

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
ZONING COMMISSION
PUBLIC HEARING

IN THE MATTER OF:

TEXT AMENDMENTS-CHILD CASE NO. 98-8
DEVELOPMENT CENTERS

Hearing Room 220 South
441 Fourth Street, N.W.
Washington, D.C.

Thursday,
March 11, 1999

The hearing in the above-entitled matter was convened,
pursuant to notice, at 7:00 p.m.

ZONING COMMISSION MEMBERS PRESENT:

JERRILY R. KRESS	Chairperson
ANGEL F. CLARENS	Commissioner
HERBERT M. FRANKLIN	Commissioner
ANTHONY HOOD	Commissioner
JOHN F. PARSONS	Commissioner

STAFF PRESENT:

Stephanie D. Brown, Office of Zoning
Alberto Bastida, Office of Planning
Dave Colby, Office of Planning

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COMMISSIONER PARSONS: Good evening, lady.

You're supposed to say "ladies and gentlemen," but I just can't bring myself to that.

I'm John Parsons, Acting Chairperson of the Zoning Commission for the District of Columbia, and joining me tonight are Mr. Franklin, Mr. Hood, and we expect Ms. Kress shortly, and she will take over the proceedings as she arrives.

I declare this public hearing open.

The case that is the subject of this hearing is Case 98-8.

Over the past several years the BZA has been requested to avoid -- to approve -- excuse me -- to approve special exceptions for a number of child development centers with programs and uses not previously accommodated in CDCs, which typically provide various types of day care for children under the ages of 15.

Those additional uses have included adult education, adult counseling, parent classes, and senior day care in individual and group sessions.

To accommodate these new use combinations, the BZA has requested the Zoning Commission to review and amend the zoning regulations as appropriate to permit new uses, presume --

1 (Laughter.)

2 PARTICIPANT: Now you've gotten him nervous.

3 COMMISSIONER PARSONS: -- to permit new uses --

4 CHAIRPERSON KRESS: I'm sorry.

5 (Laughter.)

6 COMMISSIONER PARSONS: -- with BZA approval in
7 residential zone districts.

8 The Zoning Commission will consider the
9 advertised proposal, any modifications thereto, or alternative
10 proposals that are presented and reasonably related to the
11 scope of the proposed amendments. The specific proposal to
12 amend the zoning regulations is contained in the notice of
13 public hearing for this case. Copies of that notice are
14 available for the public.

15 Notice of today's hearing was published in the
16 D.C. Register on January 29th, 1999, in the Washington Times
17 on January 26th.

18 This hearing will be conducted in accordance with
19 the provisions of 3021 of the District of Columbia Municipal
20 Regulations.

21 The order of procedure will be as follows:
22 preliminary matters; Office of Planning report; report of
23 other agencies; reports of the Advisory Neighborhood
24 Commissions; persons in support; and then persons in
25 opposition.

26 The Commission will adhere to this schedule as

1 strictly as possible.

2 Those presenting testimony should be brief and
3 nonrepetitive. If you have a prepared statement, you should
4 give copies to the staff and orally summarize the highlights.
5 Please give us your statement before summarizing.

6 Each individual appearing before the Commission
7 must complete two identification slips and submit them to the
8 reporter at the time you make your statement. If these
9 guidelines are followed, an adequate record can be developed
10 in a reasonable length of time.

11 And I'm pleased to announce that Ms. Kress has
12 joined us, and I will turn over the chair to her.

13 CHAIRPERSON KRESS: Please stay.

14 COMMISSIONER PARSONS: Well, that microphone
15 probably doesn't work.

16 (Laughter.)

17 COMMISSIONER PARSONS: So you might want to
18 check it before you --

19 CHAIRPERSON KRESS: Well, how about this one?
20 Nobody is sitting --

21 COMMISSIONER PARSONS: We haven't pushed the
22 button.

23 CHAIRPERSON KRESS: Oh, it is here. Okay.
24 We'll play musical chairs. I was at another meeting and ran
25 late.

26 Thank you.

1 Are there any preliminary matters?

2 MR. BASTIDA: Madame Chairperson, the staff has
3 no preliminary matters.

4 I would like to point out that we had just
5 prepared a reminder schedule that is in front of you with up
6 to date with all of the cases that you have set down for
7 hearing.

8 CHAIRPERSON KRESS: Thank you.

9 MR. BASTIDA: Thank you.

10 CHAIRPERSON KRESS: With that we'll move to the
11 Office of Planning, Mr. Colby.

12 MR. COLBY: Thank you, Madame Chair and
13 Commissioners.

14 I'm going to -- well, first, I guess I've given
15 this background before, but let me do it again.

16 This report started or this process on child
17 development centers text amendment started before Nate Gross
18 left the office, some time before that; has been in the office
19 for a great length of time. The person who worked on it has
20 since retired. It sounds like it's been in the office for
21 years, but actually it's probably a year and a half.

22 And I'm going to start by I'm going to just
23 summarize and read little snippets from the report to try
24 because you've had an opportunity to read it, and I'm going to
25 assume you have.

26 CHAIRPERSON KRESS: Yeah, I would assume we have

1 read it and also that we have talked about it several times
2 before.

3 MR. COLBY: Yeah.

4 CHAIRPERSON KRESS: Maybe all of the members
5 haven't, but --

6 MR. COLBY: Okay. Then I'm going to start by --
7 I think the report starts out complicating the issue. It
8 seems to, as I read it again and reread it, and I may have had
9 something to do with that in terms of my critique of the work
10 as it was being done by Bill Johnson, but I'm going to start
11 by complicating it as the report does, and then I hope
12 simplifying it as we get toward the end, and I certainly don't
13 plan to read it.

