

MEMORANDUM

TO: Zoning Commission

FROM: *JL for* Jennifer Steingasser, Deputy Director Historic Preservation and Development Review

DATE: January 29, 2018

SUBJECT: OP Final Report – Case 17-20, Child Development Centers
Text Amendment to the Daytime Care use category to address the needs of establishing and expanding Child Development Centers.

I. PROPOSAL AND RECOMMENDATION

The Office of Planning (OP) proposed amendments to the description and use provisions of Daytime Care in various zones. At its October 30, 2018 public meeting, the Zoning Commission voted to set down the proposal for a public hearing. The Office of Planning (OP) recommends that the Zoning Commission **approve** the following text amendments: (See details in Appendix 1)

1. Amendment to the description of Daytime Care use category (Subtitle B § 200.2(i));
2. Amendment to the use provisions for Daytime Care in RF zone (Subtitle U § 301.1(m));
3. Amendment to the use provisions for Daytime Care in RA zone (Subtitle U § 401.1(c));
4. Amendment to the use provisions for Daytime Care in MU-Use Group D (Subtitle U § 510.1(f) and § 511.1(c));
5. Amendment to the use provisions for Daytime Care in MU-Use Group E (Subtitle U § 512);
6. Amendment to the use provisions for Daytime Care in WR Zone (Subtitle K § 911, § 912 and § 913).

Subsequent to set down, OP coordinated with the Office of the Attorney General (OAG) to refine the proposed amendments, and these were reflected in the advertised amendments. At the set down meeting the Zoning Commission stressed the need for community outreach prior to the public hearing. OSSE has undertaken the public outreach and has notified all ANC's on the proposed amendment. The proposed amendments have also been featured in two online newsletters. OP has also met with some providers. OSSE will address this issue in their presentation at the public hearing.

II. BACKGROUND

The Office of the State Superintendent of Education (OSSE) and the Department of Consumer and Regulatory Affairs (DCRA) met with OP to reexamine changes that were made in the transition to ZR16 and to ensure that zoning regulations reflect current standards for establishing new or expanding child development centers.

“[I]n 2015, there were roughly 7,610 slots at licensed care providers for 22,000 children under the age of 3 in D.C., according to a report published by DC Appleseed, a policy-focused nonprofit. This means there is enough room for roughly one-third of D.C.’s current batch of infants and toddlers—a population that is increasing in size. The State Data Center in the Office of Planning reports that children under the age of three increased from 22,000 in 2015 to 26,720 in 2016 an increase of 4,720 or 21%.

OSSE is working with providers and city agencies to increase the supply of child care services. A grant program called *Access to Quality Child Care Expansion Grant*, has a goal of increasing the supply of child care services for infants and toddlers in the District by adding a total of 1,000 new infant and toddler slots to DC’s infant and toddler child care supply by Sept. 2020, with the goal of an average of 300 new spaces in 2018, 2019 and 2020. To meet the mandate of the *Access to Quality Child Care Fund Establishment Act of 2017*, OSSE requests that the regulations be amended to allow child development centers by special exception in low density residential zone districts with no pre-established limitation on the number of persons, and as a matter of right in high density residential, mixed-use and other zones districts.

III. OP ANALYSIS

1. Daytime Care Use category

OP recommends that the description of Daytime Care be amended by replacing “child care centers and programs” with “child development center” to be consistent with Subtitle B § 100.2, DEFINITIONS, Child development center and as described in the Department of Health Child Development Regulations.

Subtitle B § 200.2(i) is amended as follows:

200 INTRODUCTION

200.2 When used in this title, the following use categories shall have the following meanings:

...

(i) Daytime Care:

- (1) The non-residential licensed care, supervision, counseling, or training, for a fee, of individuals who are not related by blood, adoption, or marriage to the caregiver, and who are present on the site for less than twenty-four (24) hours per day;
- (2) Examples include, but are not limited to: an adult day treatment facility, **child development center** ~~child care centers and programs~~, pre-schools, nursery schools, before-and-after school programs, child development homes, an expanded child development home, and elder care centers and programs; and
- (3) Exceptions: This use category does not include uses which more typically fall within the medical care or parks and recreation use categories. This use does not refer to home-based care given by parents, guardians, or

relatives of the individuals requiring care and uses which ~~does~~ **do** not require a certificate of occupancy;

...

2. Daytime Care in the RF Zone

A child development center was a permitted matter of right use for up to 16 persons in the R-4 zone in the 1958 Zoning Regulations through § 330.5(c), and was permitted as a special exception use for over 16 persons under § 205.

