



# Town of Vienna

127 Center Street South  
Vienna, Virginia 22180  
p: 703.255.6341  
TTY 7111

## Meeting Minutes Board of Zoning Appeals

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Tuesday, November 13, 2018

8:00 PM

COUNCIL CHAMBERS-VIENNA TOWN  
HALL

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### 1. Roll Call

The Board of Zoning Appeals (BZA) held one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on November 13, 2018, beginning at 8:00 PM with Michael Gadell presiding as Chair. The following members were present: Bill Daly, Robert Dowler, Robert Petersen, Gregory Haight, and George Creed. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine Abaid, Board Clerk.

At the beginning of the meeting, Mr. Gadell gave an opening statement regarding to the purview of the Board of Zoning Appeals.

### 2. Public Hearings

108 Yeonas Circle SE - Conditional Use Permit - Case No. PF-50-18-CUP

Request for approval of a consideration by 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, in the RS-10, Single-Family Detached Residential zone. Application filed by Tania Giviani-Faris and Kambiz Faris, owners.

Ms. Tania Giviani-Faris, 108 Yeonas Circle SE, was sworn in to give her testimony.

Ms. Faris stated that she had been running a family daycare for more than nine years and the reason for the application was one of the parents, who currently had a child enrolled, had another baby and wanted to keep the children at the same daycare. Families that are enrolled at her home daycare plan for the children to be able to stay together when the parents are not with them. Ms. Faris said the approval would change things as the family would no longer have to search for daycare for their children. She also stated she is trying to provide a community and the best care she is capable of for the families at her daycare.

Mr. Daly began by stating what the parking proposals were in the application and asked if that was still their plan. Ms. Faris stated they had already executed it. Mr. Daly asked if going from three to five spaces was the two extra spaces mentioned in the application. Ms. Faris stated there would be a total of five. Mr. Daly asked if there would be an additional two spaces, Ms. Faris said she did not believe so. Mr. Daly asked if the application is to go from the allowable eight now to ten kids, and no additional changes. Ms. Faris stated no, there would not be additional changes, and that the quality is more important although she could apply for twelve, as it is the maximum allowable with the application. She prefers a smaller daycare to provide the best care.

Mr. Creed asked Ms. Faris to address the issue of employees versus the town's code. Ms. Faris explained that the state licensing point system requires an employee per sixteen

points. Her daycare is at twenty-one points requiring an employee. Ms. Faris continued stating that she did not have one full-time employee, but that she had two part-time employees, one in the morning from 7:30-3:00 and one in the afternoon from 3:00-6:00 which was approved by the state licensing office. Mr. Creed asked if the employees were at the sixteen points or the twenty-one points and asked how many employees Ms. Faris had currently. Ms. Faris stated that she was the main provider at the daycare. She continued stating that for each sixteen points the state requirement is to have an additional caregiver to help with the children. She stated that she has a mother who helps with the children, but cannot stay longer than 3:00. Ms. Faris contacted state licensing, about the employee who can only stay until 3:00, and they stated it would be okay to have a part-timer from 3:00 or later to help with the closing. There are only two caregivers at the daycare at any given time.

Mr. Gadell asked for clarification on what qualifies as a point. Mr. Faris stated infants (0 to 15 months) are four points, toddlers are three points (15 months to three years), children three to four are two points, and children four to five and up are one point. Mr. Gadell asked that moving from eight to ten, how many are children siblings. Ms. Faris stated four of the proposed ten are siblings.

