TOWN OF Herndon VIRGINIA **Town Council Public Hearing**

STAFF REPORT

Agenda Item: Special Exception – SE #24-03, 1402 Winterland Ct. - Application for a Special Exception to Permit a Home-Based Child Daycare Use

Meeting Date: April 22, 2025.

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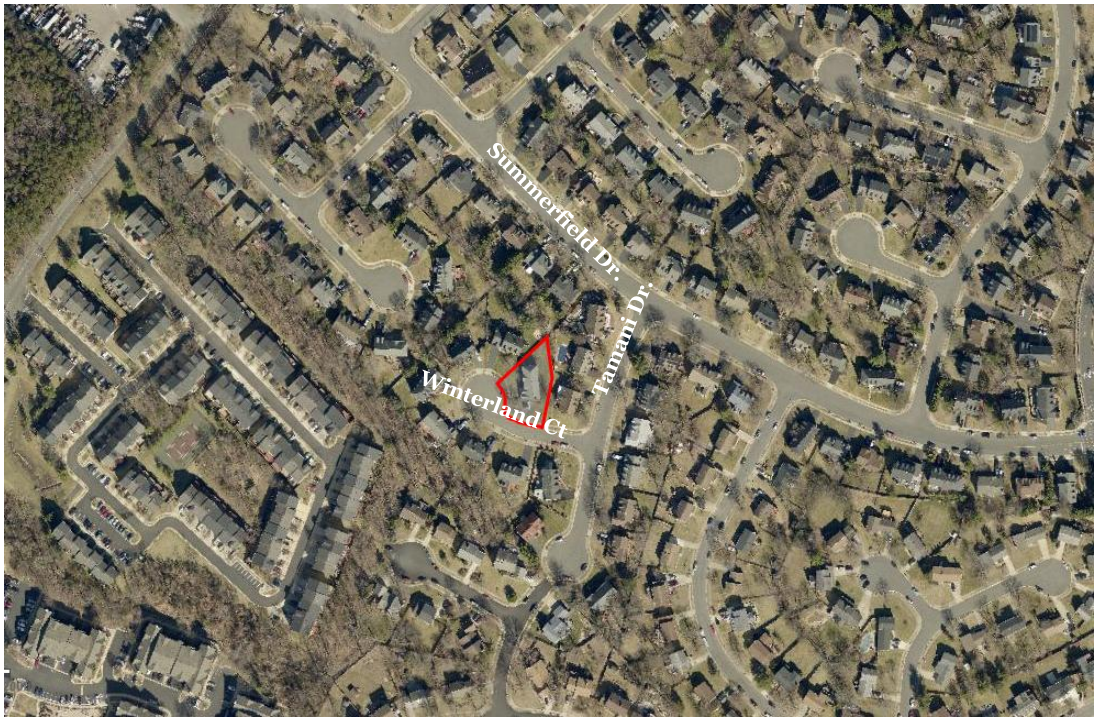
Summary Information:

Proposed Modification	This application is to consider special exception to permit a home-based child daycare use within the PD-R, Planned Development-Residential, zoning district. The proposed use will increases the maximum number of children enrolled per day from 7 to 12 and increases the hours of operation from 6 AM – 9 PM to 5 AM – 11 PM.
Address	1402 Winterland Ct.
Fairfax County Tax Map Number	0161 18 0154
Owners	Ms. Nidia Retamal
Applicant	Ms. Nidia Retamal
Business/Organization	Anbada Childcare, LLC
Property Use	Residential
Zoning District	PDR, Planned-Development Residential District – Four Seasons
Lot Size	11,959 square feet
Building Size	3,450 square feet of above-grade living area
Adjacent Zoning	**North, South, East, West**: PD-R, Residential – Single Family Detached.
Date of Construction:	1986
Comprehensive Plan Land Use Designation	Neighborhood Conservation

Location Map:



Background & Site Description:

The applicant applied for and received approval of a Zoning Inspection Permit (ZIP#24-026) to operate a child daycare use with a maximum of seven clients enrolled, as a home-based business at the subject property. ZIP#24-026 was issued on 09/30/2024 and the town has not received any complaints related to the daycare for this address.