14 The most common combination of uses coming to
15 the Board has been a mixture of child day care and counseling
16 for parents, and currently varying levels of such counseling
17 are provided at many centers as the needs occur, and these are
18 or have been, tended to be informal counseling services and
19 not necessarily part of the structured program of the
20 caregiver.

21 But when services are provided, community
22 concerns have been raised in the past and are raised.

23 The report starts out with sort of two sort of
24 traditional day care/child care center models. The first is
25 the basic day care where it all started, presumably with two
26 income families in which both parents worked a traditional

1 schedule, and facilities came into being to deal with that and
2 take care of young children.

3 And it's grown from that. The child development
4 center model, I guess, followed onto that, still relatively
5 straightforward, providing more space, more activities,
6 generally larger. These tended to come out of the home or
7 moved away from the home and had a variety of impacts on
8 neighborhoods in most of these the Board sees.

9 All child care facilities must be licensed, and
10 with the exception of the child day care home, all facilities
11 must have a valid C of O.

12 Emerging trends, and there are multi-service
13 care centers, I suppose, one of the emerging trends, and there
14 are many of these in the District, and they include the Mazik
15 Parent-Child Center, Rosemont Center, and so on and so on.

16 These multi-service centers may include a CDC, a
17 school, a clinic, counseling services. They are what their
18 name suggests, really a multiple, more than day care by far.

19 Then elderly day care is another emerging need
20 and service, similar in many aspects to CDCs. It's
21 interesting to note on average, and this of course is across
22 the country, centers have a capacity for 38 individuals, an
23 enrollment of 44, which would presume or would appear to
24 exceed the capacity, but a daily attendance of only 22.

25 Adult day care, as you might imagine, is one of
26 the fastest growing sectors of day care, in any case, in the

1 U.S., and in the District elderly day care is supplied
2 primarily through programs available through the D.C. Office
3 on Aging, through religious and private organization, and
4 individual home sites.

5 Intergenerational day care is another changing
6 aspect of day care. The literature supports it highly, where
7 elderly and child care are performed, and there's some
8 positive feedback between the two groups. It offers the
9 potential for cost savings, interaction between young and old,
10 and the added convenience of one drop-off for a guardian of
11 both an elderly parent and a young child where that kind of
12 generational situation occurs.

13 Nontraditional hours care is another emerging
14 aspect of day care. I read about this in the newspapers and
15 throughout the region, where more and more the parents need a
16 place to keep a child or an elderly parent, including in some
17 cases, I think, around the clock, but in many cases Saturdays,
18 Sundays, and hours other than school hours.

19 Existing controls. Licensing. There are
20 licensing controls as I've said. These regulations define
21 child development facilities as those locations where a child
22 development program is provided for infants and children away
23 from home for less than 24 hours per day for each infant or
24 child. That's not unlike the way the zoning regulations
25 define it.

26 A valid C of O and license are required to

1 operate a child care facility.

2 Currently elderly day care is not regulated by
3 licensure, but a C of O is required to operate an elderly day
4 care center.

5 Zoning. Existing zoning permits a child
6 development home in an R-1 district as a matter of right for
7 up to five children. That's the basic unit. The home is.
8 Five children, 15 years of age or less, provided the care is
9 less than 24 hours as an accessory use.

10 Section 205 permits a child development center,
11 the next step up, for six or more individuals 15 years of age
12 or less, again, for less than 24 hours of care in an R-1
13 district, if approved by the Board.

14 Section 205 contains a number of general
15 guidelines that are intended to limit adverse impacts on the
16 surrounding neighborhood and provide safety for the children
17 and, of course, provide guidance to the Board.

18 The zoning regulations, however, do not regulate
19 the types of programs that are provided in the child
20 development center. They don't tend to micromanage, if you
21 will, and maybe they don't say quite enough, nor do they
22 define those programs other than a reference to care,
23 education, and training.

24 The regulations are silent also about
25 combinations of child development and elderly day care.

26 Under zoning, elderly day care centers are not

1 specifically defined, but are first permitted as a matter of
2 right in the District in the C-1 zoned district. They're also
3 permitted in the R-4 zone, with BZA approval in a temporary
4 community center, and everything, I guess, just about is
5 permitted in a community center in an R-1 zone as a nonprofit
6 community activity with BZA approval.

7 I'm on page 7 of our report.

8 We tried to create the problem basically by
9 pushing the envelop and describing more and more, I mean, day
10 care situations with higher and higher impacts, starting with
11 the traditional day care home, which I've described.

12 Counseling, while critical in addressing skill
13 and social deficiencies, is a service most home and small
14 caregivers are not able to provide. It's essentially a
15 nonissue, it would appear, in home day care.

16 Day care and child development centers within
17 formal counseling of parents is the next step up.
18 Professional counseling, while not permitted under the current
19 zoning regulations, is acknowledged in the child day care
20 field to be of critical importance.

21 Counseling is also needed to stimulate the
22 involvement of parents, caregivers, and caregivers fulfill
23 that need now by providing informal guidance and advice and/or
24 education to the parents.

25 There are limited impacts on the neighborhood;
26 because of the way that is handled, can be easily assessed in

1 a special exception process if the activity is to be permitted
2 under zoning, and currently it is not. In fact, most
3 caregivers only follow the licensing procedures now and have
4 no idea that there might be a zoning problem with providing
5 counseling to their care receivers, parents, and guardians.

6 The third step up now is day care with
7 professional counseling of parents. Currently professional
8 counseling is not permitted under the zoning regulations, and
9 for it to occur legally -- this is as opposed to informal
10 counseling -- for it to occur legally would require
11 modification of the regulations.

12 In the future, limited professional counseling,
13 we believe, should be permitted in all child care venues other
14 than child care homes, including CDCs, community centers, and
15 community service centers.

