



NEW CASTLE COUNTY
Department of Land Use

FAQ

Child Day Care

A. Child Day Care in General:

Under the New Castle County Unified Development Code (UDC), Child Day Care can be provided in two different settings:

1. In the home (with a maximum of 12 children).
2. In a day care center.

The rules for each setting are different. However, in all cases the State of Delaware must license child day care.

B. Child Day Care in the Home:

Can I operate a Child Day Care in my home?

Yes, provided that the applicable conditions of Sections 40.03.420 B and C of the UDC are met. Operating a day care in the home is considered a home use, not a home occupation. The conditions of Section 40.03.420(A) do not apply to the Family Day Care and the Large Family Day Care uses, but rather separate standards for each have been established. The Family Day Care and the Large Family Day Care uses should be distinguished from the day care center use. The day care center use is either a building completely dedicated to the day care of children or adults, or that portion of commercial, office, institutional, or industrial structure dedicated to the day care of children or adults. Call 892-5800 (Delaware Family Services Division) for state licensing information and requirements.

For purposes of land use regulation, the terms Family Day Care and Large Family Day Care are defined in Section 40.33.221(A) of the UDC. The terms family day care home and large family day care home are further defined and limited by the State of Delaware, Department of Services for Children, Youth and Their Families, Office of Child Care Licensing regulations.

Are there other sources of restrictions?

The property owner, tenant and prospective day care operator should also check for deed restrictions or covenants that might limit or prohibit businesses conducted within or from the home. Tenants should confer with their landlord and check lease and rental agreements. Compliance with Section 40.03.420 does not relieve the property owner, tenant, or business owner of the responsibility to obtain all the other necessary licenses, permits, and clearances (federal, state, or local) that might be required to operate the type of day care business or use undertaken. Call the Delaware Economic Development Office (577-3156) or the Small Business Development Center (831-1555) regarding state and federal requirements.

What is the difference between a Family Day Care Home and a Large Family Day Care Home?

According to current State of Delaware regulations, a Family Day Care Home is a home in which 1 to 6 “full-time” children are served, whereas as a Large Family Day Care Home is a home in which 7 to 12 “full-time” children are served (8/1/2000). Each has separate licensing requirements; however, those for a large family day care are more extensive and rigorous.

What are the conditions that must be met for a Family Day Care Home under the UDC?

A family day care home is permitted subject to the following requirements (Section 40.03.420,B):

1. State licensing requirements must be met, including those pertaining to building, fire, safety and health codes.
2. Lot dimensional and bulk standards must conform to the applicable zoning district.
3. One (1) nameplate sign not to exceed one (1) square foot is permitted.
4. Structural or decorative modifications that will alter the exterior residential characteristics of the dwelling are prohibited.

What are the conditions that must be met for a Large Family Day Care Home under the UDC?

A large family day care home is permitted subject to the following requirements (Section 40.03.420 C):

1. State licensing requirements must be met, including those pertaining to building, fire, safety and health codes.
2. Minimum lot size must be ten thousand (10,000) square feet.
3. One (1) nameplate sign not to exceed one (1) square foot is permitted.
4. Structural or decorative modifications that will alter the exterior residential character of the dwelling are prohibited. Any new or remodeled dwelling must be designed to be compatible with the residential character of the surrounding neighborhood.
5. Outdoor play or activity areas must be fenced or otherwise enclosed on all sides and must consist of developable lands but cannot include driveways, parking areas or drop-off areas.
6. Outdoor play or activity structures must be located at least ten (10) feet away from the property line.
7. Two (2) additional off-street parking spaces must be provided.

In what zoning districts is child day care in the home permitted?

Currently, “Day Care, Family/Large Family” is permitted as an accessory use in all residential zoning districts: TN, ST, S, SR, SE, NC, and MM. If there is any uncertainty about the zoning district designation of the subject property, contact the Department of Land Use (395-5400). Written verification is also available via the Request For Zoning Certification (RFZC) process.

Do I need a County Building Permit to operate a Child Day Care in the Home?

