

## Daycare Do's and Don'ts

There has been a sharp uptick in the number of inquiries and applications from folks wanting to establish or expand Child Daycare uses in Scarborough over the past few months. Apparently there is a definite shortage of available daycare, particularly for before and after-school situations, so people are considering the opportunity to fill this gap. For that reason, I thought it might be a good time to review Scarborough's zoning and land use regulations with regard to the various types of Daycare establishments. Some of these regulations may warrant some serious decision making for current or prospective Daycare providers.

Scarborough regulates the following categories of Daycare as defined in our zoning ordinance, and you'll note there is no distinction made for before and afterschool programs versus all-day care programs.



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**Family Daycare Home** - A house or other place in which 3-6 children or adults may for consideration be cared for and which is licensed by the Maine Department of Human Services as a day care facility or a small group adult care program.

**Group Daycare Home** - A house or other place in which 7-12 children may for consideration be cared for and which is licensed by the Maine Department of Human Services as a day care facility.

**Daycare Center Facility** - A house or place in which 13 or more children may for consideration be cared for, on a regular basis and which is licensed by the Maine Department of Human Services as a day care facility, OR a house or place in which 13 or more children may for consideration be cared for on a non-recurring basis and which is licensed by the Maine Department of Human Services as a day care facility.

**Nursery School** - A house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for 3 or more children, provided that:

- A. No session conducted for the children is longer than 3 ½ hours in length;
- B. No more than 2 sessions are conducted per day;
- C. Each child in attendance at the nursery school attends only one session per day; and
- D. No hot meal is served to the children.

This term does not include any facility operated as a day care center, a summer camp established solely for recreational and educational purposes, or a public or private school in the nature of a kindergarten

approved by the Commissioner of Educational and Cultural Services, in accordance with Title 20, Section 911.

The majority of daycares are of the Family Daycare Home variety and occur in the person's residence. The tricky thing about the ordinance is that The Family Daycare Home is a permitted use in most of the residential districts in Scarborough, so as the definition suggests, someone could procure a building and operate a family daycare home for 3-6 children without zoning board of appeals approval. However, this would require Site Plan Review by the Planning Board because it is not a single or two family-dwelling, or other exempt activity. To forego that process, most folks will want to use their own dwelling and apply for a Home Occupation permit, which is allowed by Special Exception. All Special Exceptions – including Home Occupations – must be reviewed and approved by the Zoning Board of Appeals. (Are you confused? I don't blame you.)

Recently, several licensed family daycare homes have wanted to expand to a Group Daycare Home in order to accommodate more than 6 children. Group Daycare Homes are permitted only by Special Exception, again requiring review and approval by the Zoning Board of Appeals, and just like family daycare homes, if they are also Home Occupations, they must meet the performance standards for Home Occupations contained in Section IX.V of the Zoning Ordinance. In either the case of Family Daycare Home or Group Daycare Home as a home occupation, the Zoning Board will review three different sets of performance standards 1.) Section IV.I.4 for Special Exceptions; 2.) Section IV.I.6 for Child and Adult Daycare Conditions, and; 3.) Section IX.V for Home Occupations. (Still with me? Hang on tight!)

There are some pitfalls to watch out for if you are thinking of establishing or expanding a daycare. Section IV.I.6 has several conditions that must be met before a daycare use can be approved, including minimum lot size requirements, higher street classification, adequate off-street parking, separation distances from other daycares or home occupations, and Maine State Plumbing Code compliance, which means that private septic systems may need to be expanded or replaced to accommodate the additional flow based on 15 gallons per day per child and 12 gallons per day per adult employee.

Additional pitfalls can be found in the Home Occupation standards, including the limitation of only one employee not in residence, 20% maximum living area of the dwelling used for the home occupation, and no significant increase in traffic generation as a result of the Home Occupation.

It is important to note that if you expand a daycare to accommodate additional clients, State licensing rules may require you to have additional employees and space that may put you in violation of the home occupations standards. If that occurs, the use would then need to go through Site Plan Review and approval by the Planning Board, which in turn may require traffic studies, and aspects that add cost and time, but are necessary in order to demonstrate compliance.

After navigating all of the local ordinance requirements, the State of Maine has its own licensing standards and inspection process, including the form that requires the Town's assurance that the use meets all of those local zoning requirements.

Daycare is critical need for most working parents, and it can also be a rewarding career for those providers with the intestinal fortitude to undertake it. Despite the plethora of regulatory hurdles, we in Planning and Codes Department are here to guide Daycare providers through to the finish line.

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