Mr. Dowler asked that if the license she talked about was the state license, Ms. Faris said yes. Mr. Dowler then asked if anyone had spoken with her regarding the town's code on home occupancy rule not allowing employees. Ms. Faris stated that when the regulations changed for state licensing that she approached the zoning office at town hall, with neighbor approval. She stated she had to reduce the children from nine. Mr. Dowler asked what the towns zoning told her. Ms. Faris stated that the town zoning gave her approval to have eight children. Mr. Dowler stated he was referring to employees. Ms. Faris stated the town stated she could not have employees, but since she was state licensed so by state law she is allowed to have employees. Mr. Dowler asked if she was allowed to have more than two employees with her state license. Ms. Faris stated she was only allowed two due to the different ages of children in her care and a limit of four infants. Mr. Dowler asked if the state allows for up to seven children generally. Ms. Faris stated it was seven children, and one additional. Mr. Dowler asked how she was allowed eight children. Ms. Faris said she had come to town hall, requested it, and it was given to her. Mr. Dowler asked who, Ms. Faris stated it was the previous zoning administrator. Mr. Dowler then asked about the state. Ms. Faris said she presented when renewing her state license and they accepted, giving her permission for eight children. Mr. Dowler asked if she was there for a conditional use permit for ten children and that she did not have a conditional use permit for the eight children. She said she was there for a conditional use permit for the ten children and that she had permission from the Town of Vienna to have eight children and she had not been told she needed a conditional use permit for eight children until she had requested one for two more children. Mr. Dowler asked how much of the cul-de-sac was used for pick up and drop off of children. Ms. Faris stated, currently, they have parents park in their driveway and the public curb parking in front of their house. Mr. Dowler asked if the parents arrived at the same time, Ms. Faris said no. Mr. Dowler then asked what times the parents arrived. Ms. Faris said she had a copy of the previous month's drop-off and pick-up hours. The maximum cars at the same time may be two to three, but that doesn't happen daily. Ms. Faris said the hours of operation were 7:00-6:00. The drop-offs start between 7:30-7:45 with the latest at 9:00-9:30 so there is not a rush into the cul-de-sac at the same time. Mr. Dowler asked if the parents were able to use their driveway when they do come, Ms. Faris said yes. Mr. Dowler asked if they were lined up. Ms. Faris is one additional car which is hers and it is all the way up by the fence that separates the driveway and they yard. There are three spots in the driveway and additional public parking spot in front of their house. Mr. Dowler asked where the employees parked. Ms. Faris stated they park outside of the cul-de-sac, on Yeonas Drive, and walk to

the home daycare. Mr. Dowler then asked if they use three spots on the cul-de-sac. Ms. Faris asked if he meant her property. Mr. Dowler stated on the street. Ms. Faris stated one on the public street. Mr. Dowler asked if the employees were parking on the street. Ms. Faris stated yes they park on the street and only one car at a time.

Mr. Daly stated, for clarification, that Yeonas Drive, not Yeonas Circle is where the two employees park. Ms. Faris stated yes, Yeonas Drive. So there are not three people parking on the cul-de-sac, Ms. Faris stated, no, not on the cul-de-sac. Mr. Daly asked if it was only one parking spot on the cul-de-sac, and two parking on Yeonas Drive. Ms. Faris stated the two employees come at different shifts and when they arrive they park on Yeonas Drive, not Yeonas Circle. Mr. Daly continued stating it's not three employees parking in the cul-de-sac and in fact zero parking in the cul-de-sac. Ms. Faris stated, yes, it's zero parking in the cul-de-sac for employees.

Mr. Creed asked Mr. Simeck if the applicants currently had a conditional use permit. Mr. Simeck stated they did not have a current CUP. In 2013 the prior zoning administrator allowed them eight children when there should have been a cap at seven. They did not go before the Board for a CUP. Mr. Creed asked if they had been operating on a permit to go up to twelve that did not meet the home occupancy code provisions of section 18-173. Mr. Simeck stated they had not really met the home occupancy provisions of section 18-173 because the code is silent regarding family day homes. In 2013 the former zoning administrator made a determination blending the state and county regulations with a place holder under the code provision for home occupation permits. Blending the state and the county regulations stated seven and under did not need a CUP, but seven to twelve needed a conditional use permit. The former zoning administrator allowed seven plus one preschooler allowed with one employee or family member was allowed to assist. Mr. Creed asked if the reason for coming before the Board was to go from eight to ten children and that is what triggered the CUP. Mr. Simeck stated that was correct and that anything over seven triggers the CUP. Mr. Creed asked that if the application was denied, and they have eight children, would they be operating outside the bounds. Mr. Simeck stated they a conditional use permit for anything above seven. Mr. Daly state the recommendation for the planning commission said the daycare must obtain a CUP in order to engage outside employees due to the home business stating you cannot have outside employees. By virtue of the home employees they have to get a CUP. There are two reasons for a CUP, an increase in the number of kids and one outside employee not related to a family at any given time during the day. Either way there is a need of a CUP, but a single CUP could take care of the issue. Mr. Simeck stated that was correct, they were trying to meet the state requirement and the towns' requirement.

