

Prince George's County Special Exception Application No. 4377

Applicant: Grace Honnah, Owner

Location: The subject property is located on the north east corner of Riggs Road and Apache Street

Request: Special exception for Day Care Center and variance from 20 foot setback.

R E S O L U T I O N

WHEREAS, the applicant has requested a special exception for a Day Care Center and variance of eight feet from 20 foot building setback in accordance with the Prince George's County Zoning Ordinance; and

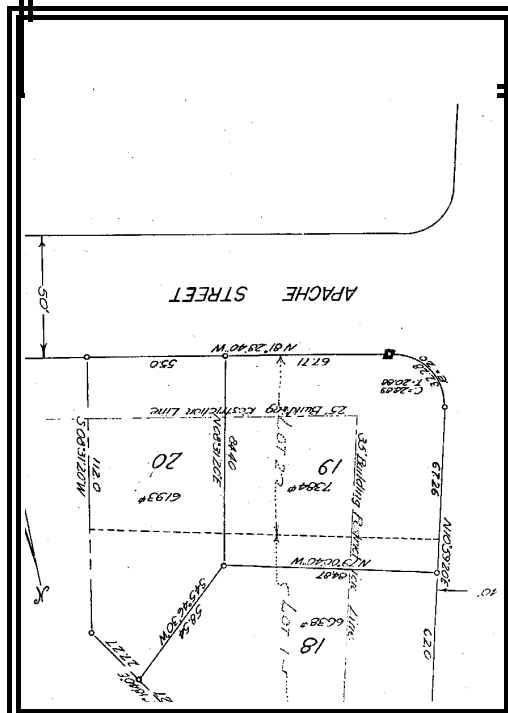
WHEREAS, the Technical Staff Report released September 13, 2000, recommended denial, and denial of variance VSE-4377A; and

WHEREAS, after consideration of the Technical Staff Report and testimony at its regular meeting on September 21, 2000, the Prince George's County Planning Board agreed with the staff recommendation and adopts the staff analysis and recommendation as its own in this case.

WHEREAS, the Planning Board recommendation is based on the findings and conclusions found in the Technical Staff Report and the following DETERMINATIONS:

