GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

Z.C. CASE NO.: 05-01

As Secretary to the Commission, I hereby certify that on DEC 22 2006 copies of this Z.C. Notice of Final Rulemaking & Order No. 05-01 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. All ANC Chairs (see attached list)
3. All Councilmembers (see attached list)
4. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
5. Office of Planning (Ellen McCarthy)
6. Ken Laden, DDOT
7. Zoning Administrator (Bill Crews)
8. Office of Attorney General (Alan Bergstein)

ATTESTED BY: Sharon S. Schellin

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 05-01
EXHIBIT NO. 13

ZONING COMMISSION
District of Columbia
CASE NO.05-01
EXHIBIT NO.13

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

★ ★ ★

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 05-01
Z.C. Case No. 05-01
(Text Amendments – 11 DCMR)
(Adult day treatment Facilities)
March 13, 2006

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1; hereby gives notice of the adoption of amendments to §§ 199, 205, 330, 350, 501, 601, 901, 2101, and 3104 of the Zoning Regulations (Title 11 DCMR). The rules recognize an "adult day treatment facility" as a use separate and distinct from the existing use known as "child/elderly development center," but treats all three types of facilities the same in terms of where they may be located.

A notice of proposed rulemaking was published in the December 23, 2005 edition of the *D.C. Register* at 51 DCR 11117. The proposed rules would have placed greater restrictions on the location of adult treatment facilities than on child/elderly development centers. Such facilities would have been disallowed in all Residence zones and in Neighborhood Shopping (C-1) districts. In addition, the proposed rules would have imposed a proximity limitation for this use in Mixed Use Commercial Residential (CR) Districts and subjected the use to special exception review in Commercial-Light Manufacturing (C-M) Districts. The Commission's subsequent decision to treat the three types of facilities in the same manner was based upon the advice of the Office of the Attorney General as will be discussed under the heading "Office of the Attorney General." Although this text differs from that proposed, it will have the same effect as the rule originally advertised for public hearing. Therefore, no republication of a proposed notice of rulemaking is required.

The Commission took final action to adopt the amendments at a public meeting held on March 13, 2006

This final rulemaking is effective upon publication in the *D C Register*.

Set Down Proceeding

The Zoning Commission of the District of Columbia initiated this text amendment to address an issue that arose in Board of Zoning Adjustment (BZA) Appeal No. 16839. In that case, the BZA upheld the Zoning Administrator's (ZA) approval of a proposed "adult development center" (ADC) use, even though the use category did not appear in the Zoning Regulations. The Zoning Administrator concluded that the proposed ADC use was similar in function to a "child/elderly center" use and therefore could be issued a certificate of occupancy under that use category, notwithstanding the fact that a child/elderly development center was defined to include only the elderly and children of 15 years of age or less. The Board concurred with the ZA's analysis and denied the appeal.

The District of Columbia Court of Appeals (DCCA) rejected the BZA's reasoning and held that the ZA may not "interpret defined uses in the Zoning Regulations to encompass other uses that are functionally comparable ... if they are outside the definition," *Chagnon v. D.C. Bd. of Zoning Adjustment,* 844 A.2d 345, 348 (D.C. 2004). Nevertheless, the DCCA indicated that the Board could, on remand, explore whether an adult development center might "be eligible for a certificate of occupancy under a different use classification," *id.* at 349. As the BZA began to work its way through this process, the Zoning Commission representative on the panel concluded that a better approach would be for the Commission, through a rulemaking proceeding, to simply add the word "adult" to the child/elderly development center use and revise the definition of the use to include all ages. The Zoning Commission setdown such an amendment for hearing at its public meeting on January 13, 2005.

Existing Regulations

As a result of the DCCA ruling, it was unclear where adult day treatment facilities could be permitted. It is the intent of this rule to remove the uncertainty.

Relationship to the Comprehensive Plan

The Human Services Elements and several ward objectives of the Comprehensive Plan refer directly or indirectly to the need for development facilities to provide a variety of health and social services for the District's diverse population, including residents with disabilities. The Comprehensive Plan clearly expresses the need for these comparable services, which are independent of the client populations' ages. A main highlight of the objectives in support of the Human Services and the Ward Elements of the Comprehensive Plan is to promote the de-institutionalization of clients in a setting that will allow participants to reintegrate and fully participate in community life.

Public Hearing

As noted, the text set down by the Commission and advertised in a notice of public hearing expanded the child/elderly development center use to include adult day treatment facilities. Thus, all three uses would be treated alike.

