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11/4/4 AM

ZONING COMMISSION
District of Columbia
CASE NO. 15-17
EXHIBIT NO. 40
ZONING COMMISSION
District of Columbia
CASE NO. 15-17
EXHIBIT NO. 40

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 15-17
(Text Amendment — 11 DCMR)
Child Development Homes

The Zoning Commission for the District of Columbia, 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 (2012 Repl.)), hereby gives notice of its intent to amend §§ 199, 202, 203, 502, 601, 702, 722, 742.2, 752.2, 761.4, and 3014.1 of the Zoning Regulations (DCMR Title 11) to establish and regulate a new use to be known as an “Expanded Child Development Home.” The use would be permitted as a home occupation in Residence Districts, an accessory use in Special Purpose Districts, a matter-of-right use in Mixed-Use (Commercial Residential) Districts, and as an accessory building in Commercial Districts. Child Development Homes would no longer be permitted as accessory uses in Residence Districts but only as home occupations. Other changes to the regulation of Child Development Homes are proposed, as well as an amendment that would count basement space towards floor area limitations for home occupations.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendment to the Zoning Regulations is proposed:

Title 11 DCMR, ZONING, is amended as follows:

Chapter 1, THE ZONING REGULATIONS, § 199 DEFINITIONS, § 199.1, is amended as follows:

By inserting the following new definition in alphabetical order:

Extended child development home – a dwelling unit used in part for the licensed care, education, or training for more than six (6) individuals, up to a maximum of twelve (12) individuals fifteen (15) years of age or less including all individuals age four (4) and younger who reside in the dwelling unit, provided that no more than six (6) of the individuals may be under two (2) years of age. 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 (24) 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.

By amending the definition of “Caregiver” to add a reference to an “extended child development home,” so that the definition reads as follows:

Caregiver – an individual who is responsible for the supervision and administration of a child development home, extended child development home, or child/elderly development center.

By amending the definition of “child development home” to insert the phrase “including all individuals age four (4) and younger who reside in the dwelling unit,” so that the definition reads as follows:

Child development home – a dwelling unit used in part for the licensed care, education, or training of no more than six (6) individuals fifteen (15) years of age or less including all individuals age four (4) and younger who reside in the dwelling unit. 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 (24) 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.

Chapter 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, is amended as follows:

Section 202, ACCESSORY USES (R-1) is amended as follows:

By repealing § 202.4¹.

By amending § 202.5 to add new paragraphs (a) through (e)² so that the subsection will 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 provided:
- (a) The dwelling unit in which the use is located shall be the principal residence of the caregiver;
 - (b) There is used no more than one (1) sign or display, which shall not exceed one hundred forty-four square inches (144 sq. in.) in area;
 - (c) No stock in trade is kept nor any commodity sold upon the premises;
 - (d) No person is employed other than a member of the caregiver's immediate family residing on the premises; and
 - (e) No mechanical equipment is used except such as is permissible for purely domestic or household purposes.

¹ Subsection 202.4 presently permits a child development home as a matter-of-right accessory use. Under these amendments, the use will be permitted only as a home occupation, which requires a permit.

² Subsection 202.5 presently requires elderly care homes to meet the requirements stated in § 202.4(a) through (e). Since those paragraphs are proposed to be repealed, it is necessary to add their content to § 202.5.

Section 203, HOME OCCUPATION (R-1), is amended as follows:

Subsection 203.4(b) is amended to include the floor area of a basement within the calculation of its floor area limitation and to add a cross-reference to §§ 203.7(e)(2), (f), and (l). Paragraphs (d), (l), and (m) of the subsection are amended to reference child development homes and/or expanded child development homes. The amended subsection reads 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:

- (a) A home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes;
- (b) Except as provided in §§ 203.7(e)(2), (f), and (l) and § 203.8(d), no more than the larger of two hundred fifty square feet (250 sq. ft.) or twenty-five percent (25%) of the floor area of the dwelling, including basement but excluding any accessory structure, shall be utilized in the home occupation;
- (d) Except as provided in §§ 203.7(a) and (e)(1), no more than one (1) person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation;
- (e) The dwelling unit owner and the practitioner shall maintain the residential character and appearance of the dwelling unit and lot;
- (f) No interior structural alteration shall be permitted if it would make it difficult to return the premises to use that is exclusively residential;
- (g) Neither the practitioner nor any other person shall conduct or allow any operations outside a structure, nor maintain or allow any storage or other unsightly condition outside a structure;
- (h) Neither the practitioner nor any other person shall use any equipment or process that creates visual or audible electrical interference in television or radio receivers outside the subject home, or that causes fluctuations in line voltage outside the subject home;
- (i) The use shall produce no noxious odors, vibrations, glare, or fumes that are detectable to normal sensory perception outside the subject home;

- (j) The use shall not produce a level of noise that exceeds the level normally associated with the category of dwelling or the immediate neighborhood;
- (k) No more than two (2) vehicles may be used in the practice of 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 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
- (n) If more than one (1) home occupation is practiced in a dwelling unit, the cumulative impact of all such home occupations, considered as a whole, shall not exceed any of the standards set forth in paragraphs (a) through (m) of this subsection.

