

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Consideration of a Zoning Text Amendment
Presenter:	Missy Creasy, Assistant Director, NDS
Staff Contacts:	Read Brodhead, Zoning Administrator, NDS Craig A. Fabio, Asst. Zoning Administrator, NDS Lisa Robertson, Acting City Attorney
Title:	<u>ZT20-10-02</u> – Family Day Home

Background:

At the July 2020 Planning Commission meeting, the following Zoning Text Amendment request was initiated:

A Zoning Text Initiation to make family day homes for up to 12 children by right uses in all zoning districts and exempt them from off street parking requirements, and to also ask staff to develop standard drop off and pick up code to ensure safety given this change. In addition, make all efforts to administratively speed up childcare applications.

Staff took two different routes for review of this item including state and local actions. Ms. Robertson contacted the City Council’s legislative subcommittee about this matter and worked to develop more specific recommendations for Delegate Hudson and Senator Deeds, as to which of the state regulations the City contemplates might be most easily [and safely] relaxed during COVID. Legislative items must come from Council directly. In addition, Ms. Robertson put together an informational/ background memo for the PC and council subcommittee on this issue which was sent on July 22, 2020. The request for changes required at the state level has been submitted and feedback is forthcoming.

In addition to state level consideration, staff reviewed the city code provisions and state code updates and drafted language for consideration that would bring our local ordinance up to date and provide for additional allowances for larger family day homes. Please note that any state

code requirement currently in place is allowable regardless of the outdated language we have in the current city code. Staff provided draft ordinance language for discussion at the September 9, 2020 Planning Commission meeting and held a joint public hearing on October 13, 2020 on the request as updated from September discussion. The Planning Commission recommended approval on October 13, 2020.

Proposed Zoning Text Changes

Revise **§34-420, 34-480, and 34-796 Use Matrixes** as follows:

- Amend to allow Family day home (1-4 children) as a by-right use in all zoning districts which allow residential use.
- Amend to allow Family day home (5-12 children) as a provisional use in all districts which allow for residential use.

Revise **§34 Article IX. Generally Applicable Regulations, Division 9. Standards for Provisional Use** as follows:

- Provide regulations for family day home (5-12 children) by provisional use.

Revise **§34-1200. Definitions.** as follows:

- Amend the definition for “Family day home” to confirm a lawfully established residential use prior to implementing a family day home.
- Amend the definition for “Occupancy, residential” to clarify that the family day home (1-4 children) use is considered residential occupancy.

Discussion:

Overview of Staff Analysis

Staff recommended approval of the proposed zoning text amendment.

- Staff reviewed the city code provisions and state code updates and drafted language for consideration that would bring our local ordinance up to date and provide for additional allowances for larger family day homes. Please note that any state code requirement currently in place is allowable regardless of the outdated language we have in the current city code. This would also broaden the locations where this use can be considered. In

addition, larger family day homes must currently go through a special use permit process which is long and costly and a provisional use permit process would streamline that yet provide for similar oversight and public engagement requirements.

- The 2013 Comprehensive Plan provides provisions for updating regulations to support uses that provide for economic vitality.
- Staff believes the proposed regulations are in line with the goals of the 2013 Comprehensive Plan.

Planning Commission

At the September 9th Work session, the Planning Commission discussion focused on hours of operation for the provisional use permit and providing as much flexibility as possible.

At the public hearing on October 13, 2020, Commissioners asked for background on the hours of operation proposal. Staff noted that the proposal was in line with providing flexibility and noted that if conditions in the future change that it could be reviewed at that time. There was also a question concerning provisional use verses by right in some districts for Family Day Home (5-12 children) and it was noted that with the change in number of children requirements due to updates in state legislation that this was an ideal opportunity to streamline the requirements.

Alignment with City Council's Vision Areas and Strategic Plan:

The proposed zoning text amendment aligns with the City Council Vision of **Economic Sustainability**, as it will provide for additional options for in home entrepreneurship.

