

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 377
CASE NO. 81-18
October 18, 1982

Pursuant to notice, public hearings were held by the District of Columbia Zoning Commission on March 15 and 22, 1981 to consider proposed amendments to the Zoning Regulations of the District of Columbia which relate to the treatment of child care facilities. These hearings were conducted in accordance with the provisions of Chapter 5 of the Rules of Practice and Procedure before the Zoning Commission.

The proposed text amendments considered by the Zoning Commission in this case resulted from concerns raised by the Board of Zoning Adjustment when it considered applications for the establishment of child care facilities. The Board advised the Commission that it had found a number of specific problems with the present Zoning Regulations. The Board requested the Commission to institute a comprehensive review of the Regulations to provide adequate and appropriate standards for child care and/or day care centers.

The present Regulations permit a "private school in the form of a kindergarten or serving a pre-school group" as a special exception in R-1 through R-3 Districts. The same use is permitted as a matter-of-right in R-4 and less restrictive districts, provided there is no merchandise for sale and provided there is at least 100 square feet of play area on the lot for each child. Parking is required at the rate of two spaces for each three teachers and other employees except custodial personnel.

The Zoning Commission referred the matter to the Office of Planning and Development (OPD). In its report dated September 30, 1981, which the Commission subsequently determined to advertise as the Notice of Public Hearing, the OPD proposed the following amendments:

1. Define "child development center."
2. Permit child development centers as a

matter-of-right in all districts for no more than five children as a home occupation.

3. Permit child development centers other than described above as special exceptions in R-1 through R-3 Districts, and as a matter-of-right in all other districts.

The Commission also sought public comment and testimony on the following issues:

1. Whether to permit before-and-after-school programs serving one group of no more than five children as a matter-of-right in the R-1, R-2 and R-3 Districts;
2. Location of and requirements for outdoor off-site play space;
3. Safety of children when traveling off-site to a nearby play area;
4. Prohibition of articles for sale;
5. Whether child care facilities in the R-4 and R-5 Districts should be permitted as a matter-of-right; and
6. Whether and how the D.C. Department of Human Services should be involved in the zoning process for review of child care facilities.

The Office of Planning and Development, by memorandum dated March 5, 1982, and by testimony presented at the public hearing, recommended approval of the proposed amendments with certain changes. As recommended by OPD:

1. A defined term, "Child development center," is proposed for adoption, which would be consistent with definitions used in licensing.
2. A small child development center of no more than five children from off the premises would be permitted as an accessory use to a dwelling in the R-1 and subsequent less restrictive zone districts. These small centers would be permitted as of right, but with some specific requirements related to their being a "home occupation."
3. A child development center having six or more children would require a special exception in the R-1 through R-4 Districts. The Regulations containing standards for the BZA to apply:

- A. Delete the neighborhood enrollment requirement;
- B. Adjust required play space to be consistent with licensing;
- C. Require OPD referral and other Agency referral, including the Department of Human Services;
- D. Set a new spacing requirement to avoid a cumulative excess of centers in any one area; and,
- E. Retain strong controls over adverse noise and traffic impacts.

The Department of Human Services, by testimony presented at the public hearing clarified questions concerning the licensing of centers and augmented the report of the Office of Planning and Development. The Department of Human Services recommended:

- 1. The addition of a definition for a "child development home;"
- 2. Opposed testimony which proposed that the number of children allowed in a child development home be increased to fifteen;
- 3. Suggested a change in the outdoor play area requirement from 100 to 60 square feet per child;
- 4. Suggested the allowed usage of off-site play space for centers;
- 5. Recommended a parking ratio of two spaces for every five employees except custodial personnel;
- 6. Suggested allowing child development homes as an accessory use/home occupation in dwellings beginning in the R-1 District; and
- 7. Recommended that child development centers be permitted as a matter-of-right in the R-1, R-2, and R-3 Districts as long as they are located in a church or public school.

The Superintendent of Schools, by letter dated April 22, 1982, recommended that child development centers should be permitted as a matter-of-right in public schools, provided that the School System has given its approval and that the licensing requirements are met.

