



# Swimming Upstream

## Child Care Providers and The Zoning Process in Philadelphia



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## ***Introduction***

Like all businesses in Philadelphia, child care providers wishing to open a family child care home, group child care or child care center must navigate complex licensing, inspection and zoning processes. Child care providers have indicated particular challenges with the zoning process; they find it difficult to understand what is expected of them, gain zoning approval in a timely way and avoid costly and sometimes questionable requirements. Often these requirements are inconsistent with best practice standards in the field and can severely affect their financial viability. This report looks at child care providers' experiences with the zoning system, documents the difficulties providers have in gaining zoning approval, and makes recommendations about ways to make the system work better for providers and the families they serve.

## ***Executive Summary***

### ***Protecting Children and Maintaining Communities***

More than 50,000 children are enrolled 564 center-based and 868 home-based child care programs in the city of Philadelphia. Child care provides two important services to children and families; it enables tens of thousands of parents to work each day, to support their families and contribute to Philadelphia's economy and its tax base. Quality child care programs support children's healthy social and emotional development and help prepare them for success in school.

The need for child care increased dramatically during the 1990s. The number of children under the age of six with a single or both parents in the workforce increased 20 percent in Philadelphia, one of the largest increases in the state. Today, more working parents need safe, affordable child care that is close to home or near transit. This has dramatically increased demand for home-based care, especially for infants and toddlers.

Having child care facilities located in areas accessible to families, which often means residential districts, lifts a tremendous burden from time-challenged parents of young children. Having a high quality facility that is easily accessible is every parent's desire. Obstacles to operation, including restrictive zoning and burdensome requirements, reduce the supply of child care and make parents' hunt for child care more difficult.

Philadelphia Citizens for Children and Youth (PCCY) sought to better understand provider experiences with the Zoning Board of Adjustment (Zoning Board, ZBA or Board) and to examine the disposition of zoning cases. We used three methods: a survey of group child care providers, (providers of care to 7-12 children who need zoning approval to operate in the city of Philadelphia), a focus group of child care providers and service organizations who work with them and an examination of all child care zoning cases that went before the ZBA in 2004. Finally we compared this data to data from a previous study of zoning cases undertaken in 1999.

### ***What is the Problem?: Issues Faced by Child Care Providers in Philadelphia***

Many child care providers seeking to operate in Philadelphia face an intricate zoning process. Start up child care programs get some guidance about navigating the initial licensing process through the Department of Licenses and Inspections (L& I) but receive little or no information about what to expect from the zoning process. There is no single point of contact for entry into the licensing and zoning system for child care providers. Different units within the Department of Licenses and Inspections give different and often conflicting information about zoning, which makes it confusing, time consuming and costly for providers.

Child care providers expressed a great deal of frustration with the zoning process and faced a great deal of uncertainty in pursuing what is, for many, a dream of caring for children. In focus group meetings and surveys they reported receiving little information about expectations for zoning approval and costs associated with the process. This paper identifies areas of concern with the zoning process and offers recommendations to address these concerns.

### ***Findings***

- 1. Child care zoning approval rates are declining.** In 1999, 67% of group child care and 49% of centers received zoning approval. By 2004, the Board approved only 53% of group programs and 31% of child care centers. In 2004 only 24 of 62 applicants, or 39%, were approved within the year.
- 2. The zoning approval process is time consuming and plagued with unnecessary delays.** In 2004, 62 applicants made 101 appearances before the Board, some coming more than once. Many of the delays were due to a lack of preparation by the applicants, a problem that could have been avoided with simple instructions from the L & I Zoning Unit. For example, the Zoning Unit does not require architectural drawings, but the ZBA often made these a condition for consideration.
- 3. Group child care providers in particular have a difficult time navigating the zoning process.**
  - a. Group child care providers are routinely approved to care for fewer than 12 children. While caring for 12 children is allowed under Pennsylvania Department of Welfare (DPW) regulations, only 28% of group child care providers were approved for 12 children. A full 28% were approved to care for just eight children. DPW requires a second staff person for 7 to 12 children. The Zoning Board limitation makes operating a group child care financially impossible.
  - b. On average the Zoning Board added \$4,140 to costs of opening a group child care facility. The annual salary of group child care providers is about \$17,000. These costs, which are almost 25% of a child care provider's annual salary, significantly affect a provider's viability and ability to offer quality care.

### ***A Good Foundation for Future Success***

In recent years, the Department of Licenses and Inspections has taken a series of steps to help child care providers navigate the system and meet L & I requirements. L & I has a Child Care Coordinator and a dedicated unit of housing inspectors and commercial inspectors who work solely with child care programs. The Child Care Unit sponsors bi-monthly orientations for potential child care sites, and works in concert with other licensing agencies, including the Health Department, State Department of Public Welfare and other city departments. A City guide to licensing child care programs was developed in 1999. The latest update of the guide will be available in early 2006.

There is little or no such guidance when it comes to zoning. Instead there is confusion and miscommunication. Providers are unprepared to appear before the Board, and when they do make it, they are subject to restrictions that significantly impede their ability to do business. The process is slow and as with all businesses, time is money.

### ***Conclusion***

Child care providers seeking to operate in Philadelphia face a difficult and daunting zoning process. The child care community and the City have worked in partnership on a number of issues and can build on that partnership to better meet the needs of providers and the families that they serve.