In the ZR 16 regulations, the use was retained as a matter of right in the RF zone as follows:

- When occupying a place of worship, the use has no limits on the number of individuals, with a condition that all required play space be on site (Subtitle U § 301.1(m));
- When occupying other than a place of worship, the use is limited to no more than sixteen (16) individuals, not including staff (Subtitle U § 301.1(n)); and
- The use was retained as a special exception for more than 16 persons with conditions relative to ensuring no adverse impacts (Subtitle U § 203.1(g), which carries forward to the RF zones pursuant to Subtitle U § 320.1(a)).

OSSE has requested, and OP recommends, that Subtitle U § 301.1(m) be amended to eliminate the requirement relative to the location of required play areas, so that the zoning regulations do not potentially duplicate or conflict with licensing requirements, which already stipulate outdoor play requirements.

Subtitle U § 301.1(m) is amended as follows:

301 MATTER OF RIGHT USES (RF)

301.1 The following uses shall be permitted as a matter of right in an RF zone subject to any applicable conditions:

...

- (m) Child/elderly development center located in a building that was built as a place of worship and that has been used continuously as a place of worship since it was built; ~~provided, that all of the play space required for the use by the licensing regulations shall be located on the same lot on which the center or facility is located;~~ and

3. Daytime Care in the RA Zone

In the 1958 Zoning Regulations, a child development center was a permitted matter of right use for up to 16 persons and was permitted as a special exception for more than 16 persons in the R-5-A, R-5-B and R-5-C zones (§ 350.4(a) and § 330). In the R-5-D and R-5-E zones, they were permitted as a matter of right use for up to 25 persons (§ 350.4(b)) and as a special exception for more than 25 persons under § 205.

In ZR-16, the use was retained as a matter of right use in the RA zone for up to 16 persons in Subtitle U § 401.1(c) and as a special exception use for more than 16 persons under Subtitle U § 203.1(g). OSSE recommends the child development centers be permitted as a matter of right with no limitations on the number of persons within these higher density residential zones. OP recommends that Subtitle U § 401.1(c) be amended to remove the limitation on the number of persons in a child/elderly development center and an adult day treatment facility as a matter of right.

Subtitle U § 401.1(c) is amended as follows:

401 MATTER-OF-RIGHT USES (RA)

401.1 The following uses shall be permitted as a matter of right in an RA zone subject to any applicable conditions:

...

- (c) Child/Elderly development center or adult day treatment facility ~~provided, that the use shall be limited to no more than twenty-five (25) individuals, not including staff;~~

4. Daytime Care in MU-Use Group D

In the 1958 Zoning Regulations, child development centers were permitted as a matter of right use in the C-1 district under §§ 501 and 701.2.

In ZR-16, Daytime Care uses are permitted as a matter of right in MU-Use Group D, under Subtitle U § 510.1(a). The regulations of Subtitle U § 510.1(f) and Subtitle U § 511.1(c) now limit the number of persons where there was no limit in the 1958 regulations. Subtitle U § 510.1(f) is proposed to be amended to delete the limit on the number of persons in a facility and to address only child development homes or expanded child development homes. Subtitle U § 511.1(c) is proposed to be deleted as a special exception use.

Subtitle U § 510.1(f) is amended as follows.

510 MATTER-OF-RIGHT USES (MU-USE GROUP D)

510.1 The following uses shall be permitted in MU-Use Group D as a matter-of-right subject to any applicable conditions:

...

- (f) Daytime care uses ~~for no more than five (5) persons, not including resident supervisors or staff and their families, except a child development home or an expanded child development home shall be permitted as an accessory use incidental to the uses permitted in MU-Use Group D; provided:~~

- (1) ~~The dwelling unit in which the use is located shall be the principal residence of the caregiver; and~~

(2) ~~The use otherwise shall meet the definition of a home occupation;~~

Subtitle U § 511 is amended by deleting Subtitle U § 511.1(c) as follows:

511 SPECIAL EXCEPTION USES (MU-USE GROUP D)

511.1 The following uses in this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section.

...

(c) ~~[DELETED]Daytime care for six (6) and fifteen (15) persons, not including resident supervisors or staff and their families;~~

...

5. Daytime Care in MU-Use Group E

In the 1958 Zoning Regulations, child development centers were permitted as a matter of right in the C-2-A, C-2-B, C-2-C and the CG-2 zones at § 701.2 and § 501. In ZR-16, daytime care is permitted as a matter of right in MU-Use Group E under Subtitle U § 512.1(c) with a limitation for up to 20 persons and by special exception at Subtitle U § 513.1(m).

If Subtitle U § 510.1(f) is amended as proposed, U § 512.1(c) and U § 515.1(e) would no longer be needed as they nest into Use Group D; thus, OP recommends U § 512.1 and U § 515.1 be amended by deleting U § 512.1(c) and U § 515.1(e) as follows:

512 MATTER-OF-RIGHT USES (MU-USE GROUP E)

512.1 The following uses shall be permitted in MU-Use Group E as a matter-of-right subject to any applicable conditions:

...