The property is located near the intersection of Tamani Drive and Winterland Court, within the Four Seasons neighborhood. It is designated as “Neighborhood Conservation” in the Herndon 2030 Comprehensive Plan[1]. The designation underscores the town's commitment to preserving and maintaining the character and quality of existing residential areas.

The subject property is a PD-R, 11,959 square feet residential lot featuring a primary dwelling unit with approximately 3,450 square feet of above-grade living area. This planned development residential zoning district is characterized by a mix of housing types

[1] Herndon 2030 Comprehensive Plan https://www.herndon-va.gov/home/showpublisheddocument/17554/638247637418370000

designed to promote cohesive residential communities with convenient access to shared amenities.

The property's land use designation as a “Neighborhood Conservation” area emphasizes compatibility with surrounding residential uses. The proximity to Tamani Drive and Winterland Court provides convenient access for families utilizing the childcare service while maintaining the residential character of the area.

The zoning ordinance standards seek to balance the increased capacity for childcare services with considerations for traffic management, neighborhood compatibility, and adherence to zoning and planning regulations in the Town of Herndon.

Case Details & Proposal:

The applicant seeks approval to increase the number of children permitted in their home-based childcare business to a maximum of twelve (12). The proposed use will provide care for children in two shifts, operating between 5:00 AM and 11:00 PM, with staggered pick-up and drop-off schedules.

A Family Day Home, licensed by the Virginia Office of Child Care Health and Safety, allows up to 12 children, exclusive of the providers own children or children residing at the home, to be cared for in a single-family residence. The zoning ordinance allows up to 7 children, exclusive of the providers own children and children residing at the home, to be care for in a single-family residence with the approval of a Zoning Inspection Permit. A maximum of 12 children may be cared for with the approval of a Special Exception. The applicant is requesting 12 children to be cared for, as allowed by the Commonwealth of Virginia.

Proposed Operations:

The home-based childcare business operates in two shifts to accommodate families with diverse needs, Monday to Friday:

- First Shift: 5:00 AM to 3:00 PM
- Second Shift: 4:30 PM to 11:00 PM

The childcare business is supported by a schedule that includes one employee working from 8:00 AM to 5:00 PM. Additionally, two assistants reside on-site and contribute to the daycare operations, ensuring continuous supervision and care for the children.

The property is located on a cul-de-sac. To ensure smooth transitions for families, the applicant has implemented a staggered pick-up and drop-off schedule:

- Morning Drop-Off: 5:00 AM to 7:30 AM
- Afternoon Pick-Up: 2:00 PM to 4:00 PM
- Afternoon Drop-Off: 4:30 PM to 5:00 PM
- Night Pick-Up: 10:00 PM to 11:00 PM

Additionally, the childcare business serves a disabled child, providing transportation. A bus arrives occasionally at the property at 9:05 AM and 4:40 PM to accommodate this need.

Staff Analysis:

Zoning Ordinance Compliance

The zoning ordinance allows a home-based daycare for up to 12 children enrolled with the granting of a special exception permit by the town council. The use will operate under its current conditions in terms of space occupied by the business, facilities provided, and general operation. The exterior appearance of the building and the existing fenced playground area in the rear yard will not be altered. No additional impervious area or land disturbance is proposed.

Special exceptions may be approved provided they comply with the following standards. Staff evaluated the criteria for review of special exceptions found in Zoning Ordinance Section 78-153.3(e):