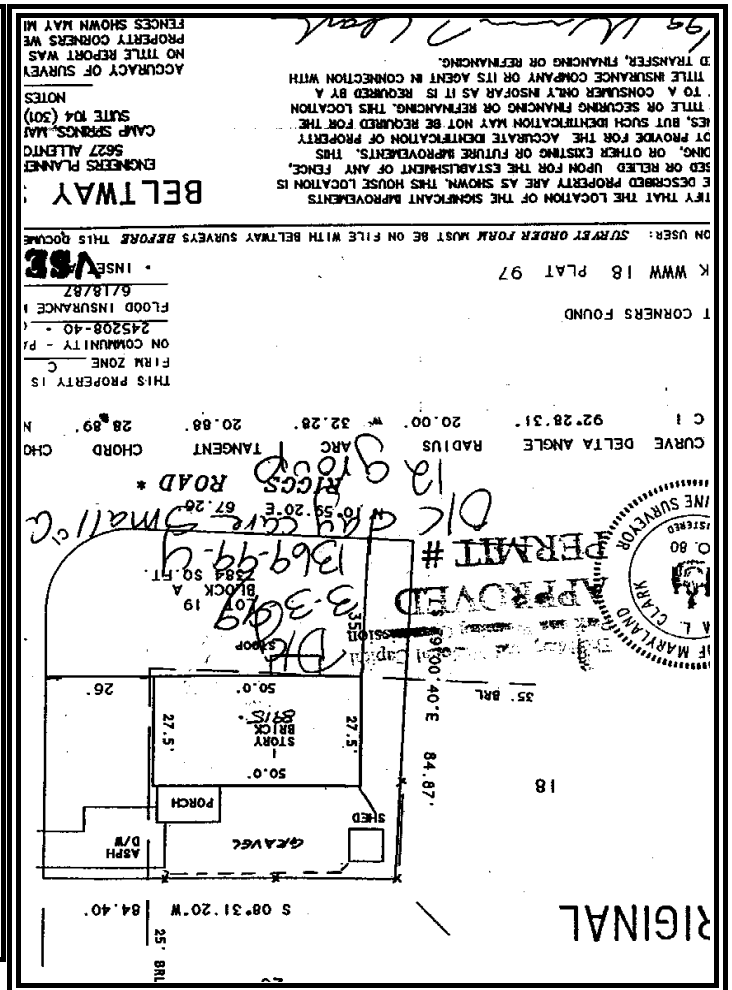
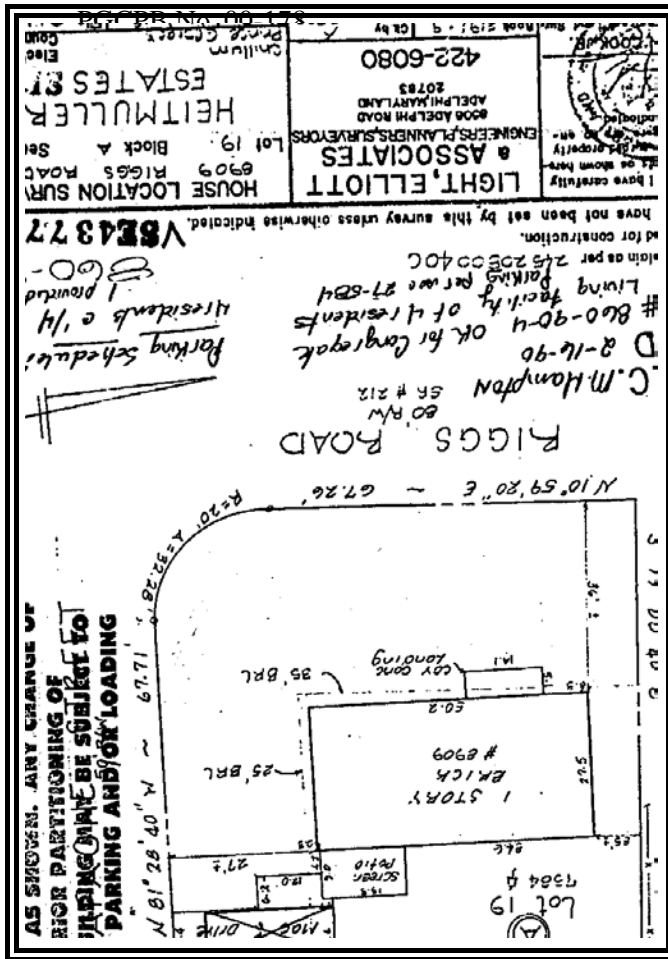
- A. Location and Field Inspection: The property is situated on the northeast corner of the intersection of Riggs Road (MD 212) and Apache Street (see Figure 1). The property is addressed as 8915 Riggs Road and lies within Planning Area 65 and within Council District 2. The property is improved with a single-family detached dwelling. A small storage shed is also located on the property. A fence currently encloses the front, north and east yards and separates the property from adjacent residential properties to the north and to the east.

Vehicular access to the property is from Apache Street which is controlled by a stop sign at its intersection with Riggs Road. The nearest major intersection is located at Metzerott Road and Riggs Road and is controlled by a traffic signal.



B. History: The subject property was originally part of the Heitmuller Subdivision recorded in 1948 (see Figure 2). In 1951, lots 18, 19 and 20 of Block A of the subdivision were re-subdivided which resulted in the current lot configuration. As a result of the re-subdivision, two lots of approximately 10,100 square feet each were reconfigured into three lots ranging from 6,193 square feet to 7,384 square feet. The property which is the subject of this application is the largest of the three reconfigured lots (see Figure 3).