(c) ~~[DELETED]Daytime care uses for not more than twenty (20) persons, not including resident supervisors or staff and their families;~~

...

515 MATTER-OF-RIGHT USES (MU-USE GROUP F)

515.1 The following uses shall be permitted in MU-Use Group E as a matter-of-right subject to any applicable conditions:

...

(e) ~~[DELETED]Daytime care uses for not more than twenty (20) persons, not including resident supervisors or staff and their families;~~

...

6. Daytime Care in Subtitle K, WR (Walter Reed) Zone

In the 1958 Zoning Regulations, child development centers were permitted as a matter of right in the WR-2, WR-3, WR-4, WR-5, WR-7, and WR-8 zones for up to 25 persons at § 3513.6(a); and by special exception at § 3514.4. In ZR16 the standards are the same as a matter of right for up to 25 persons in the WR-2, WR-3, WR-4, WR-5, WR-7, and WR-8 zones at Subtitle K § 912.6(a); and as a special exception at Subtitle K § 913.2(c).

The WR-2, WR-3, WR-4, WR-5, WR-7, and WR-8 zones are similar to the MU-4 zones (stated in Subtitle K § 912.2) and allow daytime care uses as a matter of right without any limitations.

Subtitle K § 911 USE PERMISSIONS (WR) §§ 911.2(f), 911.4(f), and 911.8(f) are amended as follows:

911 USE PERMISSIONS (WR)

911.2 The uses in this section shall be permitted as a matter-of-right in the WR-2, WR-3, WR-4 and WR-5 zones, subject to any applicable conditions:

...

(f) Daytime care; ~~subject to the conditions of Subtitle K § 912.6;~~

...

911.4 The uses in this section shall be permitted as a matter-of-right in the WR-7 zones, subject to any applicable conditions:

...

(f) Daytime care; ~~subject to the conditions of Subtitle K § 912.6;~~

...

911.8 The uses in this section shall be permitted as a matter-of-right in the WR-8 zones, subject to any applicable conditions:

...

(f) Daytime care; ~~subject to the conditions of Subtitle K § 912.6;~~

...

Subtitle K § 912 CONDITIONAL USES (WR) is amended by deleting § 912.6 as follows:

912 CONDITIONAL USES (WR)

912.6 [DELETED] ~~Daytime care uses shall be permitted as a matter of right subject to the following conditions in the WR 2, WR 3, WR 4, WR 5, WR 7, and WR 8 zones:~~

- ~~(a) — A daytime care use is permitted as a matter of right for no more than twenty five (25) persons not including resident supervisors or staff and their families;~~
- ~~(b) — Any outdoor play area shall be located on the same lot as the daytime care use; and~~
- ~~(c) — Daytime care uses not meeting the above conditions may be permitted by special exception subject to Subtitle K § 913.2(c) and the special exception criteria of Subtitle X, Chapter 9.~~

Subtitle K § 913 SPECIAL EXCEPTION USES (WR) s amended by deleting Subtitle K § 913.2(c) as follows:

913 SPECIAL EXCEPTION USES (WR)

913.2 The following uses shall be permitted as a special exception WR-2, WR-3, WR-4, and WR-5 zones if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to any applicable provisions of each section:

...

- ~~(c) — Daytime care uses not meeting the conditions of Subtitle K § 912.6 shall be permitted by special exception, subject to the following conditions:~~
 - ~~(1) — The facility shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance; and~~
 - ~~(2) — Any off-site play area shall be located so as to not endanger individuals traveling between the play area and the center or facility;~~

...

IV. SUMMARY

The proposed amendments would help to alleviate some of the barriers to the development of child care facilities and would offer the opportunities for additional slots and expansion of child development homes and child development centers to meet the severe shortage of child care spaces in the District. OP has worked with DCRA and OSSE to have a predictable system for the assessment of proposed facilities for their safety as well as that of the neighborhood and other areas within which they operate.

APPENDIX 1

Subtitle B § 200.2(i) is amended as follows:

200 INTRODUCTION

200.2 When used in this title, the following use categories shall have the following meanings:

...

V. Daytime Care:

- (4) The non-residential licensed care, supervision, counseling, or training, for a fee, of individuals who are not related by blood, adoption, or marriage to the caregiver, and who are present on the site for less than twenty-four (24) hours per day;
- (5) Examples include, but are not limited to: an adult day treatment facility, **child development center** ~~child care centers and programs~~, pre-schools, nursery schools, before-and-after school programs, child development homes, an expanded child development home, and elder care centers and programs; and
- (6) Exceptions: This use category does not include uses which more typically fall within the medical care or parks and recreation use categories. This use does not refer to home-based care given by parents, guardians, or relatives of the individuals requiring care **and uses** which ~~does~~ **do** not require a certificate of occupancy;

...