Subsection 203.7 is amended to add child development homes and expanded child development homes to the list of allowed home occupations so that the entire subsection reads as follows:

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 provided no more than two (2) persons who are not a resident of the dwelling unit shall be engaged or employed in the child development home;
- (b) Computer programming;
- (c) Cosmetologist, hair stylist, or barber;
- (d) Dressmaking, sewing, and tailoring;
- (e) Expanded child development home for between seven (7) and nine (9) individuals fifteen (15) years of age or less; provided:

- (1) No more than three (3) persons who are not a resident of the dwelling unit shall be engaged or employed;
 - (2) A minimum of thirty five square feet (35 sq. ft.) of floor area per individual is provided including basement but excluding any accessory structure shall be utilized for the expanded child development home; and
 - (2) No more than three hundred and twenty square feet (320 sq. ft.) of the floor area of the dwelling including basement but excluding any accessory structure shall be utilized for the expanded child development home;
- (f) Expanded child development home for ten (10) to twelve (12) individuals fifteen (15) years of age less 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 sq. ft.) of floor area per individual is provided including basement but excluding any accessory structure;
- (g) Home crafts, such as model-making, rug weaving, and lapidary work;
- (h) Home office of a businessperson, sales person, or manufacturer's representative; provided, that the dwelling is not used as a gathering point for workers who are on the way to another work site;
- (i) Home office of a physician or dentist; provided, that the physician or dentist may not also establish an accessory use pursuant to § 202;
- (j) Home office of a scientist, clergyman, inventor, academician, licensed health care professional other than one provided for in paragraph (k) of this subsection, or other professional person;
- (k) Mail order business;
- (l) Painting, sculpturing, writing, composing, photography, or other fine arts occupations practiced by an individual in a home studio; provided, that no more than sixty percent (60%) of the floor area of the dwelling unit may be devoted to the studio;
- (m) Telephone answering service and sales by telephone;
- (n) Tutoring of not more than five (5) students at any one time; and

- (o) Typing or word processing service.

Subsection 203.10 is amended by adding the phrase “Except as provided in § 203.7(e)(1),” to the beginning of paragraph (c), so that the entire subsection reads as follows:

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:

- (a) The proposed use and related conditions shall be consistent with the purposes set forth in § 203.1 and shall generally comply with the requirements of §§ 203.4 through 203.8, subject to specific findings and conditions of the Board in each case;
- (b) An applicant for a home occupation that is permitted by §§ 203.6 through 203.8 may request the Board to modify no more than two (2) of the conditions enumerated in §§ 203.4 through 203.8; provided that the general purposes and intent of this section are complied with;
- (c) Except as provided in § 203.7(e)(1), 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;
- (d) Any request to modify more than two (2) of the requirements found in §§ 203.4 through 203.8 shall be deemed a request for a variance. However, a person with a demonstrated physical handicap may be permitted special consideration by the Board; and a request for more than two (2) modifications of the Home Occupation requirements shall be considered in this instance as a special exception governed by this subsection; and
- (e) In considering any request for approval under this subsection, the Board may impose conditions relating to operating conditions of the home occupation, parking, screening, or other requirements as it deems necessary to protect adjacent and nearby properties consistent with the general purpose and intent of this section.

Chapter 5, SPECIAL PURPOSE DISTRICTS is amended as follows:

Section 502, ACCESSORY USES (SP), § 502.6, is amended by inserting the phrase “or an expanded child development home” so that the subsection reads as follows:

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:

- (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

Chapter 6, MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS is amended as follows:

Section 601, MATTER OF RIGHT USES (CR), § 601.5, is amended by twice inserting the phrase “or an expanded child development home” so that the subsection reads as follows:

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.

Chapter 7, COMMERCIAL DISTRICTS is amended as follows:

Section 702, ACCESSORY USES AND BUILDINGS (C-1), § 702.2, is amended by inserting the phrase “or an expanded child development home” so that the subsection reads as follows:

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:

- (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

Section 722, ACCESSORY USES AND BUILDINGS (C-2), § 722.2, is amended by inserting the phrase “or an expanded child development home” so that the subsection reads as follows:

- 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:
- (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

Section 742, ACCESSORY USES AND BUILDINGS (C-3), § 742.2, is amended by inserting the phrase “or an expanded child development home” so that the subsection reads as follows:

- 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:
- (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

Section 752, ACCESSORY USES AND BUILDINGS (C-4), § 752.2, is amended by inserting the phrase “or an expanded child development home” so that the subsection reads as follows:

- 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:
- (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.

Section 761, C-5 (PAD) DISTRICT USES, § 761.4, is amended by inserting the phrase “or an expanded child development home” so that the subsection reads as follows:

- 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:

Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE is amended as follows:

Section 3104, SPECIAL EXCEPTIONS, is amended by inserting alphabetically the following new special exceptions into the chart appended to § 3104.1:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Expanded child development home for ten (10) to twelve (12) individuals fifteen (15) years of age or less.	Any R District	§ 203.7(f).

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format to zcsubmissions@dc.gov. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.