TOWN OF VIENNA

MEMORANDUM

TO: Town Staff and All Interested Parties

FROM: Gregory M. Hembree, AICP, Director of Planning & Zoning and Zoning Administrator

DATE: June 19, 2013

SUBJECT: Zoning Administrator's Determination Regarding Family Day Homes—Updated

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This memorandum was originally created in response to an extraordinary amount of confusion that has recently developed with respect to home day care or—as the Code of Virginia calls them—"**family day homes.**"

The Commonwealth of Virginia Department of Social Services established an administrative change effective July 1, 2012, requiring providers renewing their State license or seeking their first State license for a Family Day Home (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license. Because I have been signing these forms while also noting the Town's current limitations, this change has highlighted an apparent inconsistency between the provisions of the Town's zoning ordinance with respect to family day homes and those administrative regulations now used at the state level.

Please be aware that the Town's regulations have not changed and we operate in accord with the current zoning provisions for family day homes as set out in § 15.2-2292 of the Code of Virginia (see attachment). Those provisions state, in part, that providers with five (5) or fewer unrelated children—and exclusive of the provider's own children—can operate under the same zoning provisions as that of a single-family home. Because many of these same providers also have school-aged children at their homes, Fairfax County has allowed—and continues to allow, even with changes to its family day care provisions as of June 19, 2013—**a maximum of seven (7) such children within a single-family home, five (5) children within a townhouse and has determined such use to be accessory to that of its primary use as a dwelling. Anyone desiring to establish a family day home with a greater number of children is required to obtain a special permit (referred to as a conditional use permit here in Vienna).** The Town has chosen to follow this current interpretation from Fairfax County, Virginia, just as we have for many years in the past.

Because a family day home is also a business, the **home occupation** provisions as set forth in § 18-173 of the Vienna Town Code have been and remain applicable to their operation within the Town.

Many have also asked if their current home occupancy permits are valid even if the permit refers to a different number of children than that in the preceding paragraph. If the conditions remain the same as when the occupancy permit was issued, the answer is, clearly, yes.

TOWN OF VIENNA, VIRGINIA
FAMILY DAY HOME CHECKLIST
(FOR USE WITH CONDITIONAL USE PERMIT APPLICATIONS ONLY)

NOTE: FOR SEVEN (7) OR FEWER UNRELATED CHILDREN NO CONDITIONAL USE PERMIT IS REQUIRED BY THE TOWN OF VIENNA.

"Family Day Homes," day care centers, a day care house, or home care facilities are allowed only in the following zoning districts after the issuance of a conditional use permit in accordance with § 18-209 of the Code of the Town of Vienna and appropriate County and Commonwealth of Virginia permits:

RS-16	Single Family Residential (16,000 sq. ft.)
RS-12.5	Single Family Residential (12,500 sq. ft.)
RS-10	Single Family Residential (10,000 sq. ft.)
RM-2	Multi-Family Residential

The following information shall be provided for review with the conditional use application. All information must be submitted simultaneously. The applicant must be present at all hearings to answer any questions which may be raised by the Planning Commission or Board of Zoning Appeals relative to the request.

CONTACT PERSON: _____

E-MAIL (for "Contact Person"): _____

PHONE NUMBER: _____

DAY CARE OWNER: _____

PROPOSED SITE ADDRESS: _____

ZONING DISTRICT: _____ NO. OF NON-RESIDENT CHILDREN: _____

NUMBER OF RESIDENT CHILDREN: _____ NUMBER OF FULL TIME CENTER ATTENDANTS: _____ NO. OF PART-TIME CENTER ATTENDANTS: _____

FAIRFAX COUNTY PERMITS APPLICATIONS AND DATES:

_____

_____

_____

COMMONWEALTH OF VIRGINIA PERMITS APPLICATIONS AND DATES:

_____

_____

_____

SUBMITTAL REQUIREMENTS

A. 19 folded copies of SITE PLAN of property including the following information:

- building footprint
- building setbacks
- outside play areas with total square footage
- proposed improvements
- fences
- parking
- on-site traffic circulation
- adjoining property owners
- street names

B. 19 copies of INTERIOR STRUCTURE showing the following information (all plans larger than page size should be folded):

- rooms for day care area with doors, windows and square footage
- kitchen area (if applicable) indicating food preparation area, care of perishable foods, water, garbage, etc
- location and number of toilet facilities including steps, washing facilities and towels
- all entrances and exits to and from the building

C. A STATEMENT shall be included addressing the following issues:

- how the house will be heated in the winter
- how the building is being serviced for water and sewer (municipal or well/septic)
- fire prevention measures
- if there is a connected and working telephone
- if there is to be no kitchen, how will drinking water be made available to the children, including drinking cups
- status of Fire Marshal's and other inspections

Revised August 2, 2013

FAMILY DAY HOMES – BACKGROUND INFORMATION
Applicable provisions from the Code of Virginia:

15.2-2292. Zoning provisions for family day homes.
A. Zoning ordinances for all purposes shall consider a family day home as defined in § 63.2-100 serving one through five children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. Nothing in this section shall apply to any county or city which is subject to § 15.2-741 or § 15.2-914.
B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home as defined in § 63.2-100 serving six through twelve children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within thirty days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator may issue the permit sought. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § 15.2-2204. The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under subdivision A 3 of § 15.2-2286.
(1994, cc. 781, 798, § 15.1-486.5; 1997, c. 587.)

