

## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** *JLS*  
Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

**DATE:** July 17, 2015

**SUBJECT:** Preliminary and Pre-hearing Report - Request for Text Amendment to the Zoning Regulations: § 199, Definitions, Expanded Child Development Home; § 202, Accessory Uses (R-1); § 203, Home Occupations (R-1); § 502, Accessory Uses (SP); § 601 Uses as a Matter-of-Right (CR); § 702, Accessory Uses and Buildings (C-1); § 722, Accessory Uses and Buildings (C-2); § 742, Accessory Uses and Buildings (C-3); § 752, Accessory Uses and Buildings (C-4); § 761, C-5 (PAD) District Uses.

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### **I. APPLICATION**

At the request of the Office of the State Superintendent of Education (OSSE) the Office of Planning (OP) requests various text amendments to add “expanded child development home” as a new use to the Zoning Regulations. The proposal corresponds to the definition of an Expanded Child Development Home in the current Department of Health (DOH) Child Care regulations which are administered by OSSE. Additional amendments regarding the number of employees, the area to be used for a child development home and an expanded child development home care, and the classification of child development homes and an expanded child development homes as accessory uses are also proposed. In summary, the proposals would:

1. Add a definition for Expanded Child Development Home;
2. Require special exception review for an expanded child development home with ten (10) to twelve (12) children;
3. Allow a child development home to have two (2) non-resident employees;
4. Allow an expanded child development home to have up to three (3) non-resident employees;
5. Add child development home and expanded child development home as home occupations;
6. Allow an expanded child development home as an accessory use in the R, SP, CR and C zones;
7. Clarify that the use of basements for home occupations are allowed; and
8. Amend the reference to elderly care homes.

### **II. RECOMMENDATION**

The Office of Planning (“OP”) requests the Zoning Commission set down for public hearing text amendments to the following sections of the Zoning Regulations (old text is marked with ~~strike through~~ and new text is shown in **bold and underline**:

- a. Amend § 199 as follows:

## **CHAPTER 1 THE ZONING REGULATIONS**

## 199 DEFINITIONS

**Expanded Child Development Home – a dwelling unit used in part for the licensed care, education, or training for more than six (6) children, up to a maximum of twelve (12) children. The total number of children shall include minor children who are residents of the dwelling.**

- b. Amend §202 as follows:

## 202 ACCESSORY USES (R-1)

202.4 The child development home shall be permitted as an accessory use in an R-1 District incidental to the uses permitted in this chapter, if the following requirements are met:

- (d) **No more than two (2) persons who are not a resident of the dwelling unit**~~No person is employed other than a member of the caregiver's immediate family residing on the premises;~~**shall be engaged or employed in the child development home; and**

- c. Add a new § 202.5 and renumber subsequent sub-sections:

**202.5 An expanded child development home shall be permitted as an accessory use in a R-1 District incidental to the uses permitted in this chapter if the requirements of a child development home, except for Section 202.4(d), and the following requirements are met:**

- (a) **No more than three (3) persons who are not a resident of the dwelling unit shall be engaged or employed in an expanded child development home ;**
- (b) **No more than six (6) children under two (2) years of age may be cared for in an expanded child development home ; and**

- d. Amend § 202.5, add a new § 202.7 and renumber subsequent sub-sections:

202.5~~6~~ The elderly day care home shall be permitted as an accessory use in an R-1 District incidental to the uses permitted in this chapter if the requirements of the child development home are met **with the exception of § 202.4(d).**

**202.7 No person is employed other than a member of the caregiver's immediate family residing on the premises;**

e. Amend §203 as follows:

**203 HOME OCCUPATION (R-1)**

203.4 A practitioner of a home occupation, and any owner of a dwelling unit in which a home occupation is practiced, shall comply with the requirements of §§ 203.5 and 203.6, and with the following conditions and requirements:

