

Child Care Establishments and Zoning

Observations from Upper Peninsula Zoning Ordinance Assessments

Dr. Mary Ann Heidemann, Regional Planner, Eastern UP Regional Planning

Jeff Hagan, Executive Director, Eastern UP Regional Planning

Jerald Wuorenmaa, Executive Director, Western UP Planning and Development

Lisa McKenzie, Regional Planner, Western UP Planning and Development

Ryan Soucy, Senior Planner, Central UP Planning and Development

Project Background

The Upper Peninsula is in the midst of a child care crisis, and the lack of local options is challenging families' stability in nearly every community across the region. Many U.P. child care establishments are at capacity and cannot meet the current demand for care, as illustrated in stories of long waitlists and ever frustrated working parents struggling to find care. These pressures were clarified and exacerbated by the COVID-19 Pandemic and have not been significantly alleviated. Enabling more child care businesses to start up is a critical step in solving the capacity crisis and meeting this demand. As one step to reduce barriers to these startups, a U.P.-wide planning process assessed the implications and limitations of local zoning ordinances (and the community plans associated with them) for the establishment and expansion of child care businesses.

In summer 2023, regional planners in the U.P. assessed local frameworks for permitting three types of child care facilities: *family child care homes* ("FCCHs," serving one to six children), *group child care homes* ("GCCHs," serving seven to 12 children), and *child care centers* ("CCCs," serving more than 12 children). In Michigan, child care facilities are regulated by two state statutes, the *Child Care Organizations Act (CCOA)* and *2006 Michigan Zoning Enabling Act (MZEA)*, and some degree of control is afforded to local units. By analyzing the patchwork of zoning regulations from community to community, the planners sought to discover noncompliance with the state's governing statutes and where opportunities might be present to enable more child care businesses to locate.

As a first step, a geospatial tool was created to prioritize the communities (encompassing, for the purpose of this report, cities, counties, townships, and villages) to be assessed. The tool included four factors: total number of children under five years old, home locations of area workers, drive times from economic centers, and locations of existing licensed child care facilities. These factors, weighed together, provided an initial glimpse of the landscape of child care across the U.P. and its areas of greatest need. Altogether, 55 communities, comprising municipalities, townships, and counties, were proposed for evaluation. That list was then cut back to 51 communities after follow-up research suggested four communities lacked the authority to engage in zoning.

Planners' next step was to develop an "audit" tool that could uniformly assess the zoning ordinances of communities. This required outlining elements of the CCOA and MZEA to determine what items were state mandated with regard to zoning for child care facilities. The 21-question tool was then used to assess and evaluate the selected communities.

Role of Local Plans

A master or comprehensive plan provides the policy framework and strategic vision for addressing community-wide issues. The process and requirements for adoption and maintenance of these plans is

laid out in the 2008 *Michigan Planning Enabling Act (MPEA)*. Plans most commonly have a 20-year time horizon, and MPEA requires that a master plan be reviewed annually and updated or affirmed every five years. Understanding the perspectives of parents and child care providers should be a priority in future plan rewrites and updates.

Zoning Processes and Fees

In accordance with MPEA and MZEA, a community's master plan and included zoning plan is the basis for having zoning authority. The audit tool assessed many aspects of local zoning. Among these were use permissions, approval processes, and fee schedules for site plan reviews and special use permits.

Site plan approval is a required process for many building types. This approval can be set up as an administrative task, as a planning commission responsibility, or as a legislative body responsibility. It is considered best practice for simple, routine site plan approvals to occur at the administrative level, with more complex approvals requiring planning commission involvement.

Special or conditional use permits (the terms are generally interchangeable) are required for certain uses in zones that may be allowed if certain mitigating conditions are put in place, as opposed to permitted uses that require no such further approvals. It is preferred that the planning commission be the final approving entity for special uses, as it reduces the number of meetings the applicant must attend. Special use permits involve much administrative activity, including two or more public meetings, required public notice in a newspaper of general circulation, and a public hearing.

A fee schedule is important because the costs associated with starting up a new child care establishment may be prohibitive when considering the range of other expenses providers must incur, all while operating on tight margins. Legislative boards should review their fee schedules on an annual basis, then decide on the justifiable costs of doing business (for meetings, published or direct-mailed notices, etc.) without overburdening applicants.

