist. The parents continue to fly in and out of the cul-de-sac at high rates of speed. This concerns us because we believe it is only a matter of time before someone gets hurt. There are a total of 9 residences on the cul-de-sac and the applicant's commercial daycare currently generates approximately 20 trips for parents to pick up and drop off kids each weekday. There is an additional vehicle trip made each weekday by a full size Fairfax County school bus which stops specifically and only for the daycare. And this does not count the two helpers trips should they park on the cul-de-sac instead of the Yeonas Drive.

Noise remains an issue. 106 Yeonas and 108 Yeonas are at the bottom of the cul-de-sac. Attached is an enlargement of the Abutting Properties Map included in the Planning and Zoning materials for this meeting. Please note the closeness of our residence to all of the activity that occurs at the front of the commercial daycare (area highlighted in yellow). We have constant noise during each weekday morning (generally 7:30 – 10:00 am) and afternoon (3:30 to 6:00 pm) that includes (i) vehicles coming and going (twice each day), (ii) the opening and closing of vehicle doors (twice or more upon arrival and departure of each trip); and (iii) the conversations between the daycare staff, parents and their children. The noise is concentrated just outside of and can be heard in our bedrooms and living area with all the windows closed. We have tried to mitigate the noise by letting the maple tree and shrubbery grow. Last November we suggested that the Board of Zoning Appeals permit the construction of an 6 foot fence to block the noise and activity. The neighbors installed a 4 foot fence as permitted but it does nothing to stem the flow of noise and activity in driveway and front yard that comes right into our home. We cannot open our windows when the weather is nice and I have given up working from home because it is quieter in the office than in my home. There is no respite to noise in our back yard when the kids are playing outside. Again, we mitigated as best we could with a fence and trees, but the change does not lessen the noise. In fairness, it is hard to tell on paper how close these activities are to our home so I invite you to come stand on our front porch and you will see it is really a very small area.

Neighborhood Relations.

The applicant was asked to improve the communications with the neighbors. The only method of communications the applicant uses is by written notice left at the front door and there is nothing wrong with that. It certainly documents the daycare's communications but it doesn't demonstrate a willingness by the business to mitigate its impact on the neighbors and street. Since the last Planning Commission meeting, there have been exactly two communications to the neighbors. The first notice was delivered In October 2018 between the Planning Commission and Board of Zoning Appeals meetings and the second was the notice for their annual Christmas Party in December (plus an

additional notice to us about the fence in April 2019). And there have been no verbal or written communications to the neighbors from the applicant since the end of 2018. Again, the written notices helps the Applicant document their communications to the neighbors but there is no actual oversight of the execution or any attempt to lessen the impact of the activities of the business on the neighbors. It is simply an announcement of what is happening; there has been no dialog with us and to our knowledge any other resident on the cul-de-sac. An example of the business issuing a notice with no executive oversight or monitoring occurred during their annual Christmas party. The daycare put a cone in front of 104 Yeonas Circle and our home to prevent any cars from parking there. This resulted in all of the cars parking very tightly throughout the remainder of the cul-de-sac making it nearly impossible for some of the other residents to enter and exit their driveways. None of the cars parked on Yeonas Drive to our knowledge. It is important that the business consider the impact on every resident of the cul-de-sac and not just the ones who speak out. And it is important that the business consider the residents at all times because businesses, even home businesses, and residents have very different goals and priorities and those goals and priorities are always going to be opposite of each other. This is magnified in this particular case because you have the largest and most disruptive type of a home business on a small cul-de-sac that intended to be quiet and have little or no traffic. And to make matters worse, there are absolutely no restrictions or controls on how the applicant's business can impact the residents of the cul-de-sac. If the applicant and the daycare are having such a "positive affect on neighbors" as stated in the applicant's renewal letter, why aren't any of the neighbors on Yeonas Circle attending and speaking in support of the daycare? None of residents on Yeonas Circle not even those who consented to the increase in children have shown up at the public meetings to support the applicant.

Property Value Impact:

Another issue to be addressed is the impact of the daycare facility on the valuation and salability of our property and our lack of quiet enjoyment of our home for years and years to come. The noise, disruption and traffic we suffer being located next to a large business on a small cul-de-sac has a materially adverse impact on the quiet enjoyment of our property and the fair market value of our home. There are limited buyers who want to live next to a large daycare business on a small cul-de-sac.

Finally, it is very stressful to have to come back and do this process all over again. As you are well aware, it is has been a difficult place to live since the daycare opened. We have been bullied and we have been constructively evicted from our home. I am speaking out once again because this contentious dispute has been characterized as a "dispute between neighbors". We would like to clarify for the record that the animosity and confrontation that exists today is not the result of an ongoing dispute between neighbors but rather a zoning dispute gone bad and left to fester for years due to the Town failing in 2013 to comply with the Town Code and affording the residents of the cul-de-sac due process via the conditional use permit process. After last year's meetings, it all made sense. Prior to March 2018, the applicant operated a daycare with 9 children without a certificate of occupancy. Our recollection is that we refused to sign a consent to increase the number of children at the daycare for the first time in 2012 or 2013. In March 2013 in connection with the applicant's initial certificate of occupancy application process, the applicant was required to decrease the number of children in the daycare from 9 to 8 in connection with their in March of 2013 (see testimony on page 2 of the Board of