The proposed changes align with **Strategic Plan, Goal 1.4 and Goal 4.3** as it can increase opportunities for new family day homes as well as opportunities to expand existing family day home opportunities.

Community Engagement:

No public comment was provided at the public hearing.

Budgetary Impact:

No budgetary impact.

Recommendation:

The Commission took the following action:

Commissioner Solla-Yates moved to recommend approval of this zoning text amendment to the text of Chapter 34 (Zoning Ordinance) of the City of Charlottesville, 1990, as amended, to provide updates to family day home uses to include Section 34-420, 34-480, and 34-796 Use Matrixes to allow family day home (1-4 children) as a by-right use in all zoning districts which allow residential use, to allow family day home (5-12 children) as a provisional use in all districts which allow for residential use, to update Section 34-1200: Definitions under “Family day home” to confirm a lawfully established residential use prior to implementing a family day home and under “Occupancy, residential” to clarify that the family day home (1-4 children) use is considered residential occupancy, and to add a Section to Article IX. Generally Applicable Regulations, Division 9. Standards for Provisional Use to provide regulations for family day home (5-12 children) by provisional use on the basis that the changes would serve the interests of public necessity, convenience, general public welfare and good zoning practice. Seconded by **Commissioner Dowell**. *Motion is Approved 7-0.*

Alternatives:

City Council has several alternatives:

- (1) by motion, take action to approve the attached ordinance (granting the ZTA);
- (2) by motion, request changes to the attached ordinance, and then approve the ZTA in accordance with the amended ordinance;
- (3) by motion, deny the requested ZTA (as recommended by the Planning Commission).

Attachment:

- (1) Proposed Ordinance Approving a Zoning Text Amendment
- (2) Planning Commission Staff Report with Attachments, October 13, 2020
(<https://www.charlottesville.gov/1077/Agendas-Minutes> Page 4)

**ORDINANCE
 AMENDING AND RE-ENACTING THE CODE OF THE CITY OF
 CHARLOTTESVILLE, CHAPTER 34 (ZONING) TO ESTABLISH UPDATED
 REGULATIONS FOR FAMILY DAY HOMES**

WHEREAS, the Planning Commission initiated a zoning text amendment proposing amendments to the City’s zoning ordinance, provisions regulating family day homes (“Proposed Zoning Text Amendment”); and

WHEREAS, a joint public hearing on the Proposed Zoning Text Amendment was held by the Planning Commission and City Council on October 13, 2020, after notice to the public as required by law, and, following conclusion of the public hearing, the Planning Commission voted to recommend approval of the Proposed Zoning Text Amendment for the public necessity, convenience, general welfare or good zoning practice; and

WHEREAS, after consideration of the Planning Commission’s recommendation, the City staff report and recommendations therein given, and the public comment received, this Council is of the opinion that that the Proposed Zoning Text Amendment, as recommended by the Planning Commission, has been designed to give reasonable consideration to the purposes listed in Sec. 15.2-2283 of the Code of Virginia (1950), as amended, and this Council hereby finds and determines that the public necessity, convenience, general welfare and good zoning practice require the Proposed Zoning Text Amendment; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Chapter 34 of the Code of the City of Charlottesville (1990), as amended, is hereby amended and re-enacted as follows:

1. Amend the provisions of §34-420 (Use matrix—Residential zoning districts), as follows:

Residential Zoning Districts											
Family day home	R-1	R-1U	R-1S	R-1SU	R-2	R-2U	R-3	R-UMD	R-UHD	MR	MHP
1-4 1-5 children	B	B	B	B	B	B	B	B	B	B	B
5-12 6-12 children	S P	S P	S P	S P	S P	S P	B P	P	P	B P	P

2. Amend the provisions of §34-480 (Use matrix—Commercial districts), as follows:

Commercial Zoning Districts						
Family day home	B-1	B-2	B-3	M-I	ES	IC
1-4 1-5 children	B	B	B	B		B
5-12 6-12 children	B P	B P	B P	P		P