The primary structure was constructed as a residential dwelling in approximately 1948. At that time the property was addressed as 8909



Riggs Road. A use and occupancy permit for an Elderly Care Facility was issued in 1990. The site plan accompanying that permit showed a screen patio in the same location as the frame extension on the current site plan (see Figure 4). The address of the subject property was changed during 1993 to 8915 Riggs Road. In March, 1993 a permit was issued for the operation of a small group day care facility on the subject property. The site plan accompanying that permit application showed a porch extension from the main structure (see Figure 5).

The applicant acquired the property in its current configuration in approximately, March 1999. In addition to serving as the primary residence for the applicant, the dwelling serves as the site of a small group day care center. The property was retained in the R-55 Zone via the 1990 Adopted Langley Park-College Park-Greenbelt (Planning Areas 65, 66 and 67) Sectional Map Amendment.

- C. Master Plan Recommendation: The Master Plan recommends that the property be developed for single-family detached residential uses. The Master Plan environmental feature map shows no environmental constraints and no historic site or resource on the property.
- D. Request: The applicant currently operates a small group day care center in her residence and wishes to establish a **Day Care Center for Children**. The Day Care Center would serve thirty (30) children during the hours of 6:30am to 6:30pm from Monday through Friday. The applicant will not reside at the proposed Day Care Center once operations begin. Exterior improvements would be made to provide on-site parking and a secure play area. No alternation to the existing structure is proposed.

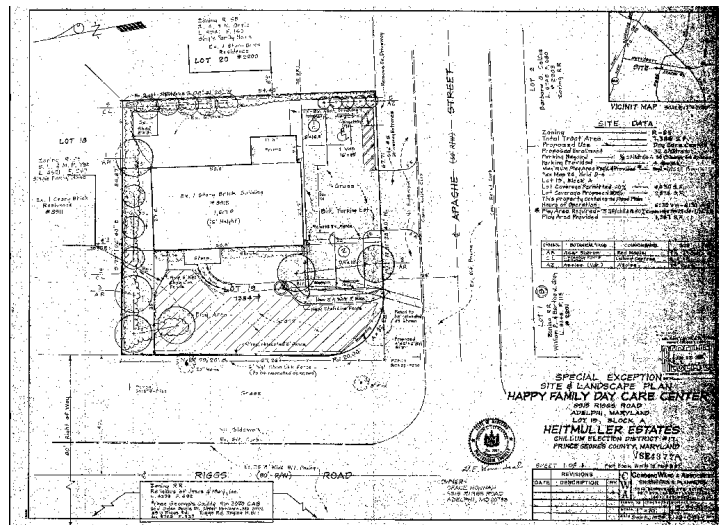
In the review of the site plan for the proposed Special Exception, it was noted that an existing extension from the rear (east side) of the main building, intrudes into the rear yard setback required in the R-55 Zone (see Figure 6). On the site plan, the extension is identified as a porch. While an open porch is permitted within the rear yard setback, a screened porch or other roofed structure in excess of six feet tall is not. An eight (8) foot variance from the required twenty (20) foot rear yard setback is requested (VSE-4377-A). No alternation to the existing structure is proposed.

- E. Neighborhood and Surrounding Uses: The neighborhood is defined by Riggs Road to the north and west; Adelphi Road and transmission lines to the east and Cool Spring Road to the south. The property is zoned R-55 and lies within a largely residential neighborhood. The residential uses in the immediate neighborhood of the property consist predominately of single-family dwelling units on land zoned R-55 and R-R. A large O-S parcel exists in the southeast portion of the neighborhood while a shopping center (Metzerott Plaza) resides in a C-S-C parcel in the northern portion of the neighborhood. R-T, R-H, R-10 and R-18 uses exist nearby but not within the neighborhood defined for analysis (see Figure 1). The Cool Springs Elementary School lies across Riggs Road from the subject property. Two other elementary schools, Cherokee Lane and Adelphi, lie within one-half (.) mile of the property.

