

Staff Report - BZA Public Hearing

Subject: SPEX 16-03 Child Care Special Exception request

Meeting Date: September 7, 2016

Staff Contacts: Patrick Sullivan

SUMMARY.

This is a special exception review of a request for approval of a residential child care facility by Ms. Annie's Home Child Care. The facility is located at 130 Misty Pond Terrace. The facility is a single family attached dwelling unit (Townhouse) and is part of the Purcellville Ridge Homerowners Association (HOA). It is located in the R-8 Residential Zoning District (Townhouse). PIN # 453459901000.

BACKGROUND.

As of February 2016 the Purcellville Town Council adopted new zoning regulations regarding residential child care in the Town of Purcellville. The biggest change is requiring all applications for residential child care facilities that want to take care of 6 to 12 children to get approval from the Board of Zoning Appeals (BZA). The review process for the BZA is provided in the zoning ordinance in Article 4 Section 1.2.27.

Prior to February 2016 the Town of Purcellville limited the number of children to no more than five at one time in residential child day care. Once the number of children exceeded 5 the ZO viewed it as a commercial day care center and was no longer allowed in a residential district. The State of Virginia regulates the number of children that may participate in residential child care in a single family dwelling unit. The State regulations allow for up to 12 children in residential daycare, whereas the Town of Purcellville only allowed up to 5 children.

Ms. Uceda has been operating a day care facility in her townhouse since 2008. During that time she enrolled 12 children and was registered with the State as was required; the planning department was not aware that she was not in compliance with the ZO until a problem with her state license surfaced because of some changes to State law. The new regulations required that the facility be in compliance with local regulations. When she came to renew her license a State inspector informed her that she would have to be in compliance with local zoning. She was not in compliance with the local ZO as she had too many children enrolled in her program and therefore she could not have her license renewed.

Ms. Uceda requested a text change to the Purcellville Zoning Ordinance that would allow for 12 children to be enrolled in a residential single family home. The Town approved the text change and along with the approval required numerous conditions, one of which was the requirement to obtain approval through the special exception process.

Following the approval of the text change Ms. Uceda filed a special exception application to establish a residential child care facility at 130 Misty Pond Terrace.

SPECIAL EXCEPTION PROCESS (SE).

There are numerous requirements that the applicant must meet in order to get approval through the SE process. The requirements are detailed in the ZO. In order to approve the SE permit, the BZA must find that the application meets the regulatory requirements of the ZO. The following staff analysis details the requirements and provides comments on the applicant’s responses.

Regulatory Requirements	Staff Analysis
A complete application form	Applicant has provided a complete form
A diagram drawn to a legible scale depicting: the boundary lines and dimensions of the lot, area of the lot, required yards, location and dimensions of any existing or proposed building or addition, the distance from all boundary lines to any existing or proposed building or addition, pathway to door of facility, child drop off and pick up locations, location of any permanent in-ground play equipment, location and area of any required on-site outdoor play area, location and area of any off-site park or playground, and location and height of any required fence. This diagram is not required to be certified by a registered engineer or surveyor	This was partially done. The plan is included with this report. Staff recommends that the Board pay careful attention and request more information on where and how the child dropoff and pickup area is located and determine that it is adequate for the safety of the children. The drop off area was not delineated. The play area along with its area was not provided. Fence location and height were not provided on the plan.
If the proposed location of a residential child care is subject to a declaration of covenants, conditions, and restrictions for a homeowners association (HOA),	HOA Letter attached. The applicant requested and received a letter from the HOA granting approval to have the Child Day Care in her residence. The HOA did not approve the use of common parking spaces by Ms. Annie’s clients. The HOA did not approve the use of any