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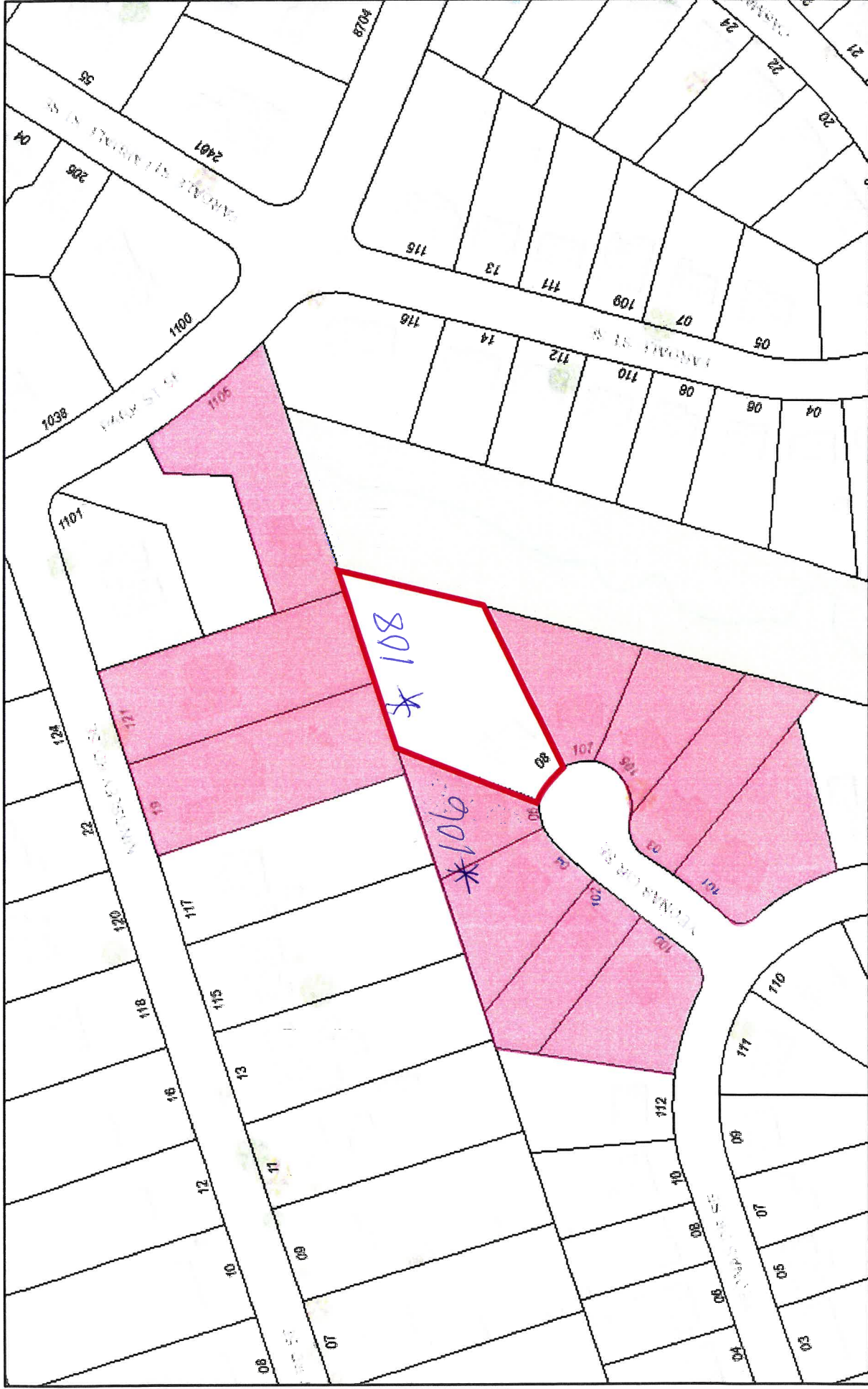
Zoning Appeal November 13, 2018 meeting minutes stating that the applicant had 9 children in March 2013 and was required to decrease the number of children at the daycare to 8). We believe the applicant may blame us for that decrease. But what we cannot understand is why the Zoning Administrator only required the applicant to give up one child rather than two and if the applicant was not required to give up 2 children, why the Zoning Administrator deprived the neighbors of the daycare from being able to address their concerns at that time. It is almost as if the Zoning Administrator decided to take matters into his own hands and decrease the number of children by one on behalf of the residents and permit the certificate of occupancy to be issued to the applicant for 8 children thereby ignoring the conditional use permit process to avoid the very same zoning dispute we are having today. No one has addressed this issue to date but it is clear that this zoning dispute has become more contentious because of the amount of time that has been allowed to pass.

In closing, all we want is a neighbor who acts like a neighbor and not a big business. The business is not always right and cannot simply do whatever it wants whenever it wants. When the certificate of occupancy was issued to the daycare in 2013, this is exactly what happened because it gave the applicant and their customers the leverage over the neighbors. Until last year's meetings, neither the applicant or the applicant's customers made any attempt whatsoever to mitigate or consider the impact of the business on cul-de-sac because there were no restrictions on their actions and no repercussions for their actions. Although our position is and remains that the applicant is limited to the 4 children permitted by right under the Virginia Code because the home daycare does not satisfy the home occupation requirements in the Town Code, we recognize that the Planning Commission and the Board of Zoning Appeals may ultimately decide to permit 10 or 8 children. If this happens without any restrictions on the applicant, the applicant and the applicant's customers will once again have all the leverage which terrifies us for the entire cul-de-sac. We believe that whatever number of children the Town permits the applicant to have, there must be governmental restrictions put in place to control the actions of the business to ensure respectful treatment at all times of the residents of the cul-de-sac by the applicant, its employees and clients. This is a residential zone and not a commercial zone.

Thank you for your consideration.

Darlene Hough and Steven Charlop
106 Yeonas Circle, SE
Vienna, VA 22180

108 Yeonas Cir SE - Abutting Properties Map



Subject Property



Abutting Property

See attached expanded version.