Ms. Christina Aizcorbe, 9524 Narragansett Place, Member of the Virginia BAR spoke in favor of the application. Ms. Aizcorbe stated she was there to speak on her experience in respect to Happy Younglings care that Tania and her caretakers provide. They have been with her care for four and half years, with two sons (two and four). In their four plus years going, congestion had never been an issue with the exception of the zoning laws allowing for parallel parking on public streets and many of them had been parking perpendicular to the curb to save space as the driveway, at that time, did not have the two extra spaces. From that time the parents have changed their behavior regarding the parking. Ms. Aizcorbe stated she was not originally looking for a home daycare. Her husband grew up in the area and it was important for them to raise their children there. There are many home daycares in the area. Due to the care that Tania provides, the reviews, and the large beautiful outside lot they chose Tania. Ms. Aizcorbe stated they had both their children there for two years. She and her husband have long unpredictable commutes which forces them to drop off and pick up at varying times. In the previous hearing, planning commission, it was discussed having fixed drop off and pick up times, but that would be

challenging as sometimes there may be a sick child, early morning conference calls, and no exact knowledge of when they would be coming or going. The flexibility is ideal and typically they are, for drop off and pick up, in and out of the house within a couple of minutes due to traffic. Ms. Aizcorbe stated that Ms. Faris has made it clear to parents what the expectations are with respect to the circle, instructing all the parents and caretakers to adhere to certain recognized practices including the parallel parking within the circle if the driveway is full. Ms. Aizcorbe didn't know that it had been the case that anyone had needed to use the space in front of the house. Going there for about four and half years, she had run into many neighbors in the circle and the planning commission hearing was the first time she had heard that there was a problem with congestion. At no point with her interactions with the neighbors had anyone stated they should not be parking on the street and there was a free spot in the driveway. None of her interactions were necessarily pleasant with the neighbors, and it sounded like there were long lasting neighborly issues. Ms. Aizcorbe felt that Ms. Faris has made efforts to make sure everyone was clear on the expectations and they try their best to stay out of the way and be in and out as quick as possible. Ms. Aizcorbe thanked the Board for their time and stated she was happy to answer any questions. Mr. Daly stated he understood the problem she was refereeing to was the house at 106. He then asked if she or any other parents had been asked to not park in front of 106. Ms. Aizcorbe said she had never parked in front of 106 as it would be challenging and she had engaged, a handful of times, with the neighbor at 106 and it had been rather unpleasant it was clear the residents of 106 were not happy that they were there and it was her personal opinion of those engagements. She continued stated she would not have considered parking in front of 106 because the space in front of 108, when parking perpendicular, accommodated two cars while allowing ingress and egress for 107 and very easily with respect to 106. Parallel only one car would be allowed, which is what is represented. There is one time a year holiday party that Ms. Aizcorbe stated the parents would need to figure out the respect of the public space and the space in the circle if the Faris's chose to have a holiday party this year. Ms. Aizcorbe stated she did not recall it had been an issue, but it could be that she did not recognize it at the time.

Mr. Kambiz Faris, 108 Yeonas Circle SE, was sworn in to speak.

Mr. Faris stated he wanted to clarify some questions that had come up. He started with the driveway and stated that it had come up in a preliminary meeting to the planning commission and it sounded like a great idea. They got the permit and added to the two extra spaces because it made sense. They wanted to be neighborly. Mr. Faris stated his neighbor at 106, Steve, was a good guy. He continued stating that at the last meeting, planning commission, when it was brought up that they were parking perpendicular that it was hard to park in front of his house because he couldn't make the circle. Since that time a best practices letter was sent out and they now know to not park perpendicular and to use the driveway.