- (b) Except as provided in §§ **203.7(b)**, 203.7(c), **203.7(f)** and 203.8(d), no more than the larger of two hundred fifty square feet (250 ft.<sup>2</sup>) or twenty-five percent (25%) of the floor area of the dwelling, ~~excluding~~**including** basement **but excluding** any accessory structure, shall be utilized in the home occupation; provided that this limitation shall;
- (d) **Except as provided in §§ 202.4(d) and 202.5(a)**~~No~~**no** more than one (1) person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation;
- (l) **Except for Child Development Homes and Expanded Child Development Homes**, vehicular trips to the premises by visitors, customers, and delivery persons shall not exceed eight (8) trips daily on a regular and continuing basis;
- (m) **Except for Child Development Homes and Expanded Child Development Homes**, the practitioner shall have no more than eight (8) clients or customers on the premises in any one (1) hour period; and

203.7 The following uses shall be allowed as home occupations; provided, that the conditions specified in §§ 203.4 through 203.6 are met at the time of the establishment of the home occupation, and maintained on a continuing basis. The uses listed under this subsection shall include similar uses in each category:

- (a) **Child Development Home**
- (b) **Expanded Child Development Home for between seven (7) and nine (9) children; provided that no more than three hundred and twenty square feet (320 ft.<sup>2</sup>) of the floor area of the dwelling, including basement but excluding any accessory structure, shall be utilized for the Child Development Home Expanded;**
- (c) **Expanded Child Development Home for ten (10) to twelve (12) children may be permitted as a special exception by the Board of Zoning Adjustment under § 3104 and subject to the provisions of § 203.10; provided a minimum of thirty five square feet (35 ft.<sup>2</sup>) of floor area per child is provided. The floor area may include that within a basement but exclude any accessory structure;**

203.10 A home occupation that is not permitted or prohibited in this section may be permitted as a special exception by the Board of Zoning Adjustment under § 3104; provided:

- (c) **Except as provided in § 202.5(a)**~~in~~ no case shall more than two (2) persons who are not residents of the subject home be permitted as employees of the home occupation, and those persons shall not be co-practitioners of the profession;

f. Amend the following sections:

**502 ACCESSORY USES (SP)**

502.6 A child development home **or an expanded child development home** shall be permitted as an accessory use in an SP District incidental to the uses permitted in this chapter; provided:

**601 USES AS A MATTER OF RIGHT (CR)**

601.5 A child development home **or an expanded child development home** shall be permitted as a matter of right as an accessory use in a CR District; provided, the dwelling unit in which the child development home **or an expanded child development home** is located is the principal residence of the caregiver and the use shall otherwise meet the definition of a home occupation.

**702 ACCESSORY USES AND BUILDINGS (C-1)**

702.2 A child development home **or an expanded child development home** shall be permitted in a C-1 District as an accessory building and use incidental to the uses permitted in §§ 701 through 711; provided:

**722 ACCESSORY USES AND BUILDINGS (C-2)**

722.2 A child development home **or an expanded child development home** shall be permitted in a C-2 District as an accessory building and use incidental to the uses permitted §§ 721, 722, and 726 through 734; provided:

**742 ACCESSORY USES AND BUILDINGS (C-3)**

742.2 A child development home **or an expanded child development home** shall be permitted in a C-3 District as an accessory building and use incidental to the uses permitted in §§ 741 through 744; provided:

## **752 ACCESSORY USES AND BUILDINGS (C-4)**

752.2 A child development home or an expanded child development home shall be permitted in a C-4 District as an accessory building and use incidental to the uses permitted in §§ 751 through 754; provided:

## **761 C-5 (PAD) DISTRICT USES**

761.4 A child development home or an expanded child development home shall be permitted in the C-5 (PAD) District as an accessory use incidental to the uses permitted in this section; provided:

### **III. ANALYSIS**

#### **(1) Background**

DCMR Title 29, Chapter 3, Child Development Facility Regulations has three (3) categories of child care facilities: “child development homes” “expanded child development homes” and “child development centers”. Child development homes and expanded child development homes are operated in private homes occupied by the operator of the facility, while child development centers are located in a facility that is not the residence of the operator.