0393 04 0005

0393 04 0005

0393 04 0005

0393 04 0010

106 Yeonas

108 Yeonas

0393 13 2018

0393 13 2017

2617

2618

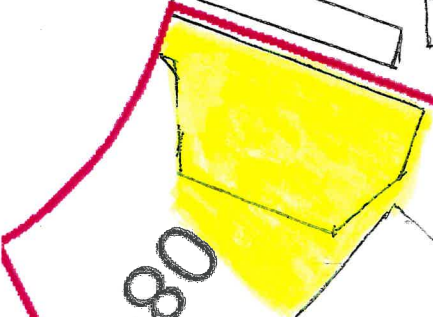
2610

0393 13 2019

08

06

24



WRITTEN SUBMISSION FOR THE RECORD FOR THE TOWN OF VIENNA BOARD OF ZONING APPEALS
HEARING ON NOVEMBER 13, 2018

Dear Ladies and Gentlemen:

Thank you for giving me the opportunity to speak on this zoning matter affecting our home and cul-de-sac. My name is Darlene Hough and my family lives at 106 Yeonas Circle, SE, immediately adjacent to the applicant. We oppose the applicant's request to increase the number of children at their home daycare from 8 to 10, but would also like to formally appeal the 2013 issuance of a Certificate of Occupancy to the applicant by Town staff (which we just learned about at the Planning Commission meeting last month) for the following reasons:

1. Yeonas Circle is zoned RS-10 which permits single family residences and customary home occupations provided the customary home occupations comply with all 12 of the conditions set forth in Section 18-173 of the Town Code.
2. The Town Staff report only cites that the home daycare fails to comply with a couple of these conditions; however, the applicant's home occupation does not comply and has never complied with 9 of the 12 required conditions.
 - 4 separate conditions require that a home occupation be only within the single family home with no external evidence of the home occupation outside the building, no sounds beyond the property line in excess of normal single unit dwelling use and no equipment of the business may be stored outside the home. The very large playground area of 15,000 – 20,000 square feet with playground equipment violates all 4 of these requirements.
 - The home occupation may only operate up to 25% of the gross livable floor area including basement and the applicant's business occupies well over 25%.
 - The applicant employs two employees in violation of the requirements of no outside employees.
 - The day care facility is not operated on an appointment basis.
 - With 8 children and 2 employees daily, the day care facility creates sidewalk and street traffic on a small cul-de-sac.
 - Lastly, the home daycare business affects adversely the use and development of our adjoining property. A cul-de-sac is the creme-de-la-creme of real estate flocked to by buyers who pay premiums in order to live on a quiet and serene street with no traffic. We don't have quiet enjoyment of our property plus we made a substantial investment in our home. We have lived here for over 20 years ago and more than doubled investment with a large addition in 2007 prior to the daycare opening along with smaller updates since then and face the prospect of not being able to get fair market value for our home or to even be able to find a buyer who wants to live next to a daycare on cul-de-sac should we need to move to a less expensive area after retirement.
3. My understanding is that it is the responsibility of The Department of Planning and Zoning to fairly and equitably enforce the zoning and code enforcement provisions of the Town Code. Yet there is no evidence of this based on the information posted for the Planning Commission meeting as follows:

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- The applicant operated a home daycare facility without a Certificate of Occupancy in violation of the Town Code for some time before applying for one. (applicant's package references being in business for over 9 years)
 - The applicant was in violation of the Town Code when the applicant submitted an application and received a Certificate of Occupancy and the applicant agreed as part of the Certificate of Occupancy that the Certificate of Occupancy could be revoked for a violation of any of the 12 home occupation restrictions set forth in the Town Code. (C of O and application attached)
 - The Town knowingly issued the certificate of occupancy for 8 children and did not require the applicant to correct the zoning code violations at that time even though the application on its face did not comply with the home occupancy regulations nor the "zoning determination" for family day care facilities made by the Town Zoning Administrator reflected in a memoranda issued just the day before the certificate of occupancy was issued and again several months later. These are same violations that exist today. (C of O and home family care information and checklist attached)
 - The Town Zoning Administrator made a "zoning determination" in two separate memoranda that state that the Town's regulations have not changed and that the Town operates in accord with the current zoning provided for family day homes as set out in the Code of Virginia Section 15.2-2292. Yet just two sentences later the Town Zoning Administrator changes course and states that the "Town has chosen to follow this current interpretation from Fairfax County, Virginia, just as we have for many years in the past" which referred to permitting up to 7 children by right. (Zoning determination memoranda attached)
4. Why isn't the Town following the Virginia Code section cited by the Zoning Administrator and requiring the conditional use permit process for family daycare facilities with 5 or more children?
- The Virginia Code Section 15.2-2292 cited in the Zoning Administrator's determination states that zoning ordinances for all purposes shall consider a family day home serving from 1-4 children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family and that no conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. That section further states that a local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home serving 5-12 children.... The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the Zoning Administrator receives no written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator may issue the permit sought. This section also states that this section is not applicable to certain cities and counties because of the type of government they have elected to be governed by, including Fairfax County.
 - Fairfax County's Code Section 2-101 of Part 1 of Article 2 states that the County Code shall apply to all land and structures in the unincorporated territories of the

County of Fairfax, Virginia, which means that since the Town of Vienna is incorporated, the County Code is not applicable.

- This is consistent with Virginia Code Section 15.2-2281 which states that for the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

There is not clear explanation of or reason for the Zoning Administrator not to follow the Virginia law cited in his own zoning determination on family home daycares. And to make matters worse, the Town Zoning Administrator chose in 2013 to ignore his own "zoning determination" in all respects and issue a Certificate of Occupancy to the applicant for 8 children.

The Town of Vienna Staff Report Cover sheet states that the Town's Zoning is silent on regulations for family day home. Silence doesn't mean that family daycare home regulations weren't considered at that time. The forms used for the Certificate of Occupancy are the same for a family day care as for any other home occupation except there is a special box to check for family daycare facilities. Had the Town wanted to create carveouts from the 12 home occupancy conditions set forth in the Town Code for family home daycares like the ones adopted by Fairfax County, it would have done so in 2013 when the planning and zoning department was clearly following the changes being made to family home daycare regulations at the state and county level based on the zoning determination memoranda issued and supporting documentation included. The assumption should be made that the Town in fact elected not want to provide carveouts from the existing home occupation requirements for family home daycares.

