

## **PROPOSED ADULT DAY CARE CENTER AMENDMENT OVERVIEW**

Adult day care uses provide a vital service for older adults and those with a disability. In January 2020, the Board of Supervisors (the Board) directed staff in the Department of Planning and Development to review the current zoning ordinance provisions related to adult day care centers and align those requirements, where appropriate, with the current requirements for child care centers, as the land use impacts associated with both types of uses are similar. This topic was added to the 2019 Zoning Ordinance Work Program as a first-tier item for authorization in the Spring of 2020.

### **BACKGROUND**

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In December of 2018, the Board of Supervisors (Board), in response to recommendations outlined in the 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 established a new continuing care facility use and created a new Planned Continuing Care Facility (PCC) Zoning District to encourage planned and coordinated developments that provide a continuum of accommodations and services designed to assist with aging in place. In addition, the amendment established new zoning regulations for adult day care centers. Prior to that amendment, the Zoning Ordinance, through interpretation, treated adult day care centers similar to child care centers and were subject to the same location permissions and use standards as child care centers. The December 2018, amendment established and defined a new adult day care center use and established the use as a special exception use in all zoning districts where previously, the use was permitted by right, in the industrial and certain commercial zoning districts. 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 as well as a requirement for a review by the Health Care Advisory Board (HCAB).

Since the adoption of the 2018 provisions, providers of adult day care services, particularly those that provide day support services to adults with intellectual and developmental disabilities, have reached out to staff and Board members with concerns that the new regulations 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 was previously allowed by right, like child care centers currently are allowed when located in an office or industrial park and vehicle access is provided via the internal circulation system of the park. The adult day care providers indicated that the special exception requirement puts them at a disadvantage when trying to lease space, particularly industrial flex space, as other uses with similar land use impacts are allowed by right, like child care centers and places of worship.

In response to these concerns, the Board, on January 28, 2020, 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. The Board requested that staff evaluate restoring adult day care centers as a by-right use in Industrial Districts and to re-evaluate the need for outdoor recreation space. With regard to the existing standard requiring

review by HCAB, the Board directed staff to continue to include a mechanism that will allow the HCAB an opportunity to review the adult day care centers prior to the center becoming operational.

## **PROPOSED AMENDMENT**

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### **Definition**

The definition of adult day care center will be revised through this Zoning Ordinance Amendment. The current definition excludes all facilities licensed by the Virginia Department of Behavioral Health and Developmental Services (VDBHDS) which licenses Service Source and other similar day programs for individuals with disabilities, such as the community integration programs provided by Service Source and other providers. Adult day care centers for older adults who need supervision during all or a portion of the day and who may suffer from physical infirmities or dementia are typically licensed by the Virginia Department of Social Services (VDSS). The 2018 Zoning Ordinance Amendment that adopted the current definition was intending to exclude facilities such as group homes or mental health treatment facilities which can also be licensed by VDBHDS. Currently by interpretation staff would consider facilities that provide day care for individuals with intellectual or developmental needs, including to those operated by businesses like Service Source, similar to a child care center instead of an adult day care center as facilities licensed by VDBHDS are explicitly excluded from the current definition of adult day care center. The revised definition will clarify that adult day care centers licensed by VDBHDS are deemed to be adult day care centers. The proposed definition is as follows.

**ADULT DAY CARE CENTER:** A facility licensed by the State of Virginia where four or more adults who are aged, infirm, or have intellectual or developmental disabilities receive supportive services, health monitoring, protection, and supervision on a regular basis during part of a 24-hour day. This use does not include any licensed facility that provides for the primary diagnosis or treatment of a medical or mental health condition or any facility licensed by the Virginia Departments of Health Professions. This use also does not include ASSITED LIVING FACILITY, NURSING FACILITY OR HOME or GROUP RESIDENTIAL FACILITY.

### **Zoning Districts**

As part of the Zoning Ordinance Modernization effort (ZMOD), the draft use standards currently being proposed will allow child care centers as by-right uses in the Commercial and Industrial Districts with certain use limitations instead of requiring special exception approval by the Board of Supervisors. While the Board's directive focused primarily on the allowing adult day care centers as by right in the Industrial Districts, they also directed staff to align the requirements for adult day care centers to be consistent with child care centers. Therefore, staff is proposing to amend the Zoning Ordinance and permit adult day care centers by right in the C-1 through C-8 Districts and I-I through I-6 Districts. Adult day care centers would remain a special exception use in the residential districts and when the use limitations are not met in the Industrial Districts.