<p>then the residential child care provider shall provide the town with certified documentation from the HOA stating whether or not the use is allowable under applicable HOA covenants, conditions, and restrictions. HOA documentation shall only be considered certified if printed on HOA letterhead or signed by an officer or employee of the HOA and notarized.</p>	<p>of the HOA facilities by the children. It is recommended that the BZA condition any approval on compliance with the HOA restrictions.</p> <p>The applicant is not planning on making any changes to the exterior of the site.</p>
<p>Public notice requirements. Prior to the issuance of a special exception for a residential child care, the applicant shall fulfill the notice requirements of Article 9: Board of Zoning Appeals and Article 11, Section 16</p>	<p>Applicant provided notice letters to those required. Public notice requirements have been complied with.</p>
<p>A residential child care shall comply with any and all applicable requirements of the Code of Virginia including, but not limited to obtaining a state family day home license.</p>	<p>The applicant agrees to meet any mandatory requirements of the Code of Virginia.</p>
<p>A residential child care shall comply with any and all town regulations, including, but not limited to, obtaining a certificate of occupancy and maintenance of a town business license.</p>	<p>The applicant will meet any mandatory Town requirements.</p>
<p>A residential child care shall comply with any and all requirements of the county and state building codes.</p>	<p>The applicant will comply with any County and State mandatory requirements</p>
<p>A residential child care location shall be the principal residence of the residential child care provider.</p>	<p>The location is the principal resident of the residential child care provider</p>
<p>A residential child care shall only be located within a single-family detached, duplex, or single-family attached dwelling.</p>	<p>The location is within a single family attached dwelling and complies with this requirement</p>

Mailing Address:

<p>The hours of operation for a residential child care shall be limited to five days a week between the hours of 6:00 a.m. and 7:00 p.m.</p>	<p>The applicant agrees to this requirement. The stated hours are 7:30am to 5:30pm Monday through Friday. It should be noted as a condition of approval.</p>
<p>Two non-resident assistants/employees shall be permitted.</p>	<p>The applicant agrees to this requirement. It should be noted as a condition of approval.</p>
<p>Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the residential child care in such a manner that children do not have to cross a street to enter or exit the facility.</p>	<p>The applicant has not proposed any outside changes. Staff recommends that the BZA question the applicant on how this requirement will be met.</p>
<p>The applicant shall demonstrate availability of sufficient employee parking on-site or along the street. Alternatively, the applicant may utilize any available HOA community parking spaces for employee parking if the HOA provides certified documentation that the applicant is authorized to use such spaces.</p>	<p>The HOA has determined that the applicant may not utilize any community parking spaces for the child care use. There does not appear to be enough parking. The only parking area is the townhouse driveway and that only supplies 2 parking spaces. If there are two employees plus the applicant that would take up all the available spaces and not provide any parking for clients. Staff recommends that the BZA determine if there is adequate parking. The BZA will have to determine if the site can handle 2 staff members, 1 homeowner, and up to two client cars at one time. The decision and conditions if any must honor the requests of the HOA as the BZA does not have the authority to give permission to the applicant to disregard the HOA's decisions.</p>
<p>A residential child care shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.</p>	<p>The applicant agrees to this requirement. It should be noted as a condition of approval.</p>
<p>There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up</p>	<p>The applicant agrees to this requirement. It should be noted as a condition of approval. There appears to be an appropriate pathway but it is not delineated on the plan.</p>

Mailing Address:

<p>locations to the entrance of the residential child care. The pathway shall be kept free of any snow or ice.</p>	
<p>Seventy-five square feet of outdoor play area must be provided on- site per child except as follows: No outdoor play area shall be required on- site when the applicant can demonstrate the residential child care is located within 1,000 feet of an existing park or playground that is at least twice the area otherwise required for the residential child care. The park or playground must be public or owned by the HOA to which the residence belongs and must be accessed without crossing an arterial or collector road. The applicant may only utilize a park or playground owned by the HOA if the HOA provides certified documentation that the applicant is authorized to use such space. The park or playground must be shown to scale on the diagram submitted at the time of application.</p>	<p>The HOA will not allow the child care center to utilize any of its facilities to include parks and playgrounds.</p> <p>In order to meet the 75 sf requirement the applicant will have to utilize the existing land within the lot borders at 130 Misty Pond Terrace. It does not appear that the back yard has sufficient lawn area square footage to meet the 75 sf per child considering that a good piece of the back yard is the deck. Meeting the 75sf standard depends on whether the deck is considered outdoor play area. If the facility has 12 children the needed play area would have to be 900 sf. The area of the backyard including the deck is approximately 1190 sf. If you take out the deck it is approximately 730 sf. The BZA will have to determine if the applicant meets this requirement.</p>
<p>Any outdoor play area must be enclosed by a fence with a minimum height of four feet.</p>	<p>It is not clear from the plans if there is a fence and if so what the height is. It should be noted as a condition and delineated on the plan.</p>
<p>No play equipment shall be located within any required front yard or within five feet of any side or rear lot line.</p>	<p>The applicant agrees to this requirement.</p>
<p>There shall be no change in the outside appearance of the dwelling or lot housing the residential child care nor other visible evidence of the conduct of a residential child care other than what may be</p>	<p>This is also a condition of the HOA approval. This should be noted as a condition.</p>

Mailing Address:

required by the state family day home license.	