Criteria from Section 78-153.3(e)(1)	**Meets/ Does Not Meet**	**Why the application meets or does not meet the criteria of Section 78-153.3(e)**
a. Is consistent with the Comprehensive Plan.	Meets	The Comprehensive Plan Land Use Section provides polices for provision of goods and services to the local community and positive economic benefits of new businesses. The proposed uses will be in conformance with the comprehensive plan polices.
b. Is free of conflict with any provision of this chapter and related regulations or any other applicable local, state, or federal laws and regulations.	Meets	The proposed special exception uses are provisioned with the base zoning district and do not create any substantial conflicts with other regulatory requirements. The use and business operations will be conditioned to ensure the use continually meets the

		purpose and intent of the Planned Development, Residential Zoning District.
c. Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.	Meets with conditions	The proposed uses are generally compatible to the site / neighborhood. The proposed amended conditions will expand the hours of operation (non-business hours) but will limit the impact to parking and vehicle trips by restricting maximum number of clients.
d. Consistent with the purpose and intent of the zoning district in which it is located or will improve compatibility among uses and will ensure efficient development within the town.	Meets	The proposed changes to the conditions will remain compatible with the intent of the uses of the PD-R district.
e. Minimizes adverse visual impact of the proposed use on adjacent lands.	Meets	The proposed changes to the conditions will not generate visual changes to the site.
f. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.	Not Applicable	No physical alterations of the structure expected and thus not subject to this criterion.
g. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.	Meets with conditions	Staff recommended the revised conditions to limit the overall capacity and distribution of customers in order to prevent negative impacts to parking, drop-off/pickup, and noise.
h. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.	Meets	The proposed use has virtually no external impacts and provides needed space utilization for the new business owners.
i. Does not significantly and adversely impact the natural environment, including but not limited to, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.	Meets	The proposed changes to the conditions will not involve any expansion of floor area or conversion of pervious area to impervious area.
j. Results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the town's transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.	Not Applicable	No physical alterations of the structure expected and thus not subject to this criterion.
k. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).	Not Applicable	No physical alterations of the structure expected and thus not subject to this criterion.
l. If infill and redevelopment is consistent with the redevelopment criteria and other applicable guidelines as stated in the Herndon	Not Applicable	No physical alterations of the structure expected and thus not subject to this criterion.

2030 Comprehensive Plan (adopted August 12, 2008), as amended.		
m. If located in the floodplain overlay district, meets floodplain overlay standards.	Not Applicable	The building is not located within the FPO.

In addition to these standards, the zoning ordinance has established additional standards for childcare or daycare uses as a home-based business. These standards identified in section 78-80.5 (b) provide the requirements for all home-based businesses.
Home-based business, childcare or daycare—Additional standards. In addition to the standards of section 78-80.5, a home-based childcare or daycare shall be subject to the following additional standards. In accordance with the Herndon Zoning Ordinance standards for home-based businesses, the application complies with the requirements concerning the number of children and nonresident employees. As stipulated under section 78-80.5 and the additional standards for home-based childcare or daycare businesses, the proposed use ensures adherence to the limits on enrollment and staffing, thereby meeting the applicable zoning regulations.

Play area. The proposed application satisfies the minimum requirement of 75 square feet of outdoor play area per child enrolled in the childcare business (900 sq. ft.). A scaled plat demonstrating the designated outdoor play area, which is fully enclosed by a four-foot fence to ensure safety, will be submitted with the application (see annex 2).

Comprehensive Plan Adherence

The proposal is consistent with the Herndon 2030 Comprehensive Plan Neighborhood Conservation Land Use Policies and encourages uses that provide a variety of goods and services as well as promotes economic development that helps increase employment and add to the community tax base.

Parking

The zoning ordinance does not require additional parking for a home-based daycare.

Analysis of Conditions

Staff are recommending six conditions for this special exception, listed in the following conditions analysis table, consistent with previously approved special exceptions. Staff believe these conditions provide reasonable ways in which the existing childcare use can be expanded while properly mitigating potential impacts, as well as achieving the purpose and intent of the applicable zoning district.

#	Condition	Covered by language in the Zoning Code	Reason for Condition
1	Substantial conformance with the submitted application and plan submitted by applicant on November 26, 2024 and for the purpose of a daycare use only.	No	The site shall be developed and maintained in substantial conformance with a submitted special exception plan that is 33 percent or less of the gross floor area and in conformance with section 78-80.5. of the zoning ordinance.
2	Hours of Operation.	No	The permitted hours of operation shall be 5:00 a.m. until 11:00 p.m. Monday through Friday.
3	Number of Permitted Children.	No	The total number of children present on site for home-based child daycare use shall not exceed 12 enrolled children per day. The ratio of employees to children as required by the state shall be maintained.
4	On-Site Play Area.	No	When playing outside all children shall be within the fenced playground area.
5	Child Drop-off and Pick-up.	No	Child drop-off and pick-up shall be limited to the driveway or to the curbside on the street adjacent to the subject property on Winterland Ct. Double parking on Winterland Ct. is prohibited at all times.
6	Signage.	No	No signage shall be permitted.

