

# Staff's Research on the Regulation of Family Day Homes

## Virginia Department of Social Services

Family Day Homes:

[http://www.dss.virginia.gov/facility/child\\_care/licensed/fdh/index.cgi](http://www.dss.virginia.gov/facility/child_care/licensed/fdh/index.cgi)

Standards for Licensed Family Day Homes with Interpretation Guidelines:

[http://www.dss.virginia.gov/files/division/licensing/fdh/intro\\_page/code\\_regulations/regulations/final\\_fdh\\_manual\\_071713.pdf](http://www.dss.virginia.gov/files/division/licensing/fdh/intro_page/code_regulations/regulations/final_fdh_manual_071713.pdf)

Code of Virginia - Title 63.2 Welfare (Social Services):

[http://www.dss.virginia.gov/files/division/licensing/fdh/intro\\_page/code\\_regulations/code/2015\\_code\\_of\\_virginia.pdf](http://www.dss.virginia.gov/files/division/licensing/fdh/intro_page/code_regulations/code/2015_code_of_virginia.pdf)

## Leesburg

Home-Based Child Care Information Webpage:

<http://www.leesburgva.gov/government/departments/planning-zoning/zoning/home-based-child-care-information>

FAQ: <http://www.leesburgva.gov/home/showdocument?id=12269>

### Definition

**Citation: 18.1.61.1**

#### **Family Day Home**

Any child day program offered in the residence of the provider or the home of any of the children in care for 6 through 12 children under the age of 13 in a 24 hour period, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for whose care tuition, fees or other forms of compensation is charged. Family day homes with 1-5 children, exclusive of the provider's own children and any children who reside in the home shall be treated as residential occupancy by a single family.

### Use Standards

**Citation: 9.3.11.1**

#### **Family Day Homes**

**A. Description.** Family Day Homes for 6 to 9 children are permitted by-right and 10-12 by special exception, subject to meeting the performance standards below and Section 3.4.13 as applicable. A home occupation application is required and shall include a Sketch Plan depicting the entire lot to scale, setbacks, pathway to door of facility, drop off and pick-up locations, location of any permanent inground play equipment, the size and location of the required outdoor play area and required fence.

**B. Required Notice.** As required by Virginia State Code section 15.2-2292, upon receipt of an application for a by-right Family Day Home for 6 – 9 children the Zoning Administrator shall send notice 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 shall issue the permit sought.

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**C. Performance Standards.** Any Family Day Home application that does not meet one or more of the performance standards below, or is denied a permit through the administrative process described above, or requests approval for 10 to 12 children may apply for a Special Exception for the Family Day Home use subject to the standards below as modified by Town Council and Town of Leesburg Zoning Ordinance section 3.4.

**1.** The Family Day Home shall comply with any and all requirements of the Town and State Codes, including without limitation, obtaining a Home Occupation Permit, maintenance of a Town Business License, and obtaining a State Family Day Home License in accordance with the State Code, as applicable.

**2.** The Family Day Home shall comply with any and all requirements of the County and State Building Codes.

**3.** If the proposed location of the Family Day Home is subject to a Declaration of Covenants, Conditions, and Restrictions for a Homeowners Association (HOA), then prior to the issuance of the Home Occupation Permit, the Family Day Home provider shall provide the Town with documentation whether or not the use is allowable under applicable HOA Covenants, Conditions, and Restrictions.

**4.** The Family Day Home lot must be at least 6,000 square feet in size.

**5.** There shall be no more than two employees for a Family Day Home. The applicant shall demonstrate availability of employee parking onsite or along the street.

**6.** Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent to the Family Day Home center in such a manner that children do not have to cross a street to enter or exit the Home.

**7.** Family Day Homes shall stagger pick up and drop off times such that there are never more than two vehicles picking up or dropping off at one time.

**8.** There shall be no change in the outside appearance of the Family Day Home or lot nor other visible evidence of the conduct of a Family Day Home other than what may be required by the State Family Day Home License or provisions elsewhere in this Zoning Ordinance.

**9.** Seventy-five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when applicant can demonstrate the Family Day Home is located within 1,000 feet of an existing park or play lot that is at least twice the area otherwise required for the home care service. The park or play lot must be public or owned by the homeowners' association to which the residence belongs and must be accessed without crossing an arterial or collector road. The Outdoor play area must be shown on a plat to scale submitted at the time of application for the permit.