MOTIONS.

1. I move to approve the child care facility SPEX16-03 as presented.

2. I move to approve the child care facility SPEX16-03 with the following conditions.
 1. The applicant shall meet any mandatory Town, County or State requirements to operate a Child Day Care Center.
 2. Hours of operation will be from 7:30 am to 5:30 pm, Monday through Friday.
 3. There will be no more than two non-resident employees/assistants.
 4. There shall be a staggered pickup and dropoff so that there are never more than 2 vehicles picking up or dropping off at the same time.
 5. The drop off area must be kept clear of snow and ice.
 6. Any outdoor play area must be enclosed by a fence with a minimum height of 4 feet.
 7. There shall be no change in the outside appearance of the dwelling or lot housing the residential child care nor other visible evidence of the conduct of a residential child care other than what may be required by the State license.
 8. _____
 9. _____

3. I move to disapprove the child care facility SPEX16-03 for the following reasons.

ATTACHMENTS.

- Application
- Site plan
- Survey
- HOA Letter of Approval
- Applicant’s response to staff comments
- New Zoning Requirements
- Applicant’s statement of support

ATTACHMENTS

Town of Purcellville
Department of Community Development
 221 S. Nursery Avenue Purcellville, VA 20132
 (540)338-2304 Fax (540)338-7460

SPEX 16-03

**Special Exception
 Application**

Date 3/10/16 PIN 453459901000 Zoning District R-8

Street Address 130 Misty Pond Terrace Purcellville VA 20132

Agent's Name _____

Owner's Name Anamaria Uceda

Fax No. _____ Phone No. _____

Fax No. _____ Phone No. 540 751 0864

E-mail _____

E-mail annie@annieschildcare.us

Mailing Address _____

Mailing Address 130 Misty Pond Terr.
 Purcellville, VA 20132

A special exception is requested for a home day care as per Article 4 / 15

Section 1/2 subsection _____

Additional Submission Requirements:

- An application properly completed.* The application must be filed in the name of the owner, occupant or contract owner. A statement from the property owner claiming knowledge and agreement with the request for a special exception must be included.
- A statement of support.* Applicant must file a statement in support of their request stating the nature of their request, and how it conforms to Article 9 of the Purcellville Zoning Ordinance, Section 5.
- A site plan or plat of the property.* A site plan or plat must be included drawn to scale and showing all existing buildings including accessory buildings and any proposed structure or alteration.
- Payment of fee.* The fee for a special exception application must be paid at the time of submission. FEES ARE NON-REFUNDABLE.
- Applicant must attend meetings.* Applicants or their agents must be present at the Board of Zoning Appeals meeting on the advertised public hearing date.

Please see reverse for application process.

Agent/Owner:

I have read this completed application, understand its intent and freely consent to its filing. The information provided is accurate to the best of my knowledge. I understand that the Town may deny, approve, or conditionally approve that for which I am applying. Furthermore, I grant permission to the Town or authorized government agents to enter the property and make such investigations and tests as they deem necessary.