16 The impact of counseling on the neighborhood
17 would likely be minimal and subject to review by the Board of
18 Zoning Adjustment, and we'll get into that further in a
19 moment.

20 Then stepping up further, counseling of parents,
21 but with associated day care, where day care is not the
22 primary use. This is stretching it because this is like any
23 other use with day care associated, but in this case, we feel
24 that the potential for increased pedestrian and increased
25 vehicular traffic suggests zone districts less restrictive or
26 that it not be permitted in the R-1 through R-4 zones; that

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1 it's crossed the line basically; that primary counseling of
2 parents with associated day care is a relatively intensive
3 use, and we can get into how that might be accommodated in a
4 moment.

5 Elderly day care, as we've said, we believe is
6 very similar in many ways, and I guess I was hoping there
7 would be more people in the audience to speak to this, to tell
8 me where I'm wrong, but that like child day care, there's the
9 same drop-off, the same need as in the case of child
10 development centers some counselors, some psychologists, some
11 medical care.

12 It's permitted currently in the R-4 zone with
13 BZA approval as a temporary community service center and
14 permitted, again, in the community center in an R-1 zone.

15 Elderly day care, as we've said, is, we think,
16 very similar to child day care, and I might note that while I
17 don't live in the District, I was surprised to hear that I've
18 got four or five houses away an elderly day care home that I
19 didn't know was there. I mean I had no idea, maybe because
20 it's four houses away and the elderly don't --

21 CHAIRPERSON KRESS: Make a lot of noise playing.

22 COMMISSIONER PARSONS: Or move very fast or far.

23 Combined elderly day care and child care,
24 intergenerational day care, if the two are similar, then
25 mixing the two, provided there's enough space and licensing is
26 followed, would not appear to create any additional problems.

1 Then we've added at the bottom of page 9 a
2 notion that some caregivers are interested in giving up or not
3 having to apply for C of Os for child development centers in
4 public schools. Apparently the government would like to keep
5 those. They feel there's some value in it, and the industry
6 would like to get rid of them, feeling that they have no need,
7 that it's inequitable.

8 A C of O is not required for a child development
9 center in a public school when it's under the control of the
10 school system.

11 We've added on other -- pulled out one separate
12 issue, parking in regard to all of these. If there's a
13 potential parking issue, it probably relates to the means of
14 access to the child development centers for parents and
15 guardians who are involved in counseling, training, or
16 educational programs. We believe that required parking can be
17 assigned to a facility on the basis either of the number of
18 persons identified, which is probably the best way, identified
19 as likely to undergo counseling or training or education, or
20 on the basis of space, which we think is probably not an
21 appropriate way to deal with that.

22 The working assumption in the industry is that
23 most of these programs will occur in neighborhoods in which
24 automobile ownership is less likely, and people will get to
25 the center by means other than private automobile, that is to
26 say, those with heavy counseling.

1 And finally, there's the issue of the
2 elimination of the temporary nature of a, quote, temporary
3 community service center. The Commission specifically asked
4 the Office of Planning, the former chair, as I recall, to
5 evaluate the possibility of eliminating the temporary aspect
6 of temporary community service center, which is first
7 permitted in the R-4 zone with BZA approval.

8 The basic problem in the use of temporary is
9 that, well, it was apparently designed for community serving
10 uses which would likely have potential adverse impacts, and so
11 it gave the Board a chance to assign or to have a time certain
12 period at which time it would either go away or, I guess, be
13 repermitted.

14 However, the temporary nature of the center
15 creates problems because it not only invites uses which tend
16 to be too intense because they're just temporary, and it also
17 tends to create a negative attitude in the community about a
18 use which may be seen as a short-term use and, therefore,
19 intrusive.

20 For better or worse, a permanent use would
21 likely be represented as good for the long term and be
22 received seriously, even when not favorably, by the community.

23 Now I'm going to simplify all of that.

24 (Laughter.)

25 MR. COLBY: We're really looking to change very
26 little. Most traditional child development centers can be

1 accommodated under the existing zoning regulations in the R-1
2 and less restrictive zones with Board approval. Several
3 innovative programs reviewed in hearings before the Board were
4 either not allowed or raised concerns. The following
5 modifications are proposed to assist the Board.

6 First, the text of the regulations for the
7 appropriate zone districts needs to be modified to add elderly
8 day care, and in fact, the first -- almost every one of the
9 changes deals with that, except for one important change.

10 Second, the zoning definitions in Section 199
11 need to be modified to allow counseling and other services to
12 parents of children in child development centers when approved
13 by the Board, as well as intergenerational use of these
14 facilities.

15 We do not recommend an additional parking
16 requirement.

17 Third, the zoning definitions in Section 199
18 need to be modified to define elderly day care, essentially as
19 we defined child day care, child care now.

20 And finally, we recommend removing the temporary
21 aspect of community service center.

22 So let me just run quickly down through the nine
23 -- through the however many, 11, 12, 13, 13 proposed
24 amendments very quickly.

25 The first, just as a definition for elderly day
26 care, which follows the same requirements for a day care home,

1 as does the child development home now. So however that
2 language ends up, that is strictly to include elderly day care
3 or permit elderly day care in the home as child care is now
4 permitted.

5 The second one renumbers some sections,
6 subsections.

7 The third one just adds elderly day care in the
8 R-1 district to child development centers, to have elderly day
9 care centers and child development centers be treated alike
10 and with the same guidance to the Board.

11 The fourth one is elderly again in the R-4
12 districts. It just includes elderly care, as is child care
13 currently treated, in the R-4 district.

14 The next, five is the R-5 district.

15 The next one is in the SP district.

16 Number seven is the CR district.

17 And eight is the C-1 district, again, treating
18 elderly day care in a fashion similar to child development,
19 either home or center.