- F. Specific Special Exception Requirements - Section 27-348.01:

(a) A day care center for children may be permitted, subject to the following:

- (1) **The District Council may specify the maximum number of children to be enrolled, which may not be increased by State**



or local health, education, or fire regulations.

The applicant is requesting that the capacity of the Day Care Center be set at 30 children.

(2) **An ample outdoor play or activity area shall be provided, in accordance with the following:**

(A) **All outdoor play areas shall have at least seventy-five (75) square feet of play space per child for fifty percent (50%) of the licensed capacity or seventy-five (75) square feet per child for the total number of children to use the play area at one (1) time, whichever is greater.**

The site plan documents the available play area as 1,367 square feet. This meets the requirement that the outdoor play area provides at least seventy-five (75) square feet of play space per child for fifty percent (50%) of the requested capacity.

Due to a restriction on the placement of the fence on the southwest corner of the property, the play area will be reduced from that noted on the site plan but would meet the minimum play area space required for thirty (30) children (1,125 square feet). Should the Special Exception application be approved, the site plan should be revised to properly locate the fence on the southwest corner and correct the note regarding the play area provided. Additionally, if the special exception is approved, a maximum of eighteen (18) children would be permitted to use the play area at any given time.

(B) **All outdoor play areas shall be located at least twenty-five (25) feet from any dwelling on an adjoining lot, and shall be enclosed by a substantial wall or fence at least four (4) feet in height.**

The site plan documents that the play area is at least twenty-five (25) feet from the nearest dwelling on an adjoining lot and would be enclosed by a six (6) foot chain link fence.

(C) **A greater set back from adjacent properties or uses or a higher fence may be required by the District Council if it determines that it is needed to protect the health and safety of the children utilizing the play area.**

No health and safety issues are apparent which would suggest a need to increase the setback or fence height requirements.

(D) **Any off-premises outdoor play or activity area shall be located in proximity to the day care center, and shall be safely accessible without crossing (at grade) any hazardous area, such as a street or driveway.**

No off-premises outdoor play or activity area is proposed and therefore no driveway, street or other hazardous area would be crossed.

- (E) The play area shall contain sufficient shade during the warmer months to afford protection from the sun.**

In the statement of justification, the applicant states that the proposed play area includes three (3) Red Maple trees which will provide sufficient shade during the warmer months to afford protection from the sun. No additional requirement was identified as part of the staff review.

- (F) Sufficient lighting shall be provided on the play area if it is used before or after daylight hours to insure safe operation of the area.**

- (G) Outdoor play shall be limited to the hours between 7 A.M. and 9 P.M.**

The applicant does not propose to use the play area before or after daylight hours. No additional lighting would therefore be required to ensure safe operation of the area.

- (3) In the C-W, C-M, I-1, I-2, and I-4 Zones, a Special Exception for a day care center for children shall be allowed only if the Council finds that existing development and uses in the neighborhood (particularly on adjacent properties) will not adversely affect the proposed use.**

The site is located in the R-55 Zone and therefore, this requirement is not applicable.

- (b) In addition to the requirements of Section 27-296(c), the site plan shall show:**

- (1) The proposed enrollment;**
- (2) The location and use of all buildings located on adjoining lots; and**
- (3) The location and size of outdoor play or activity areas.**

The site plan submitted as part of this application shows the proposed enrollment, the location and use of all buildings located on adjoining lots and the location and size of the outdoor play area.

