



County of Fairfax, Virginia

MEMORANDUM

DATE: October 20, 2020

TO: Board of Supervisors

FROM: *LBJ* Leslie B. Johnson
Zoning Administrator

SUBJECT: zMOD Proposal for Adult Day Support Centers and Adult Day Care Centers

This Memorandum outlines an approach for regulating adult day care programs that provide support services for individuals with intellectual and developmental disabilities distinct from the adult day care center use currently contained in the Zoning Ordinance. This proposal is in response to concerns raised by providers of services to adults with developmental and intellectual disabilities, as well as concerns raised by the Health Care Advisory Board (HCAB) to the proposed Zoning Ordinance Amendment that had previously been scheduled for Board authorization on July 14, 2020.

BACKGROUND

In December 2018, the Board of Supervisors (Board), in response to recommendations contained in Fairfax County's 50+ Community Action Plan, enacted significant amendments to the Zoning Ordinance addressing the needs of Fairfax County's older adults and residents with disabilities. These amendments, among other things, established new zoning regulations for adult day care centers. Before that amendment, the Zoning Administrator, by interpretation, treated adult day care centers similar to child care centers and applied the same location permissions and use standards to them as those applied to child care centers. The December 2018 amendment established and defined a new special exception use for adult day care centers. The amendment also established additional standards for adult day care centers including the provision of a safe, appropriately sized, and conveniently located outdoor area for use by adults receiving services; road access standards; and a requirement for a review by HCAB.

Since the 2018 amendment, providers that serve adults with intellectual and developmental disabilities have reached out to staff and Board members with concerns that the new regulations would create barriers within the real estate market to find appropriate locations for their programs within the County. Of particular concern is the requirement for special exception approval in the industrial districts and the requirement to provide outdoor recreation space. This use, similar to child care centers, private schools and places of worship, was previously allowed



by-right when located in an office or industrial park and where vehicle access is provided via the internal circulation system of the park. These providers indicated that the special exception requirement puts them at a disadvantage when trying to lease space, particularly industrial flex space, because other uses with similar land use impacts, such as child care centers, private schools, and places of worship, are allowed by right.

In response to these concerns, on January 28, 2020, the Board directed staff to review the current regulations for adult day care centers and to develop an approach to appropriately align adult day care center requirements with the current requirements for child care centers. As the use was proposed to be by right in certain zoning districts, rather than requiring special exception approval, the role of HCAB was adjusted. Staff proposed to maintain HCAB review by requiring it prior to the issuance of a Non-Residential Use Permit. The concept was presented to the Northern Virginia Coalition of Service Providers meeting on March 17, 2020, the Planning Commission's Land Use Process Review Committee on May 6, 2020, and HCAB on May 11, 2020. While there was general support for the proposal, all three groups expressed concern over the role of HCAB. Currently, the Zoning Ordinance requires that applications for adult day care centers be reviewed by HCAB, and HCAB may submit a recommendation to the Board as part of the special exception process. The proposed amendment still required HCAB review, but since the use would be by right in the industrial and commercial districts, there would be no mechanism for HCAB comments to be transmitted to the Board. Additionally, there was discussion regarding the appropriateness of removing the requirement to provide an outdoor area. The amendment was scheduled for Board authorization on July 14, 2020. However, due to these concerns, the amendment was pulled from the Board's agenda to allow additional time for staff to address the outstanding concerns. Subsequently, a revised approach that establishes a new adult day support center use, distinct from the adult day care center use, was drafted and shared with representatives of HCAB and Service Source, a provider of services for adults with intellectual and developmental disabilities. HCAB and Service Source have both voiced support for this revised approach. Staff intends to present this approach at the Board's Land Use Policy Committee meeting on October 27, 2020, as part of the zMOD discussion and to incorporate this revised approach into the zMOD project rather than propose it as a separate Zoning Ordinance amendment.