### ***Recommendations***

Based on the child care providers' experiences and data, PCCY recommends the following:

- Improve information and technical assistance for child care providers.
  - Create a one stop licensing and zoning assistance center to offer information and technical assistance.
  - Revise and reprint the existing zoning guide to provide clear written instructions on the zoning process.
  - Develop a zoning seminar for child care providers.
  - Increase legal resources for child care programs.
  - Provide mentors to child care providers for zoning.
- Modify the Zoning Code to better reflect child care uses.
  - Define child care centers and group child care in the Zoning Code and identify zoning districts where group child care is permitted.
  - Allow up to six children in Council Districts 6 and 10.
  - Define group child care as care for 12 children and have applicants denied or approved based on that full enrollment number.
- Amend the Zoning Code to create consistency with the Building and Fire Codes. This will better address child care safety issues so there will be no overlap with requirements imposed by the Board and items required in other City Code sections.
- Clarify the requirements for architectural drawings for group and center-based child care programs.

- Offer educational seminars to City staff about child care operations.
- Adopt an ordinance that allows group child care programs who meet specified requirements to operate without an appearance before the ZBA.

## ***Background***

The mission of Philadelphia Citizens for Children and Youth (PCCY) is to improve the lives and life chances of children in the Philadelphia region through advocacy. PCCY is particularly concerned with improving lives of children by increasing the availability of quality early education opportunities for families in Philadelphia and the Southeastern Pennsylvania region. The current Zoning Code and zoning approval process in Philadelphia create obstacles to increasing the supply of quality child care. Child care providers express concerns that the zoning process is complex and cumbersome. Providers also seek more information from the City about what was necessary to prepare to submit applications to the Zoning Unit and to prepare for hearings before the Zoning Board of Adjustment. PCCY surveyed group child care providers about zoning, reviewed 2004 zoning cases and conducted a zoning focus group to assess the current status of child care programs involved the zoning process.

## ***Terminology***

Throughout this paper, the terms family child care, group child care and child care center are used. These terms refer to categories of child care programs outlined in the Pennsylvania Department of Public Welfare (DPW) regulations. These terms are defined as follows:

- *Family child care* – care for four to six children not related to the provider in a home setting.<sup>1</sup>
- *Group child care* – care for seven to twelve children of any age or seven to 15 older school age children unrelated to the provider in a home or other setting<sup>2</sup>
- *Child care center* — care for seven or more children unrelated to the operator- typically applied to programs serving 13 or more children.<sup>3</sup>

Family child care providers must meet certain requirements and are registered with the Department of Public Welfare. They are inspected annually by the Philadelphia Department of Licenses and Inspections and the Department of Health (DOH). The DPW licenses group child care homes and child care centers and inspects both annually, as do L & I and DOH. No licensing or registration is required by the State if a provider cares for three or fewer children.<sup>4</sup>

## ***The Philadelphia Zoning Code and Procedures***

### ***The Code***

The current Zoning Code (the Code), Title 14 of the Philadelphia Code and Charter, was adopted in 1962 and has undergone various revisions since that date.<sup>5</sup> The Code divides properties into residential, commercial, and industrial zoning districts. Family child care is allowed in certain residential districts because it is one of many “residential related uses” acceptable in these districts. Family child care is permitted as long as the child care function is incidental to the use of the property as a residence and the property is a single family dwelling.<sup>6</sup> Child care is allowed in the specified residential districts as a matter of right, under the terms of the Code, without obtaining a variance. Other residential districts do not permit residential related uses like family child care. In addition, child care for up to six children is allowed in specified residential zoning districts in all Council districts except Council Districts 6 and 10, where the limit is four children.

Family child care performed outside of specified residential districts requires a zoning variance, which necessitates approval by the Zoning Board of Adjustment. All of the following situations would require zoning approval from the Zoning Board (provided that there is not an existing variance on the property that permits child care):

- A child care provider would like to care for more than six children in a personal residence.
- A provider would like to operate a child care program in a duplex or an apartment building.
- A child care provider in Council District 6 or 10 would like to care for five children in a personal residence.

If a child care program operates in a non-residential building, as do some groups and most child care centers, the provider must assess whether child care is permitted in the zoning category of the building where child care is sought. If child care is permitted within a certain zoning class, the child care provider must conform to the Zoning Code requirements, but does not need to get a variance.

Before applying for a zoning permit, an applicant obtains information on the zoning category of the property to confirm whether child care is permitted under the Zoning Code in the specific zoning district in which they are seeking to operate.<sup>7</sup> Tables A through C below outline zoning districts and which districts allow child care under the Code.

***Table A: Child Care in Residential Districts***

<b>Residential Districts Permitting Family Child Care</b>	<b>Residential Districts Variance for Family</b>
R-2, R-3, R-4, R-5, R-5A, R-6, R-7, R-8, R-9, R-9A, R-10, R-10A, R-14, R-16, R-18, R-19, R-20, RC-2, RC-3, RC-4	R-1, R-1A, R-10B, R-13, R-15, RC-1, RC

**Table B: Child Care in Commercial Districts**

<b>Commercial Districts Permitting Child Care</b>	<b>Commercial Permitting Child Care</b>
C-2, C3, C-4, C-5, C7, area shopping center commercial districts (permit children's nurseries)	C-1, C-6

**Table C: Child Care in Industrial Districts**

<b>Industrial Districts Permitting Child Care</b>	<b>Industrial Districts Permitting Child Care</b>
L-4, L-5	L-1, L-2, L-3

***The Permit Application Process***

A trip to the Zoning Unit of the Department of Licenses and Inspection is an important part of the City licensing process for a child care provider who wants to operate in Philadelphia.<sup>8</sup> A Zoning Permit is required for construction or adding on to a property. A Use Registration Permit is needed if a person is requesting a use of his or her property that differs from its current use. In order to start the zoning process, a provider must complete an application form for a Use Registration Permit or Zoning Permit at the Zoning Unit. This unit is located at Concourse level of the Municipal Services Building at 1401 John F. Kennedy Boulevard. The filing fee for a zoning permit is \$25.00 for one and two family residences and \$100 for all other occupancies. The Use Registration Permit fee is \$100. The fee of \$100 is waived for family child care owners in residential dwellings provided that the use is allowed as a matter of right under the Code. Providers who operate in commercial buildings where child care is permitted can also receive a Use Registration Permit from the Zoning Unit, but must pay the \$100 fee.