**10.** Fencing: Outdoor play area must be enclosed by a fence with a minimum height of four (4) feet.

**11.** Play Equipment Location: - No play equipment shall be located within the required yard setbacks.

**12.** Pathway to Facility: There must be a continuous hard-surface pathway/sidewalk connecting the drop-off and pick-up location to the entrance of the Family Day Home. The pathway shall be kept free of any snow or ice.

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## Hamilton

### Definition

#### **Citation:**

CHILD CARE CENTER: A facility operated for the purpose of providing care, protection, and guidance to a group of four (4) or more children separated from their parents or guardians during part of the day only, and meeting the licensing requirements for child care centers of Section 63.1-196 of the Code of Virginia, 1950, as amended.

### Use Standards

#### **Citation: Article 8, Section 4.1**

#### **Residential Daycare or Home Child Care:**

1. Maximum enrollment shall not exceed five (5) at any one time, exclusive of provider's own children.
2. No such use shall be permitted unless it is determined by Loudoun County Department of Environmental Health that the location and design does not pose any hazard to the health, safety and welfare of the children.
3. Landscape treatment and screening requirements of Article 9 shall not apply except that recreation areas shall be screened and fenced as required by the Zoning Administrator.
4. All applications shall contain the following:
  - a. The dimensions, boundary lines and area of the lot or parcel.
  - b. The location, dimensions and height of any building, structure, or addition, whether existing or proposed.
  - c. The distance from all property lines to the existing or proposed building, structure or addition, shown to the nearest foot.
  - d. The dimensions and size of all outdoor recreation space and the location of such space in relation to all lot lines.
5. All such uses shall be subject to applicable County and State regulations specifically Sec. 63.2-100 of the Code of Virginia, as amended.

## Round Hill

### Definition

#### **Citation: Article 2**

FAMILY CARE HOME: A dwelling unit established or licensed by the State of Virginia, Loudoun County or the Town of Round Hill which provides residential services for and supervision of eight or fewer persons, either related or unrelated, who are developmentally disturbed, mentally retarded, mentally ill, aged, handicapped, or children in need of adult supervision.

### Use Standards

#### **Citation: Section 5-607**

Child Care Facilities. Child care homes and centers are permitted provided they comply with the following standards:

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## (A) Child Care Homes:

- (1) All facilities shall be registered with the County pursuant to the County Code.
- (2) When calculating the total number of children cared for, resident children under the age of fourteen (14) shall be included.
- (3) The home shall be the principal residence of the operator of the child care facility.
- (4) The facility shall comply with any and all requirements of the County and State Codes.
- (5) A minimum of 75 square feet per child of outdoor play space shall be provided on the lot the child care facility is located and shall be shown on a schematic plat of the lot at the time of issuance of a zoning permit. Such play area shall be fenced, as per Section 5-607(B)(1)(a)\*, unless the applicant can show that the play area provides proper protection from traffic and other hazards and to neighboring yards.

**\*Section 5-607(B)(1)(a):** A fence at least three and one half (3 1/2) feet in height shall completely enclose the play area so that children are safely contained inside, and that all persons entering the play area are within direct line of sight from the child care center classroom areas.

## Middleburg

### Definition

**Citation:** Article II, Section 17

*Child Care Center.* A building where care, protection and supervision of more than five children are provided, on a regular schedule, during any part of the day but not for an entire 24-hour period.

*Family Day Home.* A residence in which no more than five children, excluding the provider's own children and any children living in the home, receive care, protection and supervision for compensation on a regular schedule, during any part of the day but not for an entire 24-hour period. A family day home shall be deemed a single-family occupancy for purposes of this ordinance.

### Use Standards

None

## Lovettsville

### Definition

**Citation:** Article I, Sec. 42-2

*Child care center* means a licensed establishment which offers care, protection and supervision for compensation to more than nine children at a time during any 24-hour period, and then only for part of any 24-hour day. The term "child care center" may include

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nursery schools, kindergartens or other facilities for which the purpose is primarily educational, recreational or medical treatments.

*Child care home* means a single-family detached, duplex or townhouse dwelling which offers care, protection and supervision for compensation to more than four, but not more than nine, children at a time during any 24-hour period, and then only for part of any 24-hour day.

## **Use Standards**

### **Citation: Article VI, Sec. 42-197**

Child care home and child care centers.