STATE REGULATIONS

Two distinct uses provide services and care for adults. Adult day care centers provide supervision during the day for individuals with physical or cognitive impairments and offer affordable quality care and opportunities to engage participants mentally, physically, and socially.¹ These facilities are licensed by the Virginia Department of Social Services (VDSS). Adult day care center programs are largely health and protection based. Adult day care centers provide community-based therapeutic services to people who are medically frail and have cognitive and physical disabilities, including individuals with Alzheimer's or other forms of dementia. These programs accept Medicaid reimbursement for some or all of the participants, and eligibility for those waivers requires that the individual be at imminent risk for nursing home

¹ <https://www.fairfaxcounty.gov/health/adult-day-health-care>

care if services are not provided in a community setting. The Virginia Code defines an adult day care center, in relevant part, as:

Any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage.²

Adult day support centers, such as Service Source, provide services for adults with intellectual or developmental disabilities. They offer day support services during part of a 24-hour day that include structured activities and training programs to provide opportunities for peer interaction and community integration. These programs are designed to enhance task learning, community resource utilization, behavioral, social- and pre-vocational skills, as well as assistance with personal care. Many participants are provided job training skills and have counselors assigned to help find jobs and other meaningful activities that allow full participation in the community. While medical and therapeutic services, such as medication management, speech, occupational or recreational therapies and behavior management, are available to participants, these types of services are also provided in a child care or school setting to children and adolescents with intellectual or developmental disabilities. The focus of these programs is on continuing the education and skill-based training of participants to maximize independence and community integration.³

The Virginia Administrative Code defines a Day Support Service as:

Structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability⁴ provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.⁵

² Virginia Code Sect. 63.2-100 <https://law.lis.virginia.gov/vacode/title63.2/chapter1/section63.2-100/>

³ <https://www.servicesource.org/service/long-term-community-integration-programs/>

⁴ "Developmental disability" is defined, in relevant part, as a "severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; [and] (iv) results in substantial functional limitations" 12VAC35-105-20.

⁵ 12VAC35-105-20 <https://law.lis.virginia.gov/admincode/title12/agency35/chapter105/section20/>

PROPOSAL

The previous proposal treated adult day care centers and day support services as the same use. However, staff is now proposing to separate the uses. Facilities that provide supplementary care and protection during only part of the day to aged, infirm, or disabled adults are proposed to be deemed an adult day care center under the Zoning Ordinance, while facilities that provide training, assistance, and specialized supervision to adults with developmental or intellectual disabilities are proposed to be deemed an adult day support center. The parking rate for adult day care centers—which is one space per four adults, based on the maximum number of adults licensed to attend the center, or other amount as the Board may require as part of an approved rezoning or special exception—is proposed to be applied to this new use, adult day support center.

Definition

As part of zMOD, staff proposes to create a new adult day support center use, distinct from the adult day care center use. The new use would be included in the Community, Cultural, and Educational Facilities use category because the primary use characteristics are most similar to other facilities that offer instruction, training, programs, or curriculum for education purposes, such as schools of specialized instruction and private schools. Most of the participants in the Service Source model have aged out of public or private school programs and these programs offer an opportunity to continue that skill building so that participants can be as independent as possible. Under the Community, Cultural, and Educational Facilities Use Category of the Zoning Ordinance, staff proposes to define an adult day support center as:

A nonresidential facility offering structured activities, training programs, and supportive services (including task learning, social, behavioral and pre-vocational skills) and personal care during part of a 24-hour day to adults with intellectual or developmental disabilities. This use does not include any facility that provides for the primary diagnosis or treatment of a medical or mental health condition and does not include an adult day care center.

The adult day care center use is currently proposed to be included in the Health Care Category in the zMOD consolidated draft. Staff proposes to define adult day care center as follows which includes minor changes to the existing definition to be consistent with the zMOD format.

A facility licensed by the State of Virginia that provides health monitoring, therapeutic, and other supportive services in a protective setting during part of a 24-hour day to four or more adults who are aged, infirm, or who have cognitive or physical disabilities and who reside elsewhere. This use does not include any licensed facility that provides for the primary diagnosis or treatment of a medical or mental health condition. This use also does not include a medical care facility, group residential facility, congregate living facility, or adult day support center.

Permissions

Currently, child care centers require special exception approval in the C-5 through C-8 Commercial Districts. However, the draft use standards currently being proposed as part of zMOD will allow child care centers as a by-right use in all of the commercial and industrial

districts, with certain use limitations. With the Board's January directive to align these uses with child care in mind, staff is proposing to permit adult day support centers by right in all commercial and industrial districts, along with PDH, PDC, PRC, PRM, PTC, and PCC Districts when shown on the approved development plan, and with special exception approval in the residential districts. However, when the use standards cannot be met, a special exception could be pursued.