Family Day Home definition within § 63.2-100: "**Family day home**" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

§ 15.2-914. Regulation of child-care services and facilities in certain counties and cities.
Any (i) county that has adopted the urban county executive form of government, (ii) city adjacent to a county that has adopted the urban county executive form of government, or (iii) city which is completely surrounded by such county may by ordinance provide for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities. "Child-care services" means provision of regular care, protection and guidance to one or more children not related by blood or marriage while such children are separated from their parent, guardian or legal custodian in a dwelling not the residence of the child during a part of the day for at least four days of a calendar week. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services.
Such local ordinance shall not require the regulation or licensing of any child-care facility that is licensed by the Commonwealth and such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by § 63.2-1716.
Such local ordinances shall not be more extensive in scope than comparable state regulations applicable to family day homes. Such local ordinances may regulate the possession and storage of firearms, ammunition, or components or combination thereof at child-care facilities so long as such regulation remains no more extensive in scope than comparable state regulations applicable to family day homes. Local regulations shall not affect the manner of construction or materials to be used in the erection, alteration, repair or use of a residential dwelling.
Such local ordinances may require that persons who provide child-care services shall provide certification from the Central Criminal Records Exchange and a national criminal background check, in accordance with §§ 19.2-389 and 19.2-392.02, that such persons have not been convicted of any offense involving the sexual molestation of children, the physical or sexual abuse or rape of a child or any offense identified in § 63.2-1719, and such ordinances may require that persons who provide child-care services shall provide certification from the central registry of the Department of Social Services that such persons have not been the subject of a founded complaint of abuse or neglect. If an applicant is denied licensure because of any adverse information appearing on a record obtained from the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the applicant shall be provided a copy of the information upon which that denial was based.
(1990, cc. 605, 609, § 15.1-37.3:12; 1997, c. 587; 2010, c. 649; 2011, c. 251.)

Home Child Care Facilities in Fairfax County (Current Regulations and Proposed Changes)

Current Zoning Ordinance Regulations

"Home child care" is permitted as an **accessory use** in a residence:

- Care for up to **7 children** is permitted in a single family home;
  Care for up to **5 children** is permitted in a townhome, apartment, or mobile home (*Providers' own children do not count*)
- One non-resident assistant is permitted
- Additional children up to a maximum of **10** and/or additional non-resident assistants *may* be allowed with special permit approval from the Board of Zoning Appeals (BZA)

Current State Regulations

The State allows care for up to 12 children pursuant to a State license; however, local jurisdictions may be more limiting as is the case in Fairfax County.

What Change Has Happened at the State Level?

The Virginia Department of Social Services has established an administrative change effective July 1, 2012, requiring providers renewing their State license or seeking their first State license for a Family Day Home (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license.

The change has highlighted the inconsistency between the County and State regulations given that existing providers may currently have a state license to care for 12 children. The Fairfax County Board of Supervisors (Board) will be considering a possible amendment to the Zoning Ordinance to allow for up to 12 children with a special permit, which may take several months. In the meantime, the following procedures will temporarily be in place:

- The State will continue to issue renewal licenses for the existing number of children

Department of Planning and Zoning
Zoning Administration Division
Ordinance Administration Branch
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505
Phone 703-324-1314 FAX 703-803-6372
www.fairfaxcounty.gov/dpz/

- Any "Contact with Local Zoning Administrator" forms submitted to the zoning office for signature will note the County limitations/requirements on the form
- There will be no enforcement of County limits unless it is determined that there are health and safety risks present
- Zoning staff will work with providers who may have more children in care than allowed by the Zoning Ordinance to help bring them into compliance or providing them with guidance and assistance regarding how to navigate the special permit process
- Applicants for new licenses are expected to comply with County regulations

Amendment to the Zoning Ordinance Being Considered

The Board of Supervisors has requested that staff prepare an amendment to *consider*:

- Increasing the maximum number of children with approval of a special permit from 10 to 12
- Reducing the special permit application filing fee (which is currently $1,100)
- Reviewing the standards by which special permit requests are considered
- Staff is expected to present an amendment to the Board for authorization to advertise and schedule public hearings sometime in November, 2012
- The Planning Commission (PC) public hearing is expected to be held sometime in December, 2012, and the PC will make a recommendation to the Board
- The Board public hearing will be scheduled sometime in January or February, 2013

Special Permit Process

Staff is in the process of creating a more simplified specific special permit application package for home child care applications.