A. Uceda
 Agent/Owner's Signature

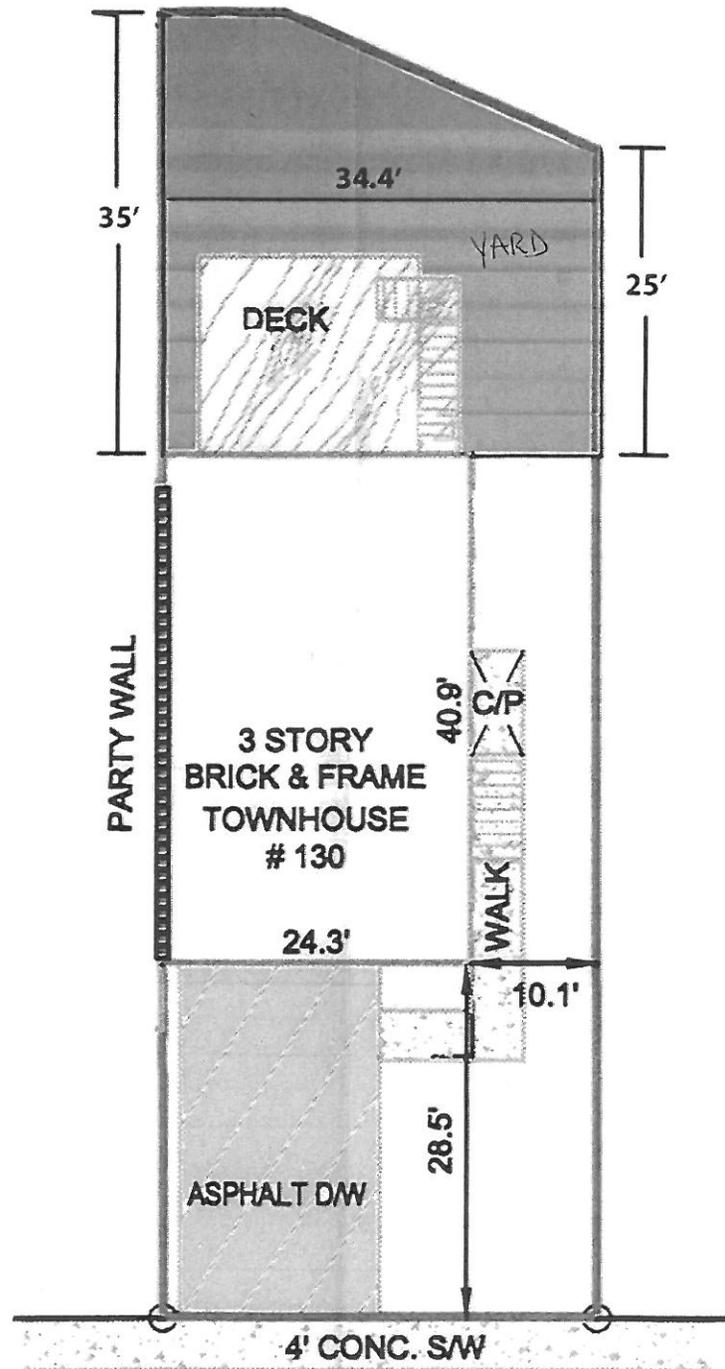
3/10/16
 Date

APR 29 2016

For Town Use Only

Application Received:	<u>4/29/16</u>	Hearing Date:		<input checked="" type="checkbox"/> Fees Paid Amount \$ <u>500⁰⁰</u>
Approved:		Denied:		Permit # <u>SPEX1603</u>