The Commission held a public hearing on the advertised text on March 31, 2005. During the hearing, the Commission requested the Office of Planning to address the issues expressed by the community representatives who testified, including:

- How these facilities are currently regulated,
- Definition of adult day treatment facility,
- Distinction of the various populations for adult facilities,
- Inclusion of language to prohibit them as residential facilities,
- Proximity to other residential facilities, and
- Parking requirements.

The Commission also heard citizen testimony expressing concern over the impact of another non-residential use in predominantly residential areas.

Proposed Action

At the July 11, 2005 public meeting of the Zoning Commission, the Commission reviewed OP's June 27, 2005 supplemental report. The report analyzed the location of existing facilities in the District and determined that the majority of these facilities were located in the C-2-A and higher density zone districts. Although initially thought to be essentially similar to child or elderly development centers, the Commission learned that adult day treatment facilities are licensed by the District of Columbia government to provide medically-supervised day treatment services for adults with developmental disabilities or mental disorders. In contrast, persons attending child and elderly development centers receive "care, education, counseling, or training." 11 DCMR § 199.1. Nevertheless, the external impacts of all three uses are essentially the same. The OP report recommended:

- A separate definition of an adult day treatment center as an adult day treatment facility;
- Prohibition of these facilities in the Residential and C-1 Zone Districts, as well as the W-0 and W-1 Zone Districts, with a proximity requirement in the CR Zone District; and
- The inclusion of definitions for adult treatment facility, mental disorder, and mental retardation.

The Commission discussed the amendments and concluded that the text should be modified in the manner recommended by OP. In addition, the Commission decided to require special exception approval for facilities proposed for the CM and M Zone Districts.

Following discussion, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the advertised text, with the modification discussed above.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on December 23, 2005, at 51 DCR 11117, for a 30-day notice and comment period.

National Capital Planning Commission Referral

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC's report found that the proposed text amendments would not adversely affect the federal interests or be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Office of the Attorney General

The Office of the Attorney General for the District of Columbia advised the Commission, through a written memorandum, that because adult day treatment facilities provide services to persons with disabilities, the proposed radius restrictions and other location-related restrictions might violate the Americans with Disabilities Act. OAG noted that the record reflected no difference between the external impact of adult day treatment facilities and child/ elderly development centers. OAG, therefore, recommended against disallowing or restricting adult day treatment facilities where no similar prohibition or restriction applied to child/elderly development centers.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on March 13, 2006 with the revisions suggested by OAG. Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 2, 3, 5, 6, 9, 21, and 31 of the Zoning Regulations, Title 11 DCMR.

Title 11 DCMR (Zoning) is proposed to be amended as follows:

A. Section 199, DEFINITIONS, is amended as follows (new text is shown in **bold** and underline and deleted text is shown with ~~strikethrough~~):

1. By amending the definition of "Child/Elderly development center" 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 **non-residential** licensed care, education, counseling, or training of individuals **two (2) years old or older but under the age of** fifteen (15) years of age ~~or less~~ and/or for **the non-residential** care of ~~elderly~~

individuals **age 65 or older**, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (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 for the ~~parents or principal guardians of children~~ **person or persons with legal charge of individuals** attending the center**, including, but not limited to, any parent, spouse, sibling, child, or legal guardian of such individuals.**

2. By inserting the following new definitions in alphabetical order:

Adult day treatment facility – a building or part of a building used for non-residential programs operated for the purpose of providing medically-supervised day treatment services for adults with a developmental disability or mental disorder, totaling six (6) or more persons who are present for fewer than twenty-four (24) hours per day. An adult day treatment facility includes the following accessory uses: counseling, education, training, health, and social services for the person or persons with legal charge of individuals attending the center, including but not limited to any parent, spouse, sibling, child, or legal guardian of such individuals. This definition does not encompass facilities that offer drug or alcohol abuse rehabilitation services. For the purposes of this definition, the following sub-definitions apply:

Mental disorder - an abnormal mental condition in an individual, who requires a comprehensive and relatively intensive range of mental health services in a therapeutic and structured environment, if he or she is to remain in the community or if he or she is to move from twenty-four (24) hour institutional care to the community.