If the Zoning Code allows the use requested on the permit, a Use Permit can be issued the same day by the Zoning Unit, without the applicant going before the Zoning Board of Adjustment.

Even if the use is permitted in a certain class of building, any proposed alterations or additions to the building must conform to the Zoning Code. If, for example, a provider wants to put a fence on the lot she owned next to her child care home for a play area, she would have to apply for a Zoning Permit for the fence. The Zoning Unit can issue the permit for a fee of \$100 if the provider meets Code requirements for erecting fences.

If the use requested on the permit application is not allowed under the Code, or if the proposed items do not conform to the Code, a provider's zoning application will be denied by the Zoning Unit. The provider then has to file an appeal to the Zoning Board of Adjustment in order to obtain a use permit.<sup>9</sup> The fee for an appeal to the Zoning Board is \$100 - \$200 depending on the property.

### ***Zoning Board of Adjustment***

The Zoning Board of Adjustment consists of the Commissioner of Licenses and Inspections plus five members appointed by the mayor.<sup>10</sup> The terms of the Zoning Board members are not limited to a specific number of years. Its members serve “at the pleasure of the appointing power (the mayor).”<sup>11</sup> Members of any board or commission of the City must be United States citizens and can be residents of the City or a Pennsylvania county adjacent to the City.<sup>12</sup>

The Zoning Board is specifically granted the authority to<sup>13</sup> :

- (a) Hear and decide appeals from determinations made by the Department (Licenses and Inspections);
- (b) Hear and decide special exceptions to any zoning ordinance;
- (c) Authorize a variance or exemption from the Zoning Code;
- (d) Grant Special Use Permits;
- (e) Issue Zoning Board of Adjustment certificates; and
- (f) Adopt regulations.

Most cases before the Board involve applicants seeking a variance in the use of a property. There are several conditions that an applicant must meet in order to receive a zoning variance from the Board. The most difficult requirement to prove is unnecessary hardship. To prove unnecessary hardship, the applicant must demonstrate that the physical condition of the property or land makes it impossible for the property to be used as it is currently zoned. Proving unnecessary hardship is difficult because an applicant must convince the Board that the current use of the property is not physically feasible.

As a general rule the Board weighs the proposed use of the property against the impact on surrounding properties and the community. Among the factors the Board considers when granting a variance are: permanent damage to the adjacent property; that the conditions causing the variance were not the result of the applicant’s actions; increased congestion, overcrowding, impairing the air or light supply, affect on public facilities, affect on health, safety and general welfare, and that the variance would not conflict with a plan approved by City Council or the City Planning Commission.<sup>14</sup>

Once granted, a zoning variance can in fact permanently change the zoning class of a property. The use of the property, as stated in the variance, continues with each successive owner unless the property is not used for three years. If the use for which the variance was granted is abandoned for three years, the zoning classification of the property reverts to the original use.<sup>15</sup>

The examples below illustrate this aspect of the zoning process.

- *In 1998 Susan successfully received a variance from the Zoning Board to operate a group child care program in her personal residence. Susan has operated her group child care program since she got the zoning in 1998. Susan sells the property to Leslie in 2005. Leslie can operate a group child care home without going through the zoning process.*

- ***Alternatively, Susan receives her zoning variance in 1998, operates her group child care program from 1999-2000 and then stops the child care business in January 2001. She sells the property to Leslie in 2005. Leslie cannot operate a group child care program in the home unless she receives zoning approval from the Zoning Board. Since it has been more than 3 years since Susan operated the child care program, the use lapsed and the property returned to the original residential use.***

The Board also has the authority to issue temporary use certificates. Certificates may be granted for up to five years.<sup>16</sup> An applicant does not have to prove unnecessary hardship to receive a temporary use certificate, but the applicant must present evidence about the following conditions that the Board considers when granting the certificate: increased traffic flow, overcrowding, cutting off light and air, burden on public facilities, affect on health, safety and welfare, and lack of conflict with the Zoning Code or with plans and ordinances approved by City Council or the City Planning Commission.<sup>17</sup>

Child care providers may appeal Zoning Board decisions to the Court of Common Pleas within 30 days of the date of mailing of the Board's decision.<sup>18</sup> The applicant must then pay the filing fees and costs associated with filing a court action.

If the zoning request is granted by the Board, the applicant must return to the Zoning Unit and pick up the Zoning or Use Registration Permit. A participant from PCCY's focus group explained that she was granted a variance at the Zoning Board hearing. Unaware that she was supposed to return to the Zoning Unit to retrieve her permit, she discovered that her variance for group child care expired because she did not pick up the permit even after a successful hearing. This type of misunderstanding was raised frequently by child care providers as a concern with the zoning process.

## ***Group Child Care Zoning Survey***

During the summer of 2005, PCCY conducted a survey of group child care programs in Philadelphia to discover any common issues and concerns about zoning among this population of business owners. This survey illuminated three major issues:

- ***The Zoning Board routinely reduces the maximum enrollment of child care providers seeking zoning for group child care, which affects the ability of group providers to enroll children and impacts the viability and sustainability of many group child care facilities and families' access to quality child care.***
- ***The Zoning Board adds an average of \$4,140 to the cost of starting a child care business in Philadelphia.***
- ***Although all applications must be reviewed by the L & I Zoning Unit, child care providers do not receive basic information about expectations before the Zoning Board.***

### ***Group Child Care Providers: Zoning Overview***

Group child care providers were chosen for the survey because most group child care providers go before the Zoning Board when seeking zoning approval to operate.<sup>19</sup> Out of 99 group child care providers in the city, 31 providers, or just under one-third, completed the survey. 51% of providers participating in the survey went through the zoning process in the 1990s, 26% went through zoning since 2000, and 13% recalled going through zoning in the 1980s. About 10% of providers were uncertain when they participated in the zoning process.<sup>20</sup>

### ***Where are the Group Child Care Providers Located?***

Group child care providers are located in all Councilmanic Districts throughout the City. The largest concentration of group child care providers is in Council District 9. About 19% of group child care providers are in that district. The fewest group providers are located in Council District 1. This district contains only 1% of the city's group child care.