Spex 16-03



MISTY POND TERRACE

PROPERTY ADDRESS

130 MISTY POND TERRACE PURCELLVILLE, Virginia 20132

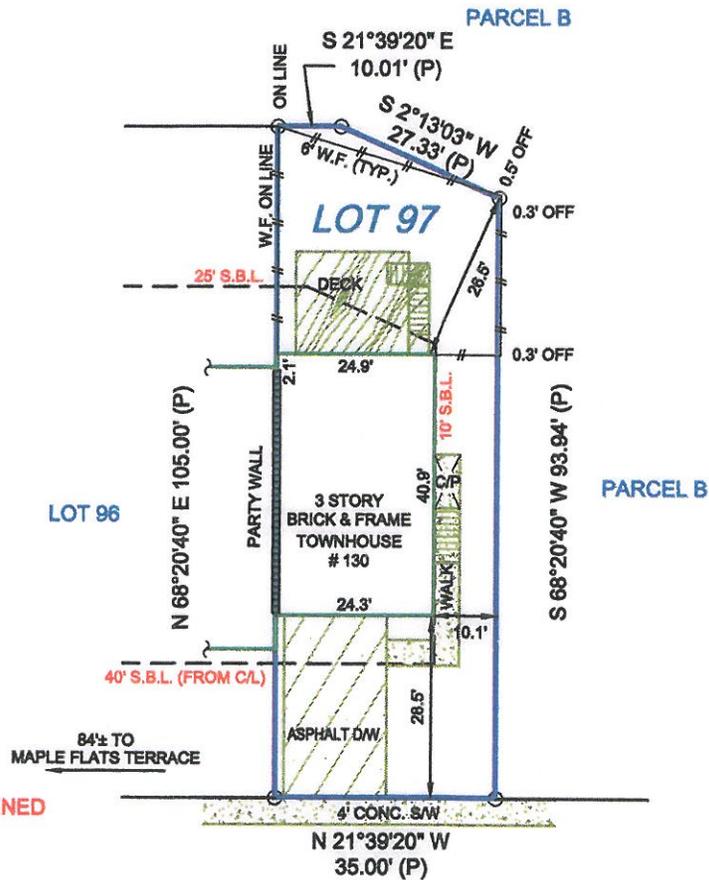
SURVEY NUMBER

1334

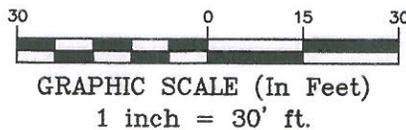
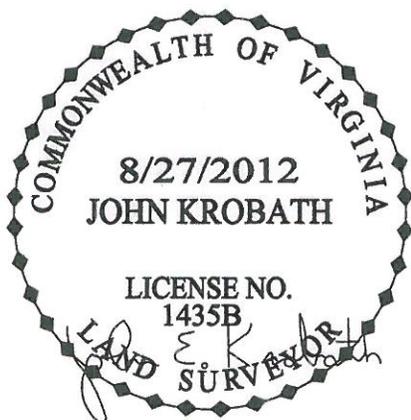
FIELD WORK DATE: 8/22/2012

REVISION DATE(S): (rev.1 8/27/2012)

1208.1641
LOCATION DRAWING
LOT 97
PURCELLVILLE RIDGE
LOUDOUN COUNTY, VIRGINIA
08-23-2012 SCALE 1"=30'



MISTY POND TERRACE
(RW VARIES)



NOTES

NONE VISIBLE

Purcellville Ridge Homeowners Association, Inc.
c/o Sentry Management Inc., AAMC®
Post Office Box 2070, Purcellville VA 20134-2070
(Office) 540-751-1888 ext. 113 - (Fax) 540-751-1899 - (Email) susan@sentrymgt.com

July 7, 2016

Ana Maria Uceda
130 Misty Pond Terrace
Purcellville, VA 20132

RE: Home Day Care Business

Dear Ms. Uceda:

This letter is to inform you that the Board of Directors for the Purcellville Ridge Homeowners Association at their meeting held on July 6, 2016, reviewed your request for continuation and certification of approval of a home day care business at your residence, with a maximum capacity of twelve (12) children, as the Commonwealth of Virginia and the Town of Purcellville zoning allows. The Board approves your request, with the condition that you continue to operate this business in a manner that does not change the residential character of the Purcellville Ridge Community, and with the continuing approval of your adjacent neighbors.

The Board of Directors does not, however, approve your request to use Purcellville Ridge HOA common parking spaces for your clients, or any employees that you engage now or in the future. Given that the Town requires a "staggered" drop off/pick up schedule for residential day care in the newly adopted zoning regulations, we feel that you have adequate parking in your driveway to provide for your clients' needs and for your employees. In addition, the Board does not permit you to use any of the facilities (pool, playgrounds) due to liability and insurance coverage issues.

If you have any questions regarding this certified approval, or any rules, restrictions or guidelines of the Association, please feel free to contact Susan Miller, the HOA management agent at SMiller@sentrymgt.com or at the contact numbers listed above.

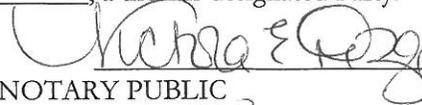
Sincerely,


Diane Griffin Shook, President
Purcellville Ridge Homeowners Association

COMMONWEALTH OF VIRGINIA
COUNTY OF Loudoun, to wit:

The foregoing instrument was personally acknowledged before me this 8th day of

July, ²⁰¹⁶ ~~2013~~, by Diane Griffin Shook, a therein-designated Party.


