

Maryland-National Capital Park and Planning Commission  
 Prince George's County Planning Department  
 Development Review Division  
 301-952-3530



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## SPECIAL EXCEPTION APPLICATION 4420 (VSE 4420A)

Application	General Data
Project Name: God's Little Angels  Location: Western corner of Shell Street and Arcadia Avenue known as 4119 Shell Street.  Applicant: Debra Morton-Robinson 4721 Pistachio Lane Capitol Heights, Maryland 20743	Date Accepted: 6/15/01
	Planning Board Action Limit: N/A
	Tax Map & Grid: 072 D-4
	Plan Acreage: 0.1836 Acres
	Zone: R-55
	Dwelling Units: N/A
	Square Footage: 2,998
	Planning Area: 75A
	Council District: 07
	Municipality: None
	200-Scale Base Map: 202SE4

Purpose of Application	Notice Dates
Day Care Center for 27 Children- 27-317 & 27-348.01 Variance for front, side & rear yard setbacks of main building & accessory building - 27-230(a)	Adjoining Property Owners (CB-15-1998)
	Previous Parties of Record: None (CB-13-1997)
	Sign(s) Posted on Site
	Variance(s): Adjoining Property Owners
Staff Recommendation	Staff Reviewer
APPROVAL	Jimi Jones
APPROVAL WITH CONDITIONS	
DISAPPROVAL	
DISCUSSION	

March 26, 2002

**TECHNICAL STAFF REPORT:**

TO: The Prince Georges County Planning Board  
The Prince Georges County District Council

VIA: Arie Stouten, Zoning Supervisor

FROM: Jimi Jones, Planning Coordinator

SUBJECT: **Special Exception Application No. 4420**  
**Variance for Special Exception VSE-4420A**

REQUEST: **Day Care Center for 27 Children and Variance from Front, Side & Rear Yard**  
**Setbacks of Main & Accessory Buildings**

RECOMMENDATION: **SE-4420: Approval with Conditions**  
**VSE-4420A: Approval with Conditions**

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NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

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## FINDINGS:

- A. Location and Field Inspection: The subject property is located on the west corner of the intersection of Shell Street and Arcadia Avenue. The property is developed with a two-story, frame, single-family home and a small garage with a concrete driveway located on Arcadia Street. A small play area on the west side of the house is enclosed by a vinyl fence.
- B. History: The 1986 *Suitland-District Heights Sectional Map Amendment* retained the property in the R-55 Zone.
- C. Master Plan Recommendation: The 1985 *Approved Master Plan for Suitland-District Heights and Vicinity* recommends medium-suburban residential (3.6-5.7 dwelling units per acre) land use for the subject property.
- D. Request: The applicant wishes to use an existing single-family home as a day care center for 27 children. A variance is also requested to address deficiencies regarding the front, side and rear setbacks for the existing house and garage.
- E. Neighborhood and Surrounding Uses: The subject property is surrounded by single-family detached homes in the R-55 Zone. The neighborhood is dominated by single-family detached homes on small lots.
- F. Specific Special Exception Requirements: Section 27-348.01(a)(2) provides the following specific requirements for a day care center:

**(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;**
- (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 meets this requirement. The outdoor play area is proposed to be 1,387 square feet in area. With a maximum proposed enrollment of 27 children, the minimum size of a play area for 14 children ( i.e., 50 percent of 27 children) is 1,050 square feet. The Urban Design Section, in a memo dated August 20, 2001, however, recommends that the play area be relocated. See Part H of this report for a discussion of this alternative.

- (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 indicates that the nearest dwelling to the play area is 25 feet. The alternative location proposed by the Urban Design Section would place the play area 30 feet from the nearest dwelling. The play area will be enclosed by a four-foot-high fence as required.

- (C) **A greater setback 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;**

Staff is recommending a greater setback for the play area to provide additional landscaping, buffering and screening for the backyards of adjacent single-family homes. There do not appear to be safety or health issues that necessitate additional setbacks.

- (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 play areas are proposed.

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

The existing mature trees on the property provide adequate shade for the play area.

- (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; and**

The applicant's Statement of Justification provides that the outdoor play area will not be used before or after daylight hours. However, the applicant, in addressing section 27-348.01(a)(2)(G), states that outdoor play shall be limited to the hours between 7:00 a.m. and 9:00 p.m. There are obviously times of the year when it is dark at 7:00 a.m. and before 9:00 p.m. The applicant must either show how the play area will be lighted or restrict the use of the play area to daylight hours.

- (G) Outdoor play shall be limited to the hours between 7:00 a.m. and 9:00 p.m.**

As noted above, it is unclear when the play area will be used. The site plan notes must provide the hours of operation for the play 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 property is zoned R-55. Therefore, the requirements of this subsection are 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 demonstrates conformance with the requirements of this subsection.

**(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 does not apply 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.**

The proposed enrollment for this use is 27 children.