The Commission received written statements from Advisory Neighborhood Commissions 1B, 2A, 3C, 3F, 3G and 4B concerning the proposed amendments. The statements were generally supportive of the amendments, but noted the following issues and concerns:

1. Facilities having more than five children in residential districts should require BZA approval.
2. There should be a spacing requirement between facilities, varying from 300 feet to a half mile.
3. Facilities for more than five children should not be a matter-of-right in R-4 Districts.
4. Attendance should be limited to children living within proximity to the facility.
5. The Zoning Regulations should be compatible with the licensing requirements.
6. Before and after school care should be permitted as a matter-of-right.

The remainder of the comments were received from parents, teachers, providers of day care services, representatives of citizens groups and other individuals. The issues they raised were generally as follows:

1. Before and after school programs as a matter-of-right in R-1, R-2 and R-3 Districts where space allows up to fifteen children;
2. A parking ratio of two spaces for every five teachers;
3. Lower limits so that the number of children allowed in any one facility will not exceed five;
4. Matter-of-right centers in churches and public schools;
5. Concern as to whether or not child development homes should be allowed as a special exception in R-1, R-2 and R-3 Districts rather than as a matter-of-right.
6. Matter of right for child development homes in R-1, R-2 and R-3;
7. Access to off-site open space facilities.

Upon consideration of all of the issues raised in the record, the Commission believes that it must balance all of

the interests involved, including parents seeking child care, providers seeking to meet the needs and citizen groups desirous of protecting their neighborhoods. The Commission has therefore determined to adopt the following regulations:

1. New definition of "child development home" and "child development center." The former is a facility located in a dwelling unit for no more than five children. The latter is a facility for six or more children, and may or may not be in a home.
2. Permission for child development homes to be located as accessory uses as a matter-of-right in all districts where a dwelling unit is permitted.
3. Permission for child development centers to be located in public schools or public recreation centers as a matter-of-right in all districts.
4. Permission for child development centers to be located in R-1 and less restrictive Districts as a special exception. The Board is to determine that:
 - a. The center can be licensed.
 - b. There will be no dangerous, objectionable or unsafe traffic conditions.
 - c. There will be sufficient off-street parking.
 - d. There will be no objectionable impact because of noise, activity or other conditions.
 - e. Off-site play area will not endanger the children.
 - f. There will be no cumulative adverse effect if there is more than one facility within 1000 feet.
 - g. Appropriate referrals to the Department of Human Services, Department of Transportation and Office of Planning and Development are made.
5. Permission for child development centers as a matter-of-right in R-4 and less restrictive Districts, provided that in R-4, R-5-A and R-5-B the center is limited to fifteen children, and in R-5-C and R-5-D, the center is limited to no more than twenty-five children.

6. Permit child development centers as a matter-of-right in R-4 and less restrictive Districts when the center is located in a structure originally designed and in continuous use as a church.
7. Parking required at one space for each four teachers and other employees.

The Commission believes that these regulations do strike the proper balance, achieving neighborhood preservation and stability, permitting a reasonable level of child care as a matter-of-right, and giving the BZA the authority to approve child development centers after considering the specific facts and circumstances in each case.

In response to the specific issues and concerns raised by the various ANC's:

1. Child development centers, for six or more children, will require BZA approval in R-1, R-2 and R-3 Districts. In R-4, R-5-A and R-5-B Districts, except for centers in churches, without BZA approval, facilities are limited to fifteen children. In R-5-C and R-5-D Districts, except for centers in churches, without BZA approval, facilities are limited to twenty-five children. The size and/or location of child development centers are restricted in all residential districts. In the higher density residential districts, where smaller centers are permitted as a matter of right, facilities are likely to be no more objectionable than other higher density uses also permitted. In addition, the play area requirements of the licensing regulations will effectively limit the number and size of facilities in those districts.
2. The Commission has not put a direct prohibition on having facilities within close proximity. However, if there is another facility within 1000 feet of a proposed location, the Board is required to determine that the cumulative effect of those facilities will not have an adverse effect on the neighborhood.
3. Child development centers in excess of fifteen children will require BZA approval in R-4 Districts. The R-4 District is treated in the same manner as R-5-A, which has a similar level of density.
4. Limitation on attendance to children residing in proximity to facilities is contrary to present day

needs and demands. The need for day care services is related not only to where people live, but where they work, how they get to and from work and the nature of the programs that are available, such as programs run by or for different religious or ethnic groups. Given the requirement for the Board to assess the traffic and parking impacts of proposed centers, the Commission believes that it is unnecessary and inappropriate to limit centers to children residing in the neighborhood.