In closing, we absolutely object to any increase in the number of clients at the home daycare for all the reasons set forth but would prefer the residence be limited to the 4 children under state law for the reasons listed in these materials. We just want to have our quiet cul-de-sac back. Businesses, even home businesses, and residents have very different goals and those goals are most likely always going to be opposite of each other. This is magnified in this particular case because a home daycare is the largest and most disruptive type of a home business on the most quiet and serene kind of street that by its nature has little or no traffic. And to make matters worse, there are no restrictions or controls on how the applicant's business can impact the residents of the cul-de-sac. As you can imagine, it is has been a very confrontational and difficult place to live since the daycare opened but it has absolutely escalated during the last 5 years once the Town issued a Certificate of Occupancy to the applicant. The certificate of occupancy has given the applicant and the applicant's customers all the leverage and power over the neighbors in the cul-de-sac. Because there are no repercussions, the applicant and its customers have shown no concern or care about the impact of this business on our cul-de-sac until the Planning Commission mentioned that they should consider it going forward. Although it has been a respectful 30 days since the Planning Commission meeting, we have no doubt that those respectful days will cease to exist after tonight unless there are conditions placed on the applicant's business.

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That being said, we do recognize that even after reviewing this documentation, the Board of Zoning Appeals may choose not to follow what we believe are the legal requirements of the Town Code and not agree to reduce the number of children to the 4 legally permitted and may even elect to increase this number as requested so we would like to offer several suggestions that may lessen the impact of the business on the residents of the cul-de-sac and our property in particular.

These suggestions are based on conditions that can be imposed on family home daycares under Section 8-305 of the Fairfax County Code. First, the front of the houses at the bottom of the cul de sac are very close together and most of the activities such as the coming and going of the clients, the parking of the cars, the entry in and out of the business take place at the front door, in the front yard and on the sidewalk and street in front. The corner of our houses are only about 28 feet apart, our front doors are probably about 80 feet apart, our driveways are about 18 inches apart and both our front door and front of the applicant's house are only about 39 feet from the street. This is small area where 8 vehicles make a total of 16 trips each day to drop off and pick up kids plus you have the 2 assistants, each making 2 trips daily in and out of the cul-de-sac. There could be more trips if the child has an appointment during the day. There is a mid-day bus that stops on the cul-de-sac. Parents do and will be in a rush or may run late and will not end up adhering to an allotted time to drop or pick up. Their lives and schedules will be their priority which is natural. On some days, we have had to wait to park on the street in front on our houses at the end of work day. The cars zoom in and zoom out of cul de sac with little regard to the speed limit.

First, since our driveways are only about 18 inches apart, the installation of a 6 foot fence between the driveways from the point where our current fence at the corner of our house ends to the telephone pole would mitigate the impact of the traffic and activity of the daycare business to our property. Secondly, the home business sits on approximately 2/3 of an acre so why not require the applicant to extend the driveway along the house on the side closest to our property and build a parking field in the rear yard to accommodate the number of clients and helpers of the daycare. It is large flat area and according to the applicant's submittal, there are already entrances to the business from the back and a wonderful walkway so it would not take much to require the home daycare to have clients enter and exits the home business from the parking field. Secondly, since our driveways are only about 18 inches apart, the installation of a 6 foot fence between the driveways would mitigate the impact of the traffic and activity of the business to our property and a speed bump would mitigate the high rate of speed of the clients going in and out of the cul-de-sac (although we really don't want one; but no idea how to control the speed of the clients in and out of the cul-de-sac). We also believe there should be some governmental control over the actions of the business included in writing to ensure respectful treatment at all times of the residents of the cul-de-sac by the applicant, its employees and clients.

The only remaining issue to be addressed is the lack of our being able to have quiet enjoyment of our property as a residential use and the impact of the daycare facility on the valuation and salability of our property. I am not sure how to resolve the damage we have and will suffer

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being located next to a large home daycare on a cul-de-sac. I appreciate your giving us this opportunity to speak.

Thank you for your time and consideration.

Darlene Hough and Steven Charlop, owners of 106 Yeonas Circle, SE, Vienna, VA since July 1998.

**TOWN OF VIENNA, VIRGINIA
CERTIFICATE OF OCCUPANCY
ARTICLE 22, CHAPTER 18, TOWN CODE**

NUMBER: 13464

A Certificate of Occupancy is hereby granted for the following firm, business, establishment, or individual in accordance with Article 22, Chapter 18, of the Code of the Town of Vienna, Virginia:

OCCUPANT NAME: **HAPPY YOUNGLINGS LLC**

STREET ADDRESS: **108 YEONAS CIRCLE SE**

SUITE: -

FLOOR: -

ZONING DISTRICT: **RS-10, RESIDENTIAL SINGLE FAMILY**

LEGAL DESCRIPTION: **39-3 ((13)) 2618**

IF PLATTED: **LOT: 2618**

BLOCK: -

SECTION: 15

SUBDIVISION: VIENNA WOODS

PERMITTED USES: OCCUPANCY FOR A HOME CHILDCARE TO ALLOW SEVEN (7) CHILDREN PLUS ONE (1) PRESCHOOLER NOT TO EXCEED EIGHT (8) CHILDREN - PRESCHOOLER MEANING TO BE INVOLVED IN SOME OTHER SCHOOLING PROGRAM THAT IS OFF THE PREMISES DURING SOME PORTION OF THE WORK WEEK

APPROVED FOR ISSUANCE OF CERTIFICATE:



DIRECTOR OF PLANNING & ZONING AND ZONING ADMINISTRATOR

DATE: March 1, 2013

This certificate does not take the place of any license required by law, nor does it authorize the use of boilers, motors, machinery, or any signs. Any change in the use or occupancy of this structure or upon the subject property shall require a new certificate of occupancy. No land disturbing activity modifying an approved erosion and sediment control permit shall be permitted without obtaining the appropriate approvals and permits.