Subtitle U § 301.1(m) is amended as follows:

301 MATTER OF RIGHT USES (RF)

301.1 The following uses shall be permitted as a matter of right in an RF zone subject to any applicable conditions:

...

- (m) Child/elderly development center located in a building that was built as a place of worship and that has been used continuously as a place of worship since it was built; ~~provided, that all of the play space required for the use by the licensing regulations shall be located on the same lot on which the center or facility is located;~~ and

Subtitle U § 401.1(c) is amended as follows:

401 MATTER-OF-RIGHT USES (RA)

401.1 The following uses shall be permitted as a matter of right in an RA zone subject to any applicable conditions:

...

- (c) Child/Elderly development center or adult day treatment facility ~~provided, that the use shall be limited to no more than twenty five (25) individuals, not including staff;~~

Subtitle U § 510.1(f) is amended as follows.

510 MATTER-OF-RIGHT USES (MU-USE GROUP D)

510.1 The following uses shall be permitted in MU-Use Group D as a matter-of-right subject to any applicable conditions:

...

- (f) Daytime care ~~uses for no more than five (5) persons, not including resident supervisors or staff and their families, except a child development home or an expanded child development home shall be permitted as an accessory use incidental to the uses permitted in MU-Use Group D; provided:~~
 - (1) ~~The dwelling unit in which the use is located shall be the principal residence of the caregiver; and~~
 - (2) ~~The use otherwise shall meet the definition of a home occupation;~~

Subtitle U § 511 is amended by deleting Subtitle U § 511.1(c).

511 SPECIAL EXCEPTION USES (MU-USE GROUP D)

511.1 The following uses in this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section.

...

- (c) ~~[DELETED]Daytime care for six (6) and fifteen (15) persons, not including resident supervisors or staff and their families;~~

...

Subtitle U § 512 is amended by deleting Subtitle U § 512.1(c) as follows:

512 MATTER-OF-RIGHT USES (MU-USE GROUP E)

512.1 The following uses shall be permitted in MU-Use Group E as a matter-of-right subject to any applicable conditions:

...

- (c) ~~[DELETED]Daytime care uses for not more than twenty (20) persons, not including resident supervisors or staff and their families;~~

...

Subtitle U § 51 is amended by deleting Subtitle U § 515.1(e) as follows:

515 MATTER-OF-RIGHT USES (MU-USE GROUP F)

515.1 The following uses shall be permitted in MU-Use Group E as a matter-of-right subject to any applicable conditions:

...

- ~~(d) [DELETED]Daytime care uses for not more than twenty (20) persons, not including resident supervisors or staff and their families;~~

...

Subtitle 911, USE PERMISSIONS (WR) §§ 911.2(f), 911.4(f), and 911.8(f) are amended as follows:

911 USE PERMISSIONS (WR)

911.2 The uses in this section shall be permitted as a matter-of-right in the WR-2, WR-3, WR-4 and WR-5 zones, subject to any applicable conditions:

...

- ~~(f) Daytime care; subject to the conditions of Subtitle K § 912.6;~~

...

911.4 The uses in this section shall be permitted as a matter-of-right in the WR-7 zones, subject to any applicable conditions:

...

- ~~(f) Daytime care; subject to the conditions of Subtitle K § 912.6;~~

...

911.8 The uses in this section shall be permitted as a matter-of-right in the WR-8 zones, subject to any applicable conditions:

...

- (f) Daytime care; ~~subject to the conditions of Subtitle K § 912.6;~~

...

Subtitle K § 912 CONTIONAL USES (WR) is amended by deleting Subtitle U § 912.6 as follows:

912 CONDITIONAL USES (WR)

912.6 ~~[DELETED]Daytime care uses shall be permitted as a matter of right subject to the following conditions in the WR 2, WR 3, WR 4, WR 5, WR 7, and WR 8 zones:~~

- ~~(e) A daytime care use is permitted as a matter of right for no more than twenty-five (25) persons not including resident supervisors or staff and their families;~~
- ~~(f) Any outdoor play area shall be located on the same lot as the daytime care use; and~~
- ~~(g) Daytime care uses not meeting the above conditions may be permitted by special exception subject to Subtitle K § 913.2(c) and the special exception criteria of Subtitle X, Chapter 9.~~

Subtitle K § 913 SPECIAL EXCEPTION USES (WR) is amended by deleting Subtitle U § 913.2 as follows:

913 SPECIAL EXCEPTION USES (WR)

913.2 The following uses shall be permitted as a special exception WR-2, WR-3, WR-4, and WR-5 zones if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to any applicable provisions of each section:

...

- ~~(e) Daytime care uses not meeting the conditions of Subtitle K § 912.6 shall be permitted by special exception, subject to the following conditions:~~
 - ~~(1) The facility shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance; and~~
 - ~~(2) Any off-site play area shall be located so as to not endanger individuals traveling between the play area and the center or facility;~~

...