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AGENCY: ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

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---------- NOTICE OF FINAL RULEMAKING

CASE NO. 98-8

(TEXT AMENDMENT - CHILD DEVELOPMENT CENTERS) SEPTEMBER 13, 1999

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the District of Columbia Office of Planning (OP) to amend the text of the District of Columbia Zoning Regulations (DCMR) Amendments to the text of the Zoning Regulations pursuant to the Zoning Act [CT OF June 20, 1938, 52 Stat. 797 as amended, D.C. Code Ann. Section 5-413 198].

Over the past several years, the Board of Zoning Adjustment (BZA) has been requested to approve special exceptions for a number of child development centers (CDCs) with programs and uses not previously accommodated in CDCs, which typically provide various types of day care for children under 15 years of age. Those additional uses have included adult education, adult counseling, parenting classes, and senior day care in individual and group sessions. These programs, either coupled with CDC activities or housed in CDC facilities, are not specifically identified in the Zoning Regulations. To accommodate these new use combinations, the Board of Zoning Adjustment (BZA) has requested the Zoning Commission to review and amend the Zoning Regulations, as appropriate, to permit these new uses, presumable with BZA approval in residential zone districts.

The OP reports filed on April 8, 1998 and May 1, 1998 presented background information about the proposal, and presented text with comments indicating the intent and justification for the proposal. At its regular monthly meeting of May 11, 1998, the Zoning Commission determined that the proposed text amendments presented a sound basis for consideration and authorized a public hearing.

Pursuant to proper notice, the Zoning Commission held a public hearing on the proposed amendments on March 11, 1998. The hearing was conducted in accordance with the process of 11 DCMR 3021. At the close of the public hearing, the Commission left the record of the case open until April 23, 1999.

On May 10, 1999, at its regular monthly meeting, the Zoning Commission discussed the case and the OP Hearing Summary Report dated May 3, 1999. The Commission reiterated that the record had been left open for a substantial length of time to receive comments and or responses from those licensing agencies such as DCRA, the Health Department and the Office on Aging. The Commission noted that no responses were received and took proposed action to approve the amendments. Following the [*8285] Commission's action, a Notice of Proposed Rulemaking was published in the D.C. Register at 46 DCR 6459 (August 6, 1999) for a thirty (30) day public and comment period. The comment period expired on (September 6, 1999.)

A notice of proposed rulemaking was referred to the Zoning Administrator (ZA), the OP and the Office of Corporation Counsel (OCC) for comments and the National Capital Planning Commission (NCPC), pursuant to the Self-Government and Governmental Reorganization Act.

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Exhibit

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EXHIBIT NO.1

By report dated August 10, 1999, the OCC, in consultation with the Zoning Commission made several changes to the proposed amendments. Those changes included combining the proposed definition of "child development center" and "elderly day care center" to a new definition called "child/elderly day care center". OCC indicated this was done to simplify the amendments as initially proposed which would have created two entities that provided for the same set of uses. OCC also stated that the definition of "child/elderly development center" also provides that any combination of the elderly and children 15 years old or less, taking 6 or more individuals, meets the minimum number to fall within the definition of such a center. OCC further indicated that the Commission may wish to define the term "elderly" in order to avoid misinterpretations of the Commission's intent and encouraged a definition that is specific to age rather than descriptive of the characteristics of elderly. Additionally, OCC revised the proposed definition of "child development center" to eliminate the requirement for adequate staffing and recreational space.

OCC determined that the proposed rulemaking meets the Corporation Counsel's standards of legal sufficiency.

On September 13, 1999, at its regular monthly meeting the Zoning Commission discussed the case and the supplemental OP reports dated September 3, 1999 and September 13, 1999. In response to comments received from OP and the Office of Early Childhood Development, Department of Human Services, the Commission increased the number of allowable persons from 15 to 16 so as to reflect the existing practice of licensing such facilities in increments of 8.

The National Capital Planning Commission (NCPC), by delegated action of the Executive Director dated September 10, 1999 indicated that there was no federal interest in the case and that the proposed amendments would not adversely affect the federal establishment or other federal interest in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

The specific amendments that were adopted by the Zoning Commission as final action at its public meeting of September 13, 1999 are as follows: [*8286]

A. Title 11, Chapter 1, Section 199, DEFINITIONS, subsection 199.1 is amended as follows:

The following definition for child development center is amended to read as follows:

Child/Elderly development center - a building or part of a building, other than a child development home or elderly day care home, used for the licensed care, education, counseling or training of individuals fifteen (15) years of age or less and/or for care of elderly individuals, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than 24 hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling, education, training and health and social services of the parents or principal guardians of children attending the center.

