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SPECIAL EXCEPTION APPLICATION NO. 4420 (VSE-4420A)

Application	General Data
Project Name	Date Accepted 6/15/01
God's Little Angels	Planning Board Action Limit N/A
Location	Tax Map & Grid 072 D-4
Western corner of Shell Street and Arcadia Avenue, known as 4119 Shell Street	Plan Acreage 0.18 acre
Applicant	Zone R-55
Debra Morton-Robinson	Dwelling Units N/A
4721 Pistachio Lane	Square Footage 2,998
Capitol Heights, Maryland 20743	Planning Area 75A
	Council District 07
	Municipality None
	200-Scale Base Map 202SE4

Purpose of Application	Notice Dates
Day Care Center for Children – Sections 27-317 & 27-348.01	Adjoining Property Owners 2-25-02 (CB-15-1998)
Variance from front and rear setback requirements	Previous Parties of Record None (CB-13-1997)
	Sign(s) Posted on Site N/A
	Variance(s): Adjoining Property Owners 2-25-02
Staff Recommendation	Staff Reviewer: Jimi Jones
APPROVAL	DISAPPROVAL
APPROVAL WITH CONDITIONS	DISCUSSION
	X

July 30, 2009

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board
The Prince George's County District Council

VIA: Arie Stouten, Zoning Supervisor

FROM: Jimi Jones, Planning Coordinator

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

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

RECOMMENDATION: **DENIAL of SE-4420**
DENIAL of VSE-4420A

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.

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 Avenue. A small play area on the west side of the house is enclosed by a vinyl fence.

B. Development Data Summary:

	EXISTING	PROPOSED
Zone(s)	R-55	R-55
Use(s)	Single-family detached	Day Care Center
Acreage	0.18± acre	0.18± acre
Lots	4	4
Square Footage/GFA	2,998	2,998
Detached Dwelling Unit	1	0

C. History: The 1986 Suitland-District Heights Sectional Map Amendment retained the property in the R-55 Zone.

D. 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.

E. Request: The applicant proposes 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.

F. 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, but also contains Bradbury Heights and John E. Howard Elementary Schools. The Oakcrest Towers apartment complex is located at the eastern edge of the neighborhood at Brooks Drive.

The neighborhood is defined by the following boundaries:

North – Bowen Road / Marlboro Pike

East – Brooks Drive

South – Pennsylvania Avenue (MD 4)

West - Southern Avenue

G. Specific Special Exception Requirements: Section 27-348.01 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. The Urban Design Section, in a memo dated August 20, 2001, recommends that the play area be relocated. The Permit Review Section, however, in a memo dated July 19, 2001, points out that the proposed parking area does not have the required 22-foot backup for vehicles. The applicant has revised the site plan to provide the backup area and in doing so has eliminated any additional area to address the Urban Design Section's recommendation.

- (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 play area will be enclosed by a four-foot-high fence and the rear wall of the existing garage.

- (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;**

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 a.m. and 9 p.m. There are obviously times of the year when it is dark at 7 a.m. and before 9 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 A.M. and 9 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.

H. 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.”

The applicant has revised the site plan (date stamped received on August 26, 2002) to demonstrate compliance with Part 11. The plan now shows the required 22-foot backup area.

- I. 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.”

Due to the small lot sizes and close proximity of adjacent single-family homes, the site plan should provide additional 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). However, a portion of the yard which would accommodate the relocated play area is needed to meet parking lot design requirements. A six-foot-high, board-on-board fence should be provided along the western property line from the existing garage on the adjacent Lot 3 to the edge of Lot 4. This fence is intended to screen the play area from the house on Lots 4 and 5 to the west. The board-on-board fence should extend along Lot 38 to the north to the end of the play area.

- J. 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 L. of this report.
- K. Sign Regulations: No freestanding signs are proposed with this application.
- L. 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:

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

The applicant contends that the existing buildings were constructed in 1930, prior to the incorporation of the property into the Regional District on April 28, 1941.

Therefore, the existing buildings predate zoning for the area, and the current setback requirements do not apply to this property.

However, the documentary information submitted by the applicant (see attached MDTA Real Property System, pg. 3, dated September 25, 2002) from the Maryland Department of Assessments and Taxation actually indicates that the primary structure was built in 1930. The document also provides that the primary structure was 2,352 square feet in size. Yet, the site plan for the proposed day care center indicates that the main building comprises 2,998 square feet. The existing garage is 360 square feet. It appears that the main structure has increased in size since 1930.

It also remains unclear when the existing garage was built. A review of aerial photos from 1938 showed the single-family home, but not the garage. The garage is shown on aerial photos from 1962. The photos suggest that the garage was built between 1938 and 1962. While we can conclude that most of the primary structure predates zoning, the information regarding the construction date of the garage is entirely inconclusive.

Unfortunately, the applicant has not clearly established that the extent of the current building lines predate zoning requirements for the area. In addition, the discrepancy with regard to the size of the main building only adds to this uncertainty. Therefore, it can only be determined that the current building setback requirements do apply to the subject property. Further, there are no known extraordinary situations or conditions affecting the property. Also, staff's field inspection revealed no unique physical characteristics of the site that could be relied upon to satisfy this first criterion for the requested variances.

(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. These requirements would result in the removal of a portion of the main 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.

(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*. The plan recommends medium-suburban residential (3.6-5.7 dwelling units per acre) land use for the subject property, and day care centers are permitted as special exception uses in the R-55 Zone.

M. 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.

The proposed use and site plan are in harmony with the purposes of the 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. Young families are in need of convenient day care services for children and 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.

The proposed use is not in conformance with the setback requirements for both the single-family dwelling and garage. The single-family dwelling does not provide the required front and side yard setbacks. The garage does not provide the required side and rear yard setbacks.

(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 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. In addition, a day care center is permitted as a special exception use in the R-55 Zone.

(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. A day care center is currently operating on the subject property without obvious adverse impacts on residents or workers. In addition, the Transportation Planning Section, in a memo dated July 30, 2001, found that no significant traffic impacts would result from 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.

With the imposition of several minor conditions mentioned throughout this report to modify the proposed site plan, the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. Additionally, the proposed use will not result in a significant change to the residential character of the property. While the main building would be used exclusively as a day care center, it will retain the appearance of a single-family home.

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

Properties with less than 40,000 square feet in area are exempt from the Woodland Conservation Ordinance. Since the subject property is 8,000 square feet in size, a Tree Conservation Plan is not required.

CONCLUSION:

The proposed use, with several minor site plan revisions, can meet all Zoning Ordinance requirements except for certain building setbacks. For instance, it can meet all the specific day care requirements, and it conforms to the purposes of the Zoning Ordinance. Furthermore, these requirements are met without adverse effects to the general welfare, without detriment to the use and enjoyment of surrounding properties, and without impairment of the current master plan.

However, the inability to meet the required setbacks cannot be cured with the requested variances because: (1) The documentary evidence presented does not clearly demonstrate that the extent of the current building lines was established prior to the effective date of zoning requirements for this area; and (2) There are no known unique physical characteristics or other extraordinary situations or conditions of the property which can be relied upon as justification to approve the needed variances.

Therefore, staff is compelled to recommend DENIAL of the requested variances and the proposed day care special exception.