20 And number nine would continue that to other
21 commercial zones as necessary.

22 Okay. Number ten is the first -- beyond the
23 elderly -- is the first significant change where a child
24 development center could or would be permitted to have
25 counseling, education, training, and health and social
26 services provided to the parents or principal guardians of the

1 children attending the center.

2 In addition, with appropriate staffing and
3 building the recreational spaces to respond to the needs of
4 the two groups, the facility may be used for intergenerational
5 care, elderly day care and child development.

6 So it builds in the elderly day care, but the
7 key point there is that counseling would be permitted in a
8 child development center, which is now currently permitted by
9 the Board in the R-4 and more intense zones.

10 Then the next, elderly day care center is a
11 definition for such a center which really follows on, again,
12 the definition for a child development center, and elderly day
13 care in your home similarly follows the pattern of the child
14 care home.

15 Number 11 is the special exception, again,
16 builds in elder care.

17 Number 12, off-street parking, again, builds in
18 elder care, relates it to child development centers and child
19 development homes.

20 And number 13 takes the temporary aspect out of
21 the cumulative service center. As you'll see in 334.1, a
22 temporary community service center is a place where not only
23 child care can occur, but job training, family counseling,
24 consumer cooperatives, and all other manner of activities that
25 a family might -- reaching out to families, and again, it gets
26 rid of the temporary nature of those and removes the time not

1 to exceed three-year aspect of those regulations.

2 Let me end with a chart, Exhibit 1, and I will
3 simplify this. If you look starting at the child development
4 home row, that exists. Child development center, that exists;
5 no change, no change other than in the definition of a child
6 development center. Child development center, school or
7 recreation center, that exists.

8 The next row down, elderly day care home is new,
9 but it's patterned on the child development home. Elderly day
10 care center is new patterned on the child development center.
11 Community center, neighborhood nonprofit, that exists.
12 Community service center, neighborhood nonprofit, that exists,
13 but we would be eliminating the temporary nature of it, and
14 church day care center exists.

15 So when you wade through all that you ever
16 wanted to know about federal programs and child day care
17 centers and where this is going and where it's been, the
18 changes are fairly simple, and whether or not we've made the
19 right recommendations in terms of parking and in terms of
20 other impacts for these centers and what is really involved
21 and can the Board know that, and the Board had better know
22 that, for kinds of programs that these centers will have in
23 order to set out, define the limits of what can and cannot
24 occur in a given neighborhood.

25 And with that, I will stop. You'll note
26 attached we haven't asked for agency reports, and we don't

1 actually have agency reports, as such, although I think what's
2 attached you could consider a significant agency input and
3 comment on this proposal.

4 So let me stop there and take any questions.

5 CHAIRPERSON KRESS: Well, let me just continue
6 with that thought because that is my most major question.
7 This is dated May of 1998. As I was comparing some issues,
8 most of the prime issues that were clear and clean were dealt
9 with, but there were some issues that for various reasons, and
10 I can see where they were good reasons, were not included.

11 My question remains though. This communication
12 is May of '98.

13 MR. COLBY: Right.

14 CHAIRPERSON KRESS: This is almost a year old.

15 MR. COLBY: Yes.

16 CHAIRPERSON KRESS: Has there been continuing
17 dialogue?

18 MR. COLBY: No, no.

19 CHAIRPERSON KRESS: This was finished then and
20 we -- I guess I'm kind of concerned, and I don't know. We
21 have one individual here, but I don't know if there has been
22 any further communication after this and --

23 MR. COLBY: There has been for --

24 CHAIRPERSON KRESS: -- the change, the changes
25 that you made after the letter dated May 20th.

26 MR. COLBY: There has been additional

1 communication, but not by me recently, one. It was by Bill,
2 and so none in the last couple of months.

3 Secondly --

4 CHAIRPERSON KRESS: But my question is
5 subsequent from the licensing memo of May 20th, the changes
6 were made to your --

7 MR. COLBY: We made changes on the basis of this
8 letter and Bill started to respond, and it got so complex, the
9 response, that I tried to simplify it, and then he got bogged
10 down in it, and then finally he retired for medical purposes.

11 CHAIRPERSON KRESS: But they have seen the --
12 whatever you incorporated was sent, and they have had an
13 opportunity to review it again or not?

14 MR. COLBY: They have not had an opportunity.
15 Well, they have not been presented with an opportunity --

16 CHAIRPERSON KRESS: Formally, un-huh.

17 MR. COLBY: -- because we never sent that letter
18 to say, "This is what we can do, and this is what we can't
19 do." And we should have carried that out. That was some time
20 ago actually. It goes back to May, as you pointed out.

21 I feel comfortable that we have met -- I'm more
22 concerned that there are other changes in licensing that are
23 going on that I, frankly, don't know where they've ended up.

24 CHAIRPERSON KRESS: Yeah, I think don't they've
25 completed their licensing. I don't know, but I don't know
26 that they've completed their licensing changes.

1 MR. COLBY: I don't think so because I think I
2 would have heard.

3 CHAIRPERSON KRESS: And that's why I'm wondering
4 whether we should formally, you know, leave the record open
5 and ask them to formally respond once again because you have
6 done quite a few things that they've asked.

7 MR. COLBY: I would be pleased if you would
8 leave it open for that, and I would feel a little less guilty
9 at not having responded originally and not having had time to
10 respond, and then in any case I would like --

11 CHAIRPERSON KRESS: And I don't think we need to
12 spend the time responding to the May 20th letter. I think
13 it's a matter of --

14 MR. COLBY: Just sending out the --

15 CHAIRPERSON KRESS: -- send them the revision
16 and saying, "You were not at the hearing, and we've left the
17 record open to receive your report as a related government
18 agency."

