



Frank Simeck, CZA  
Zoning Administrator

## MEMORANDUM

TO: All Interested Parties

FROM: Frank Simeck, CZA, Zoning Administrator

DATE: December 17, 2019

SUBJECT: Zoning Administrator Determination re: Zoning provisions for "Family Day Homes"

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Recent questions regarding the applicability of the Town's zoning provisions for "Family Day Homes" have prompted the generation of this "Zoning Administrator's determination" memorandum.

Per Virginia State Code Sec. 15.2-2286, "[T]he zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance ... His authority shall include ... (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under §15.2-2307 or subsection C of §15.2-2311."

### Findings of Fact

1. The Town Code does not define the following terms Child Care, Nursery Schools, Day Care or Family Day Homes in Article 2 Sec. 18-4. – Definitions section of the Town Code.
2. Code of Virginia section **§ 63.2-100** – "Family day home" is defined as 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 five 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 related to the provider by blood or marriage shall not be required to be licensed.

### 3. Article 5. RS-16 Single-Family Detached Residential Zone Regulations

#### **Sec. 18-12. - Permitted uses.**

*The following uses are permitted in all RS-16 zones:*

- a) *Single-family detached dwelling.*
- b) *Accessory buildings, including barns and other bona fide farm buildings, and private garages.*
- c) *Agricultural operations, including floriculture, horticultural and nurseries, provided all structures and buildings used in connection therewith are at least 100 feet from the nearest property line; poultry and dairy farming and horse breeding on parcels of at least ten acres in area, provided all animals and buildings and structures used in connection therewith are located at least 100 feet from the nearest property line.*
- d) *Customary home occupations. (See section 18-173.)*
- e) *The keeping of horses and/or ponies primarily owned and kept for the personal use of the occupant on the land on which they are maintained on parcels of at least two acres in area, provided:*
  1. *All buildings and structures used in connection with the keeping of horses or ponies shall be located at least 100 feet from all of the property lines of the owner or keeper.*
  2. *All bulk feed and other supplies, equipment and materials used in connection with the keeping of horses or ponies shall be located in such buildings or structures located at least 100 feet from all of the property lines of the owner or keeper.*
  3. *Not more than one pony or horse per acre shall be kept and all such property on which such ponies or horses are kept shall be fenced in a manner which will prevent any or all of them from straying closer than ten feet from any property line of the owner or keeper.*

#### 4. **Sec. 18-13. - Conditional uses.**

*The following uses may also be permitted in all RS-16 zones subject to securing a use permit as provided in section 18-209:*

- a) *Churches and other places of worship.*
- b) *Colleges and schools (private, elementary and high) of a noncommercial nature.*
- c) *Golf courses, country clubs, private clubs, including community buildings and similar recreational uses not owned and/or operated by a public agency (does not include golf driving ranges).*
- d) *Institutional homes and institutions of an educational or philanthropic nature, except those of a correctional nature or for mental cases.*
- e) *Certified massage therapists in the RS-16, RS-12.5 and RS-10 zones only, subject to the same restrictions applicable to home occupations as set forth in section 18-173, and who further comply with the application, investigation and training requirements of sections 22-5, 22-6, and 22-7, and the sanitation and hygiene requirements applicable to health clubs as set forth in sections 22-10 and 22-11.*
- f) *Nursery and kindergarten schools (private).*
- g) *Public buildings and uses.*
- h) *Public parks, playgrounds and other recreational uses.*
- i) *Public utilities and services, including the following: electric utility substations with non-rotating equipment; water and sewage pumping stations; above-ground transmission lines not exceeding 33KV; telephone exchanges (but excluding service and service storage yards); provided that utilities shall be housed in a structure in keeping with the character of the neighborhood in which it is located.*

j) *Transitional parking. Where the side or rear yard of any lot or parcel of land located in a C-1, C-1A, or C-2 abuts land in any residential zone, automobile parking required in connection with the particular use of such commercial land may, upon the granting of a use permit pursuant to article 21 of this chapter, be permitted as a transitional parking use on that such land zoned for residential use, provided, however, that such transitional parking:*

- 1. Shall not extend more than 200 feet into any such abutting residential zone;*
- 2. Shall not extend into the required front yard setbacks or properties on adjacent streets;*
- 3. Shall not extend beyond the front and side yard setbacks of the residentially zoned lot or lots on which it is located;*
- 4. Shall not provide more than 40 percent of the parking space required by the commercial use for the benefit of which said transitional parking lot is requested, and shall conform with the provisions of article 16 of this chapter, except as otherwise expressly provided;*
- 5. Shall not provide any ingress and egress across adjacent residentially zoned property.*

## **Determination**

The Town Code does not define the terms Child Care, Nursery, Kindergarten Schools, Day Care or Family Day Homes in the definition section in its ordinance. The only reference made regarding the use of any of these terms is in Chapter 18 Article 16 section 18-130 in the Town's Off-Street parking and loading area requirements. The Town code does not address these types of uses, where they are permitted and whether or not the uses are allowed as a by-right use or need a Conditional use permit.

It is the Town Zoning Administrators determination that a Family Day Home, as defined by the Virginia Code § 63.2-100, with four or fewer children, be allowed as a by right use.

Since the Town has not codified an ordinance when addressing Family Day Homes between 5 to 12 children, it is therefore my determination that a Family Day Home with 5 to 12 children qualifies as a conditional use listed in Town Code section §18-13.f as a private nursery or kindergarten school and shall be bound by the provisions under Article 21 Conditional Use permits section §18-209 - §18-216. Such a use would be bound by the restrictions of a Conditional Use conditions imposed by the BZA.

## **Future Action**

The Town Zoning Code needs to adopt an ordinance that addresses uses for Child Care, Nursery, Kindergarten Schools, Day Care or Family Day Home aligned with the Code of Virginia. Updates are needed, especially as it relates to home occupations and day-care and community-based care facilities (whether for children or adults). The Town Council at its December 9, 2019 council meeting directed staff to begin the process to prepare an RFP for a zoning code rewrite of Chapters 17 and 18 of the Town code. The Town Zoning Administrator, Town Attorney and Director of Planning & Zoning are in full support of this effort.

CC: Cindy Petkac, Director of Planning & Zoning  
Steven D. Briglia, Town Attorney  
Mercury Payton, Town Manager  
Lynne Coan, Communications and Marketing Manager