- (c) Any day care center for children which has, on or before the effective date of this Ordinance, fully complied with the provisions of this Subtitle in effect at the time the use commenced shall not be required to meet the requirements of this Section, provided that the use has not been expanded or changed since that time. Any expansion or change shall be governed by the provisions of this Section, or of Sections 27-445.03, 27-464.02, 27-475.02, or 27-541.02.**

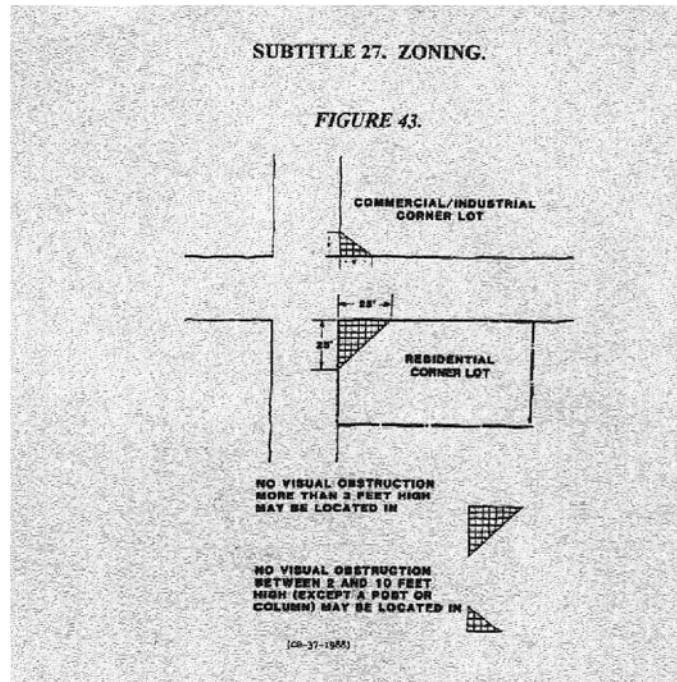
This requirement is not applicable to this application.

- (d) **For the purposes of this Section, enrollment shall mean the largest number of children enrolled in the center in any one (1) session.**

- G. **Parking Regulations: In Sec. 27-568 of the Zoning Ordinance, the number of parking spaces required for Child Day Care Centers is given as one (1) space for each eight (8) children.**

Based on the applicant's operating plan, four (4) spaces would be required. For most parking lots, Sec. 27-566 requires that of the four spaces, one space must be reserved for the physically handicapped. The parking schedule should include the number and types of parking spaces provided. The site plan does document the parking requirement (4 spaces) and the total number of spaces provided. While the one (1) required handicap space is shown on the site plan, it is not noted on the parking schedule. If this application is approved, the site plan should be revised to indicate the number and type of parking spaces provided.

8. **Loading Requirements: The proposed use does not have specific loading space requirements identified in the Zoning Ordinance.**
9. **Landscape Manual Requirements: Since this property does not include the construction, extension or enlargement of a building, it is exempt from the general landscaping, buffering and screening requirements set forth in the Landscape Manual per Sec. 27-328.02.**
10. **Zone Standards: The subject property is not in full compliance with the requirements for the R-55 Zone. Specifically, the frame extending from the main structure does not meet the twenty (20) foot setback requirement as described in Section 27-442(e) Table IV - YARDS (Minimum Depth/Width in Feet). A companion application for a variance from the twenty (20) foot setback requirement has been filed.**
11. **Sign Regulations: Sec. 27-617 of the Zoning Ordinance provides that institutional signs shall meet the following design standards:**
- (1) Maximum area for each sign - 48 square feet
 - (2) Maximum height - 8 feet above finished grade at base of sign
 - (3) Minimum setback - 15 feet from adjoining land in any Residential Zone
 - (4) Type allowed - freestanding or attached to a building
 - (5) Maximum number - 1 per street the property fronts on (must face street frontage)