19 MR. COLBY: Right. And there was another major
20 input person who provided input who is part of the National
21 Child Development Center and has a center that he started up
22 in the District that Bill got a lot of material from and a lot
23 of guidance from that I would like to send that to also.

24 CHAIRPERSON KRESS: Then let's formally leave
25 the record open.

26 MR. COLBY: Yes, for whatever length of time,

1 and I'll make sure I get both, at least those two sets of
2 comments.

3 CHAIRPERSON KRESS: Okay, good. Questions for
4 Office of Planning?

5 Commissioner Clarens.

6 COMMISSIONER CLARENS: The mirroring of the
7 elderly and the child in the level of restriction in different
8 zoning categories, I'm having a little bit of difficult
9 because the impact, as you just mentioned in the case that you
10 mentioned when you were talking, the impact on the community
11 is not a mirror impact.

12 A child development center, by its own nature,
13 will have a greater impact in terms of traffic, access,
14 dropping off, noise, play area, activity, et cetera, et
15 cetera, that an elderly center might not generate, and yet in
16 the proposal we are mirroring the two. We are actually
17 applying the same restrictions.

18 Have you given that any thought? It sort of
19 struck me that we were creating this sort of mirror, you know,
20 in which I'm getting closer to one side of the mirror than the
21 other end of the mirror where I used to be.

22 (Laughter.)

23 COMMISSIONER CLARENS: And I'm finding a
24 parallel which might not quite be there, and I don't know if
25 there might be any wisdom in making some adjustments there.

26 MR. COLBY: First of all, in most cases, the

1 Board will have the opportunity to make those adjustments to
2 the extent that the Board is aware of the differences. So
3 that's probably most important.

4 Secondly, there's been very little involvement
5 by the District in elderly day care. I mean in terms of
6 licensing, it's like it's not there, and it just occurs, as I
7 said, in C-1. Right now it doesn't occur in residential zoned
8 districts, in spite of what you said.

9 Third, I think I would agree that you don't have
10 the play areas. You don't have the noise, and you don't have
11 all -- some of which is very positive, but on the other hand,
12 it can have adverse impacts.

13 But, on the other hand, there are probably a few
14 other associated caregivers, medical care or other things,
15 that go with a child development center -- I mean an adult
16 development center -- that more people coming in. There's
17 probably a higher ratio of staff, but I don't know that, staff
18 to those being cared for with adults than with children. I
19 could be wrong, but that's my sense.

20 So, in part, because I don't know and, in part,
21 because in these things I always fall back on the Board and
22 say, well, the Board will know because they'll have the
23 specifics of the case in front of them, as well as have an
24 opportunity for the community to provide input, I think they
25 probably do not mirror, but I'm not sure that the differences
26 will be that different.

1 The break points are fairly simple right now.
2 It's home day care. It's a child development center, and then
3 you add some counseling basically, and of course, you can
4 combine the two. That's it.

5 So I'm not sure that you'd say, well, maybe R-3
6 is okay for elderly day care centers rather than R-4. I mean
7 I don't know how to think about it that way, in spite of I
8 think the question was valid.

9 COMMISSIONER CLARENS: I know, and I mean, I
10 don't know where to draw the line either, and I guess you've
11 drawn it where it used to be, and you have simply applied it
12 to both cases.

13 The other issue has to do with do I understand
14 correctly that a child development center might have cross-
15 generational or intergenerational care and vice versa, that an
16 elderly day care center can also have child development
17 facility, that both are --

18 MR. COLBY: As proposed.

19 COMMISSIONER CLARENS: As proposed?

20 MR. COLBY: Yeah, they're really one and the
21 same. I mean, at some point it's half and half.

22 COMMISSIONER CLARENS: So basically you are
23 really creating almost an equality between the two. You're
24 saying they're really interchangeable or even mixable, if
25 that's a word.

26 MR. COLBY: Well, now, the letter from Allen

1 Young Fatah suggests that you would be careful about mixing
2 the two, that they really have different space, different
3 programs, that they come together as appropriate, but other
4 than that they are very separate.

5 COMMISSIONER CLARENS: That's right, which is
6 true.

7 CHAIRPERSON KRESS: But it does recognize the
8 trends and the philosophy of care for the future and the
9 intermixing. I think that's why, when we talked about it, why
10 this was evaluated, and for right now I think -- and I think
11 it was well taken in the licensing letter -- that these are
12 very different, and people need to be trained differently.

13 That's not our concern, and I think what happens
14 is that we allow for that licensing to change in the future by
15 giving them the space that's similar and interchangeable, and
16 then as licensing changes, we have basically a format in which
17 both work, I think.

18 COMMISSIONER CLARENS: Under these regulations,
19 the proposed regulations, the fact that the services people
20 can -- there's a phrase here that says "shall be present for
21 less than 24 hours per day." What is the purpose of that, and
22 how in the world can it be policed? Less than 24 hours is 23
23 hours and 59 minutes, and so it means that the person leaves
24 for a minute, the home, and comes back in, I mean?

25 MR. COLBY: I can't answer your second question.
26 Your first question though is answered by the fact that there

1 is, like the height limit in the District, which is
2 sacrosanct, so is there a family limit or size of persons
3 living in a home who are unrelated by blood, and this is, I
4 have to assume, a form of keeping that, of being consistent
5 with that.

6 And so that if you live there, if you spend the
7 night there, I mean, it's not a hotel because you're so young,
8 but at some point I'm not sure that it makes sense, but I
9 think I know where it comes from.

10 I mean< I think that there is --

11 CHAIRPERSON KRESS: That's the way the child
12 care is written already.

13 MR. COLBY: Why wouldn't there be a need for a
14 place?

15 CHAIRPERSON KRESS: The child care is written
16 the same way already.

17 MR. COLBY: Yes, and licensing.

18 CHAIRPERSON KRESS: In 24 hours, it becomes a
19 home.

20 MR. COLBY: Yeah.

21 CHAIRPERSON KRESS: And just they're saying
22 anything less than that. It is a little silly because you
23 could just walk around the block and come back in.