In DCMR 29, Chapter 3 regulations, a child development home is allowed to care for up to six (6) children (DCMR 29, § 351.1) while an expanded child development home allows more than six (6) children up to a maximum of twelve (12) children (DCMR 29, §357.1).

The Zoning Regulations allows child development homes and child development centers and their definitions are similar to those of DCMR 29, Chapter 3. However, the Zoning Regulations do not identify “expanded child development home” as a use. Due to the lack of this definition, the Zoning Administrator has been defining homes with more than 6 children and up to a maximum of 12 children as a child development center and requiring a BZA approved special exception<sup>1</sup>. With that approval, the home is then subject to the different building and fire code requirements which are usually for larger child development centers. These conflicts in the requirements of the different agencies discourage providers from creating or expanding their in-home services due to added and unnecessary cost and the extended length of time to obtain a permit.

In conversations with OSSE and representatives of child development homes it was emphasized that child development homes are preferred over child development centers by many parents but are experiencing a lack of available space, particularly when trying to place two children under the age of two in the same home. Currently, there are one hundred and twenty seven (127) child development homes and two (2) expanded child development homes licensed by OSSE. Today, many would-be providers and existing providers experience a long process to obtain a license and are deterred by the conflicts and/or duplication of regulations.

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<sup>1</sup> BZA 19392, 18455, 18468

To address the problems a group which consisting of representative of OP, OSSE, DCRA and FEMS convened to review the regulation pertaining to the child development homes. Generally, it was found that the regulations conflicted, requirements were being repeated, requirements were inadequate to address the safety of children in these homes, were difficult to understand, and in some cases did not meet best practice standards set in other jurisdiction. The group has recommended changes to the relevant regulations to streamline the process, make the process predictable and increase inspections to ensure that safety standards are maintained. As part of the review it was requested that amendments be made to the Zoning Regulations to add the expanded child development home category and other amendments. Additionally, OSSE is in the process of making changes to the regulations that govern child development homes to ensure stronger health and safety standards for Child Development Facilities.

(2) Expanded Child Development Homes

The proposal is to amend § 199 by adding a definition for an expanded child development home as follows:

**199 DEFINITIONS**

**Expanded Child development Home – a dwelling unit used in part for the licensed care, education, or training for more than six (6) children, up to a maximum of twelve (12) children. The total number of children shall include minor children who are residents of the dwelling.**

This definition is consistent with that of the Child Development Facility Regulations (DCMR 19, Chapter 3).

(3) Non-resident Employees - Child Development Home

OSSE and providers have requested that § 202. 4 be amended to allow a child development home to have two (2) non-resident employees. The child development regulations allow child development home providers to serve up to six (6) children with a ratio of one adult caregiver to every 2 children, 2 years of age or younger in the group. However, providers have expressed the desire to hire assistance as in many cases there is a need for slots to accommodate children below two years of age and providers need assistance that is not available or cannot be provided by a household member. This request to allow a non-resident employee would be similar to § 202.2(c) which allows physician or dentist office as an accessory use and also allows “*Exclusive of domestics, not more than two (2) persons who do not reside on the premises may be employed. No person so employed shall be a physician or dentist;*” Section 202.4(d) would be amended as follows:

202.4 Child Development Home

- (d) **No more than two (2) persons who are not residents of the dwelling unit**~~No person is employed other than a member of the caregiver's immediate family residing on the premises;~~ **shall be engaged or employed in the child development home; and**

(4) Non-resident Employees –Expanded Child Development Home

With the increased number of children in expanded child development homes it is requested that a higher number of children under two (2) years be allowed. Under OSSE's regulations, there must be a ratio of 1 caregiver per two children under the age of 2. The maximum number of children receiving custodial care is limited by fire and building code requirements, which take into account the number of residents in the dwelling (adults and children residing in the dwelling) in addition to caregivers. The child care regulations at DCMR 29, § 357.2(a) require *that "Expanded Child Development Home shall have at least two Caregivers."* To be consistent with these requirements, it is recommended that expanded child development homes be allowed to have up to three (3) non-resident employees to be reflective of the increased number of children allowed. Additionally, it is recommended that the maximum number of children receiving custodial care under the age of two (2) years be limited to six (6).