- Submission requirements include:
  - ✓ Application Form
  - ✓ House Location Plat (with all current structures and their heights and distances from property lines)
  - ✓ Zoning Map (available online or in our office)
  - ✓ Photos of the property
  - ✓ Written Statement of Justification (explain what you are requesting and why)
  - ✓ Affidavit Form
  - ✓ Ownership Statement (who owns the property and permission to file if provider is renting)
  - ✓ Filing Fee (currently $1,100)

- Optional Pre-Application Meeting available -you may request to discuss your specific property with staff and ask questions about the application before filing
- Application Acceptance -you will be notified if materials need to be corrected or if anything is missing from your application
- Staff Review (you will have a staff person assigned to your application)
- Notification (includes letters to adjacent properties, newspaper ad, sign on property)
- Public Hearing will be scheduled within 90 days of the date of acceptance of your application

Special Permit Criteria

"Additional Standards" for Special Permits for Home Child Care Facilities:

- The BZA may allow applicant to exceed the number of children permitted by right, but may not allow more than **10** (*currently*), and/or increase the number of assistants
- Existing/proposed parking will be reviewed
- The BZA may require landscaping to screen adjacent properties if appropriate
- Plats must include location/size of outdoor recreation space available
- The BZA may impose other conditions based on the specific issues identified with each property and request
- Must also meet applicable County and State licensing requirements for home child care

Contact Information

For Questions About Submitting "Contact With Local Zoning Administrator" Forms;
Information on Proposed Changes to the Zoning Ordinance:
Zoning Administration Division
703-324-1314

For Questions About Special Permit Applications (Filing Requirements, Process, etc.):
Zoning Evaluation Division
703-324-1290

FAIRFAX COUNTY

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Home Child Care Facilities

PUBLIC HEARING DATES

Planning Commission March 20, 2013 at 8:15 p.m.

Board of Supervisors May 14, 2013 at 4:30 p.m.

PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314

January 29, 2013

CSB

Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

STAFF COMMENT

The proposed amendment is on the 2012 Priority 1 Zoning Ordinance Amendment Work Program and is in response to a Board of Supervisors' (Board) request to consider an increase in the maximum number of children permitted to be cared for in a home child care facility with special permit approval from 10 to 12, a reduction in the special permit filing fee for home child care facilities, and to review the appropriateness of the existing special permit standards. These proposed changes are prompted by a recent change in policy by the Virginia Department of Social Services which requires Zoning Administrator review of home child care facilities that are subject to State licensing. Implementation of this requirement has highlighted the differences between the current Zoning Ordinance regulations and State licensing regulations.

Current Zoning Ordinance Provisions

Pursuant to Par. 6 of Sect. 10-103 of the Zoning Ordinance, home child care facilities are permitted as an accessory use to any residential dwelling, with the following use limitations: care for up to 7 children is permitted by-right in any single family detached dwelling, and care for up to 5 children is permitted by-right in any single family attached (townhome), multiple family dwelling (apartment or condominium), or mobile home. These limitations do not include the providers' own children who may also be cared for in the home child care facility. The child care provider must either reside at the dwelling or may provide care in a dwelling other than their own as long as the dwelling is the primary residence of one of the children being cared for; but in either case, no exterior evidence of the child care facility, such as signs, is permitted. In addition, one non-resident assistant, whether paid or not, is permitted between the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday. Home child care facilities are further subject to the regulations contained in Chapter 30 of the County Code (for home child care facilities caring for up to 5 children) or Title 63.2, Chapter 17 of the Code of Virginia (for home child care facilities caring for 6 or more children). A copy of Par. 6 of Sect. 10-103 is provided as Attachment A. Additional children up to a maximum of 10 and/or additional non-resident assistants may be allowed with special permit approval from the Board of Zoning Appeals (BZA), except in the PDH, PDC, PRM and PTC District where special exception approval is required by the Board. Home child care facilities exceeding the by-right levels may also be permitted in the P Districts when depicted on an approved development plan.

Background

The Virginia Department of Social Services established an administrative change that became effective July 1, 2012, which among other things requires providers renewing their State license or seeking their first State license for a "Family Day Home" (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license. The form requires the provider to state the number of children that the provider requests to care for under the State license. As part of this review, it became evident that there are numerous home child care facilities that have received licenses from the State but are caring for more children than are currently permitted under the Zoning Ordinance and/or have not received the required zoning approval. Nearly 500 home child care providers in the County are currently licensed by the State.

Furthermore, the majority of these existing State-licensed facilities are approved for the care of 12 children, while the greatest number of children that the County allows in a home child care facility is 10 with special permit or special exception approval.

After receiving testimony from a number of home child care providers regarding the impacts of the administrative State licensing changes at the June 19, 2012, Board meeting, the Board requested staff to prepare a Zoning Ordinance amendment to address this issue, and also requested that staff pursue an agreement with the State regarding temporary measures to address this discrepancy without disrupting the provision of established licensed child care.