Staff proposes to continue to require adult day care centers to present their request to HCAB. However, the review would now need to be done prior to issuance of a Non-Residential Use Permit (Non-RUP). HCAB could provide any concerns or recommendations directly to the appropriate

agency of the State of Virginia. The provision of an outdoor recreation area would need to be provided as required by the appropriate agency of the State of Virginia. Below are the proposed use limitations.

**C-1 through C-8 Districts**

Adult day care centers are permitted by right in accordance with the following:

- A. The adult day care center must be located to readily and safely facilitate the drop-off and pick up of persons on the site, to include step free access.
- B. No facility may operate until such time as a license has been granted by the appropriate agency of the State of Virginia.
- C. Any outdoor area provided for use by persons receiving adult day care services must be safe, appropriately sized, and conveniently located.
- D. Prior to issuance of a Non-Residential Use Permit, the applicant must present the proposed request to the Health Care Advisory Board for its review. Written documentation of such review must accompany the application for a Non-Residential Use Permit. The Health Care Advisory Board may submit comments to the appropriate licensing agency of the State of Virginia.

**I-1 through I-6 Districts**

Adult day care centers are permitted by right in accordance with the following:

- A. The adult day care center must be located to readily and safely facilitate the drop-off and pick up of persons on the site, to include step free access.
- B. No facility may operate until such time as a license has been granted by the appropriate agency of the State of Virginia.
- C. Any outdoor area provided for use by persons receiving adult day care services must be safe, appropriately sized, and conveniently located.
- D. Prior to issuance of a Non-Residential Use Permit, the applicant must present the proposed request to the Health Care Advisory Board for its review. Written documentation of such review must accompany the application for a Non-Residential Use Permit. The Health Care Advisory Board may submit comments to the appropriate licensing agency of the State of Virginia.
- E. The center must be located in an office or industrial complex that is planned, designed, constructed, and managed on an integrated and coordinated basis.
- F. Vehicular access to the adult day care 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.

**Planned Districts**

Adult day care centers will continue to be permitted in the Planned Districts when shown on an approved development plan. The following use limitations are proposed to be added.

Adult day care centers are permitted by right in accordance with the following:

- A. The adult day care center must be located to readily and safely facilitate the drop-off and pick up of persons on the site, to include step free access.
- B. No facility may operate until such time as a license has been granted by the

- appropriate agency of the State of Virginia.
- C. Any outdoor area provided for use by persons receiving adult day care services must be safe, appropriately sized, and conveniently located.
  - D. Prior to issuance of a Non-Residential Use Permit, the applicant must present the proposed request to the Health Care Advisory Board for its review. Written documentation of such review must accompany the application for a Non-Residential Use Permit. The Health Care Advisory Board may submit comments to the appropriate licensing agency of the State of Virginia.

### **Residential Districts**

Adult Day Care uses would continue to require special exception approval by the Board in the residential districts. A special exception would also be required when the by-right use limitations are not met in the Industrial Districts. The current additional standard restricting the number of persons permitted in the adult day care center based on the street type is proposed to be removed through this Zoning Ordinance Amendment. Other standards have been modified based on the Board's directive. The following are the proposed additional standards.

Standards when permitted by special exception:

- A. The adult day care center must have direct access to an existing or programmed public street of sufficient right-of-way and cross-section width to accommodate pedestrian and vehicular traffic to and from the center.
- B. The use must be located to readily and safely facilitate the drop-off and pick-up of all persons attending the adult day care center, to include step-free access.
- C. Any outdoor area provided for use by persons receiving adult day care services must be safe, appropriately sized, and conveniently located.
- D. No such facility may operate until such time as a license has been granted by the appropriate agency of the State of Virginia.
- E. All applications for an adult day care center will be referred to the Health Care Advisory Board for its review in accordance with the standards in Sect. 9-308. The Health Care Advisory Board may submit a recommendation to the Planning Commission and Board of Supervisors at the public hearings.
- F. All services and facilities provided must be designed, located, and of a scale to support those persons receiving adult day care services.

## **SCHEDULE**

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The following schedule is currently proposed for the Zoning Ordinance Amendment.

March to May 2020	Public Outreach
July 2020	Board Authorization
September 2020	Planning Commission Public Hearing
October 2020	Board of Supervisors Public Hearing

## **ADDITIONAL INFORMATION**

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For questions or comments about the proposed amendment, please contact Sara Morgan at 703-324-1314 or [sara.morgan@fairfaxcounty.gov](mailto:sara.morgan@fairfaxcounty.gov).