Mr. Creed said it was admirable that they put another pad in at the driveway, but unless vehicles were bumper, to bumper, to bumper they would be hard pressed to get five vehicles in there. They may be able to get three vehicles in, possibly four, but five would be tough. Mr. Creed said there may be a problem over the next few months and up to a year when the property at 107 or 105 is to be torn down. Mr. Faris said it was 105. Mr. Creed said once a contractor is in there, there will be a lot of vehicles and it will be tough for parking for everyone. Mr. Creed asked how the daycare would propose to accommodate that over the next year to year and one-half. Mr. Faris said the folks at 105 talked about it with them and they are one of the neighbors that gave an approval letter. They have twelve immediate or adjacent and eight gave approval and support letters. The owner of 105 stated they would speak with the contractor to ensure they would not park in front of their house. Mr. Faris stated they had five tight parking spaces in their driveway and one on the

circle in front of their house with a total of six. He reiterated that the contractor would not park in front of their house and that they would buy a red cone so the big trucks could not be parked there. Mr. Faris stated that they had a staggered drop off and the odds of five or six people being there at the same time was very low.

Mr. Dennis Herzog, 1721 Pebble Beach Drive, was sworn in to speak.

Mr. Herzog stated he was one more example of a happy customer of Tania's place. They have a "4-point" kid who was the youngest at the time. He stated they felt happy and privileged to have their son at her daycare as they have had some other experiences with a chain daycare is night and day. He continued stating their child is so happy at the daycare, that it was difficult to take him home as he enjoys playing with his friends at the daycare. It is evident how loving and caring Tania and her helpers are and they really interact and play with the kids. They do their best to provide an awesome service. Mr. Herzog stated that from his perspective, as a father and not picking up his son on a daily basis, he could share his experience when he had a chance to pick up. They have made mistakes parking incorrectly, but it was made clear and they immediately stopped the wrong behavior. He stated he has never parked in front of 106. They do try to improve everyone who has their children there to make it work and help the neighborhood come to a better relationship to not cause any further tensions. Mr. Herzog stated he has not met any neighbors or had any discussions so if they did anything wrong no one had talked them, but they are trying to make things better for now and the future. He also said that if it is tight to get five cars in the driveway that Tania's husband is usually at work and he did not see even their car in the driveway. It wasn't a permanent situation that their car was using a space. He continued stating he has never experience a situation that there would be a shortage of parking. Mr. Herzog stated this was his personal experience and he wanted to stress what a wonderful job they do, how great they treat the children, and how wonderful it is to find such a great place.

Mr. Gadell asked if there was anyone wishing to speak for the matter. He then asked if there was anyone wishing to speak against the motion.

Ms. Darlene Hough, 106 Yeonas Circle SE, was sworn in to speak.

Ms. Hough thanked the Board for allowing her to speak on the zoning matter. Ms. Hough stated she had no issue with the daycares operation and how wonderful it may be to the children, she stated it was solely zoning. She stated she owned the house to immediately next door to the right. They are the most impacted by the daycare and have been for the past nine years. It is a residential neighborhood. Ms. Hough continued stated the Town of Vienna had zoning stating what a home business has to comply with to operate in a residential zoning. Ms. Hough stated she didn't think they complied in a lot of areas, and not just with the employees. She stated they impact parking and the use of the cul-de-sac. They bought their home in 1998, have lived there twenty years, and made a large investment moving to Vienna. She said they tried to mitigate some of their issues with the daycare by putting up a 6-foot fence along the property line from the back property line up to the front of the house, where it has to stop by code. They put in Leland trees to try cut out the noise of the kids playing. She stated street parking was effected and although people are saying it's not effected, there are times people are there at the same time, there are times that people come at the same time. You cannot make a daycare have appointments or have orderly parking. They are in a hurry; they will drop their kids and pick them up. She continued stating, for the Board members that had been to the cul-de-sac, the two houses at the bottom of the cul-de-sac were close together and the front yards were little. She stated the corner of their houses were twenty-eight feet apart, the front doors are eighty feet apart, and the driveways are now eighteen inches apart since