Add the following definition, in alphabetical order, to subsection 199.1 to read as follows:

Elderly day care home - a dwelling unit used in part for the care, education, recreation or training of no more than five (5) elderly individuals who are not related by blood or marriage to the caregiver and who are present for less than 24 hours per day. This definition encompasses facilities generally known as senior care centers, elder care programs, and similar programs and facilities.

B. Title 11, DCMR, Chapter 2, Section 202, ACCESSORY USES (R-1), is amended by adding subsection 202.5 to read as follows:
202.5 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.

Existing subsections 202.5 through 202.10 shall be renumbered 202.6 through 202.11.

C. Title 11, DCMR, Chapter 2, Section 205, CHILD DEVELOPMENT CENTERS (R-1), is amended as follows:

Section 205 is amended by deleting the word "CHILD" and substituting "CHILD/ELDERLY".

Subsection 205.1 is amended by deleting the word "child" and substituting "child/elderly". [*8287]

Subsection 205.3 is amended by deleting the word "children" and substituting "children or elderly persons".

Subsection 205.8 is amended to read as follows:

The Board may approve more than one (1) child/elderly development center in a square or within one thousand feet (1,000 ft.) of another child/elderly 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.

Subsection 205.9 is amended to read as follows:

205.9 Before taking final action on an application for use as a child development and/or elderly day care center, the Board shall submit the application to the D.C. Departments of Public Works and Health, the D.C. Office on Aging and the D.C. Office of Planning, for review and written reports.

D. Title 11, DCMR, Chapter 3, Section 330, R-4 DISTRICTS: GENERAL PROVISIONS, is amended as follows:

Subsection 330.5(d) is amended to read as follows:

(d) Child development and/or elderly day care center; provided that the center shall be limited to no more than sixteen (16) individuals:

Subsection 330.5(e) is amended by deleting the word "Child" and substituting "Child/Elderly".

E. Title 11, DCMR, Section 334, TEMPORARY COMMUNITY SERVICE CENTERS (R-4), is amended as follows:

Section 334 is amended by deleting the word "TEMPORARY".

Subsection 334.1 is amended by deleting the word "temporary".

Subsection 334.2 is amended by deleting the word "temporary".

Subsection 334.5 is amended by deleting the word "temporary".

Delete subsection 334.6.
[*8288]

F. Title 11, DCMR, Chapter 3, Section 350, R-5 DISTRICTS: GENERAL PROVISIONS, subsection 350.4(g) is amended by deleting the word "Child" and substituting "Child/Elderly".

G. Title 11, DCMR, Chapter 5, Section 501, USES AS A MATTER OF RIGHT (SP), subsection 501.1(g) is amended by deleting the word "Child" and substituting "Child/Elderly".

H. Title 11, DCMR, Chapter 6, Section 601, USES AS A MATTER OF RIGHT (CR), as follows:

Subsection 601.2(c) is amended by deleting the word "Child" and substituting "Child/Elderly".

Section 601 is amended by adding a new subsection 601.6 to read as follows:

601.6 An elderly day care home shall be permitted as a matter of right as an accessory use in a CR district; provided, that the dwelling unit in which the home is located shall be the principal residence of the caregiver, and the use shall otherwise meet the definition of a home occupation.

I. Title 11, DCMR, Chapter 7, Section 702, ACCESSORY USES (C-1), is amended by adding a new subsection 702.3 as follows:

702.3 An elderly day care home shall be permitted in a C-1 district as a matter of right as an accessory use incidental to the uses permitted in §§ 701 through 719 of this chapter; Provided, that the following requirements shall be met:

a) The dwelling unit in which the use is located shall be the principal residence of the caregiver; and

b) The use otherwise shall meet the definition of a home occupation.

Existing subsection 702.3 shall be renumbered 702.4.

J. Title 11, DCMR, Chapter 9, Section 901, USES AS A MATTER OF RIGHT (W), is amended as follows:

Subsection 901.1(t) is amended by deleting the word "Child" and substituting "Child/Elderly".

Subsection 901.4 is amended by deleting the word "child" and substituting "child/elderly".
[*8289]

K. Title 11, DCMR, Chapter 21, Section 2101, SCHEDULE OF REQUIREMENTS FOR PARKING SPACES, subsection 2101.1, SCHOOLS, is amended by deleting the word "Child" and substituting "Child/Elderly".

L. Title 11, DCMR, Chapter 31, Section 3104, SPECIAL EXCEPTIONS is amended by adding deleting the word "Child", located in the list of uses permitted by Special Exception in any R District, Section 205, and substituting "Child/Elderly".