The County and theVirginia Department of Social Services Division of Licensing Programs have entered into such an agreement while the Board considers revisions to the Zoning Ordinance. Under the agreement, the State is continuing to issue renewals for the existing number of children licensed to be in care, and County enforcement action for licensed numbers of children in care has been suspended, provided that there are no life or safety issues. Once the Board takes action on a Zoning Ordinance amendment, home child care providers are then expected to take steps to achieve compliance with all County zoning regulations within a reasonable time period. Existing State license holders will need to either reduce the number of children in care or pursue the appropriate zoning approvals to come into compliance. New applicants for State license, however, are expected to comply with the current County regulations.

In conjunction with the County's Office for Children, staff has participated in several public meetings to inform the home child care provider community and citizens about the changes in the State regulations, to clarify the differences between State and County regulations, to inform providers of the interim procedures being implemented, and to discuss the proposed Zoning Ordinance amendment. During these meetings there were a range of concerns expressed by the home child care providers, including the difficulty and cost involved in filing a special permit (or special exception) application, the posting of signs advertising the public hearing which may generate neighborhood concerns even though the existing facility was currently operating without complaint, and the impact that neighbor comments could have on potential zoning approvals, among others. Several providers requested that the by-right numbers for children permitted to be cared for in the home be increased, particularly for providers living in townhouses, with providers noting that some townhouses are larger than some single family detached dwellings. It was also suggested by some providers that home child care facilities already operating without complaint with up to 12 children with a State license be permitted to continue operating without requiring additional zoning approval. Residents living near home child care facilities also participated in these meetings, and they expressed concerns primarily related to higher traffic volumes on neighborhood streets, blocked driveways and inadequate on-site parking.

In order to help facilitate the special permit application process for potential applicants, a new special permit application package has been developed specifically for home child care facilities. Simplified instructions are included and all the parts not relevant to home child care facilities have been deleted. A website has also been created that includes the application form and other pertinent information for home child care facility providers.

On October 2, 2012, staff provided an update to the Board's Development Process Committee, which is a committee of the whole Board, on the status of home child care facilities, including the history of Zoning Ordinance provisions, a comparison of the home child care facility regulations and fees of neighboring and comparable jurisdictions with Fairfax County regulations, the special permit/special exception applications history for home child care facilities in the County, and the zoning enforcement history of home child care facilities in the County. Staff provided an update to the Development Process Committee on January 15, 2013 to summarize staff's proposed Zoning Ordinance text changes.

The Zoning Ordinance has periodically been amended to coincide with changes to the State and County Code regulations regarding home child care facilities. In general, there has been a gradual increase in the number of children permitted in a home child care facility. The State increased the maximum number of children which could be cared for under a State family day home license from 9 to 12 in 1993. On March 18, 2002, in response to requests from home child care providers, the Board adopted a Zoning Ordinance amendment which permitted one nonresident employee to work in the home child care facility by-right, similar to other home occupations. At that time, the Board also considered increasing the number of children allowed to be cared for with special permit approval from 10 to 12, but the Board did not approve the increase.

Staff evaluated the regulations of several other area jurisdictions, including the counties of Arlington, Loudoun, Prince William, Stafford, Chesterfield, Henrico, Hanover, and Montgomery County, MD, the cities of Alexandria, Falls Church, and Fairfax, and the towns of Herndon and Vienna. The analysis shows that the current Fairfax County Zoning Ordinance provisions regarding numbers of children permitted to be cared for are generally within the range of existing regulations throughout the region. The majority of the above jurisdictions currently allow 5 children by-right, and most do not count the providers' children. Loudoun County allows up to 9 children but includes the providers' children in that count; Prince William allows up to 9 children on lots greater than 5,000 square feet in size, otherwise 5 children are permitted; and Montgomery County allows up to 8 children in most residential districts and up to 12 children in some, and also includes the providers' children in those counts. All but one jurisdiction (Stafford County, which allows up to 12 children by- right) have public hearing processes to enable providers to request care of additional children, increase the business hours and/or increase the number of nonresident assistants. The maximum numbers of children permitted with a public hearing process ranges from 9 to 12. It should be noted that Loudoun County and the Town of Herndon are also currently considering Zoning Ordinance changes to better align with state regulations. Application fees in these jurisdictions for the special exception and special permit applications for home child care facilities range from $200 to $1800, with the majority being lower than the County's current filing fee of $1,100. The chart in Attachment B contains details on other area jurisdictions' regulations.

Since the 1980's, a total of 42 special permit applications and 6 special exception applications for home child care facilities have been filed. Of those applications, 20 special permits and 2 special exceptions were approved. Commonly approved development conditions included providing a fenced play area, planting trees, staggering arrival and departure times, prohibiting signs, prohibiting conversion of garage spaces to uses other than parking, expanding driveway space, limitations on enrollment and assistants, and specific playground equipment setbacks from neighboring properties.

Common reasons for denial of applications included heavy traffic flow, poor sight distance, inadequate access into the property, inadequate on-site parking, lack of available street parking, and play yard safety issues.