Generally, no, unless the conversion or conduct of the Child Day Care operation requires a structural change or addition, or significant modification or expansion of plumbing, heating, ventilation, or electrical systems. However, other certifications or inspections might be required. If a building permit is required, a site or plot plan is needed to show the location of the improvements. Enough information needs to be

supplied to determine whether the conditions of Section 40.33.420 (B & C) are met. Moreover, if a building permit is required, an inspection of the improvements by the Licensing Division of the New Castle County Department of Land Use will have to be conducted and a Certificate of Occupancy will have to be obtained prior to use of the facility improvement for child day care purposes.

What Certifications or Inspections might I need for a Child Day Care in the Home?

The Department's experience suggests that the Delaware Office of Child Care Licensing wants evidence of local zoning clearance as part of its licensing process. The evidence varies according to whether the license application is for a Family Day Care Home or a Large Family Day Care Home.

For a Family Day Care Home, the zoning clearance usually involves just one step – written verification of zoning. This can be accomplished by obtaining, completing and submitting a "Request For Zoning Certification" (RFZC) application form (there is a processing fee). The Department recommends that a cover letter be submitted explaining the intended use for which certification is requested and any unique circumstances or conditions which should be called to the attention of the Department of Land Use. The Department, within 20 working days of receiving a completed RFZC application, will issue a letter of response. A copy of this letter can be submitted to the State as proof that the use is permitted at the proposed family day care location.

In the case of a Large Family Day Care Home, zoning clearance involves two steps. Zoning verification via the RFZC process described in the preceding paragraph is the first step. In the second step, the state wants either a) a written report from the local building inspector, or b) either a Certificate of Use or Certificate of Occupancy, as might be appropriate and applicable. Generally, the Department of Land Use is prepared to issue either a Certificate of Use or Certificate of Occupancy as applicable. The Certificate of Occupancy is usually issued in cases where a building permit has been drawn, and is issued only after the improvements have been inspected and found in compliance with the County Code. A Certificate of Use will be issued upon application and a positive finding that the conditions of Section 40.03.420 (C) have been met. An application for a Certificate of Use must be accompanied by a site plan or plot plan drawing with sufficient information on it to determine whether the conditions of Section 40.03.420 (C) have been met. In addition, the Delaware Office of Child Care Licensing may conduct its own inspection of the Large Family Day Care Home to determine compliance with its own separate regulations.

C. Child Day Care Centers:

Child Day Care Centers are permitted within several contexts. A child day care center use is either a building completely dedicated to the day care of children or that portion of commercial, office, institutional, or industrial structure dedicated to the day care of children. A day care center can be a principal (or primary) use or in some cases, an ancillary use under the provisions of the New Castle County Unified Development Code (UDC). Section 40.33.230 of the UDC classifies day care centers for all ages as an Institutional Use, specifically, "Institutional, Regional" and "Institutional, Neighborhood." See NAICS 624120 & 624410. This FAQ focuses, however, upon day care centers designed for and licensed for child day care.

In what zoning districts is a Child Day Care Center permitted?

Currently, Day Care Centers as "Institutional, Neighborhood" uses are allowed as "Limited" uses in all residential and nonresidential zoning districts except the HI (Heavy Industrial) and EX (Extractive) zoning districts. In the HI and EX zoning districts Day Care centers are prohibited except as ancillary use in a business or industrial park setting per Section 40.03.430(L) of the UDC. Day care centers as a "Limited" use are subject to the conditions of Section 40.03.309 of the UDC and to at least a site plan review (Sections 40.03.100 & 40.31.210).

At this time, Day Care Centers as "Institutional, Regional" uses are allowed as "Limited" uses in the ST, OR, CR, S, SE, NC, and SR zoning districts subject to the conditions of Sections 40.03.308, 40.03.309,

and 40.31.210 of the UDC which includes at least a site plan review of the proposed facility (Sections 40.03.100 & 40.31.210).

If there is any uncertainty about the zoning district designation of the subject property, contact the Department of Land Use (395-5400). Written verification is also available via the Request For Zoning Certification (RFZC) process.

How large of a site must the Day Care Center be located upon?