Child care homes and centers (collectively, facilities are permitted, provided they comply with the following standards):

- (1)** Child care facilities shall be registered with the county pursuant to the county code.
- (2)** When calculating the total number of children cared for, resident children under the age of 14 shall be included.
- (3)** The home shall be the principal residence of the operator of the child care home.
- (4)** The facility shall comply with any and all requirements of the county and state codes.
- (5)** Unless exempted by subsection (6) of this section, a minimum of 75 square feet per child of outdoor play space shall be provided on the lot the child care facility is located on and shall be shown on a schematic plan of the lot at the time of issuance of a zoning permit. A fence at least 3½ feet in height shall completely enclose the play area so that children are safely contained inside, and that all persons entering the play area are within direct line of sight from the child care center classroom areas.
- (6)** No play area shall be required on site when it is demonstrated that the child care home or center is located with 1,000 feet of an existing park or play space of at least two times the size required for the child care home, providing that such park or play space may be accessed without crossing an arterial or collector road. Such park or play space shall either be a public park or play space or shall be dedicated to such uses as part of a local community association.
- (7)** No play equipment at child care facilities shall be located within any required front yard setback or within five feet of any side or rear lot line. All play areas at child care facilities shall be safely segregated from parking, loading or service areas.
- (8)** Parking areas at child care facilities shall be designed to enhance the safety of children as they arrive at and leave the facility.
- (9)** Child care facilities shall have a designated pickup and delivery zone located adjacent to the child care structure in such a way that children do not have to cross vehicular travel ways to enter or exit the center.
- (10)** Persons operating child care facilities shall obtain a business license and pay the business license tax as described in article IV of chapter 18, business license taxes. Child care homes operated as home occupations shall be subject to section 42-199.

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## Loudoun County

### Definition

#### **Citation: Article 8**

**Child Care Center:** A licensed establishment other than a child care home, which offers care, protection and supervision of children for compensation during any twenty-four (24) hour period, and then only for part of any twenty-four (24) hour day. A child care center may include nursery schools, kindergartens or other facilities for which the purpose is primarily educational, recreational, or medical treatments.

**Child Care Home:** A licensed establishment located in a single-family detached, duplex or townhouse dwelling which offers care, protection and supervision for compensation to more than five (5) non-resident children at a time during any twenty-four (24) hour period, and then only for part of any twenty-four (24) hour day. For the purpose of this definition, "non-resident children" means children that are not the child care providers' own children and children not residing in the home. Pursuant to the Code of Virginia, an establishment that offers care, protection and supervision for compensation to five (5) or less non-resident children is regulated the same as a dwelling unit.

### Use Standards

#### **Citation: 5-609 Child Care Facilities.**

**5-609 Child Care Facilities.** Child care homes and centers are permitted provided they comply with the following standards:

(A) **Child Care Homes:**

- (1) Notwithstanding Section 5-600 of this Ordinance, this Section 5- 609(A)(1) and Sections 5-609(A)(2), (4), (5) and (6) below shall not be modified by Minor Special Exception.
- (2) The total number of children cared for in a child care home shall not exceed a maximum of twelve (12) children under the age of thirteen (13).

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- (3) When calculating the total number of children cared for in a child care home, the provider's own children, children residing on the premises, and non-resident children shall be included.
- (4) The child care home shall be the principal residence of the child care home provider.
- (5) The child care home shall comply with any and all requirements of the County and State Codes, including without limitation, obtaining a Zoning Permit in accordance with Section 6-1000 of this Ordinance, obtaining a County Business License, and obtaining a State Family Day Home License in accordance with the State Code, as applicable, prior to establishing the use.
- (6) Prior to the issuance of a Zoning Permit for a child care home, written notice of the Zoning Permit application shall be sent to the last known address of the owner of each adjacent property as shown on the County's current real estate tax assessment records. For the purposes of this Section 5-609(A)(6) "adjacent" shall mean properties abutting the subject property and all property immediately and diagonally across the street or road from the subject property, but not including properties separated from the subject property by a roadway having more than two through lanes of travel, or, properties across such roadway that are more than 100 feet from the boundary of the subject property. Such written notice shall be sent by certified or registered mail. When such notice is not sent by the County, mail receipts or an affidavit shall be submitted to the Zoning Administrator showing that the required notice was sent. Such written notice shall include the following information:
  - (a) A statement that a Zoning Permit application for a child care home has been submitted to the County;
  - (b) The address of the property subject to the Zoning Permit application for the child care home;
  - (c) A statement informing the adjacent property owner that if they have any objection to the proposed child care home that they can send their objection in writing to the Zoning Administrator, which must be received within thirty (30) days from the date the

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notification letter was sent, and that such written objection shall include the specific issues that are the basis for their objection. The address of the Zoning Administrator shall also be included in the notice letter.