the Faris's have expanded their driveway in both directions. The kids, the parents walking in the kids, the conversations, there is a lot of traffic. There are eight cars coming in and out every day. Ms. Hough said they used to joke that in the first ten years that no one came in and out and they only saw their neighbors. She said that what concerns her most is that there are no regulations that go with their home occupancy permit and they are allowed to do as they see fit, when they see fit. She said there had not been any engagement of the neighbors until the planning commission meeting thirty days ago when the planning commission stated they do so. Ms. Hough stated that a business has different goals than a residence and those goals are opposite in particular when you have a large business. Ms. Hough stated a daycare of eight kids is large on a cul-de-sac which she said by nature is to be a quite serene street with no traffic which is why people buy there and pay premiums. Since the 2013 occupancy permit had been issued by the Town of Vienna, the relations have escalated. Ms. Hough stated she has never had spoken to any parents in the nine years that she's been there. She continued stating that she may give them (the parents) dirty looks, and does give them dirty looks, but she had never had a conversation with the parents. Ms. Hough stated she wants the cul-de-sac that she bought years ago to be what it was, a beautiful quiet place to enjoy. Ms. Hough said she realizes that the Board can choose to increase that, but she thought that what they already have will be even more magnified. Ms. Hough then gave the following suggestions that she took from Fairfax County's zoning section 8-305, dealing with impositions in family home daycares. One suggestion is to put up screening to help contain the business so it is not a large impact on residential homes. Another suggestion she is not opposed to is getting an exception to put up an eight-foot fence between where her fence ends and the telephone pole separating the eighteen inches between the driveways. Ms. Hough stated they had eight children already, plus two more that although they may come at different times it's still two cars. The regulations sometimes provide for off street parking. The driveway on the left could be continued, they are on two-thirds of an acre and Ms. Hough stated she was not adverse to them building a parking field in their yard to get the activity in the front out of the street. Ms. Hough stated the parents are in a hurry so she is concerned with speed and although their kids are older so it's not as much of a concern and a speed bump is not what she wants to see on the cul-de-sac. She stated that there needs to be more governmental control. Over the last thirty days have been purely delightful and that she had not seen any parents and wondered if they were going to the daycare, unlike the last nine years. She then stated she didn't think that would continue after tonight unless there were guidelines to go with their business operations and how it impacts the neighborhood. Ms. Hough said this all left her with one large continuing concern that they don't have the quite enjoyment of their property as a residential use that they bargained for when they bought over twenty years ago. They can't know the damages that they suffer from having a daycare facility with respect to their property value and whether they would be able to find a buyer should they choose to sell their house down the road since they are next to a very large daycare. She stated those were her issues and not on the daycare itself, but on the impact on the neighborhood and the lack of communications and considerations of a business in a neighborhood with all residences.

Mr. Gadell asked for anyone else who wished to speak against the matter.

Mr. Gadell asked for a motion to close the public hearing.

Mr. Daly made a motion to close the public hearing

Mr. Creed seconded the motion

Motion: Daly

Second: Creed

Passed: 6-0

### **3. Regular Meeting - The Board will reach a decision on the above listed agenda items at the conclusion of the scheduled public hearing**

The Board of Zoning Appeals (BZA) met in regular session to review one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on November 13, 2018, beginning at 8:00 PM with Michael Gadell presiding as Chair. The following members were present: Bill Daly, Robert Dowler, Robert Petersen, Gregory Haight, and George Creed. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine Abaied, Board Clerk.

#### **Item No. 1**

Request for approval of a consideration by 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, in the RS-10, Single-Family Detached Residential zone. Application filed by Tania Giviani-Faris and Kambiz Faris, owners.

Mr. Gadell asked if any Board members wished to speak on the motion.

Mr. Creed stated someone should make the motion first.

Mr. Gadell then asked if there was a motion to approve or deny item before them.

Mr. Daly made a motion to approve the application for the CUP to increase the number kids from eight to ten.

Mr. Gadell asked if there was a second.

Mr. Peterson seconded the motion.

Mr. Daly stated that he was sensitive to the objections as he lives in Vienna on a cul-de-sac. The fact that the recent increase in parking in the driveway from three to five is a significant by the owners of the daycare to alleviate what appears to be the main concern which is cars coming and going. It doesn't appear that there is a problem with three people showing up at the same time and that it is an odd situation. The parking that exists in the driveway as expanded and in front of the house aside from anything else on the cul-de-sac seems to be fine in ninety-five or more percent of the time that kids are coming on any given day. Mr. Daly stated that for him and increase from eight to ten would not significantly increase the impact when hearing kids in the backyard as far as he could tell. Mr. Daly stated the issue as to screening is something that perhaps the owners should take up and an eight foot or even six foot fence can come out from the house and go out to the telephone pole in accordance with the town ordinance. Mr. Daly stated he wasn't sure what plantings could go in, at the expense of the owners, and that they may be willing to do that and it would be nice to do to appease. Mr. Daly stated that with the driveways eighteen inches apart if it was feasible to have a plant. Mr. Daly identified that a four foot fence may be allowed between the driveways and that he was not making his motion contingent on a four foot fence, but from a neighborly perspective it may be a nice thing to consider at the expense of the daycare especially with the increased income they could expect with an approval. Going from eight to ten under these circumstances is very appropriate. Mr. Daly said he understood the sensitivity of keeping children at the same daycare to keep from dropping off two different kids at two different daycares.