The site or lot must be one (1) acre in area (Section 40.03.309); this must be net of any protected natural resource areas; e.g., floodplains, wetlands, certain percentage of forests, etc. (Section 40.04.110).

What are the special conditions that must be met for a Day Care Center under the UDC?

Pursuant to Section 40.03.309 of the UDC, specific special conditions applicable to Day Care centers are:

1. State licensing requirements must be met, including those pertaining to building, fire, safety and health codes.
2. Outdoor play or activity areas must be fenced or otherwise enclosed on all sides, as approved by the Department, and must consist of developable lands, but cannot include driveways or parking areas. A 0.1 opacity bufferyard is required around the play area, unless bufferyard standards are otherwise required by UDC.
3. The circulation pattern of the parking area shall be designed to provide a safe and convenient pedestrian access from all parking spaces to the entrance of the facility.
4. No portion of the day care center can be located within five hundred (500) feet of any gasoline pumps, underground gasoline storage tanks or other storage of explosive materials, package store, bar or tavern, or other similar incompatible uses.
5. When a day care facility is located in a shopping center or shares parking and/or access with other commercial uses, the parking area must function independently of and physically separate from the general parking and circulation pattern of the other stores or businesses. The day-care facility must be in either the end unit of the multiple occupancy building or a separate structure. These standards do not apply to day care facilities located within developments consisting solely of office uses.
6. In residential districts, no structural or decorative changes that will alter the exterior residential character of an existing residential structure used for a day care center shall be permitted. Any new or remodeled structure must be designed to be compatible with the residential character of the surrounding neighborhood.

What intensity, bulk and dimensional standards apply?

Except for the minimum lot size which is fixed at one (1) acre in Section 40.03.309 of the UDC, the intensity, bulk and dimensional standards vary according to the zoning district in which the facility is proposed to be located. These standards are contained in Table 40.04.110 of the UDC. They are usually listed within the row entitled "Other Permitted Uses" under the applicable zoning district header.

What landscaping and bufferyard requirements apply?

The landscaping and bufferyard requirements vary according to the zoning district, whether the lot abuts a residential use or a residential zoning district, and the location of play and parking areas. The standards are located in Table 40.04.110, Division 40.04.300 and Article 23 (Tables 40.23.140 & 40.23.110). If a

landscape plan is required, it must be prepared by a Landscape Architect registered in and with the State of Delaware.

What parking standards and requirements apply?

Currently, 3.5 parking spaces per 1,000 square feet (SF) of Gross Floor Area (GFA) of day care building space is required (Table 40.03.522). Paved and curbed parking lots are generally required, and dead-end parking aisles are generally prohibited. Other parking lot design and improvement standards are found in Division 40.03.500 and 40.22.600 of the UDC.

Can the day care facility also include a preschool or kindergarten?

Yes, provided all state licensing requirements and County UDC requirements are met.

When is Minor or Major Land Development Plan Required?

Generally a Minor Land Development Plan is required when the proposed new building or additions equal or exceed 1,000 square feet (SF) of Gross Floor Area (GFA) or the development involves the subdivision of land into 5 or less lots not creating new street right-of-way. Generally, a Major Land Development Plan is required when the scope of the project exceeds 20,000 SF of GFA in new buildings or additions, more than 5 lots are created, or a new public or private street is created. See the definitions of these terms in Division 40.33.300 of the UDC or call the Department of Land Use (395-5400) for further guidance. A professional engineer or land surveyor registered in and with the State of Delaware must prepare both Minor and Major Land Development Plans. Specific information requirements for Land Development Plans are found in Part 1 and 2 of Appendix 1 of the UDC.

In the case of a Day Care Center proposal, if a land development plan is not required, either a site plan or a combination site and parking plan will be required, even in the case of building conversions, additions and use changes. Specific information requirements for site and parking plans can be found in Part 2, B & C of Appendix 1 of the UDC; however, sufficient information needs to be supplied to determine whether the requirements of the UDC are met.

Do I need a County Building Permit to establish or modify a Child Day Care Center?