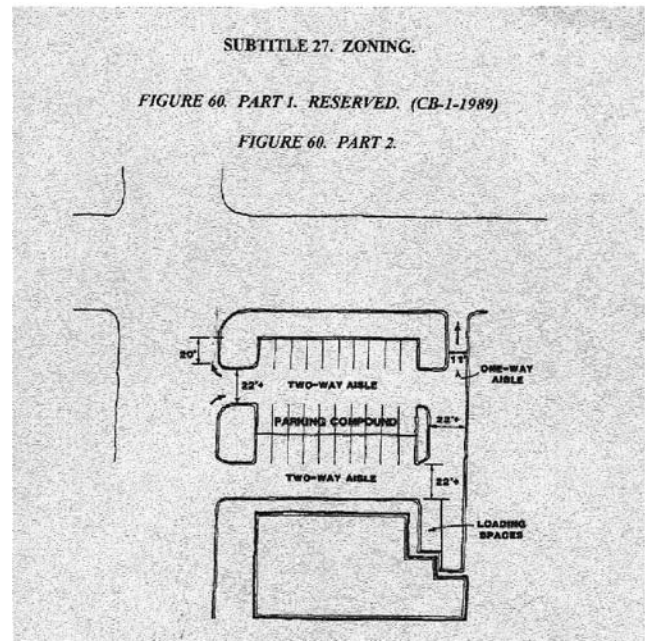
While the dimensions of the proposed sign are in conformance with the provisions of Sec. 27-617, the proposed placement of the sign results in it being considered a corner lot obstruction and it must be relocated. The standard for Corner Lot Obstructions is documented in Sec. 27-421 of the Zoning Ordinance (see Figure 7).

12. Other Issues: In the review of the special exception application, staff of the Transportation Planning Section of the Countywide Planning Division concluded that a modest impact on traffic operations was expected. Mr. Thomas Masog, using trip rates from the Institute of Traffic Engineers estimated that eight (8) additional trips would impact Riggs Road at Metzerott during the AM peak hour and approximately nine (9) additional trips would impact that intersection during the PM peak hour. While noting that the impact was modest, Mr. Masog also cautioned that the unavailability of a recent traffic count for the intersection limited his ability to make a definitive finding.

The latest available traffic count for the intersection of Riggs Road and Metzerott Road was completed in 1989. At that time, the intersection was operating at an acceptable level of service. A review of State Highway Administration traffic counts for Riggs Road in the vicinity of the subject property showed that, in general, traffic along Riggs Road north of the subject property has increased approximately seven and one-half percent (7.%) between 1989 and 1999. Using that growth to approximate the current traffic at the intersection of Riggs Road and Metzerott Road further suggests that the intersection would continue to operate at an acceptable level of service.

Sec. 27-563. Connection to street. Every parking lot shall be connected to a street by means of a driveway. This driveway (except those provided for, and on the same lot with, one-family dwellings), shall be at least eleven (11) feet wide for each lane, exclusive of curb return and gutters. In the case of a corner lot, no driveway shall be located less than twenty (20) feet from the existing or proposed ultimate point of curvature of the curb or the edge of the pavement of an uncurbed section (whichever forms the greater distance to the point of curvature of the fillet of the driveway apron (see Figure 8).

The site plan as submitted shows only twenty (20) feet rather than the required twenty-two (22) feet. If the application for the Special Exception is approved, the site plan must be revised to provide a full twenty-two (22) feet for the ingress and egress lanes from the on-site parking area.



The site plan as submitted appears to provide the required separation from the proposed point of curvature of the curb. To avoid ambiguity, the site plan should be modified to indicate the point of curvature so that conformance to Section 27-563 (driveway location) of the Zoning Ordinance can be explicitly demonstrated on the site plan.

M Required Findings - Variances

In Section 27-230, the Zoning Ordinance provides that a variance may only be granted after a three-step inquiry: First, **a specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions.** Second, **the strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property.** Third, **the variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.** Failure to meet any one of the three determinations means that the variance cannot be granted.