In many instances during the assessments for this project, regulatory uncertainty was evident in both fees and processes. The best ways to address this are clarification or revision of ordinances and provision of information in a more user-friendly format. But when legitimate questions arise about what uses are permissible under an ordinance, or an applicant is dissatisfied with the determination received from a zoning administrator, the applicant can ask for the matter to be referred to the Zoning Board of Appeals (ZBA). The ZBA also has the jurisdiction to decide if an unlisted use is similar enough to a listed use to be included in the district in question. ZBA review can be a cumbersome, lengthy, and expensive process, and the need for it should be eliminated whenever possible.

State of Michigan Definitions and Preemption

Unfortunately, child care facilities have not been immune from the "not in my backyard" (NIMBY) phenomenon. Decades ago, prohibiting or severely restricting the location of child care facilities in residential neighborhoods became common enough in Michigan to prompt state legislative action. After adoption of CCOA in 1973, Michigan's county and township zoning enabling acts at the time were amended to require that FCCHs be a permitted residential use in any residential zone. GCCHs could be designated as special uses in residential zones, but the lawful conditions that could be imposed were strictly limited. CCCs were not required to be allowed as either permitted or special uses in residential

zones. When MZEA combined the three previous zoning enabling acts, the child care establishment definitions of CCOA, as well as the previous county and township zoning enabling acts' child care use inclusion requirements, were restated by the new law and continue to the present.

The MZEA stipulates different sets of requirements for FCCHs and GCCHs depending on the type of jurisdiction that acts as the regulating authority, so it is critically important that local units conform to its provisions. In the case of cities and villages, the Act is silent on FCCHs, so cities and villages have some latitude regarding their methods of regulation, though the best practice is to make them a permitted use in all residential districts. However, for counties and townships, the Act states “a family child care home is considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit...” (This is referred to as a use “permitted by right.”)

The MZEA also contains provisions for GCCHs, and those are regulated differently depending on the municipality type. For cities and villages, the Act simply (and somewhat vaguely) says “a group child care home may be issued a special use permit, conditional use permit, or other similar permit.” The language being permissive allows cities and villages the option to choose whether or not to apply discretionary decision making for GCCHs. In counties and townships, the ZEA requires GCCHs to be special or conditional uses, and even stipulates the conditions upon which they may be approved.

Child Care Facility Zone Permissions by Regulatory Entity

| | FCCH, Residential Zone | GCCH, Residential Zone | CCC, Any Zone |
|---------------------------|------------------------------------|--|----------------------|
| City or Village | Not addressed | <i>May</i> be issued a special use permit | Not addressed |
| County or Township | <i>Shall</i> be permitted by right | <i>Shall</i> be permitted by right OR through special use permit | Not addressed |

This assessment found many units of government out of compliance with the requirements of zoning district permissions for child care facilities in MZEA. Even where a use is permitted by state law that preempts local zoning, such a conflict confuses or dissuades citizens who do not wish to deal with a regulatory conflict or who may not even be aware of the superseding state law.

In discussions with a few local zoning administrators about this matter, it was clear that many communities consider a FCCH to be within the definition of a “home occupation.” However, illustrative lists of home occupations usually include those such as lawyer, architect, dentist, building contractor, real estate agent, bookkeeper, dressmaker and hairdresser, none of which are obviously similar to child care, and this could therefore leave doubt about whether or not a child care facility would be included. When a zoning ordinance is not explicit and clear, the zoning administrator is the first step in interpreting the ordinance. To confirm the regulatory status of child care facilities, an applicant would need to contact the administrator and ask for a determination, which is subjective. The lack of clarity in local ordinances about child care facilities adds a layer of uncertainty to the application, review and approval process that can in itself be a barrier to establishing new child care facilities.

CCOA does not require CCCs (again, serving more than 12 persons) to be permitted or special uses in residential or any other zones. CCCs are traditionally seen as commercial uses, so allowing them to locate within a commercial/mixed-use district by some method is most appropriate. All types of child care establishments are less likely to be found in other non-residential districts, such as industrial, agricultural, and resource production.

Central U.P. Child Care Audit Results

The Central U.P. region (CUP) comprises the counties of Alger, Delta, Dickinson, Marquette, Menominee, and Schoolcraft. Out of the total 51 communities in the assessment pool, most of them (27) were located in the CUP: three in Alger County, six in Delta County, six in Dickinson County, seven in Marquette County, three in Menominee County, and two in Schoolcraft County. Four communities that received assessments fell under the zoning jurisdictions of Delta (Townships of Masonville, Wells, and Bark River) and Schoolcraft (Hiawatha Township) counties, while the remaining 23 had local zoning control.