If an objection is received in writing from an adjacent property owner within the required thirty (30) days, the Zoning Permit application cannot be approved until either (i) the Applicant obtains approval of a Minor Special Exception by the Board of Supervisors, in accordance with the provisions of Section 6-1300 of this Ordinance, or (ii) the Applicant elects in writing not to seek a Minor Special Exception, the Zoning Permit application is denied, the Applicant appeals the denial to the Board of Zoning Appeals in accordance with the provisions of Section 6-1700, and the Board of Zoning Appeals reverses the denial and approves the permit. In approving such permit, the Board of Zoning Appeals may impose such conditions and restrictions upon the location, character and other features of the proposed use as it may deem necessary in the public interest. Failure to comply with any such conditions and restrictions shall constitute a violation of this Ordinance.

- (7) The Zoning Permit application for the child care home shall include a Sketch Plan, in accordance with Section 6-703 of this Ordinance, The Sketch Plan shall show the size and location of the required outdoor play area and fence required by (8) below, and the required parking spaces.
- (8) Unless exempted by (9) below, an outdoor play area shall be provided on the lot where the child care home is located. The minimum size of the outdoor play area shall be seventy-five (75) square feet for each child permitted under the permit regardless of the number of children actually cared for in the child care home. Such play area shall be fenced, as per Section 5-609(B)(1)(a), and shall be located in the rear or side yard.
- (9) No outdoor play area shall be required on-site when it is demonstrated that the child care home is located within 1,000 feet of an existing park or outdoor play area of at least two (2) times the size required for the child care home, providing that such park or outdoor play area may be accessed without



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crossing an arterial or collector road. Such park or outdoor play area shall either be a public park (neighborhood, community or regional park) or other public play area or park which is shown on the approved concept development plan, site plan, or subdivision plat for the development within which the child care home is located, and which is for the use of owners and residents of the portion of the said development where the child care home is located.

- (10) Two non-resident assistants/employees shall be permitted.
- (11) The hours of operation for the child care home shall be limited to five days a week between the hours of 6:00 AM and 7:00 PM.
- (12) Signage for the child care home shall be as permitted in Section 5- 1200 of this Ordinance.
- (13) Parking spaces required by Section 5-1102 of this Ordinance shall be designed for the drop off/pick up of children and shall be designed and constructed to enhance the safety of children as they arrive and leave the child care home.
- (14) For child care homes permitted to care for more than nine (9) children, including the provider's own children, children residing on the premises, and non-resident children:

The child care home shall be permitted only in a single family detached dwelling that is located on a lot that is a minimum of 5,000 square feet in size.

- (B) **Child Care Centers** shall meet the criteria of Sections 5-609(A) (5), (8), and (9) above, and the following:

- (1) Outdoor play areas shall meet the following standards:
  - (a) A fence at least three and one half (3 ½) feet in height shall completely enclose the play area so that children are safely contained inside, and that all persons entering the play area are within direct line of sight from the child care center classroom areas.
  - (b) Notwithstanding Section 5-200(A)(9), no play equipment shall be located within the required yard setback of any district.

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- (c) Outdoor play areas shall be safely segregated from parking, loading, or service areas (such as dumpster pads or delivery sites).
- (2) Parking areas and vehicular circulation patterns shall meet the following standards:
  - (a) Parking areas shall be designed to enhance the safety of children as they arrive at and leave the facility.
  - (b) A designated pickup and delivery zone, providing at a minimum one (1) parking space per twenty (20) children, shall be located in proximity to the child care structure in such a way that provides safe and clearly designated access to enter or exit the center.

## Warrenton

### Definition

#### **Citation: Article 12**

Child Care Center: A facility operated for the purpose of providing care, protection, and guidance to a group of four (4) or more children separated from their parents or guardians during part of the day only, and meeting the licensing requirements for child care centers of Section 63.1-196 of the Code of Virginia, 1950, as amended.