Developmental disability – a severe, chronic disability of a person that is attributable to a mental or physical impairment, or both, that is manifested before the person attains the age of twenty-two (22) years and is likely to continue indefinitely. The person causes substantial functional limitations in three (3) or more areas of major life activity:

(a) Self-care;
(b) Receptive and expressive language;
(c) Learning;
(d) Mobility;
(e) Self-direction;
(f) Capacity for independent living; or
(g) Economic sufficiency.

A developmental disability reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment, or other service, which are life-long or of extended duration, and are individually planned and coordinated

B. Chapter 2, § 205; Child/Elderly Development Centers (R-1), is amended by:

1. Changing the section's title to: Child/Elderly Development Centers and Adult Day Treatment Facilities;

2. Striking the phrase "child/elderly development center" wherever it appears and inserting the phrase "child/elderly development center or adult day treatment facility" in its place;

3. Striking the phrase "the center" wherever it appears and inserting the phrase "center or facility" in its place; and

4. Subsection 205.3 is amended by striking the phrase "children or elderly persons" and inserting the phrase "persons in attendance" in its place.

C. Subsections 330.5(d), 350.4(g), 501.1(g), 601.2(c), and 901.1(t) are amended by inserting the phrase "or adult day treatment facility" after the phrase "Child/Elderly development center."

D. Chapter 21, OFF-STREET PARKING REQUIREMENTS, is amended by inserting, alphabetically, the following use and parking requirement in the parking schedule included in § 2101.1, under the general use category "Commercial Building."

Adult Day Treatment Facility

All Districts 1 for each employee.

E. Chapter 31, § 3104, Special Exceptions, is amended by inserting alphabetically, the following special exception in the table included in § 3104.1:

Type of Special Exception	Zone District	Sections in Which the Conditions Are Specified
Adult day treatment facility	R-1, R-2, and R-3 District	§ 205

Vote of the Zoning Commission taken at its public meeting on March 13, 2006 to **APPROVE** the proposed rulemaking: **3-1-1** (John G. Parsons, Michael G. Turnbull, and Carol J. Mitten to approve; Anthony J. Hood, opposed; and Gregory N. Jeffries not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on March 13, 2006 by a vote of **3-1-1** (John G. Parsons, Michael G. Turnbull, and Carol J. Mitten to adopt; Anthony J. Hood, opposed; and Gregory N Jeffries not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on DEC 22 2006.

CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 05-01
Z.C. Case No. 05-01
(Text Amendments – 11 DCMR)
(Adult day treatment Facilities)
March 13, 2006

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

Impression antibourrage et a secnage rapide
Utilisez le gabarit 5963MC
www.avery.com
1-800-GO-AVERY
AVERY® 5963MC

Linda W. Cropp, At Large
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 504
Washington, D.C. 20004

Kwame R. Brown, At Large
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 406
Washington, D.C. 20004

Carol Schwartz, At Large
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 404
Washington, D.C. 20004

David A. Catania, At Large
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 110
Washington, D.C. 20004

Phil Mendelson, At Large
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 402
Washington, D.C. 20004

Jim Graham – Ward 1
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 105
Washington, D.C. 20004

Jack Evans – Ward 2
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 106
Washington, D.C. 20004

Kathleen Patterson – Ward 3
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 107
Washington, D.C. 20004

Adrian Fenty – Ward 4
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 408
Washington, D.C. 20004

Vincent B. Orange, Sr. – Ward 5
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 108
Washington, D.C. 20004

Sharon Ambrose – Ward 6
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 102
Washington, D.C. 20004

Vincent C. Gray – Ward 7
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 506
Washington, D.C. 20004

Marion Barry – Ward 8
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Room 400
Washington, D.C. 20004

Jam and Smudge Free Printing
Use Avery® TEMPLATE 5963™
www.avery.com
1-800-GO-AVERY
AVERY® 5963™

Impression antibourrage et à séchage rapide
Utilisez le gabarit 5963MC
www.avery.com
1-800-GO-AVERY
AVERY® 5963MC

Ali Muhammad, Chair
ANC 1A
P.O. Box 73325
Washington, DC 20058-3325

Dee Hunter, Chair
ANC 1B
P.O. Box 73710
Washington, DC 20009

Alan Roth, Chair
ANC 1C
P.O. Box 21009
Washington, DC 20009

Gregg Edwards, Chair
ANC 1D
P.O. Box 43529
Washington, DC 20010

Vince Micone, Chair
ANC 2A
St Mary's Court
725 24th Street, NW
Washington, DC 20037