All CUP communities assessed for this project properly had master plan documents in place, though only 15 of the 27 were found to be in compliance with MPEA-required five-year updates, and only two communities were found to have statements supporting Child Care and discussed potential strategies in their plans. This is likely because the child care crisis was not fully laid bare until the pandemic, and insufficient time has passed for this concern to be widely addressed in local plans.

All but four communities provided for administrative site plan reviews, with the remainder requiring planning commission review; none required review by the legislative body. Fees for site plan review varied from \$50 to \$500, with cities generally on the upper end of the cost spectrum.

For special use permit approvals, the planning commission was the approving body in all but one community, the City of Kingsford, where the legislative body was the approving entity. Special use permit fees were mostly within the \$200 to \$400 range, with a few outliers.

The definitions for child care facilities specified in CCOA were found in 11 communities, whereas 4 communities were completely lacking definitions. The other 12 communities defined or referred to one or more of the facility types as something else, such as “daycares” or “nursery schools”. Recent amendments to CCOA provided for increased capacity, for both FCCHs and GCCHs, and while none of the communities assessed refer to the term increased capacity, 10 of the communities reference that these types of facilities are governed by the CCOA.

Nine of 16 townships properly included FCCHs as permitted uses in all residential districts. For the seven other townships, it is imperative to amend zoning ordinances to include FCCHs as permitted uses in all of their residential districts because they are superseded by state law.

Out of 11 cities and villages, 6 included GCCHs as permitted uses, 3 regarded them as special uses, and 2 did not expressly permit them. The best practice is to allow GCCHs as permitted uses, but at the very least, they should be included as special uses to determine on a case-by-case basis if there is some hesitancy from the community regarding their compatibility with the surrounding neighborhood.

Ten out of 16 counties and townships appropriately regarded GCCHs as special uses in residential districts. Out of these ten, four included all of the conditions required by MZEA, three contained some of

the required conditions, and three did not specify any conditions. Once again, it is important for these counties and townships to amend their ordinances to conform to the requirements found in this section of MZEA.

CCCs were designated as either permitted or special uses in residential districts in 15 communities.

Allowances for child care facilities in non-residential districts varied widely. The assessment found that across communities of all types, 16 allowed FCCHs as either permitted or special uses in commercial/mixed-use districts. In comparison, GCCHs were permitted uses in such districts in only 13 communities. Surprisingly, only six communities classified CCCs as a permitted use in commercial/mixed-use zones, and 10 classified them as a special use. CCCs are decidedly traditional commercial uses, so allowing them to locate within a commercial/mixed-use district in some manner would be most appropriate. We suspect that these uses were inadvertently, not intentionally, left out as communities crafted their zoning regulations.

Eastern U.P. Child Care Audit Results

The Eastern Upper Peninsula region (EUP) comprises Chippewa, Luce, and Mackinac counties. Plans and ordinances were assessed for 13 units of government: Luce County (countywide ordinance); the Chippewa County zoned townships of Bay Mills, Kinross, Pickford, Rudyard, Soo, and Superior; the Mackinac County zoned townships of Clark, Garfield, and Portage; and the cities of Mackinac Island, Sault Ste. Marie, and St. Ignace.

All EUP ordinances assessed were accompanied by adopted master plans, and nearly all of those plans were prepared for the typical long-range planning period of 20 years. None of the plans reviewed called out child care as a specific need or concern within the community.

Costs of obtaining site plan review and special/conditional use review varied widely in the EUP. For example, Superior Township does not charge applicants for any of its zoning-related reviews. The City of Sault Ste. Marie completely exempts child care facilities from review costs. In the other communities examined, site plan review cost varied from \$30 to \$150. Special use permit review costs ranged \$150 to \$1,000. Rarely were these fees posted online, so contact with the Zoning Administrator or other local official would be required to find out in advance what review fees would apply. Further, it was not always clear if a permitted use and/or a home occupation would require a site plan review. Several communities imposed a zoning permit review fee even where a site plan review is not explicitly required.

The difference between a zoning permit review and site plan review can be critical in terms of time as well as cost. Zoning permits are typically issued independently by the Zoning Administrator, whereas nine of the 13 EUP zoning ordinances examined required planning commission approval of site plans, even for permitted uses.