Despite the ongoing difference between the maximum number of children permitted under a State license and the Zoning Ordinance regulations, there have been relatively few complaints received by the Department of Code Compliance (DCC) concerning home child care facilities. Since 2007, a total of 139 home child care facility zoning complaints were received. Many of those complaints were either unfounded or voluntary compliance was achieved. Only 24 complaints resulted in Notices of Violation being issued during that time.

During the October 2, 2012, Development Process Committee Meeting, the Board raised several issues. The issues of differentiating the number of children permitted to be cared for by-right as determined by lot size was raised, in light of the fact that Prince William County makes a distinction between lots above and below 5,000 square feet in size, with more children permitted to be cared for by-right on the larger lots. In Fairfax County, however, the minimum lot sizes for single family detached dwellings in all conventional residential zoning districts equal or exceed 5,000 square feet. Additionally, in P Districts, there are no minimum lot size requirements. The idea of basing the number of children permitted to be cared for by-right on dwelling size was also raised. Currently a distinction is made in the Zoning Ordinance between dwelling types, with single family detached dwellings having a larger allowance for number of children by-right than other dwelling types. It has been noted that a townhouse may be significantly larger than a detached house; and that home child care providers residing in a large townhouse are only permitted to have 5 children in care by-right while home child care providers residing in a very small detached house are permitted to have 7 children in care by- right. However, it is staff's opinion that lot size and dwelling size are not necessarily the most distinguishing factors in determining potential land use impacts, but rather factors such as access, public road frontage versus private road frontage, parking availability, and lot layout are more significant in determining land use impacts which may be associated with a home child care facility. As these issues are more prevalent in townhouse and multiple family developments, staff believes that the distinction between single family detached dwellings and other dwelling types as currently set forth in the Zoning Ordinance is appropriate with regard to the maximum number of children permitted to be cared for by-right.

Finally, regarding the proposed change to the fees for the special permit applications for home child care facilities, staff looked at the range of existing fees for other home-based zoning applications in the County. The ranges for these fees were as follows: $435 for a special permit for an accessory dwelling unit, $600 for appeals, which are frequently residential in nature, and $910 for a number of residential application types. These residential applications include special permits for modifications to limitations on the keeping of animals, errors in building location, reduction in minimum yard requirements, and increases in fence height. They also include residential variances for reduction in minimum yards, increases in fence height, modification of location regulations or use limitations for accessory structures or uses, and modifications of grades for single family detached dwellings. Staff, in consultation with the Board, concluded that the advertised range should be between $435 and the current fee of $1,100.

Proposed Amendment

In order to align more fully with State licensing regulations, staff recommends that the BZA should have the authority to approve a special permit to allow a home child care facility to care for up to 12 children, rather than the current maximum of 10, if the appropriate conditions exist on the site. Staff believes that the current filing fee of $1,100 for home child care facility special permit applications is appropriate given the amount of staff review required to process and review these applications, as the advertising and staff costs associated with processing this type of special permit application typically exceeds the $1,100 filing fee. If the Board desires to lower the filing fee, staff recommends a fee similar to the fee that has been established for residential special permits and variances for modifications of yards, error in building location and the like, which is currently $910. In order to provide the Board with legislative flexibility, staff recommends an advertised range between $435 and $1,100 and the Board can consider any fee within that range.

As previously noted, home child care facilities are permitted accessory uses subject to the use limitations contained in Par. 6 of Sect. 10-103 which include, among things, prohibition of signs, permitted employee hours, and that the facility must be the primary residence of the provider. Increases in the number of children and non-resident employees currently require special permit approval in most districts, and all such special permit requests are subject to the additional standards contained in Sect. 8-305 of the Zoning Ordinance. Staff believes that the existing additional standards are generally sufficient and flexible enough to allow the BZA to address the specifics of each application and impose conditions that will mitigate impacts on surrounding properties. There are certain conditions that the BZA frequently imposes on home child care facility special permits, such as the prohibition of signage, which are accommodated in the by-right use limitations. Therefore, staff believes it is appropriate to revise the home child care facility special permit additional standards to specifically require that, except for the number of children and non-resident employees, all special permit approved home child care facilities shall also be subject to the provisions of Par. 6 of Sect. 10-103.

Adequate parking and access to the site are important issues that potentially could impact nearby properties. One of the special permit additional standards requires that the BZA review all existing and/or proposed parking to determine if such parking is sufficient. The BZA may require the provision of additional on-site parking to accommodate the specific home child care facility on a site. Because traffic and parking conditions can vary greatly from one site to another, staff recommends that site access should always be a consideration and there may be instances where consideration of on-street parking could be appropriate in accommodating the needs of a proposed home child care facility. Therefore, staff recommends that the special permit home child care facility additional standards be revised to require the BZA to review site access, and to allow the BZA to consider the availability of on-street parking and/or alternative drop off and pick up areas located in close proximity to the use in determining whether there is sufficient parking to serve the home child care facility. The amendment incorporates revisions to Sect. 8-305 addressing these recommendations.