- G. Parking Regulations: The site plan correctly indicates that a total of four parking spaces will be provided based on one space per eight children. The Permit Review Section, in a memo dated July 19, 2001 submits that:

■ Since the existing building will no longer be used as a single-family residence, the parking lot must conform to the design standards set forth by Part 11 of the Zoning Ordinance. With the required 22-foot backup for parking being located within the right-of-way, it appears that a departure from design standards will be required.●

- H. Landscape Manual Requirements: The Urban Design Section, in a memo dated August 20, 2001, points out that this application does not involve the construction, enlargement or extension of a building and therefore does not require compliance with the *Landscape Manual*. However, pursuant to Section 27-328.02;

■ In approving a Special Exception, the District Council may require additional landscaping, screening, or buffering if it determines that the amount required by the *Landscape Manual* is insufficient to adequately protect adjacent uses.●

Staff believes that due to the close proximity of backyards for adjacent single-family homes, the proposed play area may require additional landscaping, screening, or buffering. The Urban Design Section has proposed an alternative location for the play area which would allow additional landscaping, screening, and buffering (see attachment). The site plan proposes a parking layout that



does not provide the required 22-foot-wide driveway access to the parking area. A portion of the yard which would accommodate the relocated play area may be needed for parking.

I. Zone Standards: The proposed day care center does not comply with the setback requirements for the R-55 Zone. The applicant is requesting a variance to address these deficiencies. The variance is discussed in Part K of this report.

J. Sign Regulations: No signs are proposed with this application.

K. Variance VSE-4420:

Section 27-442(e) (Table IV) requires the following minimum setbacks for uses in the R-55 Zone:

For the main building:

Front Yard: 25 feet required; 14.6 feet is provided

Side Yard (along a side street): 15 feet required; 10 feet provided.

For the existing garage:

Side Yard (along side street): 15 feet required; 8 feet provided

Rear Yard: 10 feet required; 0.5 feet provided

Section 27-230(a) provides that:

(a) **A variance may only be granted when the Board of Appeals finds that:**

(1) **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;**

The existing structures are affected by extraordinary situations that require relief from the setback requirements. According to the applicant, based on information from the Maryland Department of Assessments and Taxation, the dwelling was constructed in 1930, prior to the incorporation of the subject property into the Maryland Regional District on April 28, 1941.

This structure, therefore, predates zoning and was not subject to the current setback requirements when it was built. According to the applicant, county records (aerial photography) suggest that the subject garage was constructed prior to 1962. The applicable setback requirements at that time for accessory structures was 10 feet for the rear yard and two feet for the side yard. It is, therefore, more difficult to make a positive finding for the garage. Staff notes that the applicant refers to information from the Maryland Department of Assessments and Taxation but does not submit this information for our review. These documents should be included in the file for this case.

(2) **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; and**

The strict application of the setback requirements will result in peculiar and unusual

practical difficulties to, or exceptional or undue hardship upon, the owner of the property. The day care facility will operate out of the existing dwelling. This structure predates the setback requirements for the R-55 Zone. Strict application of the setback requirements would result in the removal of a portion of the building, which would essentially destroy it. With respect to the existing garage, strict compliance with the setback requirements would destroy it as well. However, it does not appear that day care activities will occur in that structure. Certainly, removal of the garage will have a significant monetary impact on this small business. Unfortunately, there does not appear to be a strong justification to grant relief from the setback requirements for this structure that may have been constructed illegally.

**(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.**

The variance will not substantially impair the intent, purpose, or integrity of the 1985 *Approved Master Plan for Suitland-District Heights and Vicinity*. While the plan recommends medium-suburban residential (3.6-5.7 dwelling units per acre) land use for the subject property, staff notes that uses such as day care centers normally locate in the residential areas that they serve.

L. Required Findings:

**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.**

With the granting of a variance for the existing dwelling and the recommended conditions of approval, the proposed use and site plan are in harmony with the purposes of Zoning Ordinance. The purposes of the Zoning Ordinance, which are set forth in Section 27-102, seek generally to protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the county. Staff is aware that young families are in need of convenient day care services for children. The proposed day care center will help to address the need for such facilities.

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

With the conditions of approval and the variance (for the existing dwelling), the proposed use is in conformance with all the applicable requirements and regulations of Zoning Ordinance. Staff notes, however, that without a departure from design standards, the relocation of the proposed parking will require a significant revision to the site plan.

**(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 Master Plan, the General Plan.**

The proposed use will not substantially impair the integrity of the 1985 *Approved Master Plan for Suitland-District Heights and Vicinity*. The plan recommends medium-suburban residential (3.6-5.7 dwelling units per acre) land use for the subject property. A day care center is a special exception

use in the R-55 Zone and is deemed generally compatible with uses in the zone under certain circumstances. The applicant has presented a site plan that, with some modifications, can provide a service to the community that is compatible and meets the spirit and intent of the Zoning Ordinance.

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

The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area. Staff notes that a day care center is currently operating on the subject property without adverse impacts on residents or workers. The Transportation Planning Section, in a memo dated July 30, 2001, found that no significant traffic impacts would result from the approval of the subject day care center.

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

The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. **The proposed use will not result in a significant change to the residential character of the property.**

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

The proposed site is less than 40,000 square feet in area (8,000 square feet) and is therefore, exempt from the Tree Preservation Ordinance.

## **CONCLUSION:**

The applicant has demonstrated that the proposed use would, with certain conditions of approval, meet all applicable requirements of the Zoning Ordinance. Staff therefore, recommends APPROVAL of SE-4420, subject to the following conditions:

1. The applicant shall either restrict usage of the play area to daylight hours or indicate how the play area will be lighted.
2. The parking area shall be revised to provide a driveway in accordance with Section 27-563 or a Departure from Design Standards application must be approved.
3. Redesign the play area in accordance with the Urban Design Section's comments dated August 20, 2001.

Staff recommends APPROVAL of VSE-4420A, subject to a condition requiring that the applicant either submit information documenting when the structures were constructed or revise the site plan to meet current setback requirements.