Meanwhile, adult day care centers would continue to require special exception approval in all zoning districts with review by HCAB. No changes are proposed to these permissions.

Use Standards

While the use standards for an adult day care center would remain unchanged, the use standards for an adult day support center are proposed to be similar to those for child care centers and private schools. HCAB review would not be required for adult day support centers, nor would an outdoor area be required under the Zoning Ordinance provisions. Rather, the outdoor area requirement would be dictated by the appropriate state licensing agency. The proposed use limitations include the following:

Standards applicable to all adult day support centers:

1. The adult day support center must provide a safe drop-off and pick up location that includes step-free access.
2. If an outdoor recreation area is provided, it must be located outside the minimum front setback, unless specifically approved by the Board in accordance with subsection 8100.3.
3. The adult day support center may not operate until a license has been granted by the appropriate State agency.

Standards when permitted by right:

4. In industrial districts, an adult day support center is permitted by right if it complies with the following standards:
 - a. The adult day support center must be located in an office or industrial complex that is planned, designed, constructed, and managed on an integrated and coordinated basis; and
 - b. Vehicular access to the adult day support center must be provided via the internal circulation system of the office or industrial complex where it is located and not from a collector or arterial street that borders the complex.
5. An adult day support center that does not meet the standards in (4), above, may seek special exception approval from the Board.

Standards when permitted by special exception:

6. The Board may approve a special exception for an adult day support center if the center has direct access to a street of sufficient right-of-way and cross-section width to accommodate pedestrian and vehicular traffic to and from the center.

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NEXT STEPS

Staff will include this proposal as part of the zMOD discussion scheduled for the Board's Land Use Policy Committee meeting on October 27, 2020 at 1:30 pm. Staff also plans to continue outreach on this revised proposal to include HCAB, the Long Term Care Coordinating Council, the Council on Aging, and providers of support services for adults with intellectual and developmental disabilities. Questions and comments can be directed to Sara Morgan, Senior Planner at sara.morgan@fairfaxcounty.gov or 703-324-1314.

ATTACHMENTS

1. Draft Text

cc: Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Elizabeth D. Teare, County Attorney
Barbara Byron, Director, Department of Planning and Development
Jill Cooper, Director, Department of Clerk Services
David Stoner, Deputy County Attorney, OCA
Laura Gori, Senior Assistant County Attorney, OCA
William Mayland, Deputy Zoning Administrator, DPD
Carmen Bishop, Principal Planner, DPD
Casey Judge, Senior Planner, DPD
Sara Morgan, Senior Planner, DPD

4. Use Table for Planned Development Districts

TABLE 4101.4: Use Table for Planned Development Districts

✓ = permitted if shown on final development plan/development plan and PRC plan;
 ✓/SE = permitted if shown on final development plan/development plan and PRC plan, or as special exception if not on plan(s)
 ✓/SP = permitted if shown on final development plan/development plan and PRC plan, or as special permit if not on plan(s)
 SE = special exception; SP = special permit; *blank cell* = not allowed
 A = allowed as accessory use only; A+ = permitted as an associated service use; AP = allowed with approval of administrative permit

Use	PDH		PRC					PDC		PRM		PTC	PCC		Use-Specific Standards NOTE: General Standards also apply
	Principal	Secondary	Residential	Neighborhood Convenience Center	Village Center	Town Center	Convention/Conference Center	Principal	Secondary	Principal	Secondary		Principal	Secondary	
PUBLIC, INSTITUTIONAL, AND COMMUNITY USES															
Community, Cultural, and Educational Facilities: uses generally of a public, quasi-public, nonprofit, or charitable nature providing a local service (e.g., cultural, educational, recreational, counseling, training, religious) directly to people of the community															
Adult Day Support Center ²		✓/SE	✓/SE	✓/SE	✓/SE	✓/SE	✓/SE		✓/SE		✓/SE	✓/SE		✓/SE	4102.4.A
Alternate Use of Public Facility		✓/SE	✓/SE	✓/SE	✓/SE	✓/SE	✓/SE		✓/SE		✓/SE	✓/SE			4102.4.B
Child Care Center		✓/SE	✓/SE	✓/SE	✓/SE	✓/SE	✓/SE		✓/SE		✓/SE	✓/SE		✓/SE	4102.4.C