In regard to the first determination, the applicant argues that the subject property suffers from exceptional shallowness as compared to its adjacent properties and to other properties on Apache Street ■ 27 - 230(a)(1).• The primary justification given for that statement is the reduced lot depth of 44 feet (actual depth of 79 feet less the required 35 foot setback) while most lots along Apache Street have a reduced lot depth of approximately 80 feet (actual depth of approximately 100 feet less a required setback of 20 feet).

It is worth noting that with one exception, the other properties on Apache Street are zoned R-R while the subject property is zoned R-55 (see Figure 1). While the difference in zone does not alter the setback requirements, it does impact the size of the lot. For lots recorded prior to 1967, the standard size for lots zoned R-R is one and two-thirds (1½) the size of standard lots in the R-55 Zone. As a result of this difference in zoning, one would expect the subject property to be more narrow or more shallow when compared to R-R properties.

The subject property fronts on Riggs Road which results in the thirty-five (35) foot building restriction line while the other properties referenced in the applicant's statement of justification front on Apache Street which only has a twenty (20) foot building restriction line. However, all properties fronting on Riggs Road are subject to the same thirty-five (35) foot building restriction line and thus are similarly situated. Of the three (3) other R-55 lots in the immediate vicinity of the subject property, two (2) front on Riggs Road and have the same building restriction line. Those lots are somewhat deeper than the subject property but not exceptionally so.

As background to the granting of a variance, the Maryland Court of Appeals asserted that:

In the zoning context, the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to

navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. *North v. St. Mary's County*, 99 Md. App. at 512.

The characteristic which is used to argue exceptional shallowness is not an inherent characteristic of the land but rather the result of the subdivision of the land. The subject property was originally subdivided with a net depth of approximately 72 feet (107 less the required 35 foot setback) (see Figure 2). A subsequent re-subdivision of the original lots 1 and 2 produced the smaller lots 18, 19 and 20, one of which (lot 19) is the subject of this application (see Figure 3). The referenced characteristic is a direct result of the subdivision design initiated by the previous owners of the subject property. No other topographic, soil, or other physical characteristic of the land has been identified as unique.

If the subject property were found to be unique, a second test is applied. That second test requires a finding that **■**the strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property.●

The characteristic proposed as unique does not intrinsically require a variance from the required setback to make productive use of the property. In the unimproved state, the applicant would have sufficient flexibility to attain the full use of the property in accordance with the requirements for the R-55 Zone. Had the extension of the main building which extends into the rear yard setback been developed as an open porch, there would be no violation of the setback requirement and no need for a variance.

To achieve compliance with the twenty 20 foot rear yard setback requirement of the R-55 Zone, the applicant would be required to remove the existing extension of the main building or reconstruct it as an open porch. The applicant argues that removal of a portion of an existing structure would be a peculiar and practical difficulty to the owner of the property. However, the courts have found that:

■It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violation of the zoning requirements.● 424 A.2d at 439

■...When a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.▲■ (651 A.2d at 437)

■A hardship created by an owner constitutes no valid basis for a variance.● (651 A.2d at 435, 439-441).

The applicant correctly notes that the violation was in existence when a use and occupancy permit was granted for a Small Group Day Care Center. While the failure to reject the permit at that time is regrettable, the courts have established that **■**A mistake by a municipal officer or permit granted in contravention of the Zoning Ordinance is not a basis for hardship or granting of a variance.● (651 A.2d at 440-441)

Where such a mistake has occurred, the Zoning Ordinance provides an alternative form of relief in Section 27-258, Validation of permit issued in error. The preliminary review of the case suggests that the existing structure as well as the current use of the property as a small group day care potentially qualifies for validation under this section. While such a validation would not permit the applicant to pursue the establishment of a Day Care Center for Children as requested in SE-4377, it would eliminate the re-construction expense associated with complying with the area requirements as well as provide for reasonable use of the property.

The applicant also cites Maryland Courts as having established three criteria for proving ■practical difficulty• in seeking a variance from ■area• requirements of the Zoning Ordinance. Those criteria and staff comments follow:

1) Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.