Any violation of the aforementioned conditions or other sections of the Herndon Town Code shall be grounds for revoking the special exception pursuant to the manner described in Section 78-155.3(h).

Considerations brought by the Planning Commission

Since the Planning Commission's initial public hearing on February 24, 2025, Town staff have conducted site observations and further evaluated concerns related to the proposed home-based childcare business.

Observation	Date	Cars counted
1	2/27/2025 12:30pm – 2:30pm	0
2	2/28/2025 2:30pm – 4:00pm	1
3	3/06/2025 7:30am – 8:30am	1
4	3/13/2025 5:15am – 8:45am	6

Particular attention was given to potential traffic impacts at the cul-de-sac and subdivision entrance, especially in light of the applicant's plan to operate in two shifts. Commissioners also suggested actions for both the applicant and the recreation/homeowner's association, including opportunities for dialogue and consideration of any applicable

private covenants or Recreation Association bylaws that may affect the proposed business. These considerations have informed staff's analysis and recommendations regarding the special exception request. At the conclusion of the hearing, however, the Planning Commission voted to continue its decision.

Following the Planning Commission's second work session on March 10, 2025, staff confirmed that the Town Council has the authority to grant a special exception for a home-based daycare business that does not meet the additional standards listed in Section 78-80.5(b) of the Zoning Ordinance. However, per Section 78-50.5(c)(b), Council does *not* have the authority to approve an enrollment exceeding 12 children per day.

Staff continue to support the proposed operating hours of 5:00 AM to 11:00 PM, noting that these hours would enable the applicant to provide services to community members with non-traditional work schedules.

It is important to note that while the Recreation Association's bylaws may impose more restrictive covenants than the Town's zoning ordinance, these are private legal agreements. The Town is not a party to such agreements and cannot delegate its zoning authority to a third party. Any conditions placed on this special exception must be consistent with how the Town evaluates similar properties with the same zoning classification—in this case, a PD-R (Planned Development – Residential) district.

Precedent for Home-Based Childcare Special Exceptions (Past 10 Years)

Special Exceptions Home-Based Business, Childcare Use	**Address**	**Subdivision**
SE#12-01	450 Virginia Ave.	Chandon
SE#13-03	1110 Burwick Dr.	Estates At Eagle Lie
SE#13-04	1115 Autumnhaze Ct.	Four Seasons
SE#14-03	288 Missouri Ave.	Chandon Woods
SE#14-05	1210 Summerfield Dr.	Four Seasons

During the public hearing, some neighbors and the Recreation Association expressed concerns about the proposal. One neighbor expressed support. The Planning Commission voted 4–2 to recommend approval of the special exception.

While other special exceptions have been approved to allow up to 12 children per day in home daycare within the town, this is the first special exception that would permit the operation of a home daycare beyond 9:00 p.m. The expansion of the number of children serves a community need, as does the time extension to 11:00 p.m., which is needed by parents in the service industry as well as others who work later shifts. Special exception provisions allow the town to revoke approval of this special exception if this home-based business does not operate in accordance with the conditions imposed

Fiscal Impact:

The town can collect taxes from home-based businesses.

Town Council Alternatives:

The following alternatives are available to the Town Council for its decision on SE#24-03:

1. Approval with conditions per the prepared resolution.
2. Approval with amended conditions.
3. Denial of the application. [The daycare would continue its operations with seven children as a by-right use.]
4. Continuance of the application to May 2025.

Staff Recommendation:

Staff recommends alternative 1, the Town Council approve the special exception with conditions per the prepared resolution.