5. The definitions contained in the Zoning Regulations are derived directly from and are consistent with the licensing regulations. The Commission has generally left to licensing the control of the programs of child development centers. The Zoning Regulations are basically aimed at the potential external effects of centers, which is an appropriate land use concern.
6. The Commission makes no distinction between before-and-after school care and other types of child development centers. They are permitted either as special exceptions or a matter-of-right depending upon the number of students and location of the facility. The Commission believes there is no difference in land use impact terms between before-and-after school care and other types of child care facilities.

The proposed amendments to the Zoning Regulations were referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC, by letters dated July 8, and September 2, 1982, reported that the amendments to various provisions of the Zoning Regulations of the District of Columbia which define and control location, size and other aspects of child care facilities proposed by the Zoning Commission would not adversely affect the Federal Establishment and other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission published a notice of proposed rulemaking in the D.C. Register on July 2, 1982 and solicited written comments from interested individuals. The Commission reviewed the comments received and at its public meeting held August 9, 1982 and made substantive changes to the proposal as advertised in July. The Zoning Commission therefore published a second notice of proposed rulemaking in the D.C. Register on August 27, 1982.

The Commission finds that the amendments to the Zoning Regulations contained herein are in the best interest of the

District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act. The new Regulations are not inconsistent with the Goals and Policies element of the Comprehensive Plan. Furthermore, these amendments have the effect of clarifying the Regulations, eliminating inconsistencies with the licensing regulations, and helping the BZA to facilitate the processing of applications to establish child care facilities. The Zoning Commission, therefore, hereby Orders APPROVAL of the following amendments to the Zoning Regulations:

1. Add the following new definitions to Section 1202:

Caregiver - An individual who is responsible for the supervision and administration of a child development home or child development center.

Child development home - A dwelling unit used in part for the licensed care, education or training of no more than five individuals fifteen years of age or less. Those individuals receiving care, education or training who are not related by blood, marriage or adoption to the caregiver shall be present for less than twenty-four hours per day. This definition encompasses facilities generally known as a child care center, day care center, pre-school, nursery school, before-and-after school programs and similar programs and facilities.

Child development center - A building or part thereof, other than a child development home, used for the licensed care, education or training of six or more individuals fifteen years of age or less. Those individuals receiving care, education or training who are not related by blood, marriage or adoption to the caregiver shall be present for less than twenty-four hours per day. This definition encompasses facilities generally known as a child care center, day care center, pre-school, nursery school, before-and-after school programs and similar programs and facilities.

2. Permit a child development home as an accessory use as a matter-of-right in R-1 through R-5 Districts, by adding a new Paragraph 3101.56, to read as follows:

3101.56 Child development home, provided that:

3101.561 The dwelling unit in which the use is located is the principal residence of the caregiver.

3101.562 The use otherwise meets the definition of a home occupation.

Renumber existing Paragraph 3101.56 to 3101.57

3. Permit a child development home as an accessory use as a matter-of-right in the SP Districts by adding a new Paragraph 4101.63 to read as follows:

4101.63 Child development home provided that:

4101.631 The dwelling unit in which the use is located is the principal residence of the caregiver.

4101.632 The use otherwise meets the definition of a home occupation.

Renumber existing Paragraph 4101.63 to 4101.64.

4. Permit a child development home as an accessory use as a matter-of-right in the W District by revising existing Sub-paragraph 4402.219 to read as follows:

4402.219 Accessory use (including parking), building or structure customarily incidental and subordinate to the principal uses permitted above.

4402.2191 Mechanical amusement machines shall be permitted as accessory to uses specified in Paragraphs 4402.24, 4402.28, 4402.210, 4402.213, and 4402.37, but in the case of Paragraph 4402.37 only as to a college or university, subject to the provisions of Sub-section 7601.6.

4402.2192 A child development home shall be permitted, provided that the dwelling unit in which the use is located is the principal residence of the caregiver and the use otherwise meets the definition of a home occupation.