Strict compliance with the requirement would not prevent the use of the property for a permitted purpose, but conformance (only obtainable by removing the portion of the structure projecting into the rear yard setback) would be burdensome to the applicant. It should be noted, however, that the violation was an inherited, ■self-imposed• hardship. Were it not for the prior existence of the violation, there would be no burden whatsoever.

2) Whether the grant would do substantial injustice to the applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief.

While the grant of the variance, would not do substantial injustice to either the applicant or to other property owners in the district, there is a lesser relaxation than that applied for which would give substantial relief. Validation of the permit issued in error would allow the subject property to function as a residential property and as a Small Group Day Care Center without substantial cost to the applicant. It would not, however, provide for the more intense use proposed in this special exception.

3) Whether relief can be granted in such a fashion that the spirit of the Ordinance will be observed and public safety and welfare secured.

The granting of a variance could be argued to diminish the privacy intended for residents of the R-55 Zone since the required setback would not be met. While a fence currently exists which provides a buffer between the subject property and the property to the east, more substantial planting would further reduce the apparent intrusion should the variance be granted.

If the first two conditions required for the granting of a variance were met (■uniqueness• and ■hardship•), a third finding that ■the variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan• must be met.

As far as can be determined, the condition necessitating the variance existed prior to the adoption of the most recent Master Plan and would not impair the intent, purpose or integrity of the General Plan or Master Plan. In their review of the application for the variance, the Community Planning Section concluded the requested variance will not raise any major issues impeding the goals, concepts and guidelines of the approved master plan.

14. Required Findings Special Exception:

Section 27-317(a) of the Zoning Ordinance provides that a special exception may be approved if:

(1) The proposed use and site plan are in harmony with the purposes of this Subtitle.

In general, the purposes of the Zoning Ordinance are to protect the health, safety and welfare of the County's residents. This application for a special exception is in harmony with those purposes.

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.

The proposed use is not in full compliance with the setback requirements for the R-55 Zone. In order to fully comply with the setback requirement, a variance is required. Specifically, the frame extending from the main structure does not meet the twenty (20) foot building setback requirement. In addition, the property does not satisfy the criteria for approval of the requested variance to reduce the building setback.

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or in the absence of a Master Plan or Functional Map Plan, the General Plan.

The 1989 Approved Langley Park-College Park-Greenbelt Master Plan recommends single-family detached residential ■Low Suburban density for the neighborhood, and the subject property was retained in the R-55 Zone. The Community Planning Division has concluded that the proposed day care center will not substantially impair the integrity of the master plan.

(4) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area.

The proposed use provides the required buffering from adjacent uses and provides an enclosed play area for children. Traffic impacts from the proposed operation are expected to be modest and adequate onsite parking is provided. No adverse health, safety or welfare impacts are expected to result from the operation as proposed.

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.

The proposed use does not propose physical changes to the existing main structure and entails modest exterior changes to the site. In addition, the proposed use is not anticipated to lower current service levels on the area road network. Therefore, the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.

(6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

The Environmental Planning Section of the Countywide Planning Division has concluded that although the site does not have an approved Tree Conservation Plan, the property is exempt from the County Woodland Conservation and Tree Preservation Ordinance because it is less than 40,000 square feet and does not have a previously approved Tree Conservation Plan. A letter of exemption from the Prince George's County Woodland Conservation and Tree Preservation Ordinance was issued on June 7, 1999.

NOW, THEREFORE, BE IT RESOLVED, that the Prince George's County Planning Board recommends that Special Exception No. 4377 be DENIED and Variance VSE-4377A be DENIED.

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Brown, seconded by Commissioner Eley, with Commissioners Eley, Brown and Hewlett voting in favor of the motion, with Commissioner Lowe absent, at its regular meeting held on Thursday, September 21, 2000, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 19th day of October 2000.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:jj:leb