THIS CERTIFICATE SHALL BE CONSPICUOUSLY POSTED AT ALL TIMES

The Town of Vienna does not discriminate on the basis of disability in the administration or access to, or treatment or employment in, its programs or activities. The Director of Human Resources, 127 Center Street, South, Vienna, Virginia 22180, has been designated to coordinate compliance with non-discrimination requirements. This document will be made available in large print or on audio cassette upon request. Call 255-6300 (voice) or TDD users dial 255-5730 (Police Department), 255-5735 (Town Hall) or 255-5739 (Parks and Recreation).

TOWN OF VIENNA, VIRGINIA
APPLICATION FOR CERTIFICATE OF OCCUPANCY

MAR - 1 2013

HOME OCCUPATION
(TYPE OR PRINT IN INK)

APPLICANT NAME: Tania Giviani - Paris DATE: 3/1/2013
STREET ADDRESS: 108 Yeonas Cir. SE Vienna, VA 22180 PHONE: (716) 606-5562 / 606-3365
BUSINESS NAME (IF APPLICABLE): Happy Younglings LLC
PROPOSED USE: OFFICE ☐ DAYCARE ☒ WORKSHOP ☐ STORAGE ☐
DESCRIBE—IN DETAIL—THE NATURE OF THE PROPOSED HOME OCCUPATION: Family Daycare

Eight children the one is going to special school part time (preschool)
LIST ALL EMPLOYEES AND THEIR RELATION TO YOU: _____

TOTAL GROSS FLOOR AREA OF DWELLING (INCLUDING BASEMENT): 1450 sq ft = 2900
AREA TO BE USED FOR HOME OCCUPATION (INCLUDING STORAGE): 1450
HOURS OF OPERATION: 7:30 - 6:30 TOTAL HORSEPOWER USED: _____
NUMBER OF DAILY CUSTOMER VISITS: 8 NUMBER OF DAILY DELIVERY/PICKUPS: 8

*16 trips -
what about
staff?*

OWNER NAME: Tania Giviani - Paris PHONE: (716) 606-5562

OWNER ADDRESS: 108 Yeonas Cir. SE Vienna, VA 22180

E-MAIL ADDRESS (for "Contact Person"): Kambiz777@yahoo.com / tania.faris@yahoo.com

DO YOU OWN THE DWELLING? YES ☒ NO ☐ **NOTE:** IF YOU DO NOT OWN THE SUBJECT PROPERTY, YOU ARE REQUIRED TO SUBMIT—ALONG WITH THIS APPLICATION—A LETTER FROM THE PROPERTY OWNER (INCLUDING THE OWNER'S NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS—IF KNOWN) STATING THAT THEY HAVE NO OBJECTIONS TO THE PROPOSED BUSINESS BEING CONDUCTED IN THE RESIDENCE.

OFFICE USE ONLY			
Permit No. <u>13464</u>	Receipt No. _____		
Zoning District: <u>RS-10</u>	Legal Description: <u>39-3((15)) 2618</u>		
If Platted Subdivision: <u>Vienna Woods</u>	Section: <u>15</u>	Block: <u>-</u>	Lot: <u>2618</u>
Use Limitations: <u>Home child care for seven (7) children plus one (1) preschooler with a total of eight (8) children.</u>			
APPROVED BY: <u>[Signature]</u>			
Director of Planning & Zoning		Date: <u>3.7.2013</u>	
Town Manager		Date: <u>03/01/13</u>	

* 7 children plus 1 preschooler child with eight (8) total preschooler.
Preschooler means to be involved in some other schooling program off the premises during some portion of the work week.

SECTION 18-4 AND 18-173: HOME OCCUPATION RESTRICTIONS:

A Home Occupation is defined in Section 18-4 of the Vienna Town Code as follows: "Any accessory use of a dwelling unit in addition to occupancy (See Sec. 18-173 for Supplemental Regulations). A boarding house, tourist home, or real estate office shall not be deemed a home occupation."

Section 18-173 of the Vienna Town Code states the following: 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:

- A. Is entirely operated within the single dwelling unit and only by the residents maintaining a dwelling therein.
- B. Creates no external evidence of the home occupation, including any advertisement other than a dwelling name plate no larger than 1.5 square feet in area.
- C. Does not utilize more than 25% 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.
- E. Does not use any internal combustion engine as a power source and does not use more than a total of three horsepower in fractional horsepower electric motors (other than normally used for domestic use).
- F. Will not involve the emission of any sounds, odors, or smoke beyond the property in excess of normal single family dwelling use.
- G. No commodity or good may be sold on the premises.
- H. Customers or Clients may come to the premises only by appointment.
- I. Will not constitute a nuisance due to sidewalk or street traffic.
- J. Will not tend to adversely affect the use and development of adjoining properties in the immediate neighborhood.
- K. All equipment and/or merchandise may only be stored inside the principal residential structure.
- L. All commercial deliveries, either to or from the premises, may only be made between 8:00 AM to 6:00 PM.

A boarding house, tourist home, massage therapist or massage therapy establishment, or principal office of a real estate business shall not be deemed a home occupation.

ADDITIONAL NOTE: PROHIBITED HOME OCCUPATIONS also include Hair Salons, Nail Salons and Food Services that use the home kitchen for goods sold to the public (home-based catering, bakery, etc., are also prohibited by Fairfax County Health Department Regulations).

I, Tania Giviani-Faris, CERTIFY THAT I UNDERSTAND THE HOME OCCUPATION RESTRICTIONS AND ORDINANCE, SECTIONS 18-4 AND 18-173 OF THE TOWN CODE, AND A VIOLATION OF SUCH RESTRICTIONS MAY RESULT IN THE REVOCATION OF MY HOME OCCUPATION PERMIT. I ALSO UNDERSTAND THAT THIS CERTIFICATE DOES NOT TAKE THE PLACE OF ANY OTHER LICENSES THAT MAY BE REQUIRED.

SIGNATURE: _____

DATE: 3/11/13


The Town of Vienna does not discriminate on the basis of disability in the administration or access to, or treatment or employment in, its programs or activities. The Director of Administrative Services, 127 Center Street, South, Vienna, VA 22180, has been designated to coordinate compliance with non-discrimination requirements. This document will be made available in large print or on audio cassette upon request. Call (703) 255-6300 (voice) or TTY 711.