Home child care facilities that operate above the by-right limitations are currently permitted in all P Districts when depicted on an approved development plan, and by special permit approval in the PRC District and special exception approval in all other P Districts when not depicted on an

approved development plan. Although the filing fee for home child care facility special exception applications has recently been revised to be the same as for the special permit application ($1,100), the special exception application process involves public hearings before the Planning Commission and Board, whereas the special permit process only involves a public hearing before the BZA. Staff believes that the approval process for all P Districts should be the same as there is no apparent reason to treat the PRC District differently. Given that home child care facilities occur within a dwelling unit and it would typically be unknown at the time of rezoning or development plan approval whether a future resident will operate a home child care facility at a specific location, and given that not all property may be appropriate for a home child care facility that operates above the by-right levels, staff concludes that it is appropriate to require all home child care facilities that operate above the by-right levels to obtain special permit approval from the Board of Zoning Appeals. The proposed changes to Article 6 result in home child care facilities in all P Districts operating above the by-right limits being treated the same and requiring special permit approval even if shown on an approved development plan.

Conclusion

The proposed amendment effectively brings the County's regulations regarding home child care facilities into a more close alignment with the State licensing regulations, while continuing to mitigate the potential negative impacts associated with such facilities on residential communities. In addition, the proposed amendment facilitates the special permit process for home child care facilities by reducing the filing fee, requiring special permit approval in all districts for home child care facilities that exceed the by-right numbers, allowing the BZA to consider on-street parking in evaluating the appropriateness of the site for operating a home child care facility, and requiring adherence to the use limitations for home child care facilities contained in Article 10.

Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of January 29, 2013 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by revising the Home Child Care Facility definition to read as follows:

HOME CHILD CARE FACILITY: A dwelling or mobile home where ~~ten (10)~~ twelve (12) or fewer children receive care, protection and supervision during only part of a twenty-four (24) hour day unattended by parent or legal guardian. Such use shall be permitted in accordance with the provisions of Part 1 of Article 10 or Part 3 of Article 8. For purposes of this Ordinance, when such a use is located in a structure other than a dwelling, it shall be deemed a CHILD CARE CENTER.

Amend Article 8, Special Permits, Part 3, Group 3 Institutional Uses, Sect. 8-305, Additional Standards for Home Child Care Facilities, by revising Paragraphs 1 and 2 to read as follows:

1. The number of children that may be cared for in a home child care facility may exceed the number of children permitted under Par. 6A of Sect. 10-103, but in no event shall the maximum number of children permitted at any one time exceed ~~ten (10)~~ twelve (12), excluding the provider's own children. The BZA may also allow more than one nonresident person to be involved with the use. Except as described above, home child care facilities shall also be subject to the use limitations of Par. 6 of Sect. 10-103.

2. The BZA shall review access to the site and all existing and/or proposed parking, including but not limited to the availability of on-street parking and/or alternative drop off and pick up areas located in proximity to the use, to determine if such parking is sufficient. The BZA may require the provision of additional off-street parking spaces based on the maximum number of vehicles expected to be on site at any one time and such parking shall be in addition to the requirement for the dwelling unit.

Amend Article 18, Administration, Amendments, Violations, and Penalties, Part 1, Administration, Sect. 18-106, Application and Zoning Compliance Letter Fees, by revising the Group 3 special permit application fee and the Category 3 special exception application fee set forth in Par. 1 to read as follows:

All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning.

1. Application for a variance, appeal, special permit or special exception:

Application for a:
Group 3 special permit

- Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of 100 or more students daily — $11025
- Home child care facilities — $910
  [The advertised fee range is $435 to $1,100]
- All other uses — $1100

Application for a:
Category 3 special exception

- Child care centers, nursery schools and private schools which have an an enrollment of less than 100 students daily, churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of less than 100 students daily and independent living facilities for low income tenants, whether a new application or an amendment to a previously approved and currently valid application, with or without new construction~~, home child care facilities~~ — $1100
- Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of 100 or more students daily — $11025
- All other uses — $16375

Amend Article 6, Planned Development District Regulations, as follows:

[The proposed changes to Article 6 establish home child care facilities in all P Districts as a special permit use when operating above the by-right limitations set forth in Par. 6 of Sect. 10-103.]

- **Amend Part 1, PDH Planned Development Housing District, as follows:**

  - **Amend Sect. 6-103, Secondary Uses Permitted, by revising Par. 10 to read as follows:**

    The following secondary uses shall be permitted only in a PDH District which contains one or more principal uses; only when such uses are presented on an approved final development plan prepared in accordance with the provisions of Article 16; and subject to the use limitations set forth in Sect. 106 below.

10. Institutional uses (Group 3), limited to:

A. Churches, chapels, temples, synagogues and other such places of worship

B. Convents, monasteries, seminaries and nunneries

C. Group housekeeping units

D. Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education

- **Amend Sect. 6-104, Special Permit Uses, by adding a new Par. 1 to read as follows, and renumbering the subsequent paragraphs accordingly.**

For specific Group uses, regulations and standards, refer to Article 8.