### ***Characteristics of Group Child Care Facilities***

Fifty-two percent of respondents have group child care programs outside their personal residences. Forty-eight percent have programs in their own homes. Fifty-eight percent of the providers surveyed have their program on the first floor of the building only. A full 26% operate child care only in the basement. Only 3% have programs on the second floor and above and 13% have programs on multiple levels. 74% of responding providers have outdoor play space. About 29% of responding group child care providers have parking.

**Table D: Group Child Care Council District Breakdown**

Council Districts for all group child care	District 1	District 2	District 3	District 4	District 5	District 6
	1	11	14	18	11	3
	1%	11%	14%	18%	11%	3%
Council Districts for providers completing survey	District 1	District 2	District 3	District 4	District 5	District 6
	1	4	1	5	3	1
	3%	13%	3%	16%	10%	3%

**Table E: Group Child Care Building Characteristics**

Building type sought	Commercial	Residential
# Responding		
31	10	
Percentages	32%	
Building granted by zoning	Commercial	Residential
# Responding		
31	12	
Percentages	39%	

- **The Zoning Board routinely reduces the maximum enrollment of child care providers seeking zoning for group child care, undermining programs' financial viability and reducing their ability to ensure safe and high quality care.**

The maximum enrollment numbers providers sought were significantly reduced when a provider went before the Zoning Board. While 68% of providers requested a capacity of 12 children, only 28% of providers actually received approval for 12 children. Although none of the providers requested a capacity of eight children, 28% of providers were granted a capacity of eight children.

A reduction in enrollment numbers is critical for the viability of group child care because reducing the numbers of children makes the business less financially viable. Under state regulations, if a group provider

cares for older toddlers or a mix of older toddlers and preschool children, the provider must have two staff people if the enrollment is above six children.<sup>21</sup> In many cases, providers seeking group child care determine expenses and profit based on child care fees from 12 children and costs for one additional staff person. In reality, when the Zoning Board reduces a provider’s maximum to eight children, a group provider’s business barely survives, if at all because it is financially infeasible to support an additional staff person while generating fees from eight, rather than 12, children.

**Table F: Group Provider Enrollments: Number Sought v. Number Granted by Zoning Board**

Enrollments for Group Providers				
Enrollment number sought				
# Responding	Request for more than 12 children	Request for 12 children	Request for 11 children	Request for 10 children
# Responding 25	0	17	4	1
Percentages	0%	68%	16%	4%
Enrollment granted by zoning	Granted more than 12	Granted 12	Granted 11	Granted 10
# Responding 25	1	7	3	2
Percentages	4%	28%	12%	8%

***“Zoning requirements should be clear and consistent.”***

*-Group child care provider*

***“Let the provider know what has to be done to move to the next level of operation [family to group]. New providers in the business need more technical assistance to help walk through growing from one level to another.”***

*-Family child care provider whose application for Use Registration Permit for group child care was denied by the Board*

- ***Providers are unaware and unprepared for costs of requirements imposed by the Zoning Board. These costly items are imposed as a condition of approval and must be implemented in addition to items required for compliance with City and State regulations.***

The Zoning Code does not outline specific requirements for child care programs to operate. While the Zoning Code is silent about details regarding child care, there are detailed requirements contained in local and state laws and regulations that providers must comply with in order to maintain local and state licensure. Regulations on the state level cover matters such as staff ratios, sanitation and trash pickup, the minimum indoor and outdoor play

space, and toilet areas. Other City child care regulations govern food preparation, environmental health issues, and building safety.

The Zoning Board has imposed various conditions on group child care providers in order to obtain zoning approval. Providers surveyed stated that conditions mandated by the Zoning Board added an average of \$4,140 to the cost of doing business. In 2003, the average income for a child care provider in Pennsylvania was \$17,340.<sup>22</sup> In Pennsylvania, 40% of home-based child care workers live below 200% of the poverty level.<sup>23</sup> Imposition of requirements that amount to over 23% of annual salary affects a provider's ability to stay in business.

Providers who believe they are in compliance with relevant state and local regulations are often surprised at, and unprepared for the additional requirements imposed by the Zoning Board. One provider spent \$25,000 to meet Zoning Board requirements. She said the Board required her to build another bathroom, add a garage door, and add a bathroom door on an existing bathroom. This provider said she would have reconsidered the zoning process had she known the costs would be so high. Providers asserted that if the applicants were informed about ZBA standards for child care facilities, more would be prepared for the hearings and for the additional business expenses. The requirements imposed by the Board often appear arbitrary and not in step with best practices in the field.

Table G sets forth the range of requirements imposed on the group providers by the Zoning Board.

**Table G: Zoning Board Requirements**

<b>Requirements imposed by Zoning Board</b>	<b>Number of providers</b>
Fire alarm	
Ramp/ADA Compliance/Handicapped accessible bathroom	
Exit signs	
Fire wall	
Fire proof door	
Smoke detector	
Commercial trash pickup	
Sprinkler	
Garage door	
Add door for bathroom	
Fence	
Widen bathroom door	
Install additional bathroom	
Enclosed stairway	

- ***Child care providers are frustrated with customer service and information provided by the City regarding the zoning process.***

A large majority of providers rates the zoning process below average. Approximately 63% of group child care providers participating in the survey rated the zoning experience below

average, while 37% rated the experience average or better. In addition, 64% of the providers thought that they did not receive an adequate explanation about the zoning process and had concerns about the customer service they received from the City.