4102. Use Standards

4. Public, Institutional, and Community Uses

Community, Cultural, and Educational Facilities

A. Adult Day Support Center³

Standards applicable to all adult day support centers:

- (1) The adult day support center must provide a safe drop-off and pick up location that includes step-free access.
- (2) If an outdoor recreation area is provided, it must be located outside the minimum front setback, unless specifically approved by the Board in accordance with subsection 8100.3.
- (3) The adult day support center may not operate until a license has been granted by the appropriate State agency.

² Change since 6/30/2020 draft: This is a new use with new permissions.

³ Change since 6/30/2020 draft: This is a new use with new standards.

Standards when permitted by right:

- (4) In industrial districts, an adult day support center is permitted by right if it complies with the following standards:
 - (a) The adult day support center must be located in an office or industrial complex that is planned, designed, constructed, and managed on an integrated and coordinated basis; and
 - (b) Vehicular access to the adult day support center must be provided via the internal circulation system of the office or industrial complex where it is located and not from a collector or arterial street that borders the complex.
- (5) An adult day support center that does not meet the standards in (4), above, may seek special exception approval from the Board.

Standards when permitted by special exception:

- (6) The Board may approve a special exception for an adult day support center if the center has direct access to a street of sufficient right-of-way and cross-section width to accommodate pedestrian and vehicular traffic to and from the center.

Article 6 - Parking and Loading

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
PUBLIC, INSTITUTIONAL, AND COMMUNITY USES	
Community, Cultural, and Educational Facilities	
<u>Adult Day Support Center</u>	<u>1 space per 4 adults, based on the maximum number of adults licensed to attend the center, or other amount as the Board may require as part of an approved rezoning or special exception</u>
Health Care	
Adult Day Care Center	1 space per 4 adults, based on the maximum number of adults licensed to attend the center, or other amount as the Board may require as part of an approved rezoning or special exception

Article 9 - Definitions and Ordinance Interpretation

9103. Uses

4. Public, Institutional, and Community Uses

A. Community, Cultural, and Educational Facilities

The Community, Cultural, and Educational Facilities category includes uses that provide a local service (e.g., cultural, educational, recreational, counseling, training, religious) directly to people of the community. These uses are generally of a public, quasi-public, nonprofit, or charitable nature. This category does not include commercial health clubs or recreational facilities (categorized in the Recreation and Entertainment use category), or counseling in an office setting (categorized in the Office use category).

Adult Day Support Center⁴

A nonresidential facility offering structured activities, training programs and supportive services (including task learning, social, behavioral and pre-vocational skills), and personal care during part of a 24-hour day to adults who have intellectual or developmental disabilities. This use does not include an adult day care center or any facility that provides for the primary diagnosis or treatment of a medical or mental health condition.

C. Health Care

The Health Care category includes uses providing a variety of health care and supportive services, including surgical or other intensive care and treatment, various types of medical treatment, and nursing care. Care may be provided in a protective setting during part of the day, or on an inpatient, overnight, or outpatient basis. Although a continuing care facility includes household living uses and health care uses (e.g., nursing facilities), it is categorized as a Health Care use because of its focus on the present or future provision of health and personal care. This category does not include professional offices for physicians, dentists, or similar occupations.

Adult Day Care Center⁵

A facility licensed by the State of Virginia that provides health monitoring, therapeutic, and other supportive services in a protective setting during part of a 24-hour day to four or more adults who are aged, infirm, or who have cognitive or physical disabilities and who reside elsewhere. This use does not include any licensed facility that provides for the primary diagnosis or treatment of a medical or mental health condition. This use also does not include a medical care facility, group residential facility, congregate living facility, or adult day support center.

⁴ Change since 6/30/2020 draft: This is a new use and new definition.

⁵ Change since 6/30/2020 draft: This carries forward the current definition, with edits to differentiate this use from the new Adult Day Support Center.