NOTARY PUBLIC

My commission expires: 2/28/17 Notary registration: 301778



July 25th, 2016

Mr. Patrick Sullivan
Zoning Administrator

Re: Special Exception Application SPEX 16-03

In response to your request of additional information:

- 1) The plan is now in a larger format.
- 2) The plan provides dimensions as requested.
- 3) I do not use in-ground play equipment.
- 4) I do not plan to use any off-site or play area.
- 5) The actual HOA permission letter is in this package.
- 6) HOA does not approve of parking in the street. My driveway will be available entirely for my clients.
- 7) I am sending a new Special Exception Adjoining Property Owner Information Sheet with an additional address.
- 8) The certified letters have been sent.
- 9) Copy of the letter sent to my neighbors is in this package, as well as proof of Certified Mail.
- 10) My yard has more than 900 square feet.
- 11)
 - a) Drop off and pick up location is the main entrance of my home. No children enter or exit from the garage, nor the patio door. It's shown on the plan.
 - b) Continuous hard surface pathway connecting the drop off and pick up area to the entrance of the townhouse is on the plan.
 - c) My future employee will use my garage.
 - d) My driveway will be used for child home care use.
- 12)
 - a) 130 Misty Pond Terrace in Purcellville is my principal residence.
 - b) My home daycare is located within a single family attached dwelling.
 - c) My hours of operation is Mon-Fri 7:30am-5:30pm.
 - d) I am aware I can have a maximum of 2 employees.
 - e) I will make sure no more than 2 vehicles are picking up or dropping off at the same time as it has been doing in the last 8 years.

Thank you,



Ana Maria Uceda

Ms. Annie's Home Day Care

AMENDED RESIDENTIAL CHILD CARE REGULATIONS

(As approved in Ordinance 16-02-01 on February 23, 2016)

ARTICLE 4. - DISTRICT REGULATIONS

Section 1. - Use Regulations.

1.1 Use table.

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Use	R2	R3	R3A	R8	R15	C1	MC	C4	CM1	M1	PDH	X	IP	AC	RT	Use Standard
.....																
Child care, residential	P/SE	P/SE	P/SE	P/SE	P/SE		P/SE	P/SE			PPU/SE	P/SE		P/SE	P/SE	Art. 4, Sec. 1.2.27
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1.2 Use standards.

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27. Child care, residential

a. General standards.

- i. Applicability. Pursuant to the Code of Virginia, a residential child care serving one through five children, exclusive of the provider's own children and any children who reside in the home, is exempt from the following regulations and is a permitted use in a residential dwelling. Any other residential child care requires a special exception to be granted by the Board of Zoning Appeals in accordance with *Article 9: Board of Zoning Appeals*.
- ii. Application Submission Requirements. In addition to any application requirements for a special exception set forth in *Article 9: Board of Zoning Appeals*, a complete application for approval of a residential child care shall include the following:
 1. A completed special exception application form.
 2. A diagram drawn to a legible scale depicting: the boundary lines and dimensions of the lot, area of the lot, required yards, location and dimensions of any existing or proposed building or addition, the distance from all boundary lines to any existing or proposed building or addition, pathway to door of facility, child drop off and pick up locations, location of any permanent in-ground play equipment, location and area of any required on-site outdoor play area, location and area of any off-site park or playground, and location and height of

any required fence. This diagram is not required to be certified by a registered engineer or surveyor.

3. If the proposed location of a residential child care is subject to a declaration of covenants, conditions, and restrictions for a homeowners association (HOA), then the residential child care provider shall provide the Town with certified documentation from the HOA stating whether or not the use is allowable under applicable HOA covenants, conditions, and restrictions. HOA documentation shall only be considered certified if printed on HOA letterhead or signed by an officer or employee of the HOA and notarized.
 4. If a residential child care proposes to utilize a parking space, park, playground, or any other facility owned by a HOA to meet any requirement of this ordinance, the applicant shall provide the Town with certified documentation from the HOA stating that the residential child care is authorized to use such facility. HOA documentation shall only be considered certified if printed on HOA letterhead or signed by an officer or employee of the HOA and notarized.
- iii. Public Notice Requirements. Prior to the issuance of a special exception for a residential child care, the applicant shall fulfill the notice requirements of *Article 9: Board of Zoning Appeals* and *Article 11, Section 16: Public Notices*. In addition, the applicant must send written notice of the application to the last known address of the owner of each adjacent property as shown on the current real estate tax assessment records of Loudoun County. If the proposed location of the residential child care is a member of a HOA, the applicant must also send written notice to such HOA. Any written notice shall be sent by certified or registered mail and must include the following information:
1. A statement that an application for a residential child care has been submitted to the Town;
 2. The address of the property subject to the application for the residential child care; and
 3. A statement informing the recipient that if they have any objection to the proposed residential child care that they can send a written objection, which shall include the specific issues that are the basis for their objection, to the Zoning Administrator who will transmit the written objection to the Board of Zoning Appeals. The address of the Zoning Administrator shall also be included in the notice letter.
- iv. A residential child care shall comply with any and all applicable requirements of the Code of Virginia including, but not limited to, obtaining a State Family Day Home License.