1. Group 3 - Institutional Uses, limited to:

A. Home child care facilities

- **Amend Part 2, PDC Planned Development Commercial District, as follows:**

- **Amend Sect. 6-203, Secondary Uses Permitted, by revising Par. 8 to read as follows:**

The following secondary uses shall be permitted only in a PDC District which contains one or more principal uses; only when such uses are presented on an approved final development plan prepared in accordance with the provisions of Article 16; and subject to the use limitations set forth in Sect. 206 below.

8. Institutional uses (Group 3), limited to:

A. Churches, chapels, temples, synagogues and other such places of worship

B. Convents, monasteries, seminaries and nunneries

C. Group housekeeping units

D. Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education

- **Amend Sect. 6-204, Special Permit Uses, by adding a new Par. 1 to read as follows, and renumbering the subsequent paragraphs accordingly.**

For specific Group uses, regulations and standards, refer to Article 8.

1. Group 3 - Institutional Uses, limited to:

A. Home child care facilities

- **Amend Part 3, PRC Planned Residential Community District, as follows:**

- **Amend Sect. 6-302, Permitted Uses, as follows:**

- **Amend Par. A (Residential Uses), by revising Par. A(10) to read as follows:**

(10) Institutional uses (Group 3), limited to:

(a) Churches, chapels, temples, synagogues and other such places of worship

(b) Convents, monasteries, seminaries and nunneries

(c) Group housekeeping units

(d) Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education

- **Amend Par. B (Neighborhood Convenience Center), by deleting Par. B(8)(d).**

(8) Institutional uses (Group 3), limited to:

~~(d) Home child care facilities~~

- **Amend Par. C (Village Center), by revising Par. C(11) to read as follows:**

11. Institutional uses (Group 3), limited to:

(a) Churches, chapels, temples, synagogues and other such places of worship

(b) Convents, monasteries, seminaries and nunneries

(c) Group housekeeping units

(d) Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education

- **Amend Par. E (Convention/Conference Center), by deleting Par. E(11)(c).**

(11) Institutional uses (Group 3), limited to:

~~(c) Home child care facilities~~

- **Amend Sect. 6-303, Special Permitted Uses, by adding a new number 5 to read as follows and renumbering the subsequent paragraphs accordingly.**

  5. Group 3 – Institutional Uses, limited to:

     A. Home child care facilities

- **Amend Part 4, PRM Planned Residential Mixed Use, as follows:**

  - **Amend Sect. 6-403, Secondary Uses Permitted, by deleting Par. 12C.**

    The following secondary uses shall be permitted only in a PRM District which contains one or more principal uses; only when such uses are presented on an approved final development plan prepared in accordance with the provisions of Article 16; and subject to the use limitations set forth in Sect. 406 below.

    12. Institutional uses (Group 3), limited to:

        ~~C. Home child care facilities~~

  - **Amend Sect. 6-404, Special Permit Uses, by adding a new Par. 1 to read as follows, and renumbering the subsequent paragraph accordingly.**

    For specific Group uses, regulations and standards, refer to Article 8.

    1. Group 3 - Institutional Uses, limited to:

       A. Home child care facilities

- **Amend Part 5, PTC Planned Tysons Corner Urban District, as follows:**

  - **Amend Sect. 6-502, Permitted Uses, by revising Par. 17 to read as follows:**

    The following uses shall be permitted subject to the approval of a final development plan prepared in accordance and the provisions of Article 16; and subject to the use limitations set forth in Sect. 505 below.

    17. Institutional uses (Group 3), limited to:

        A. Churches, chapels, temples, synagogues and other such places of worship

        B. Convents, monasteries, seminaries and nunneries

        C. Group housekeeping units

        D. Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education

- **Amend Sect. 6-503, Special Permit Uses, by adding a new Par. 2 to read as follows and renumbering the subsequent paragraphs accordingly.**

1. For specific Group uses, regulations and standards, refer to Article 8.

2. Group 3 - Institutional Uses, limited to:

   A. Home child care facilities

ARTICLE 10 ZONING ORDINANCE PROVISIONS for HOME CHILD CARE FACILITIES

Article 10, Accessory Uses, Accessory Service Uses, and Home Occupations, Part 1, Accessory Uses and Structures, Sect. 10-103, Use Limitations:

6. The following use limitations shall apply to home child care facilities:

A. The maximum number of children permitted at any one time shall be as follows:

(1) Seven (7) when such facility is located in a single family detached dwelling.

(2) Five (5) when such facility is located in a single family attached, multiple family or mobile home dwelling.

The maximum number of children specified above shall not include the provider's own children.

B. A home child care facility shall be operated by the licensed or permitted home child care provider within the dwelling that is the primary residence of such provider, and except for emergency situations, such provider shall be on the premises while the home child care facility is in operation. Notwithstanding the above, a substitute care provider may operate a home child care facility in the absence of the provider for a maximum of 240 hours per calendar year.