**202.5 An expanded child development home shall be permitted as an accessory use in a R-1 District incidental to the uses permitted in this chapter, if the requirements of the child development home, except for Section 202.4(d), and the following requirements are met:**

- (a) No more than three (3) persons who are not a resident of the dwelling unit shall be engaged or employed in an expanded child development home;**
- (b) No more than six (6) children under two (2) years of age may be cared for in an expanded child development home; and**

(5) Elderly Care

The elderly care reference is updated.

**202.56** The elderly day care home shall be permitted as an accessory use in an R-1 District incidental to the uses permitted in this chapter if the requirements of the child development home are met **with the exception of § 202.4(d).**

**202.7 No person is employed other than a member of the caregiver's immediate family residing on the premises;**

(6) Home Occupation

Section 203.4 is amended to allow expanded child development homes, a home occupation, to have up to three (3) non-resident employees and be consistent with § 202.5(a).

**203.4** A practitioner of a home occupation, and any owner of a dwelling unit in which a home occupation is practiced, shall comply with the requirements of §§ 203.5 and 203.6, and with the following conditions and requirements:

- (d) **Except as provided in §§ 202.4(d) and 202.5(a)** ~~No~~ more than one (1) person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation;

(7) Use of Basement

Currently, there is conflict in the interpretation of § 203.4 as to whether a home occupation is allowed in the basement of a home. In order to clarify that the basement is included in calculating the 250 square feet of the dwelling or the 25% of the floor area of the dwelling, the section is amended as follows:

203.4 A practitioner of a home occupation, and any owner of a dwelling unit in which a home occupation is practiced, shall comply with the requirements of §§ 203.5 and 203.6, and with the following conditions and requirements:

- (b) Except as provided in §§ **203.7(b)**, 203.7(c), **203.7(f)** and 203.8(d), no more than the larger of two hundred fifty square feet (250 ft.<sup>2</sup>) or twenty-five percent (25%) of the floor area of the dwelling, ~~excluding~~ **including** basement **but excluding** any accessory structure, shall be utilized in the home occupation; provided that this limitation shall;

(8) Vehicular Trips

The existing eight daily trip cap to include visitors, customers, and deliveries trips for home occupation sites in § 203.5(l) is not a realistic cap for a child care development home or an expanded child development home with up to nine children since drop-off and pick-up activities alone could create up to 18 daily trips. The Department of Transportation's (DDOT) threshold for a traffic analysis is 25 peak-hour trips, thus a facility with up to nine children would have minimal to negligible traffic impacts on traffic network. With an increase of in-home child care facilities supply, it is hoped that residents will have the opportunity to choose options within walking distance from their homes. Homes with over nine (9) children would be allowed only by special exception and traffic impacts would be considered as part of that review.

In regards to the "no more than 8 clients on the premises in any hour" in § 203.5(m), it is unclear if it means parents with children, the children alone, or just parents. Again, this would not be possible if clients and customers include both parents and children. This section is therefore amended to exempt child development homes and child development homes expanded from the following requirements.