***“There should be more communication from the Zoning Board. I didn’t receive enough information before the hearing.”***

*-Group child care provider*

Providers would like to see a written document explaining the entire process from permit application to the Zoning Board hearing. In December 1995, the Department of Licenses and Inspections published “How to Obtain a Zoning Permit.” The preface to the document says that “[t]his booklet was written as a reference guide for the general public who simply wants to better understand zoning.” The guide has been discontinued and is no longer available. Child care providers are seeking the same thing: a better understanding of the process. A revised guide should explain the entire zoning process and include information about preparing for hearings before the Zoning Board.

While the Board submits a form letter to providers explaining some of its procedures, there is no other document or verbal information clearly explaining these requirements. For example, the Zoning Board typically insists that providers have support from surrounding neighbors, City Council and community groups, a stipulation that could easily be communicated prior to an appearance before the Board.<sup>24</sup>

Providers are seeking some place to get answers to zoning questions. At our September 2005 focus group, several providers felt that they were rushed through the zoning permit process with little opportunity to have questions answered. They believed the zoning examiners tended to move people along because of the lines. While they received information from the zoning examiner, they were uncertain about how to use much of the information, and felt they did not have the opportunity to ask questions. Providers at the September focus group wanted the Zoning Unit to examine customer service practices so that all people who come in contact with child care providers are giving providers the same information, and at least a written guide, about zoning procedures.

***“Orientations could help ease the stress of going through the process” – Group child care provider***

Offering an information seminar on zoning to child care providers would also be an excellent opportunity to for providers to hear information about the process and ask questions about Code requirements. Several participants in the focus group and survey respondents felt zoning orientations were necessary. It is important to include information about Zoning Board procedure and practice in these seminars.

## ***Analysis of 2004 Zoning Cases***

There were 62 child care applicants with 101 appearances before the zoning Board in 2004.<sup>25</sup> Evaluating the cases, information about continuances and the zoning decisions during this year reveal three major trends in the Zoning Board cases:

- **Child care approval rates are decreasing.**
- **There were a significant number of continuances in 2004.**
- **Most continuances are due to lack of applicant preparation for zoning hearings.**

### **Who appeared before the Zoning Board in 2004?**

Information about the 2004 child care zoning cases was collected by reviewing the Zoning Board hearing lists and notes from the 2004 hearings. The printed Board decisions issued that year were also reviewed.

Of the 62 applicants, 45 (73%) planned to open child care centers, 15 (24%) wanted to operate group child care facilities, 1 (2%) wanted to operate family child care businesses and 1 (2%) was seeking more than one type of child care. Sixty-one percent of applicants owned the building they wanted to use for child care and 39% were not owners of the building.

In 2004, there were applications for child care from all City Council Districts. The most child care applications were from Council District 8, which had 23% of applicants, Council District 9, which accounted for 21% of applicants, and Council District 5, which had 15% of applicants. The lowest number of applicants came from Council District 10, which only had 3% of applicants for 2004.

Sixteen percent of the providers applying for zoning in 2004 had a faith based affiliation while 77% of providers were not associated with a faith based group. In the case of 6% of the providers, it was not clear if they were connected to a faith based group or just using the space of a religious facility.

***Table H: 2004 Child Care Cases – Council District Breakdown***

<b>Council Districts of Applicants</b>	District 1	District 2	District 3	District 4	District 5	District 6
	4	5	3	4	9	3
<b>Percentages</b>	6%	8%	5%	6%	15%	5%

**Table I: 2004 Child Care Case Overview**

Ownership	# of owners	% of owners	# of non owners	% of non
	<b>38</b>	<b>61%</b>	<b>24</b>	<b>39%</b>
Types of Providers	Center	% Center	Group	% Group
	<b>45</b>	<b>73%</b>	<b>15</b>	<b>24%</b>
Number of children sought (number not listed for 1 provider)	13 or more	% 13 or more	7 to 12	% 7 to 12
	<b>44</b>	<b>70%</b>	<b>16</b>	<b>26%</b>
Faith Based Affiliation	Faith Based Group	Not faith based group	Unclear	
	<b>10</b>	<b>48</b>	<b>4</b>	
	<b>16%</b>	<b>77%</b>	<b>6%</b>	

**Table J: Zoning Categories of 2004 Cases**

Zoning Categories		
Zoning Classification	#Numbers in classification	%
G-2 IND	6	10%
C-1 COMM	4	6%
C-1/R-5	1	2%
R-3 RES	2	3%
R-4 RES	3	5%
R-5 RES	11	17%
R-5A RES	1	2%
R-9 RES	7	11%
R-9A RES	12	19%
R-10 RES	7	11%
R-10A RES	3	5%
R-10A/C-1/R-10	1	2%
R-13 RES	2	3%
Residential	1	2%
Not stated	1	2%
<b>Totals</b>	<b>62</b>	<b>100</b>

**Council Districts 6 and 10**

Council Districts 6 and 10 have the lowest numbers of providers participating in the zoning process. These districts are restricted by the Code to a maximum of four children in a residence, rather than six children that other City residents are permitted. Of the group child care providers in Philadelphia 3% are from District 6 and 2% are located in Council District 10. No family child care providers from Districts 6 or 10 appeared before the Zoning Board in 2004. The need to obtain a variance in Districts 6 and 10 may be a deterrent to family child care providers operating in the Northeast. In addition, some participants in the focus group recalled that Council staff in the Northeast often says that group child care is not legal in Philadelphia and thus may discourage potential providers from even going through zoning.