Revised 1/5/2011

TOWN OF VIENNA

MEMORANDUM

TO: Town Staff and All Interested Parties

FROM: Gregory M. Hembree, AICP, Director of Planning & Zoning and Zoning Administrator 

DATE: February 28, 2013

SUBJECT: Zoning Administrator's Determination Regarding Family Day Homes

This memorandum has been created in response to an extraordinary amount of confusion that has recently developed with respect to home day care or – as the Code of Virginia calls them – “family day homes.”

According to a brochure from Fairfax County's Department of Planning & Zoning, the Commonwealth of Virginia Department of Social Services established an administrative change effective July 1, 2012, requiring providers renewing their State license or seeking their first State license for a Family Day Home (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license. Because I have been signing these forms while also noting the Town's current limitations, this change has highlighted an apparent inconsistency between the provisions of the Town's zoning ordinance with respect to family day homes and those administrative regulations now used at the state level.

Please be aware that the Town's regulations have not changed and we operate in accord with the current zoning provisions for family day homes as set out in § 15.2-2292 of the Code of Virginia (see attachment). Those provisions state, in part, that providers with five (5) or fewer unrelated children – and exclusive of the provider's own children – can operate under the same zoning provisions as that of a single-family home. Because many of these same providers also have school-aged children at their homes, Fairfax County has allowed a **maximum of seven (7) such children within a single-family home** and has determined such use to be accessory to that of its primary use as a dwelling. The Town of Vienna has chosen to follow this current interpretation (as of the date of this memorandum), just as we have for many years in the past.


Because a family day home is also a business, the home occupation provisions as set forth in § 18-173 of the Vienna Town Code have been and remain applicable to their operation within the Town.

Many have also asked if their current home occupancy permits are valid even if the permit refers to a different number of children than that in the preceding paragraph. If the conditions remain the same as when the occupancy permit was issued, the answer is, clearly, yes.

TOWN OF VIENNA

MEMORANDUM

TO: Town Staff and All Interested Parties

FROM: Gregory M. Hembree, AICP, Director of Planning & Zoning and
Zoning Administrator 

DATE: June 19, 2013

SUBJECT: Zoning Administrator's Determination Regarding Family Day Homes – Updated

This memorandum was originally created in response to an extraordinary amount of confusion that has recently developed with respect to home day care or – as the Code of Virginia calls them – “family day homes.”

The Commonwealth of Virginia Department of Social Services established an administrative change effective July 1, 2012, requiring providers renewing their State license or seeking their first State license for a Family Day Home (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license. Because I have been signing these forms while also noting the Town's current limitations, this change has highlighted an apparent inconsistency between the provisions of the Town's zoning ordinance with respect to family day homes and those administrative regulations now used at the state level.

Please be aware that the Town's regulations have not changed and we operate in accord with the current zoning provisions for family day homes as set out in § 15.2-2292 of the Code of Virginia (see attachment). Those provisions state, in part, that providers with five (5) or fewer unrelated children – and exclusive of the provider's own children – can operate under the same zoning provisions as that of a single-family home. Because many of these same providers also have school-aged children at their homes, Fairfax County has allowed – and continues to allow, even with changes to its family day care provisions as of June 19, 2013 – a maximum of seven (7) such children within a single-family home, five (5) children within a townhouse and has determined such use to be accessory to that of its primary use as a dwelling. Anyone desiring to establish a family day home with a greater number of children is required to obtain a special permit (referred to as a conditional use permit here in Vienna). The Town has chosen to follow this current interpretation from Fairfax County, Virginia, just as we have for many years in the past.


Because a family day home is also a business, the home occupation provisions as set forth in § 18-173 of the Vienna Town Code have been and remain applicable to their operation within the Town.

Many have also asked if their current home occupancy permits are valid even if the permit refers to a different number of children than that in the preceding paragraph. If the conditions remain the same as when the occupancy permit was issued, the answer is, clearly, yes.



STAFF REPORT COVER SHEET

October 1, 2018

Addresses:	108 Yeonas Cir SE	Case Number:	PF-50-18-CP		
Public Meeting Date:	10/10/2018	Applicant:	Happy Younglings Family Daycare		
Board/Commission:	Planning Commission	Owners:	Tania Giviani-Faris & Kambiz Faris		
Application Date:	September 4, 2018	Existing Zoning:	RS-10		
Deadline for Action:	December 3, 2018; BZA Action required 90 days from app. date	Existing Land Use:	Low Density Residential		
Brief Summary of Request:	Recommendation to the Board of Zoning Appeals for approval of a conditional use permit for a Family Day Home of maximum ten (10) children				
Site Improvements:	n/a				
Size of Property:	30,171 square feet/0.69 acres				
Public Notice Requirements:	<ul style="list-style-type: none"> - No requirements for Planning Commission meeting however letters were sent to adjoining properties - Posting of sign on property advertising the Planning Commission and Board of Zoning Appeals meeting dates. - Advertisement of the Board of Zoning Appeals hearing date once a week for two successive weeks in a newspaper having a paid general circulation in the Town 				
Staff Recommendation:		Recommend Approval to Board of Zoning Appeals			
Brief Analysis					
<p>PROPERTY HISTORY</p> <p>The applicant has operated a home daycare at this location for over 9 years. They received a Home Occupancy Permit on March 1, 2013 for "Occupancy for a home childcare to allow seven (7) children plus one (1) preschooler not to exceed eight (8) children - preschooler meaning to be involved in some other schooling program that is off the premises during some portion of the work week".</p> <p>COMPATIBILITY WITH THE COMPREHENSIVE PLAN</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>COMPATIBILITY WITH THE ZONING ORDINANCE</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>					
Attachments:	Application <input checked="" type="checkbox"/> Site Plan/Plat <input checked="" type="checkbox"/> Justification Statement <input checked="" type="checkbox"/> Home Occupancy Permit <input checked="" type="checkbox"/> Supporting letters from the neighbors <input checked="" type="checkbox"/> Zoning Determination Memo - Family Day Home <input checked="" type="checkbox"/>				
Reviewed By:	Kelly O'Brien, AICP, Principal Planner				

*
why issued determination of State & Co. law

ITEM NO. 1:

Recommendation to the Board of Zoning Appeals for a conditional use permit to establish a family day home up to ten (10) children on property located at 108 Yeonas Circle SE, and in the RS-10, Single-Family Detached Residential zone. Application was filed by Tania Giviani-Faris and Kambiz Faris, owners. Public Hearing before the Board of Zoning Appeals scheduled on November 13, 2018.