Mr. Simeck stated Mr. Daly was correct that a four foot fence could be put from the building line to the street.

Mr. Petersen said Mr. Daly addressed, quite well, the rationale for approving the CUP request. He addressed the issues that should be the primary concern to our Board and he spoke quite well about the de minimis nature of moving from eight to ten. The only thing added to support the motion is the stated and county authority that enabled the daycare center to go into business and its precedence over the silence of Vienna on the issues. There has been presentation tonight on issues that could be extraneous to what the Board should be focused in approving the CUP. One last thing, when visiting the cul-de-sac and looking at the available parallel parking around the cul-de-sac, the staggered nature of drop-offs and pick-ups there should be no congestions of significant concern for anyone living there. Mr. Petersen stated those were the reasons he strongly supported the motion Mr. Daly made.

Mr. Gadell directed to Mr. Petersen that the state law requires them a certain amount of points to get an employee, the town residential is silent on that. Mr. Gadell as if Mr. Petersen was looking to make an amendment to Mr. Daly's motion to allow for an employee.

Mr. Dowler stated he was voting against the CUP. In considering a conditional use permit the primary to their consideration is how it will affect the neighborhood and it this case the business exceeds what's allowable in the neighborhood. First, it exceeds the limitations that there are two employees. The town codes home business rule says no employees; it's the owner or a family member who both should reside there. Second, as far as the parking, Mr. Dowler felt there was insufficient on-site parking and he didn't feel they should use the street or the cul-de-sac and that they have outgrown their location. Third, the close proximity of the homes in the residential area, and the residential aspect of the cul-de-sac should be reserved, and for this reason he is voting against it.

Mr. Haight stated he agreed with Mr. Dowler. It was clear that the children were very well cared for and it was an important business for the Town of Vienna. It is also important that the effect of the business not be so detrimental to the people who are touched by it, the people who use the area to park their cars, etc. Mr. Haight stated he would have to vote against the business.

Mr. Creed stated that his visit to the cul-de-sac, that is was one of the most compact cul-de-sacs he has seen in Vienna. He looked at the parking in the circle and on the property itself and thought the number of vehicles in there is higher. When cars are put on angles to maneuver in, back in, and park it's virtually impossible to get cars to get more straight lines and it won't fit in the parking spaces delineated there. Mr. Creed thought the neighbors had a legitimate concern and the presentation adequately represented the true picture on the cul-de-sac parking.

Mr. Daly stated he agreed to some of the points that were made and that Town Council should address some of the issues. If there is a state requirement as to the number of employees there, with staffs acknowledgement, a lot of home daycares in the town a concern is not treating the home daycares the same. Mr. Daly stated that his understanding was that many home daycares in Vienna have one or more employees that assist in caring for the kids. Due to having seven to twelve kids, the home daycares need the employee according to state regulations. If we vote against this, we are deciding that this one is to be treated differently than others. Mr. Daly stated he didn't believe there was enough information to ignore the staff recommendation and the unanimous planning commission recommendation. He continued stating they approve it based upon the ability



for the people coming and going, to be able to come and go without adversely impacting the neighborhood significantly, not even close as far as I could tell. With the increase in parking, five in the driveway and one parallel in front, and all of the employees parking entirely outside of the cul-de-sac makes the parking issue not a good faith basis to deny this.

Mr. Gadell asked Mr. Daly if he would be open to a motion, should it be approved, to a time limit. In other words, let's revisit this in one years' time. Mr. Daly said he would consider it a friendly amendment and it gives opportunity to provide the screening that was talked about, the four foot fence in particular. He continued stating the neighbors at 106 had proposed that the applicant extend their driveway with their consent to take the three cars and extending it enough so the three cars is a no brainer and there is no doubt that three could fit on the left side of the driveway. This would allow time, during which ten kids would be allowed to be there, for both sides to see if there is some middle ground that would work well for everyone involved. Mr. Gadell stated, by the testimony of the neighbors, they believe it's a good business and the past month has been well, but what assurance is there that the relationship would continue. Mr. Daly said that was a good reason to see how things go for the next twelve months and would consider that a friendly amendment if Mr. Petersen would also. Mr. Petersen agreed to the amendment.