24 MR. COLBY: But if we had somebody here from
25 Licensing, you could ask them that question, and you could get
26 them to tell you probably more clearly that that's a good idea

1 or a bad idea. Did it come from zoning or did it come from
2 licensing?

3 COMMISSIONER FRANKLIN: Well, why not just
4 simply say "shall not reside at the premises"?

5 MR. COLBY: I can't answer that. That's a good
6 alternative.

7 CHAIRPERSON KRESS: I wouldn't make a change
8 without coordinating that with Licensing. These are going
9 hand in hand.

10 MR. COLBY: Yes.

11 CHAIRPERSON KRESS: And I think, again, since
12 you're going to be coordinating with Licensing, why don't we
13 bring this question --

14 MR. COLBY: Okay.

15 CHAIRPERSON KRESS: -- to Licensing and ask that
16 a response be given to this during the time we keep the record
17 open? How's that? Is that all right with you Commissioner?

18 COMMISSIONER CLARENS: Yeah, I think that that's
19 fine. I think that the proposal of Commissioner Franklin is,
20 you know -- I think that what we are concerned about is that
21 these people will be residing at these facilities. Then it
22 seems to me that we should go for that idea and say rather
23 than this 24-hour thing, which is difficult to enforce and
24 easy to circumvent.

25 MR. COLBY: But under that definition, could
26 spend the night if circumstances required that. There's no

1 build-up when no one could get there and no one picked them up
2 and so on.

3 COMMISSIONER CLARENS: Yes, right, right. They
4 could spend the night.

5 MR. COLBY: Yeah, and not reside there.

6 CHAIRPERSON KRESS: Like speaking of snow
7 recently.

8 COMMISSIONER CLARENS: That's right. They could
9 spend 48 hours in the place, but they're not residents there.

10 MR. COLBY: Yes.

11 COMMISSIONER CLARENS: You just happen to be
12 there as guests for 24 or 48 hours.

13 MR. COLBY: Yeah.

14 COMMISSIONER CLARENS: Otherwise, I don't have
15 any other comment that I can think of right away, except that
16 I think that it is a welcome change. I'm only wondering if
17 the definition of child development center we have to go into
18 this explanatory reasoning for the change and to explain why
19 it is that it comes about because the facilities are used for
20 counseling and education.

21 And I'm not objecting to it. I'm just wondering
22 if they belong in the definitions, and that's just a question.

23 CHAIRPERSON KRESS: Well, I will answer that,
24 that in sitting on the BZA when we had several child care
25 cases come, I saw on several of them, and the issue kept
26 coming up that we were having to turn them down because

1 legally they were doing what would be called counseling, even
2 though they only talked to the parents a few minutes.

3 COMMISSIONER CLARENS: Right.

4 CHAIRPERSON KRESS: They were legally doing what
5 was called training, and that's the reason these words got
6 into this definition, is because in sitting on the other side
7 of that, we were turning down cases because something was
8 falling, and we got into big arguments whether that was really
9 this or really that.

10 COMMISSIONER CLARENS: I understand. My only
11 problem is with the beginning of that whole area.

12 MR. COLBY: Yes, the first clause.

13 COMMISSIONER CLARENS: Which says "because of
14 the recognized importance of the health, safety, and welfare
15 of the whole family" --

16 COMMISSIONER FRANKLIN: Yeah, it's
17 inappropriate.

18 CHAIRPERSON KRESS: Oh, I see.

19 COMMISSIONER CLARENS: We just basically said
20 these are regulations. So we don't need to be apologetic for
21 how it is. So if we basically say --

22 COMMISSIONER FRANKLIN: The sentence should
23 begin with "the facility."

24 CHAIRPERSON KRESS: I see.

25 COMMISSIONER CLARENS: The facility may also be
26 used for the counseling, education, training, and health

1 services, et cetera, et cetera, without having to say why
2 we're allowing that.

3 CHAIRPERSON KRESS: I'm sorry. I misunderstood
4 you. Yes, I think that's a good suggestion.

5 MR. COLBY: That's fine.

6 COMMISSIONER CLARENS: And then finally, I
7 really am very pleased that we're moving in the direction of
8 eliminating the word "temporary" from community service
9 center.

10 (Laughter.)

11 COMMISSIONER CLARENS: I think that that is
12 something that I struggled for six years in the BZA with this
13 notion of the temporary community service center, and I'm glad
14 that is going.

15 CHAIRPERSON KRESS: Great.

16 COMMISSIONER HOOD: I just have one question,
17 and it probably doesn't even have any merit, but basically I
18 noticed when we were dealing with the children we were talking
19 about an age limit. For the elderly do we have an age limit?

20 MR. COLBY: You all asked us that last when we
21 sat down, but we don't have an answer. I mean we tried to
22 answer it. What we have found is people are accepted for
23 these --

24 CHAIRPERSON KRESS: The lower limit.

25 COMMISSIONER HOOD: The lower limit, like 62 or
26 63.

1 MR. COLBY: Yeah, the lower limit.

2 COMMISSIONER HOOD: I guess I always have a
3 concern when things are a matter of right because it takes the
4 ability of the community to be able to express their concerns,
5 and when I read this, I started bringing in a lot of other
6 components, you know, when we talk about age limit.

7 MR. COLBY: Yeah, yeah.

8 COMMISSIONER HOOD: Somebody could say they're
9 elderly at 45, and I see this going hand in hand with the
10 CDRFs from the way I read it. Now, I may have misunderstood
11 it, but I was just wondering if there was an age limit.

