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*

ZONING COMMISSION
District of Columbia
CASE NO. 05-01
EXHIBIT NO. 15

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ZONING COMMISSION
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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

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

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:

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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

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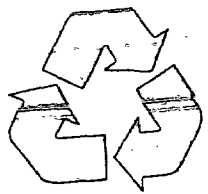

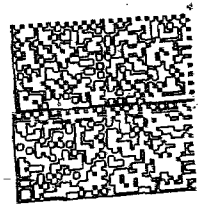

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