5. Permit a child development home as an accessory use as a matter-of-right in the CR District by Revising existing Paragraph 4502.220 to read as follows:

4502.220 Accessory use (including parking), building or structure customarily incidental and subordinate to the principal uses permitted above.

4502.2201 Mechanical amusement machines shall be permitted as accessory to uses specified in Paragraphs 4502.24, 4502.28, 4502.211, 4502.214, 4502.34, and 4502.310 subject to the provisions of Sub-section 7601.6.

4502.2202 A child development home shall be permitted, provided that the dwelling unit in which the use is located is the principal residence of the caregiver and the use otherwise meets the definition of a home occupation.

6. Permit a child development home as an accessory use as a matter-of-right in the C-1 District by revising existing Sub-section 5101.6 to read as follows:

5101.6 The following accessory uses or accessory buildings incidental to the above uses are permitted:

5101.61 Mechanical amusement machines subject to provisions of Sub-section 7601.6.

5101.62 Child development home, provided that:

5101.621 The dwelling unit in which the use is located is the principal residence of the caregiver.

5101.622 The use otherwise meets the definition of a home occupation.

5101.63 Other accessory uses customarily incidental and subordinate to the uses permitted in C-1 Districts.

7. Permit a child development home as an accessory use as a matter-of-right in C-2 Districts by revising existing Sub-section 5102.6 to read as follows:

5102.6 The following accessory uses or accessory buildings incidental to the above uses are permitted:

5102.61 Mechanical amusement machines subject to provisions of Sub-section 7601.6.

5102.62 Child development home, provided that:

5102.621 The dwelling unit in which the use is located is the principal residence of the caregiver.

5102.622 The use otherwise meets the definition of a home occupation.

5102.63 Other accessory uses customarily incidental and subordinate to the uses permitted in C-2 Districts.

8. Permit a child development home as an accessory use as a matter-of-right in C-3 Districts by revising existing Sub-section 5103.5 to read as follows:

5103.5 The following accessory uses or accessory buildings incidental to the above uses are permitted:

5103.51 Mechanical amusement machines subject to provisions of Sub-section 7601.6.

5103.52 Child development home, provided that:

5103.521 The dwelling unit in which the use is located is the principal residence of the caregiver.

5103.522 The use otherwise meets the definition of a home occupation.

5103.53 Other accessory uses customarily incidental and subordinate to the uses permitted in C-3 Districts.

9. Permit a child development home as an accessory use as a matter-of-right in C-4 Districts by revising existing Sub-section 5104.5 to read as follows:

5104.5 The following accessory uses or accessory buildings incidental to the above uses are permitted:

5104.51 Mechanical amusement machines subject to provisions of Sub-section 7601.6.

5104.52 Child development home, provided that:

5104.521 The dwelling unit in which the use is located is the principal residence of the caregiver.

5104.522 The use otherwise meets the definition of a home occupation.

5104.53 Other accessory uses customarily incidental and subordinate to the uses permitted in C-4 Districts.

10. Permit a child development home as an accessory use as a matter-of-right in C-5 (PAD) Districts by revising existing Sub-section 5105.5 to read as follows:

5105.5 The following accessory uses or accessory buildings incidental to the above uses are permitted:

5105.51 Mechanical amusement machines subject to provisions of Sub-section 7601.6.

5105.52 Child development home, provided that:

5105.521 The dwelling unit in which the use is located is the principal residence of the caregiver.

5105.522 The use otherwise meets the definition of a home occupation.

5105.53 Other accessory uses customarily incidental and subordinate to the uses permitted in C-5 (PAD) Districts.

11. Permit child development centers as a matter-of-right in R-1 and less restrictive districts by adding a new Sub-paragraph 3101.316 to read as follows:

3101.316 Child development center located in a District of Columbia public school or a public recreation center operated by the District of Columbia Department of Recreation, provided that written permission to use the school or the recreation center has been granted by the District of Columbia Superintendent of Schools or the Director of the Department of Recreation, respectively.