12 CHAIRPERSON KRESS: I'm sorry. Why do you think
13 it goes hand in hand with CDRFs?

14 COMMISSIONER CLARENS: Well, only because it is
15 something that is going to be in residential districts that is
16 not a typical --

17 CHAIRPERSON KRESS: Single family home.

18 COMMISSIONER CLARENS: -- single family home or
19 a home or dwelling unit, and therefore, it has some --

20 COMMISSIONER HOOD: Mr. Clarens, you have
21 explained that better than I would have.

22 COMMISSIONER CLARENS: No.

23 COMMISSIONER HOOD: But I was just saying as far
24 as like R-4. CDRF is in R-4, and I was looking at the chart
25 here on page 16 and R-4, and a lot of things are a matter of
26 right, and I was just, you know, putting those hand in hand.

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1 MR. COLBY: We made very little changes to the
2 existing structure, and you are pointing out something about
3 the existing structure which has existed for however long
4 these regulations have been in place.

5 COMMISSIONER HOOD: Okay, okay.

6 MR. COLBY: We perhaps could and should have
7 examined that and did not, basically said, "Oh, somebody's
8 been here before. We'll just follow their footsteps."

9 COMMISSIONER HOOD: So in other words, this
10 chart is already existing.

11 MR. COLBY: Yeah.

12 COMMISSIONER HOOD: Because when I look at it I
13 see "proposed."

14 MR. COLBY: Right.

15 COMMISSIONER HOOD: Okay.

16 MR. COLBY: And in answer to your question --

17 COMMISSIONER FRANKLIN: Well, are you saying to
18 Mr. Hood that you are not introducing these facilities as a
19 matter of right in zones where they're not now a matter of
20 right, regardless of the definition for the moment? I mean,
21 are child centers being allowed as a matter of right, for
22 example, within zones under this proposal that they are not
23 allowed --

24 MR. COLBY: No, no change.

25 COMMISSIONER FRANKLIN: No change. Okay.

26 MR. COLBY: As regards the age, and I want you

1 to react to this because I think this is the situation that
2 exists. I had a friend who has since died who contracted
3 multiple sclerosis at an age earlier than he should have. I
4 grew up with him and sort of went through all the schools with
5 him, and so on.

6 He went to -- at some point couldn't -- lived in
7 Georgetown -- couldn't get around and moved to San Francisco
8 into a care facility, an apartment building which provided all
9 kinds of care, and everybody else there was far older than he
10 was. They were happy to have him because he was like the
11 child, mixing the intergenerational care, and I think he was a
12 little off-put by being with everybody who was so much older,
13 but that was where he had to be.

14 I'm sure there are examples of that that don't
15 fit and you wouldn't want to fit and say that they fit into a
16 normal elder care situation because they would require more
17 helpers or more something and there would be more impacts, but
18 there are people who either because they lost some mental
19 capacity who need that care and can't take care of themselves,
20 and it doesn't always fall on the age where you might expect
21 it to fall.

22 And that's why if you set what would be almost
23 an arbitrary age, then you're going to exclude some people
24 whom you have no real reason or you wouldn't really want to
25 exclude if you knew who they were.

26 CHAIRPERSON KRESS: And isn't it also true when

1 this came up last time? I think we discussed the fact that
2 there isn't any standards, either federally or locally, and I
3 don't mean --

4 MR. COLBY: No.

5 CHAIRPERSON KRESS: -- for elder care, as to a
6 limit of age, where there are for youth, and codes and
7 whatnot? But there isn't anything really federally or
8 locally.

9 MR. COLBY: I guess the answer is people develop
10 when they're young at a fairly standard --

11 CHAIRPERSON KRESS: That's a good point.

12 MR. COLBY: -- predetermined manner, but they
13 don't age in the same way. They age very differently.

14 COMMISSIONER CLARENS: But there's also sort of
15 commonly held sort of notions about senior citizen
16 nomenclature and the elderly, et cetera, et cetera, and they
17 might range anywhere from what? Fifty-five to --

18 COMMISSIONER FRANKLIN: Well, you can be 50 and
19 be a member of the American Association of Retired Persons.

20 CHAIRPERSON KRESS: I just said when I turned 50
21 that was the first thing I got, was an invitation to join
22 AARP, yeah.

23 MR. COLBY: And I'm not sure what's gained by
24 setting the limit, but I do know you're going to exclude some
25 people if you set it there, and again, I'd rather Licensing
26 take the lead on that if they're inclined to, but they haven't

1 been involved in elder care to date.

2 COMMISSIONER HOOD: Okay. Also, I'll just be
3 glad to see the comments that come back once they review your
4 report.

5 MR. COLBY: Me, too.

6 CHAIRPERSON KRESS: Did you want to pursue the
7 age any further, Commissioner Clarens? Commissioner Hood?

8 COMMISSIONER HOOD: Oh, no, no.

9 COMMISSIONER CLARENS: No.

10 CHAIRPERSON KRESS: Okay. Commissioner
11 Franklin, do you want to?

12 COMMISSIONER FRANKLIN: No, I don't have any
13 questions at this time. I think they've been covered by the
14 previous questions.

15 COMMISSIONER PARSONS: No questions.

16 CHAIRPERSON KRESS: All right. Thank you.

17 We only have one person in the audience, and
18 since it's now time for persons in support, persons in
19 opposition, ANC, anyone else to testify, are you here to
20 testify tonight or just listen?

21 I'm sorry. You won't be on the record. If
22 you're just here to listen, I guess it's not --

23 MR. BASTIDA: She's with Corporation Counsel,
24 and she's one of the persons who would be assigned to the
25 Office of Zoning to work on Zoning matters.