- *Child care approval rates in 2004 were low, particularly compared to approvals in 1999 and compared to the rates of cases dismissed, withdrawn or refused in 2004.*<sup>26</sup>

**Table K: 2004 Case Outcomes**

Type of Program	Approved	Approved w/Temporary Certificate	Continued	V
<b>All programs</b>	19	5	17	
	31%	8%	27%	
<b>Family</b>	1	0	0	
	100%			
<b>Group</b>	5	3	4	
	33%	20%	27%	
<b>Center</b>	13	1	13	
	29%	2%	29%	
<b>Multiple types (group and center)</b>	0	1	0	
		100%		

Overall, the Zoning Board approved 31% of child care cases in 2004, but more cases, 34% were withdrawn, dismissed or refused. For child care centers, representing the largest percentage of cases, only 29% of cases were approved in 2004 and 41% were withdrawn, dismissed or refused.

- *Most child care cases were continued at least once during 2004.*

Applicants appear before the Zoning Board and were frequently asked for information that they should have been told they needed early in the process. This type of oversight lead to a continuance of the case and a costly delay for the applicant.

There were a striking number of continuances on hearings before the Board. Of 62 applicants, fully 65% had cases continued at least once. Table K shows that 27% of cases heard in 2004 were continued beyond 2004. About 29% of cases involving child care centers and 27% of group cases were continued beyond that year.

- **Zoning applicants were unprepared for cases before the Zoning Board because providers did not have clear instructions about the process and expectations at the hearing.**

Examining the reasons for continuances is an indicator that applicants need more instruction about basics of the process.

**Table L: Reasons for Continuances<sup>27</sup>**

Reason	
Meet with Council person	16
Need architectural drawings	12
Meet with community	9
Must be heard (schedule immediately)	8
Need attorney	6
Meet with L&I Child Care Liaison	6
Repost on another list	5
Continue within specified time	3
Continued by request	1
Miscellaneous reasons	7

The top reasons matters were continued in 2004 were: a meeting with the Council person, a meeting with the community group and lack of architectural plans. In a number of instances, the Board also continued a case for applicants to contact the child care coordinator in the Department of Licenses and Inspections.

Although not in the Zoning Code, it is clear from observing zoning cases that any applicant seeking zoning approval must contact his or her Council person and the community group about the project and attempt to get support from both of these places. In most cases, the Zoning Board does not hear a case until the applicant proves that these contacts were made.

In addition, while architectural drawings are not a requirement for applying for a Zoning Permit or Use Registration Permit, the Zoning Board often requests drawings or plans for appearances before the Board, particularly for child care centers. Zoning applicants may be unaware of the need for architectural drawings since they were told these drawings were not necessary at the outset of the process. Architectural drawings add significant cost to operations, and may prompt someone to reconsider opening a business.

The Zoning Board's recommendations to contact the Child Care Liaison shows that the applicants have not been linked to vital City services. The Department of Licenses and Inspection Child Care Provider Services Coordinator offers seminars about preparing to operate child care in Philadelphia. Attendance at

the seminar is critical for someone who wants to operate child care in Philadelphia. Potential child care providers need to receive this information from the seminars before appealing to the Zoning Board. Staff from all City departments involved in child care, including the Zoning Unit, attend and present information at the seminar. For people who may only have contact with the City through the Zoning Unit, information about the seminars should be shared with child care zoning applicants.

In addition, most 2004 zoning applicants, 78%, were seeking child care in residential buildings. Twenty percent of prospective providers wanted zoning for nonresidential buildings, which were classified as commercial, industrial or a combination of residential and nonresidential use. Lack of information about the zoning process may have lead providers to apply for buildings unsuited for child care. Better information earlier in the process will make the process more efficient and less costly for zoning applicants.

➤ ***Approval Rates for Child Care Programs are Declining***

PCCY compared the disposition of zoning cases in 2004 to those that came before the Board in 1999. The comparison shows that approval rates for child care programs have declined significantly over the past five years.

From January 1998 through September 1999 67% of group providers and 49% of child care centers were approved by the Board. In 2004, only 53% of group child care programs and 31% centers were approved.

Table M provides a comparison of child care case approval rates in 1999 and 2004.

***Table M: Zoning approvals 1999 v. 2004 (includes Temporary Certificates)***

Year	Group Approvals	Center Approvals
1999	67%	49%
2004	53%	31%

***Other Building and Zoning Concerns***

***Inconsistencies in City Codes***

A recent change in City Building and Fire Codes permits family child care for up to five children in multi-family residences. The Zoning Code specifically states that family child care up to six children in most Council districts is only permitted in single family dwellings. Providers who are given approval from L & I, later discover that family child care is not permitted as a matter of right under the Zoning Code. Providers attending the focus group suggested that the Zoning Code be amended to reflect the recent changes in the Building and Fire Codes to permit child care in multi-family residences.