12. Permit a child development center as a special exception in R-1 through R-3 Districts, in R-4, R-5-A and R-5-B Districts in excess of fifteen individuals and in R-5-C and R-5-D Districts in excess of twenty-five individuals, by deleting existing Paragraph 3101.41 and substituting the following new Paragraph 3101.41:

3101.41 Child development center, provided that:

- a. The center shall be capable of meeting all applicable code and licensing requirements.
- b. The center shall be so located and designed as to create no objectionable traffic condition and no unsafe condition for picking-up and dropping-off children.
- c. The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors.
- d. The center, including any outdoor play space provided, is so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The Board may require such special treatment in the way of design, screening of buildings, planting and parking areas, signs or other requirements as it shall deem necessary to protect adjacent and nearby properties.
- e. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between such play area and the center itself.

- f. The Board may approve more than one child development center in a square or within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise operations or other similar factors.
- g. Before taking final action on an application for such use, the Board shall submit the application to the D. C. Department of Human Services, D. C. Department of Transportation and the D. C. Office of Planning and Development for review and written reports. The referral to the D. C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District of Columbia.
13. Delete existing Paragraph 3104.34, which permitted a "private school in the form of a kindergarten or serving a pre-school group" as a matter-of-right in an R-4 District, and replace it with the following new Paragraph 3104.34 to permit a child development center as a matter-of-right in R-4, R-5-A and R-5-B Districts:
- 3104.34 Child development center, provided that the center shall be limited to no more than fifteen individuals.
14. Permit a Child development center as a matter-of-right in R-4 and less restrictive districts by adding a new Paragraph 3104.35 to read as follows:
- 3104.35 Child development center located in a building which was built as a church and has continuously been used as a church since it was built, provided that all of the play space required for the center by the licensing regulations shall be located on the same lot on which the center is located.
- Make a conforming amendment by amending existing Paragraph 3104.36 to read as follows:
- 3104.36 Rooming House or Boarding House.
15. Permit a child development center as a matter-of-right in R-5-C and less restrictive districts by adding a new Paragraph 3105.38 to read as follows:
- 3105.38 Child development center, in R-5-C and R-5-D Districts, provided that the center shall be limited to no more than twenty-five individuals.

16. Permit a child development center as a matter-of-right in SP and less restrictive districts by adding a new Paragraph 4101.38 to read as follows:

4101.38 Child development center.

17. Permit a Child Development Center as a matter-of-right in W Districts by adding a new Paragraph 4402.221 to read as follows:

4402.221 Child development center

18. Permit a Child Development Center as a matter-of-right in CR Districts by adding a new Paragraph 4502.222 to read as follows:

4502.222 Child development center

19. Amend the table of Special Exceptions in Sub-section 8207.2:

- A. Delete the reference to "School-private kindergarten or pre-school"
- B. Add "Child development center;" "Any R District"
"3101.41"

20. Amend the table of parking requirements in Sub-section 7202.1:

- A. Change "Nursery through Junior High School" to "Elementary through Junior High School"
- B. Add a new category "Child development center" with a requirement of "one for each four teachers and other employees."

21. Make certain additional conforming amendments as follows:

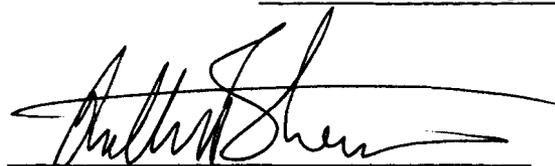
- A. In Paragraph 3101.42, delete the word "Other."
- B. In Paragraph 3104.46, delete the phrase "day care centers."
- C. In Paragraph 4101.32, delete the phrase "pre-school group."

Vote of the Commission taken at its public meeting on June 14, 1982: 4-0 (Lindsley Williams, George M. White, John G. Parsons, and Walter B. Lewis to approve as amended, Ruby B. McZier not voting, having resigned as of May 27, 1982).

Vote of the Commission taken at its public meeting on August 9, 1982: 4-0 (Lindsley Williams, George M. White, Walter B. Lewis and John G. Parsons to approve as amended, Maybelle T. Bennett not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its public meeting held on October 18, 1982 by a vote of 3-0: (Lindsley Williams, John G. Parsons and Walter B. Lewis to adopt, George M. White not present, not voting, Maybelle T. Bennett not voting, not having participated in the case).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, the amendments to the Zoning Regulations are effective on NOV - 5 1982.



WALTER B. LEWIS
Chairman
Zoning Commission



STEVEN E. SHER
Executive Director
Zoning Secretariat