26 CHAIRPERSON KRESS: Terrific. Happy to meet

1 you. You're getting a very raucous meeting tonight.

2 PARTICIPANT: A little unusual.

3 CHAIRPERSON KRESS: Yeah, a little unusual. I
4 can't remember the last time we had absolutely nobody in the
5 audience. Does anyone remember a time?

6 PARTICIPANT: Never.

7 CHAIRPERSON KRESS: I don't ever remember it.

8 COMMISSIONER FRANKLIN: This is highly unusual.
9 Did you mention your name?

10 MS. NAGELHOUT: Mary Nagelhout.

11 COMMISSIONER FRANKLIN: Mary?

12 MS. NAGELHOUT: Nagelhout.

13 MR. BASTIDA: N-a-g-e-l-h-o-u-t.

14 CHAIRPERSON KRESS: Well, with no more
15 testimony, I guess we're prepared to -- do you have a closing
16 statement

17 MR. BASTIDA: Do you have it with you?

18 CHAIRPERSON KRESS: Oh, did you already give it
19 over to -- is there any other further discussion?

20 COMMISSIONER FRANKLIN: Well, Madame Chair,
21 there's another matter totally unrelated.

22 Mr. Bastida, did you want us to do anything
23 about this?

24 CHAIRPERSON KRESS: Well, let's close this
25 hearing.

26 MR. BASTIDA: Oh, no, I didn't want you to do

1 anything.

2 COMMISSIONER FRANKLIN: Oh, okay.

3 MR. BASTIDA: I'll let you know.

4 CHAIRPERSON KRESS: Okay. Go ahead.

5 MR. BASTIDA: I don't need you to do anything.

6 I was just trying to find the background so in that way

7 Corporation Counsel has advised me what to do.

8 CHAIRPERSON KRESS: What are you talking about?

9 MR. BASTIDA: About the letter.

10 COMMISSIONER FRANKLIN: We can go off the

11 record. We can close the hearing and then discuss that.

12 CHAIRPERSON KRESS: Yeah. There's a letter.

13 All right.

14 Well, let me go ahead and close the hearing.

15 Before I do that I wanted to ask how long do you think we

16 should keep the record open to allow you to receive what you

17 need to receive?

18 MR. COLBY: If a month isn't too long for you, I

19 think it's plenty of time for me.

20 CHAIRPERSON KRESS: A month? All right. Do you

21 have a date that you can give us, Mr. Bastida?

22 MR. BASTIDA: Yeah, that would be -- do you want

23 approximately a month?

24 COMMISSIONER CLARENS: Wait a minute. Is this

25 coming back as another hearing?

26 CHAIRPERSON KRESS: Oh, no, no, no.

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1 COMMISSIONER CLARENS: This is just coming back
2 for a meeting?

3 CHAIRPERSON KRESS: No, we leave the record open
4 --

5 COMMISSIONER CLARENS: For a decision?

6 CHAIRPERSON KRESS: -- before our decision so
7 then at the time we go to make our decision, we will have the
8 information that came in after the close of our record, and we
9 will discuss it at the time we make our decision.

10 MR. BASTIDA: Your next meeting is the 12th of
11 April, and that is approximately a month. If you keep it open
12 until then, you will not be able to make a decision until May.

13 COMMISSIONER CLARENS: May sounds good to me.

14 MR. BASTIDA: Okay. Then you can leave the
15 record open until April the 12th.

16 CHAIRPERSON KRESS: Okay. Why don't we do that?

17 MR. BASTIDA: Or you can go even a little longer
18 if you so wish because your May meeting is the 10th.

19 CHAIRPERSON KRESS: Well, you can decided. As
20 far as I'm concerned, this is --

21 MR. BASTIDA: Why don't we leave it open until
22 April 23rd, which is a Friday?

23 CHAIRPERSON KRESS: All right. All right.

24 MR. COLBY: Fine.

25 CHAIRPERSON KRESS: All right. April 23rd.

26 MR. BASTIDA: Friday, April 23rd, 1999.

1 COMMISSIONER CLARENS: And the Office of
2 Planning will contact the Health Department; is that correct?

3 MR. COLBY: And anybody else who --

4 COMMISSIONER CLARENS: And anybody else as you
5 mentioned in your record.

6 CHAIRPERSON KRESS: Now, as far as I'm
7 concerned, I think we're leaving the record open for the
8 individuals that you worked with before and the various
9 agencies. I don't want to just restrict it.

10 MR. COLBY: Right.

11 CHAIRPERSON KRESS: If when you go back through
12 there's somebody else that you have forgotten to mention.

13 MR. COLBY: Right, fine.

14 MR. BASTIDA: For clarification, you are leaving
15 the record open for previous people who have been involved
16 with the Office of Planning?

17 CHAIRPERSON KRESS: Other agencies and
18 individuals who are involved with the Office of Planning in
19 commenting and in preparing this case.

20 MR. BASTIDA: Okay. Thank you.

21 CHAIRPERSON KRESS: All right. With that then
22 I'll quick close and say, ladies and gentlemen and other
23 members of the Commission, I thank you for your testimony and
24 assistance in this hearing.

25 The record in this case will be kept open until
26 April 23rd for the submission of any additional information.

1 The report should be filed at the Office of Zoning, 441 Fourth
2 Street.

3 The Commission will make a decision on this case
4 at one of its regular meetings following the closing of the
5 record.

6 You should be aware that if the Commission
7 proposes affirmative action, the proposed action must be
8 referred to the National Capitol Planning Commission for
9 federal impact review.

10 The Commission will take final action at a
11 public meeting following receipt of the National Capitol
12 Planning Commission review, after which a written order will
13 be published.

14 I now declare this hearing closed.

15 (Whereupon, at 8:05 p.m., the hearing in the
16 above-entitled matter was closed.)