Family Care Home: A private single-family home in which more than three (3) children, but no more than six (6) children, are received for care, protection, and guidance during only part of the day, except children who are related by blood or marriage to the person who maintains the home, and meeting applicable licensing requirements for family care homes of § 63.1-196 of the Code of Virginia, 1950, as amended.

### Use Standards

None

## Culpeper

### Definition

#### **Citation: Article 1, Sec. 27-1**

*Child care center* means any establishment which is licensed or approved as a child care center in the Commonwealth of Virginia by the Virginia Department of Social Services, that enrolls two (2) or more children under the age of thirteen (13) in a facility that is not the residence of the provider or of any of the children in care or thirteen (13) or more children at any location for whose care tuition, fees or other forms of compensation are charged. A child care center may include nursery schools or kindergartens. Other facilities for which

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the purpose is primarily education, recreational, or medical treatments that are not exempt from licensure by the Virginia Department of Social Services, and child care centers operated by religious institutions exempt from licensure are considered child care centers.

*Family day home* means any child day program offered in the residence of the provider or the home of any of the children in care for six (6) through twelve (12) children under the age of thirteen (13), exclusive of the provider's own children and any children who reside in the home, when at least one (1) child receives care for whose care, tuition, fees or other forms of compensation is charged. Family day homes with one (1) to five (5) children, exclusive of the provider's own children and any children who reside in the home, shall be treated as residential occupancy by a single family.

## **Use Standards**

### **Citation: Article III, Sec. 27-52**

Permitted in R-1, R-2 & R-3 as:

Family day homes for up to twelve (12) children subject to the following requirements and performance standards:

- a. A sketch plan depicting the entire lot to scale, setbacks, pathway to door of facility, drop off and pick-up stations, location of any permanent in-ground play equipment, the size and location of the required outdoor play area and required fence.
- b. As required by Code of Virginia, § 15.2-2292, upon receipt of an application by a family day home, the zoning administrator shall send notice 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 (30) days of the date of sending the letter and determines the family day home otherwise complies with the provisions of the ordinance from which this section was derived, the zoning administrator shall issue the permit.
- c. Any family day home application that does not meet one (1) or more of the below standards or is denied a permit through the administrative process described above, may apply for a conditional use permit subject to standards below as modified by the town council.
  1. The family day home application shall comply with any and all requirements of the town, county and state codes, including obtaining a zoning permit, business license, building code, and obtaining a state family day home license in accordance with the Virginia Department of Social Services.
  2. If the proposed location of the family day home is subject to a declaration of covenants, conditions and restrictions for a homeowners association (HOA), then prior to the issuance of a zoning permit, the family day home provider shall provide the town with documentation whether the use is allowable under the applicable HOA covenants, conditions and restrictions.
  3. The family day home lot must be at least six thousand (6,000) square feet in size.
  4. There shall be no more than two (2) employees for a family day home. The applicant shall demonstrate availability of employee parking on-site or along the street.
  5. Child drop off and pick up locations shall be designated to enhance the safety of children as they arrive and depart. A designated arrival and departure zone shall be located adjacent

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to the family day home center in such a manner that children do not have to cross a street to enter or exit the home.

**6.** Family day homes shall stagger pick up and drop off times such that there are never more than two (2) vehicles picking up or dropping off at one (1) time.

**7.** There shall be no change in the outside appearance of the family day home or lot nor other visible evidence of the conduct of a family day home other than what may be required by the state family day home license or provisions elsewhere in this chapter.

**8.** Business vehicles: Only one (1) vehicle used in connection with a family day home shall be permitted.

**9.** Seventy-five (75) square feet of outdoor play area must be provided on-site per child except as follows: No outdoor play area shall be required on-site when the applicant can demonstrate the family day home is located within one thousand (1,000) feet of an existing park or play lot that is at least twice the area otherwise required for the home care service. The park or play lot must be public or owned by the homeowners association to which the residence belongs and must be accessed without crossing an arterial or collector road. The outdoor play area must be shown on a plat to scale submitted at the time of application for the zoning permit.

**10.** Fencing: Outdoor play areas must be enclosed by a fence with a minimum height of four (4) feet.

**11.** Play equipment location: No play equipment shall be located within the required yard setbacks.

**12.** Pathway to facility: There must be a continuous hard-surface pathway or sidewalk connecting the drop-off and pick-up location to the entrance to the family day home. The pathway shall be kept free of any snow or ice.