***A potential provider who did not receive information about the zoning process is denied by the Board:***

*J.B. is a focus group participant who went before the Zoning Board in 2005. She is a retired school teacher and attended the City's licensing seminar to prepare for opening a family child care home. J.B. sought to have a family child care program in a duplex. She thought she went through the proper channels within the City and even had a passing inspection by the Department of Licenses and Inspections prior to initiating the zoning process. J.B. was also informed that family child care up to five children was permissible in a multifamily residence under the city's Fire Code.*

*J.B. did not receive zoning approval and was unable to open her child care program. She said if she would have received more information about the inconsistencies in the Fire Code and Zoning Code, or had known who to ask about zoning issues, she would have reconsidered starting her child care business.*

*J.B. purchased and set up equipment for the business, but her plans to open a child care program are stalled because she did not get zoning approval.*

***Building Industry Association Report***

The Building Industry Association (BIA) of Philadelphia published a report entitled "If We Fix It, They Will Come" in October 2004 detailing recommendations for changes to the Zoning Code and zoning process.<sup>28</sup> Some of the chief concerns raised in the BIA report mirror those raised by the child care community and are worth repeating in this document. One major reform suggested by the BIA is creation of a written document to outline the development process. The report states that "Philadelphia needs to add transparency to its permitting process. . . . Philadelphia does not have a written document that takes a developer from a project's early planning stages to a certificate of occupancy."<sup>29</sup>

Another change suggested by the BIA and echoed by the child care community is incorporating several customer service initiatives. The BIA recommends separating out large projects from zoning's main service center. Using this model, greater emphasis would be placed on helping people with smaller projects, such as child care providers. The report also requests that L&I offer a weekly zoning clinic for people who "need help understanding the process." These seminars would be particularly helpful for child care providers who often have no resources available to them about the process. Also proposed is a one stop shop for the development process; isolating staff members to provide assistance and help with development in the City. A one stop shop model, either housed in the City or privately administered, incorporating and dispensing information about zoning and other departments, would benefit those seeking to expand their businesses, needing assistance with the process and are uncertain where to turn for information.

### ***California Child Care Zoning Law***

In assessing the impact of the Zoning Code on child care providers in Philadelphia, it is important to look to zoning systems in other states. California's system is worth examining further as it fuses two critical goals. The California child care zoning system addresses the need to increase the supply of regulated child care while making the zoning process more efficient. California law recognizes the importance of regulated family child care for families based on an increasing numbers of working parents, the need for neighborhood child care, cost effective child care opportunities for families and the need for compliance with health and safety standards. The legislature created child care laws which promote the use of family child care in California by making zoning rules more efficient and uniform throughout the state.

Two types of family day care homes are allowed in California: small family day care homes, serving eight or fewer children and large family day care homes, serving seven to fourteen children.<sup>30</sup> Small family child care, which is similar in definition to family child care in Pennsylvania, is permitted in residential homes as a matter of right. Any use of a single family home for small family child care is considered residential under California law. Local jurisdictions in California are prohibited from imposing fees, taxes or requiring business licenses for small family child care operators.<sup>31</sup> Also, small family child care does not result in a change of occupancy for local building code purposes.

In California, local governments can only create zoning laws which regulate and restrict four factors for large family child care homes: 1) spacing and concentration; 2) traffic control; 3) parking; and 4) noise control. If a large family child care home complies with the ordinances a locality has enacted regarding any or all of these factors, then the facility can receive a zoning permit without a hearing. Since municipalities are required to create and enact regulations surrounding the four large family child care zoning factors, providers seeking a zoning permit through a local government know the expectations for acquiring a zoning permit because these requirements are required by state law to be part of local ordinances.<sup>32</sup>

### ***Recommendations***

Zoning approval is required for many child care providers who want to conduct business in Philadelphia, and it is increasingly difficult to secure. The following recommendations will help to increase the supply of safe regulated child care, decrease costs and smooth the process for child care applicants.

- 1. Develop a definition of group child care and center-based child care contained in the Zoning Code, and identify zoning districts in which group child care is allowed as of right.** While it may be appropriate to review group child care in many residential districts, group child care should be a permitted use in some residential and many commercial districts.
- 2. Clarify the requirement for architectural drawings for group child care programs and child care centers.** The Department of Licenses and Inspections considers group child care in a home to be a home-based program and does not enforce commercial building requirements. Group child

care in a commercial building is reviewed by the Commercial and Industrial unit and treated as a commercial use. A similar clear standard should be set by the Zoning Unit and Zoning Board that home-based group programs do not require drawings, but commercial programs must submit such plans. This will create consistency with L & I and eliminate provider uncertainty.

3. **Modify the review process for group child care programs.** California law limits zoning review for group child care programs to four factors, if the programs can demonstrate that they meet the conditions of the local ordinance, they can obtain a zoning permit without a zoning hearing. A similar ordinance should be adopted in Philadelphia.
4. **Develop an easy to use Guide to Zoning, for child care and other applicants, that clearly lays out the process, information and preparation and requirements so that applicants are fully prepared to argue their case before the Board.** Child care providers are seeking written information about zoning. The City has a zoning book published in 1995. An updated version of this zoning guide will provide a framework for providers who need to understand the entire process. The guide should include an outline of the Zoning Board hearing process, stress the importance of preparing for Board hearings by contacting City Council, soliciting community support and attending child care seminars. It should be distributed at the start of the zoning process. Providers will then receive consistent information about zoning at the start of the process, when it is most useful.
5. **Develop a Zoning Orientation process in the Department of Licenses and Inspections that can inform applicants of the rules, requirements, processes and timeline of their appearance before the ZBA.** Most providers are extremely interested in learning more information about the zoning process. They are also looking for someone to answer lingering questions so they know expectations for a permit approval. A zoning orientation seminar offered by the City would give people access to learning more about the zoning process. The seminar should include information about the full zoning approval process, including Board procedures.
6. **Create a one stop licensing and zoning assistance office for child care providers in Philadelphia.** Child care providers, advocates and government officials should work together to create an office that provides information, technical assistance and answers questions about zoning and other licensing issues. The office will market the advantages of licensing and other quality initiatives, while helping providers with questions about the licensing process.
7. **Assess the need for changes to the Zoning Code to allow for six children in residential buildings in all Councilmanic Districts.** The current Code rule allowing fewer children in family child care in Council Districts 6 and 10 is inequitable for child care providers residing in those districts. Providers in this area have to invest more money to participate in the zoning process to serve fewer children than in other parts of the City. This rule also makes processing matters in the

Zoning Unit more cumbersome. Instead of automatically issuing a Use Registration Permit to providers in Districts 6 and 10, the Zoning Unit must check addresses against a Council District map or other resource outlining the district boundaries. The current Code will cause the planned automation of the zoning system more time consuming and less efficient. Someone will still have to manually check a Council district location of a property even if all zoning information for a property is stored electronically. This will add time to the zoning process and to the workload of the unit.