A building permit is required for new construction of a Day Care Center or a structural change or addition, or significant modification or expansion of plumbing, heating, ventilation, or electrical systems of an existing structure to accommodate a Day Care Center. However, other certifications or inspections might be required. If a building permit is required, an inspection of the improvements by the Licensing Division of the New Castle County Department of Land Use will have to be conducted and a Certificate of Occupancy will have to be obtained prior to use of the facility improvement for child day care purposes. At minimum a site or plot plan is needed to show the location of the improvements. Enough information needs to be supplied to determine whether the requirements of the UDC are met.

What Certifications or Inspections might I need for a Child Day Care Center?

The Department's experience suggests that the Delaware Office of Child Care Licensing wants evidence of local zoning clearance as part of its initial licensing process and then wants evidence that the facility has received the appropriate and applicable Certificate of Use or Certificate of Occupancy.

The first step is submission of written verification of the parcel's zoning to the Delaware Office of Child Care Licensing. This can be accomplished by obtaining, completing and submitting a "Request For Zoning Certification" (RFZC) application form with a \$75 processing fee for a residential parcel or \$300 for a non-residential parcel. Checks are to be payable to New Castle County. The Department recommends that a cover letter be submitted explaining the intended use for which certification is requested and any unique circumstances or conditions which should be called to the attention of the Department of Land Use. The Department within 20 working days of receiving a completed RFZC application will issue a letter

of response. A copy of this letter can be submitted to the State as proof that the use is permitted at the proposed location.

In the second step, the state wants either a) a written report from the local building inspector, or b) either a Certificate of Use or Certificate of Occupancy, as might be appropriate and applicable. Generally, the Department of Land Use is prepared to issue either a Certificate of Use or Certificate of Occupancy as applicable. The Certificate of Occupancy is usually issued in cases where a building permit has been drawn, and is issued only after the improvements have been inspected and found in compliance with the County Code. A Certificate of Use will be issued upon application and a positive finding that the conditions of Section 40.03.420 (A or B as applicable) have been met. An Application for a Certificate of Use must be accompanied by a site plan or plot plan drawing containing sufficient information to determine whether the conditions and requirements of UDC have been met. In addition, the Delaware Office of Child Care Licensing may conduct its own inspection of the Day Care Center to determine compliance with its own separate regulations.

How long does it take for a plan to get approved?

The Department has 20 working days to initially review and respond to any application, then it is up to the applicant to address all identified code compliance issues. The Minor Land Development Plan Review Process has two phases: the Exploratory Sketch Plan (ESP) and the final Record Plan (RP). The Major Land Development Plan Process has three phases – the middle step of a Preliminary Plan is inserted between the ESP and RP phases. The Department does not have control over how long the applicant takes to proceed to the next phase once the Department takes action on an ESP or Preliminary Plan application. Final approval may not be granted until all identified code compliance issues have been addressed.

What should be considered in evaluating and selecting a site?

The Department recommends that anyone interested in determining the feasibility of a site for use as a Child Day Care center seek the counsel and services of both a registered surveyor or engineer and a registered architect. The services of an architect can be particularly important where new buildings, building additions, building conversions, or building modifications are contemplated. Besides typical economic, marketing, safety, health, and organizational or individual goals and considerations, a site should be evaluated for UDC compliance feasibility. Considerations should include natural resource constraints (e.g., wetlands, floodplains, ground water recharge areas, etc.), infrastructure (transportation, sewer, water, stormwater management, etc.), design and improvement requirements, and intensity and bulk requirements (LSR, FARs, setbacks, etc.), and uses on adjoining parcels. Intensity standards are particularly important since they pose a limit to expansion on undeveloped and developed sites, including those with nonconformities (Section 40.08.130 B 1). Questions about the interpretation and use of Landscape Surface Ratios (LSRs) and net and gross Floor Area Ratios (FARs) should be directed to the Planning Division of the Department of Land Use.

The FAQ Series only summarizes or highlights portions of the New Castle County Unified Development Code (UDC). In all applications, the UDC must be directly consulted. The language in the UDC prevails over the FAQ.

Created: 03/21/01
Revised: 7/10/2012