Introductory Comments & Background:

The property was purchased by the applicants in July 2008 and have been operating a family day home business at this location since 2009. The applicant applied for and received a home occupation permit in March 2013 to care for seven (7) children plus one (1) preschooler that is off premises for some portion of the week.

The applicant was approved in August 2018 for a 9' wide by 30' long driveway expansion to increase the available parking on site from three cars to five. The driveway is complete and reflected on the updated plat.

The childcare operation is primarily located in the lower level of the split level home with a full bathroom and small wet bar area immediately adjacent to the play area for use for the daycare. The total indoor space used for the home child care is 1,200 square feet. The property has a large fenced back yard, 15,000 – 20,000 square feet, with play equipment for the child care.

The applicant has stated the drop-offs and pick-ups are staggered from 7:30 am to 6:00 pm. The applicant identified seven (7) to eleven (11) available parking spaces for short term parking between the driveway and on-street parking on the cul-de-sac. There are two employees assisting the homeowner with the business.

Current Proposal:

According to the submittal documents, there are no proposed changes to the existing residence or surrounding yard, it is only the number of children who are being cared for on a daily basis being increased from eight (8) to ten (10). The applicant also stated use of one full-time employee and one part-time employee which is beyond what is allowed for home occupancy permits as stated in the code above. The business also utilizes more than 25% of the gross livable floor area including the basement as allowed under home occupancy permits.

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 application.

Relevant Regulations:

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](#).

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. As such, we advise both the Planning Commission and Board of Zoning Appeals to carefully review all aspects of this request to determine if "a level of comfort" can be reached for approval.

The applicant's current business operation including the use of staff not related to the business owner is in violation of the home occupancy permit. State regulations for home day care determine the number of staff required based on a points system. According to regular state inspections the applicant has required the need of an assistant for the number and age of children being cared for.

The applicant has provided letters of support from six (6) of the neighbors stating that their understanding of the business details and proposal to increase the number of children on site.

However, two neighbors have come forward with concerns about the business and proposed increase in children cared for on site, specifically about the impact of the parents parking on street and blocking the driveways of neighbors.

The site having a large backyard is well suited for the applicant's home day care use, however, the location at the end of the cul-de-sac makes the balance of on-street parking more challenging for the parents and neighbors.

Staff Recommendations:

Staff believes that the Planning Commission should recommend to the BZA approval of this CUP application for expansion of an existing family day home from eight (8) children to up to ten (10) children and additional staff member(s) to bring the business into compliance with the Town Code. The applicant is already operating with staggered drop off and pick-up times. Staff recommends the applicant encourage staff to park in the expanded driveway and remind parents to use the driveway whenever possible and not block neighboring driveways.

Town is not a
city or county

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2292. Zoning provisions for family day homes. *attached*

A. Zoning ordinances for all purposes shall consider a family day home as defined in § 63.2-100 serving one through four children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. Nothing in this section shall apply to any county or city which is subject to § 15.2-741 or 15.2-914. *attached*


B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home as defined in § 63.2-100 serving five through 12 children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator may issue the permit sought. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § 15.2-2204. Upon such hearing, the local governing body may, in its discretion, approve the permit, subject to such conditions as agreed upon by the applicant and the locality, or deny the permit. The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under subdivision A 3 of § 15.2-2286.

1994, cc. 781, 798, § 15.1-486.5; 1997, c. 587; 2014, c. 771; 2015, cc. 758, 770.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

11/12/2018


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Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 9. General Powers of Local Governments

Fairfax
Co.

§ 15.2-914. Regulation of child-care services and facilities in certain counties and cities.

Any (i) county that has adopted the urban county executive form of government, (ii) city adjacent to a county that has adopted the urban county executive form of government, or (iii) city which is completely surrounded by such county may by ordinance provide for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities. "Child-care services" means provision of regular care, protection and guidance to one or more children not related by blood or marriage while such children are separated from their parent, guardian or legal custodian in a dwelling not the residence of the child during a part of the day for at least four days of a calendar week. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services.

Such local ordinance shall not require the regulation or licensing of any child-care facility that is licensed by the Commonwealth and such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by § 63.2-1716.

Such local ordinances shall not be more extensive in scope than comparable state regulations applicable to family day homes. Such local ordinances may regulate the possession and storage of firearms, ammunition, or components or combination thereof at child-care facilities so long as such regulation remains no more extensive in scope than comparable state regulations applicable to family day homes. Local regulations shall not affect the manner of construction or materials to be used in the erection, alteration, repair or use of a residential dwelling.


Such local ordinances may require that persons who provide child-care services shall provide certification from the Central Criminal Records Exchange and a national criminal background check, in accordance with §§ 19.2-389 and 19.2-392.02, that such persons have not been convicted of any offense involving the sexual molestation of children or the physical or sexual abuse or rape of a child or any barrier crime defined in § 19.2-392.02, and such ordinances may require that persons who provide child-care services shall provide certification from the central registry of the Department of Social Services that such persons have not been the subject of a founded complaint of abuse or neglect. If an applicant is denied licensure because of any adverse information appearing on a record obtained from the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the applicant shall be provided a copy of the information upon which that denial was based.