Only four of the assessed communities' zoning ordinances included the CCOA definitions of child care facility types, and only five out of 10 county and township ordinances clearly list FCCHs as a permitted use in all residential districts, as required by state law.

None of the 13 EUP ordinances explicitly stated that child care was within the definition of home occupations or home-based businesses.

Outside of residential zones, because the EUP is predominantly a rural region, many local ordinances have established agricultural and/or forest recreation zones. Though both these zones typically allow for single family homes as a use by right, they are less clear about child care facilities. While four of the 13 ordinances examined allowed some child care facilities to be established as either a permitted or special use in the agricultural or recreational zones, the other 9 ordinances did not specifically list child care facilities as an allowable use within those zones.

Western U.P. Child Care Audit Results

The Western Upper Peninsula region (WUP) consists of six counties: Baraga, Gogebic, Houghton, Iron, Keweenaw, and Ontonagon. Six cities and six townships were identified to be audited in these counties. One of the townships, in Keweenaw County, was not audited, due to the rurality of the community, lack of information, and lack of governmental staff. Therefore, only five of the six counties (with 11 assessed jurisdictions) are represented in the report.

Ten WUP communities had master plans that were easily accessible, eight of which had evidently been properly reviewed and/or updated on a five-year schedule. Only one community - Iron River in Iron County - had addressed child care within its master plan, focusing on the acquisition of an inventory of child care facilities within the city, license type, and number and age of children served.

All communities had local zoning ordinances, although not all were easily accessible online. Just six communities had fee schedules or information readily available online, but all communities had contact information for zoning administrators or staff who could respond to fee inquiries.

Ten communities were consistent with the facility definitions in the CCOA. Only one township lacked clearly consistent definitions.

Fees for site plan review varied widely across the communities, ranging from no cost to over \$500. In all communities, the planning commission was indicated as responsible for site plan review.

Where special use permits are required, these fees also varied widely across the region. The highest-cost special use permit was listed at \$350, and most such permits would be in addition to a site plan review. Planning commissions were tasked in all audited communities with reviewing and approving special use permits. However, in Calumet Township and the City of Houghton, final approval of special use permits must be given by the governing body after planning commission review and approval. The City of Iron River left special use permits to the zoning administrator for approval.

Three of the six cities and villages required special use permits for FCCHs and GCCHs in all residential districts. Among the audited townships, which have less authority to impose such limitations, compliance was mixed. Three townships specified FCCHs as a permitted use in all residential districts as required by MZEA, and two did not. Two townships specified GCCHs as a special use in all residential districts as required, and three did not.

In six audited communities, including one township, CCCs were either permitted or special uses in various residential districts, and in seven communities, they were permitted or special uses in commercial/mixed-use districts. Two cities, Hancock and Houghton, designated CCCs as a permitted or special use in all residential, commercial/mixed-use, and light industrial districts.

Conclusions and Recommendations

Now as the child care crisis reaches new levels of severity, communities are advised to reassess their plans and zoning ordinances as related to child care facilities and make appropriate adjustments to improve flexibility. Child care establishments provide necessary resources for working parents, and as such they are fundamental assets in our local and regional economic development strategies.

There may be a shortcut to lessen or eliminate regulatory uncertainty. It would be relatively easy for each community with a zoning ordinance in effect to develop a **one-page informational document** that summarizes how that community regulates each of the three levels of child care facilities, which zones allow the facilities as permitted or special uses, and which zones don't allow child care uses at all. The sheet could also specify the processes and fees required for reviews. Not only would this sheet help applicants; it might also spark awareness among officials and community members about what child care policies are currently in place, which could spark changes. A one-page sheet could be made available at the government offices and distributed (for all local governments) through child care and small business support organizations. The sheets could be easily amended if and when policies are changed. The sheets themselves would not have the force of law or regulatory administration. Their purpose would simply be to make existing policies more accessible and more widely understood.

In reflecting on the many barriers faced by child care providers in Michigan, the issues involved in zoning compliance seem to take a back seat to other, arguably more important facility licensing requirements set out in the Child Care Organizations Act, including criminal background checks for child care workers, health and safety standards for child care premises, and staffing and capacity limits. But given an already burdensome regulatory setting, communities have an opportunity and obligation to remove as many barriers as possible.