- v. A residential child care shall comply with any and all Town regulations, including, but not limited to, obtaining a Certificate of Occupancy and maintenance of a Town Business License.
- vi. A residential child care shall comply with any and all requirements of the County and State Building Codes.
- vii. A residential child care location shall be the principal residence of the residential child care provider.
- viii. A residential child care shall only be located within a single-family detached, duplex, or single-family attached dwelling.
- ix. The hours of operation for a residential child care shall be limited to five days a week between the hours of 6:00 AM and 7:00 PM.
- x. Two non-resident assistants/employees shall be permitted.
- xi. The applicant shall demonstrate availability of sufficient employee parking on-site or along the street. Alternatively, the applicant may utilize any available HOA community parking spaces for employee parking if the HOA provides certified documentation that the applicant is authorized to use such spaces.
- xii. Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the residential child care in such a manner that children do not have to cross a street to enter or exit the facility.
- xiii. A residential child care shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.
- xiv. There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up locations to the entrance of the residential child care. The pathway shall be kept free of any snow or ice.
- xv. Seventy-five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when the applicant can demonstrate the residential child care is located within 1,000 feet of an existing park or playground that is at least twice the area otherwise required for the residential child care. The park or playground must be public or owned by the HOA to which the residence belongs and must be accessed without crossing an arterial or collector road. The applicant may only utilize a park or playground owned by the HOA if the HOA provides certified documentation that the applicant is authorized to use such space. The park or playground must be shown to scale on the diagram submitted at the time of application.
- xvi. Any outdoor play area must be enclosed by a fence with a minimum height of four feet.

xvii. No play equipment shall be located within any required front yard or within five feet of any side or rear lot line.

xviii. There shall be no change in the outside appearance of the dwelling or lot housing the residential child care nor other visible evidence of the conduct of a residential child care other than what may be required by the State Family Day Home License.

b. Reserved.

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ARTICLE 15. - DEFINITIONS

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Section 2. - Definitions.

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Child care, residential. A program conducted within a residential dwelling which offers care, protection, supervision, and/or education to less than 13 children under the age of 13 during any 24-hour period, and then only for part of any 24 hour day, for compensation or otherwise.

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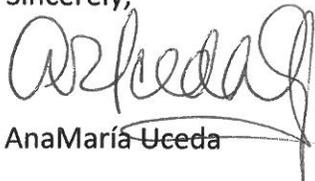
Statement of Support

I am running a home daycare since October 2008, Ms. Annie's Home Child Care. I got the respective Certificate of Occupancy in 2008 and I have been renewing the Town Business License annually. Also, since 2008, I got the Family Day Home license from the Commonwealth of Virginia, The State of Virginia granted me the State License for 12 children after the corresponding paperwork and home inspection.

On May of 2015, that is almost 7 years running my home daycare with a license for 12 children, the State of Virginia's inspector informed me that my license would be dropped to 6 children because of the town of Purcellville. The state decided to follow the Town of Purcellville guidelines even though they were more restrictive than the State. Since May of last year, I have been in contact with the town in order to change the law. Finally, an amendment was made for the article 4, section 1 and Article 15, section 2.

That is why I am requesting a Special Exception from the Town of Purcellville to allow me to enroll a maximum of 12 children as the Commonwealth of Virginia permitted.

Sincerely,



AnaMaría Uceda

Ms. Annie's Home Child Care
130 Misty Pond Terrace
Purcellville, VA 20132
540 751 0864
www.annieschildcare.us

March 28th 2016