1990, cc. 605, 609, § 15.1-37.3:12; 1997, c. 587; 2010, c. 649; 2011, c. 251; 2017, c. 809.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 7. County Manager Plan of Government

N/A
not a county
manager plan
of govt.

§ 15.2-741. Regulation of child-care services and facilities in certain counties.

A. The board may by ordinance provide for the regulation and licensing of (i) persons who provide child-care services for remuneration and (ii) child-care facilities. "Child-care services" includes regular care, protection, or guidance during a part of a day to one or more children, not related by blood or marriage to the provider of services, while they are not attended by their parent, guardian, or person with legal custody. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services for remuneration. However, such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by § 63.2-1716.


B. Such ordinance may be more restrictive or more extensive in scope than statutes or state regulations that may affect child-care services or child-care facilities, provided that such ordinance shall not impose additional requirements or restrictions on the construction or materials to be used in the erection, alteration, repair, or use of a residential dwelling.

1990, c. 545, § 15.1-687.19; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 1. General Provisions

§ 63.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;
2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;
3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis;
6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902; or
7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services providers, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform such services.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by

the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by § 35.1-18; and
3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children or were formerly committed to the Department of Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Kinship guardian" means the adult relative of a child in a kinship guardianship established in accordance with § 63.2-1305 who has been awarded custody of the child by the court after acting as the child's foster parent.

"Kinship guardianship" means a relationship established in accordance with § 63.2-1305 between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision making for the child.

"Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305, payments to eligible individuals who have received custody of a relative child of whom they had been the foster parents.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform

assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Sibling" means each of two or more children having one or more parents in common.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.


"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

Code 1950, §§ 63-101, 63-222, 63-232, 63-347, 63-351; 1954, cc. 259, 290, 489; 1956, cc. 300, 641; 1960, cc. 331, 390; 1962, cc. 297, 603; 1966, c. 423; 1968, cc. 578, 585, §§ 63.1-87, 63.1-172, 63.1-195, 63.1-220; 1970, c. 721; 1972, cc. 73, 540, 718; 1973, c. 227; 1974, cc. 44, 45, 413, 415, § 63.1-250; 1975, cc. 287, 299, 311, 341, 437, 507, 524, 528, 596, §§ 63.1-238.1, 63.1-248.2; 1976, cc. 357, 649; 1977, cc. 105, 241, 532, 547, 559, 567, 634, 645, §§ 63.1-55.2, 63.1-55.8; 1978, cc. 536, 730, 749, 750; 1979, c. 483; 1980, cc. 40, 284; 1981, cc. 75, 123, 359; 1983, c. 66; 1984, cc. 74, 76, 498, 535, 781; 1985, cc. 17, 285, 384, 488, 518; 1986, cc. 80, 281, 308, 437, 594; 1987, cc. 627, 650, 681; 1988, c. 906; 1989, cc. 307, 647; 1990, c. 760; 1991, cc. 534, 595, 651, 694; 1992 c. 356, § 63.1-194.1; 1993, cc. 730, 742, 957, 993, § 63.1-196.001; 1994, cc. 107, 837, 865, 940; 1995, cc. 401, 520, 649, 772, 826; 1997, cc. 796, 895; 1998, cc. 115, 126, 397, 552, 727, 850; 1999, c. 454; 2000, cc. 61, 290, 500, 830, 845, 1058, § 63.1-219.7; 2002, c. 747; 2003, c. 467; 2004, cc. 70, 196, 245, 753, 814; 2006, c. 868; 2007, cc. 479, 597; 2008, cc. 475, 483; 2009, cc. 705, 813, 840; 2011, cc. 5, 156; 2012, cc. 803, 835; 2013, cc. 5, 362, 564; 2015, cc. 502, 503, 758, 770; 2016, c. 631; 2017, c. 195; 2018, cc. 497, 769, 770.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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ARTICLE 2

GENERAL REGULATIONS

PART 1 2-100 SCOPE OF REGULATIONS

2-101 Territorial Application of Regulations

The provisions of this Ordinance shall apply to all land and all structures in the unincorporated territory of the County of Fairfax, Virginia.

2-102 General Effect

No structure shall hereafter be erected and no existing structure shall be moved, altered, added to or enlarged, nor shall any land or structure be used or arranged to be used for any purpose other than is included among the uses listed in the following Articles as permitted in the zoning district in which the structure or land is located, nor shall any land or structure be used in any manner contrary to any other requirements specified in this Ordinance. Notwithstanding the above, land located within the Tysons Corner Urban Center, as defined in the adopted comprehensive plan, wherein a development proposal utilizes the redevelopment option set forth in the adopted comprehensive plan, shall only be considered by the Board in conjunction with a rezoning application to the PTC District as set forth in Part 5 of Article 6.

2-103 (Deleted by Amendment #86-137, Adopted December 29, 1986)

2-104 Exemptions

1. The following structures and uses shall be exempt from the regulations of this Ordinance:
 - A. Wires, cables, conduits, vaults, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephone or other communications, electricity, gas, or water, or the collection of sewage or surface water operated or maintained by a government entity or a public utility including customary meter pedestals, telephone pedestals, distribution transformers and temporary utility facilities required during building construction, whether any such facility is located underground or aboveground; but only when such facilities are located in a street right-of-way or in an easement less than twenty-five (25) feet in width. This exemption shall not include any substation located on or above the surface of the ground or any such distribution facility located in an easement of twenty-five (25) feet or more in width which shall be regulated by the provisions of Part 1 of Article 9.
 - B. Railroad tracks, signals, bridges and similar facilities and equipment located on a railroad right-of-way, and maintenance and repair work on such facilities and equipment. This exemption shall not include any facilities and equipment listed in Par. 2 of Sect. 5-602 or any facilities listed in Par. 6 of Sect. 9-401.
2. The following structures shall be exempt from the minimum yard requirements set forth in this Ordinance: Telephone booths and pedestals, underground utility equipment,

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2281. Jurisdiction of localities.


For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.

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