Darren Bowie, Chair
ANC 2B
DC Jewish Community Center
9 Dupont Circle, NW
Washington, DC 20036

Leroy J.Thorpe, Jr., Chair
ANC 2C
P.O. Box 26182
Washington, DC 20001

Sandra P. Perlmutter, Chair
ANC 2D
2153 California St., N.W., #502
Washington, DC 20008

Ed Solomon, Chair
ANC 2E
Georgetown Visitation School
3265 S Street, NW
Washington, DC 20007

Charles Reed, Chair
ANC 2F
Washington Plaza Hotel
5 Thomas Circle, NW
Washington, DC 20005

Tamela Gordon, Chair
ANC 3B
P.O. Box 32312
Washington, DC 20007

Nancy MacWood, Chair
ANC 3C
2737 Devonshire Place, NW
Washington, DC 20008

Alma H.Gates, Chair
ANC 3D
P.O. Box 40846
Washington, DC 20016

Amy B. McVey, Chair
ANC 3E
Lisner Home
5425 Western Avenue, NW
Washington, DC 20015

Jam and Smudge Free Printing
Use Avery® TEMPLATE 5963™
www.avery.com
1-800-GO-AVERY
AVERY® 5963™

Impression antibourrage et a secnage rapide
Utilisez le gabarit 5963MC
www.avery.com
1-800-GO-AVERY
AVERY® 5963MC

Catherine Wiss, Chair
ANC 3F
4401-A Connecticut Ave., NW - Box 244
Washington, DC 20008

Robert Gordon, Chair
ANC 3G
P.O. Box 6252
Washington, DC 20015

James H. Jones, Chair
ANC 4A
7600 Georgia Avenue, NW, Suite 404
Washington, DC/ 20012

Cherita Whiting, Chair
ANC 4B
6856 Eastern Ave., N.W., Box 314
Washington, DC 20012

Joseph Martin, Vice-Chair
ANC 4C
P.O. Box 60847
Washington, DC 20039-0847

Renee Bowser, Chair
ANC 4D
143 Kennedy Street, NW
Washington, DC 20011

Franklyn Malone, Chair
ANC 5A
1322 Irving Street, NE
Washington, DC 20017

William C. Shelton, Chair
ANC 5B
1355 New York Avenue, NE
Washington, DC 20002

Diane Barnes, Chair
ANC 5C
P.O. Box 77761
Washington, DC 20013

Joseph V. Fengler, Chair
ANC 6A
P.O. Box 75115
Washington, DC 20013

Scott Cernich, Chair
ANC 6B
921 Pennsylvania Avenue, SE
Washington, DC 20003

Mark Dixon, Chair
ANC 6C
P.O. Box 77876
Washington, DC 20013

Andy Litsky, Chair
ANC 6D
25 M Street, SW
Washington, DC 20024

Angela Thompson-Murphy, Chair
ANC 7A
4310 Texas Avenue, SE
Washington, DC 20019

Jam and Smudge Free Printing
Use Avery® TEMPLATE 5963™
www.avery.com
1-800-GO-AVERY
AVERY® 5963™

Impression antibourrage et à séchage rapide
Utilisez le gabarit 5963MC
www.avery.com
1-800-GO-AVERY
AVERY® 5963MC

Raymond Keith, Chair
ANC 7B
3200 S Street, SE
Washington, DC 20020

Muriel Chambers, Chair
ANC 7C
4651 Nannie Helen Burroughs Rd., N.E.
Washington, DC 20019

Dorothy Douglas, Chair
ANC 7D
P.O. Box 64052
Washington, DC 20019

Naomi P. Robinson, Chair
ANC 7E
5001 Hanna Place, SE, Ste. B
Washington, DC 20019

Anthony Muhammad, Chair
ANC 8A
2100 M.L.K. Avenue, S.E.
Washington, DC 20020

Jacque D. Patterson, Chair
ANC 8B
3521 21st Street, SE
Washington, DC 20020

Mary Cuthbert, Chair
ANC 8C
3125 MLK Jr., Avenue, SE
Washington, DC 20032

Maria Powell, Chair
ANC 8D
4601 M.L.K. Avenue, SE
Washington, DC 20032

Sandra "SS" Seegars, Chair
ANC 8E
P.O. Box 7050
Washington, DC 20032

Jam and Smudge Free Printing
Use Avery® TEMPLATE 5963™
www.avery.com
1-800-GO-AVERY
AVERY® 5963™