Mr. Gadell asked if the Board if they were ready to vote on the amended motion. Mr. Dowler asked if it was the amended motion, and Mr. Gadell stated it was the amended motion and asked Mr. Daly to restate the amended motion.

Mr. Daly detailed the amended motion as follows: the granting of the CUP increasing the number of children from eight to ten with a time limitation for the CUP to be one year and for the owners to come back after one year and see where things are at that point.

Mr. Creed interjected with a point of order saying that under Robert's Rules there is no such thing as a friendly amendment. He then said that he thought if they were going to amend it they needed to go through the sequence of amending the initial motion, vote on that and then vote on the new motion.

Mr. Daly stated he thought it may be quicker to withdraw the original motion so he withdrew the initial motion. Mr. Creed stated that the member who seconded needed to agree, Mr. Petersen agreed to the withdrawal of the original motion.

Mr. Daly made a new motion that the Board grant a CUP allowing ten children as opposed to eight and it is limited in time to one year, during which the owners must come back after one year to see if the Board will extend the CUP.

Mr. Petersen seconded the motion.

Motion: Daly  
Second: Petersen  
Passed: 4-2  
Nay: Creed, Dowler

#### **4. Approval of the Minutes:**

Mr. Gadell stated the next item was the meeting minutes from July.

Mr. Petersen made a motion to approve the July Minutes.

Mr. Dowler seconded the motion.

Motion: Petersen

Second: Dowler

Passed: 6-0

## 5. Meeting Adjournment

Mr. Gadell asked if there was any other discussion or a motion to close the meeting

Mr. Petersen made a motion to adjourn the meeting.

Mr. Daly seconded the motion.

Motion: Petersen

Second: Daly

Passed: 6-0

Adjournment

The meeting was adjourned at 9:05.

Respectfully submitted,

Sharmaine Abaied

Board Clerk

*THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6341, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.*

## About the Board of Zoning Appeals

The Board of Zoning Appeals is a quasi-judicial board comprised of seven members – all of whom are residents of the Town of Vienna, VA. The Board serves as an arm of the Fairfax County Circuit Court, as all members are appointed to the Board by the Court after receipt of recommendation from the Vienna Mayor and Town Council.

The Board is empowered by the Code of Virginia to:

1. Hear and decide appeals from any order, requirement, decision or determination of the Zoning Administrator.
2. Grant variances from the Zoning Ordinance – as defined in Section 15.2201 of the Code of Virginia – as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will unreasonably restrict the utilization of the property to a degree that is not shared generally by other properties within the same zone or district, and its authorization will not be of substantial detriment to adjacent properties or change the character of the neighborhood
3. Hear and decide applications for interpretation of the Zoning District Map when there is any uncertainty as to the location of the boundary line.
4. Grant Conditional Use Permits in accordance with the provisions of Section 18-209 – 216 of the Vienna Town Code.

The Board of Zoning Appeals does not have the power to change the Zoning Ordinance or the rezone property. Those powers rest with the Mayor and Town Council. Please be advised, the Board decides each application on its own merit – there are no precedents.

The Board will first consider each application during the Public Hearing portion of the meeting. As part of the Virginia Court System, the Board of Zoning Appeals takes sworn testimony and each participant will be sworn in prior to offering comments.

The second portion of the meeting – the Regular Meeting – will convene after the Public Hearing has been closed. The Board will reach a decision on each item. The grant of any appeal from a decision by the Town's Zoning Administrator requires an affirmative vote of the majority of the entire membership of the Board. The grant of a Conditional Use Permit or variance requires an affirmative vote of the majority of those present and voting. If you are unable to stay for the last portion of the meeting, you may learn the Board's decision by contacting staff.

If any party is not satisfied with the decision of the Board, an appeal may be filed with the Circuit Court of Fairfax County within 30 days after the issuance of the Board's decision on the matter.