- 8. Amend the Zoning Code to be Consistent with Recent Building and Fire Code Changes about Child Care.** In 2004 the city's Building and Fire Codes were amended to reflect changes in the Uniform Construction Code which permits providers to have up to five children in multifamily housing as a matter of right. Providers are often confused when they are told by Licenses and Inspections, which includes the Zoning Unit that up to five children in multi family residences is permitted then told this is not the case by the Zoning Unit. The Zoning Code only allows providers to have children in a single family residence without obtaining a variance. These ordinances, amending the Building and Fire Codes, were approved by the City after debate and consideration of child care health and safety standards. The Zoning Code should be amended to reflect these recent changes in building codes.
- 9. Expand legal resources for child care providers.** Currently, low and moderate income providers and non profit programs can access the Community Legal Services Child Care Project to obtain free legal assistance for zoning issues. While one attorney currently staffs this project, sustaining this service is critical for the child care community. Adding a paralegal or other administrative positions would allow the child care project to spend more time on more providers with concerns about zoning. Contact existing law firms in Philadelphia and assess whether there is a willingness to start a pro bono clinic offering free legal representation to child care providers. While there are various pro bono legal clinics in the City, none focuses exclusively on child care. Pro bono or low cost legal services could be available to child care providers in the City of Philadelphia who do not meet Community Legal Services guidelines.
- 10. Initiate a mentorship program in the child care community.** Child care providers often need help with zoning questions that can be answered by someone who has been through the experience. Many of the child care providers participating in the survey and the focus group want to share their knowledge about the zoning process with others. The child care community should organize a program to pair experienced providers with those just starting the zoning process.

## References

### (Endnotes)

<sup>1</sup> 55 Pa. Code §3290.4

<sup>2</sup> 55 Pa. Code §3280.4

<sup>3</sup> 55 Pa. Code §3270.4

<sup>4</sup> City of Philadelphia law requires, however, that anyone caring for one or more unrelated child must be licensed by the City.

<sup>5</sup> Philadelphia Code and Charter (“Code”) §14-100, fn1.

<sup>6</sup> This paper will use the terms family child care, group child care and child care center to refer to the various types of child care. Although these definitions are established in Pennsylvania regulations, the terms are widely accepted within the local child care community to refer to the three types of child care. State regulations describe family child care as care for 4 or more children, group child care is the care of 7 to 12 children and child care centers involve care for 7 or more children.

<sup>7</sup> Zoning folders for each address in the City are available to view at the Zoning Unit. The zoning folder for a specific address contains the approved zoning classification for the building.

<sup>8</sup> After a child care provider completes the City licensing process, the program must meet the requirements of the Department of Public Welfare to become licensed or registered with the state.

<sup>9</sup> A zoning permit is a document necessary to for commencement of construction or certain alterations to a building or land. A use permit is the permit needed to confirm that a particular use is permitted on a piece of property.

<sup>10</sup> Home Rule Charter, Article III, Chapter 9, § 3-911.

<sup>11</sup> Rule Charter, Article III, Chapter 9, § 3-207.

<sup>12</sup> Home Rule Charter, Article III, Chapter 9, § 3-306.

<sup>13</sup> Code, §14-1808.

<sup>14</sup> Code, §14-1802.

<sup>15</sup> Code, §14-104(5)(c)

<sup>16</sup> Home Rule Charter Art. V, Ch.10, § 5-1006, Code §14-1801.

<sup>17</sup> Code, §14-1804.

<sup>18</sup> Code, §14-1807 (1).

<sup>19</sup> There could be child care providers who purchased a property that was zoned for a group child care use from the prior owner.

<sup>20</sup> Many child care providers who went through the zoning process in earlier years admitted that they could not remember details from their zoning experiences, and thus left some questions in the survey unanswered. These unanswered questions account for the varying number of responses to the survey questions.

<sup>21</sup> 55 Pa. Code § 3280.52(b), (c)

<sup>22</sup> Department of Labor, Bureau of Labor Statistics, November 2003

<sup>23</sup> “Losing Ground in Early Childhood Education Declining Workforce Qualifications in an Expanding Industry, 1979-2004”, Economic Policy Institute 2005.

<sup>24</sup> A review of the child care cases before the Zoning Board in 2004 establishes that support from all of the aforementioned groups is necessary before gaining approval for zoning.

<sup>25</sup> The difference between the cases and applicants is a result of a number of applicants with cases continued by the Zoning Board.

<sup>26</sup> Approval rates represent approvals for issued in 2004. Matters may have been heard in another year and approved. These matters are not included in the results. Similarly continuances represent matters continued beyond 2004.

<sup>27</sup> This chart only shows reasons where the Board gave a reason for continuance. In 14 cases, the Board did not give a reason for continuing the case.

<sup>28</sup> “If We Fix It They Will Come,” Building Industry Association of Philadelphia, October 2004.

<sup>29</sup> “If We Fix It They Will Come,” Building Industry Association of Philadelphia, October 2004.

<sup>30</sup> *CA Health and Safety Code, Section 1596.78*

<sup>31</sup> *CA Health and Safety Code, Section 1596.45*

<sup>32</sup> *CA Health and Safety Code, Section 1596.46*