203.4 A practitioner of a home occupation, and any owner of a dwelling unit in which a home occupation is practiced, shall comply with the requirements of §§ 203.5 and 203.6, and with the following conditions and requirements:

- (l) **Except for Child Development Homes and Expanded Child Development Homes** ~~V~~ehicular trips to the premises by visitors, customers, and delivery persons shall not exceed eight (8) trips daily on a regular and continuing basis;



- (m) **Except for Child Development Homes and Expanded Child Development Homes** The practitioner shall have no more than eight (8) clients or customers on the premises in any one (1) hour period; and

(9) **Child Development Homes and Expanded Child Development Homes as Home Occupations.**

DCRA requires child development home operators to obtain a Home Occupation Permit (HOP). In the current Zoning Regulation a child development home is not classified as a home occupation. Its inclusion would codify what is now practiced. Section 203.7 should therefore be amended to specifically state that a child development home and an expanded child development home are allowed as home occupations and subject to the conditions of §§ 203.4 through 203.6.

While an expanded child development home allows more than six (6) children up to a maximum of twelve (12) children OSSE has requested to have extra review of expanded child development homes with between 10 and 12 children allowed by the special exception under § 203.10. § 203.10 would also be amended to be consistent with § 202.5(a) which allows up to three (3) non-residents to be employed in child development homes expanded.

203.7 The following uses shall be allowed as home occupations; provided, that the conditions specified in §§ 203.4 through 203.6 are met at the time of the establishment of the home occupation, and maintained on a continuing basis. The uses listed under this subsection shall include similar uses in each category:

- (a) **Child Development Home;**
- (b) **Expanded Child Development Home for between seven (7) and nine (9) children; provided that no more than three hundred and twenty square feet (320 ft.<sup>2</sup>) of the floor area of the dwelling, including basement but excluding any accessory structure, shall be utilized for the Child Development Home Expanded;**
- (c) **Expanded Child Development Home for above nine (9) children may be permitted as a special exception by the Board of Zoning Adjustment under § 3104. A minimum of thirty five square feet (35 ft.<sup>2</sup>) of space per child shall be provided in the dwelling, including basement but excluding any accessory structure and subject to the provisions of § 203.10;**

203.10 A home occupation that is not permitted or prohibited in this section may be permitted as a special exception by the Board of Zoning Adjustment under § 3104; provided:

- (c) **Except as provided in § 202.5(a)** ~~In~~ no case shall more than two (2) persons who are not residents of the subject home be permitted as employees of the home occupation, and those persons shall not be co-practitioners of the profession;

(10) Amendments to other zones

The regulations would also be amended to allow an expanded child development home in all Residential, CR, SP and C zones as shown in Section II above.

#### **IV. COMPREHENSIVE PLAN**

The proposal is not inconsistent with the Comprehensive Plan. The Comprehensive Plan Policy CSF-2.2.1: Adequate Child Care Facilities encourages “*new and expanded child care facilities in all residential, commercial and mixed use areas in an effort to provide adequate affordable childcare facilities throughout the district. . .*” Further, the Comprehensive Plan recommends zoning actions to be taken to facilitate these facilities:

*Action CSF-2.2.A: Review and Address Zoning Issues*

Review and assess the zoning regulations to identify barriers to the development of child care centers in the District. The assessment should consider ways of reducing any barriers that are identified, provided that child safety and neighborhood quality of life issues can be adequately addressed. 1107.5

In November 2012<sup>2</sup> OSSE reported that there were approximately 20,284 children under the age of 3 living in the District, but there were only enough licensed slots for 5,337 or 26% of these children. Further, there are approximately 127 licensed Child Development Homes licensed for these approximately 762 children. The proposed amendments would therefore offer the opportunity for additional slots in licensed expanded child development homes. The proposed amendments will not lessen the quality of life for the neighborhoods as they will be required to meet the accessory use and home occupation requirements and the additional children would not generate any excessive noise or traffic.

#### **V. CONCLUSION**

OP recommends that the Zoning Commission set down the proposed text amendment for public hearing.

#### **V. PRE-HEARING FILING**

This report also serves as the prehearing report required by § 3013.

JLS/mbr

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<sup>2</sup> Latest survey available