3. Amend the provisions of §34-796 (Use matrix—Mixed use corridor districts), as follows:

Mixed Use Zoning Districts														
Family day home	D	DE	DN	WME	WMW	CH	HS	NCC	HW	WSD	URB	SS	CD	CC
1-4 1-5 children	B	B	B	B	B	B	B	B	B	B	B	B	B	B
5-12 6-12 children	P	P	P	P	P	P	P	P	P	P	P	P	P	P

4. Amend §34-1200, the definitions of “family day home” and “residential occupancy”, as follows:

Family day home means a child care program serving one (1) to twelve (12) children under the age of thirteen (13) (exclusive of the provider's own children and any children who reside in the home), where such program is offered in the **lawfully established** residence of the provider or the **lawfully established** residence of any of the children in care. Any program serving more than twelve (12) children shall be considered a child daycare facility.

Occupancy, residential for purposes of this zoning ordinance, this term refers to the number of persons who may reside together within one (1) dwelling unit, as a single housekeeping unit. Each of the following shall be deemed a single housekeeping unit: (i) one (1) person; (ii) two (2) or more persons related by blood or marriage, together with any number of their children (including biological children, stepchildren, foster children, or adopted children); (iii) two (2) persons unrelated by blood or marriage, together with any number of the children of either of them (including biological children, stepchildren, foster children, or adopted children); (iv)

within certain designated university residential zoning districts: up to three (3) persons unrelated by blood or marriage; (v) within all other residential zoning districts: up to four (4) persons unrelated by blood or marriage; (vi) group homes, residential facilities and assisted living facilities, as defined in the Code of Virginia, § 15.2-2291, which are licensed by the department of social services or the department of behavioral health and developmental services and which are occupied by no more than eight (8) mentally ill, mentally retarded, developmentally disabled, aged, infirm, or disabled persons together with one (1) or more resident counselors; (vii) a group of persons required by law to be treated as a single housekeeping unit, in accordance with the Federal Fair Housing Act, or a similar state law. **A family day home that serves one (1) to (4) four children shall be considered part of a residential occupancy by a single family.**

5. Add a new §34-1176, as follows:

§34-1176.—Family day home (5-12 children).

A provisional use permit that authorizes a family day home serving five (5) to twelve (12) children shall be subject to the following regulations:

1. Each provisional use permit for a family day home will be valid from January 1 (or such other date during a calendar year on which such permit is issued) through December 31 of the calendar year in which the permit is issued.
2. The operator of the family day home must reside at the property as his/her primary residence, or must be caring for children who reside within the residence.
3. No clients or employees shall be allowed to visit the property on which a family day home is conducted earlier than 6:00 a.m. or later than 11 p.m. The family day home may operate up to 12 hours within each 24 hour period.
4. Applicants for a family day home provisional use permit must obtain, and provide to the zoning administrator:
 - a. A copy of a valid city business license (or a statement from the commissioner of revenue that no city business license is required)
 - b. A copy of a valid state license. Following initial issuance of the provisional use permit, the operator shall keep the zoning administrator supplied with a valid state license at all times while the provisional use permit is valid.
 - c. A traffic safety plan that addresses drop-off and pick-up procedures related to automotive traffic.

5. In addition to the resident(s) of the dwelling, not more than one (1) other individual may be engaged in the activities of the family day home on the property at any given time.
6. One (1) exterior sign, of dimensions no greater than two (2) square feet, may be placed on the exterior of the dwelling or an accessory structure to indicate the presence of the family day home. The sign shall not be lighted.
7. A provisional use permit for a family day home may be revoked by the zoning administrator should a permit holder fail to maintain compliance with any of the regulations set forward in this section. An operator whose provisional use permit has been revoked pursuant to this paragraph shall not be permitted to apply for a new permit for any location for one calendar year after the end of the permit term.
8. Once an application requesting a provisional use permit is received by the zoning administrator, notification shall 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 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance and all other applicable local ordinances, the zoning administrator shall issue the permit. If the zoning administrator receives a written objection from a person so notified within 30 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 shall consider such objection and may (i) issue or deny the permit or (ii) refer the permit to the local governing body for consideration.