C. There shall be no exterior evidence, including signs, that the property is used in any way other than as a dwelling, except that play equipment and other accessory uses and structures permitted by this Part shall be allowed.

D. In addition to the persons who use the dwelling as their primary residence, one (1) nonresident person, whether paid or not for their services, may be involved in the home child care use on the property, provided that there is only one (1) such person on the property at any one time and the hours of such attendance shall be limited to 7:00 AM to 6:00 PM, Monday through Friday.

E. Notwithstanding the provisions of Par. B above, a child care provider may care for the maximum number of children permitted in Par. A above in a dwelling other than the provider's own, as long as the dwelling is the primary residence of at least one of the children being cared for by the provider. Such child care provider shall comprise the one nonresident person allowed under Par. D above.

F. All such uses shall be subject to the regulations of Chapter 30 of The Code or Title 63.2, Chapter 17 of the Code of Virginia.

G. An increase in the number of children permitted under Par. A above or the involvement of more than one nonresident person as permitted under Par. D above may be permitted in accordance with the provisions of Part 3 of Article 8.

Home Child Care Regulations in Neighboring Jurisdictions

Municipality	Number by right	Are Provider's Children Counted?	Number with Additional Approval (method)	Are Provider's Children Counted?	Are Outside Employees Permitted? (Number)	Application Fee	Other Notes
Fairfax County	**5 in townhouse, 7 in sfd**	**no**	**up to 10 (special permit)**	**no**	**1 by right, additional with special permit**	**$1,100**	
Arlington County	5	no	6-9 (Special Exception)	n/a	yes (1 for 6-9 children)	$122 (license fee)	requires license from County Mgr.
City of Alexandria	5	yes	6-9	yes	yes (1 for 6-9 children)	$250	
City of Falls Church	5	no	>5 (special use permit, only in some districts)	no	yes (with special use permit only)	$200	very few requests, little prescedent
City of Fairfax	5	no, but max of 8 incl. the providers' under age 10	12 (Special Use Permit)	no	(unclear)	$500	to date all SUP applicants have requested the max 12
Town of Herndon	5	no	>5	(unclear)	yes (1)	$300	no SE requests to exceed 5 to date
Town of Vienna	up to 7	(unclear)	8+ (Conditional Use Permit)	yes	yes (not specified)	$400	
Loudon County	9 (zoning permit)	yes	up to 12 (with SE)	n/a	yes, defers to State approval	$165 (permit) $1800 (SE)	all require the zoning permit
Prince William County	9 for SFD on > 5,000 sf lots; all others 5	no	6-9 where only 5 by right (Special Use Permit)	no	yes (1 by right only)	$265	requires home occ permit and occupancy permit, over 10 children is a full fledged child care center
Stafford County	up to 12	no	n/a	n/a	n/a	n/a	
Chesterfield County	5	no	12 (Conditional Use Permit?)	no	yes	$300	
Henrico County	"small" up to 5; "large" 6-12 (lim. to hrs. of 6AM-6PM)	no	6-12 outside hour limits (Special Exception)	no	none by right, Special Exception Approval req.	$600	
Hanover County	5 with caviat*	no	12 (Special Exception)	no	yes	$750	*caviat for by right is no more than 4 children (inc. own) under age 2
Montgomery County, MD	8 all resid. Districts; 12 some districts	yes	up to 12 (Special Exception some districts)	yes	yes (2 for up to 8 children, 3 for 9-12 children)	unknown	

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Board Passes Home Day Care Ordinance; Bulova Calls for Town Hall

June 18, 2013– Today the Fairfax County Board of Supervisors amended the zoning ordinance to bring rules concerning home child care in line with state code. Upon approval Chairman Bulova announced the County would host a town hall for providers on July 20. That will be followed by workshops throughout the County to assist Providers with the application.

"Fairfax County has a balanced approach to home child care," Chairman Bulova stated. "There is a tremendous need for quality child care in the County and we want to help make sure there are a sufficient number of providers available. We must also ensure that existing and future home child care facilities are safe and manageable for children, providers, parents, and neighbors, who can be affected by a business operating next door, especially when it comes to parking."

The amendment increases the maximum number of children allowed in a home child care facility, with a special permit, from 10 to 12 and reduces the permit fee. The amendment was prompted by a change in state administrative practice, which requires home care providers to show that they are in compliance with local zoning laws.

Fairfax County Board of Supervisors Chairman Sharon Bulova called for an informational town hall to be held on July 20, 2013 from 10am-12pm in the Board Auditorium at the Fairfax County Government Center.

"This town hall will be a helpful opportunity for staff to initiate outreach and educate providers on the approved Zoning Ordinance Amendment," Chairman Bulova stated. "It will help providers prepare and file special permit applications and also outline a timeline for coming into compliance."

County staff will hold additional meetings around the County to assist providers with their applications and answer questions. These meetings will be advertised once dates and times have been finalized.

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