

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed SE-4568 and VSE-4568 requesting a Special Exception and associated variance in accordance with Subtitle 27 of the Prince George’s County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on February 14, 2008, the Prince George’s County Planning Board finds:

1. **Location and Field Inspection:** The subject property is a rectangular shaped lot located on the east side of Livingston Road, 550 feet south of its intersection with Bealle Hill Road in Accokeek. The site, also known as 15404 Livingston Road, is a through lot, with frontage along Livingston Road along the western boundary and Bealle Hill Road along the eastern boundary. Because it is a through lot, there is no legal rear yard. The site is improved with a one-story, 1,944 square foot brick dwelling, a 832 square foot detached garage, an oversized shed, a paved parking area in front of the dwelling and a gravel driveway and parking pad by the garage. Access is currently provided via one 11 foot-wide driveway from Livingston Road and one 12 foot wide driveway from Bealle Hill Road. A six-foot high privacy fence encloses the entire property.

2. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-R	R-R
Use(s)	Single-family dwelling with day care for 8	Day care center for 50
Acreage	0.486	0.486
Square Footage	1,944	2,776
Lots	1	1

3. **History:** The 1993 Sectional Map Amendment for the Subregion V Study Area retained the subject property in the R-R Zone. The property is currently used as a single-family dwelling with a day care for eight children.

4. **Master Plan Recommendation:** This application conforms to the land use recommendations of the *1993 Subregion V Master Plan*. The property is located in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable.

5. **Request:** The applicant is proposing the conversion of a 1,944 square foot, single-family residence with a day care for eight children into a two-building, 2,776 square foot day care center for 50 children. The proposal includes the addition of another 11-foot-wide driveway from Livingston Road (creating a circular drive) seven parking spaces which includes one handicap accessible space, and an 832 square foot infant center which is currently used as a garage. Two play areas will also be provided.

6. **Neighborhood and Surrounding Uses:** The neighborhood is defined by the following boundaries:

North and West—Livingston Road
South—Bealle Road and Accokeek Road
East—Bealle Road

The neighborhood is residential in nature with single-family homes in the R-R Zone adjacent to the subject property and across both Livingston Road and Bealle Hill Road.

7. **Specific Special Exception Requirements for a Day Care Center:**

- (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;**

Based on a proposed enrollment of 50 children, a total of 3,750 square feet is required for the play area to accommodate the full enrollment at one time. However, a play area of 50 percent of the enrollment (25 children) may be provided as long as only half the children are in the play area at a given time. For 25 children, a play area at least 1,875 square feet is required. The proposed outdoor play area is 2,364 square feet in area; therefore, the Board recommends that no more than 25 children are in the primary play area at a given time. A note stating as such should be included on the site plan. The Board notes that 12 of the proposed 50 children enrolled will be infants. The applicants have proposed a second play area for the infants and toddlers that shall be shown on a revised site plan and that shall comply with all applicable requirements for play areas.

- (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 primary play area is located 47 feet from the nearest dwelling, which is located on the adjoining lot to the south. The play area is enclosed by a four-foot-high black, vinyl-clad chain link fence. The fence detail does not indicate that the chain link is black vinyl clad; the Board recommends the detail be revised to state as such. In addition, the site plan should indicate that the fencing is existing. The revised site shall also indicate that the second play area meets this requirement.

- (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;**

The Board finds the existing setbacks are adequate given the nature of the surrounding uses. The Urban Design Section, in a memorandum dated December 7, 2007, recommends that the applicant replace the chain-link with an attractive, durable non-wood material for the play area enclosure, since it will be visible from the road. However, the field inspection revealed that the applicants have already installed a six-foot high board-on-board fence in the front portion of the site and a sight-tight fence around the entire remaining perimeter of the property. The primary play area will be only partially visible from Livingston Road.

- (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;**

The applicant does not propose the use of an off-premise outdoor play area.

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

The site plan shows a row of five Linden trees proposed along the southern edge of the site adjacent to the primary play area. Because the trees are not required per the *Landscape Manual*, and because there are two existing ornamental trees in proximity to the play area, the Board recommends the applicant revise the site plan to show two to three shade trees adjacent to the play area rather than five trees. The two to three trees will provide adequate shade to the play area without competing for space with the existing trees. The day care use is already screened from the adjacent residential property by a six-foot-high sight-tight fence. Urban Design staff further recommends, in the aforementioned memorandum, that the Linden trees be replaced with a plant species that does not attract bees. A Maple tree that is shown on the site plan as existing was damaged in a storm and was removed. The Maple tree should be deleted from the site/landscape plan. The smaller play area must also be sufficiently shaded with either a tree or structure.

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

The applicant is providing building-mounted lighting to illuminate the parking area as well as a limited portion of the play area. Lighting details were not provided in the submittal; therefore, the Board recommends that lighting details be provided prior to issuance of the use and occupancy permit. The details shall reflect that all lighting over six feet high will be shielded, full cut-off fixtures to minimize light spillage and glare.

(G) Outdoor play shall be limited to the hours between 7am and 9pm.

Outdoor play will be limited to the hours between 8:00 a.m. and 6:00 p.m. during daylight hours.

8. **Landscape Manual Requirements:** The proposed use is exempt from the *Landscape Manual* per Section 27-328.02 of the Zoning Ordinance. That section states that special exceptions that do not require the construction, enlargement or extension of a building are not subject to *Landscape Manual* requirements. The applicant is not proposing any additional square footage over what currently exists. References to compliance with the *Landscape Manual* (i.e., bufferyard schedules) should be removed from the site/landscape plan. Because the field inspection revealed that the site plan does not match the existing conditions on site, including plantings, the applicant must revise the landscape plan to accurately indicate what is proposed and what is existing. Because some of the shade trees were found to be substandard in the field, the Board recommends that all shade trees should be installed according to the plant schedule, at the caliper (2.5 to 3 inches) specified.
9. **Sign Regulations:** Two freestanding signs are proposed on the subject property. The proposed sign along Bealle Hill Road must be shown on the site plan. The signs must meet all area, height and setback requirements. Sign details shall be provided to ensure compliance with these requirements and compatibility with the existing residential character of the neighborhood. The Board further recommends the applicant provide directional signage designating the entrance only and exit only driveways, to facilitate safe ingress and egress.
10. **Referral Comments:** The property is located in the Accokeek Development Review District. The Accokeek Development Review District Commission, in a letter dated August 10, 2007, indicated it had no objection to the proposal as presented to them by the applicants. None of the referral replies received by staff had any objection to the application.
11. **Parking and Loading Requirements:** Section 27-568 (Schedule of Parking Spaces) of the Zoning Ordinance requires a total of seven parking spaces for the day care use (one space for every eight children). The applicants are providing seven parking spaces, including one handicap van-accessible space, as required. Although the site plan indicates the correct number of required and provided parking spaces, the site plan notes should be revised to reflect the correct calculation for determining required parking.

The site is exempt from loading requirements.

12. **Zone Standards:** Section 27-442(i) (Table VIII) requires a minimum 60 foot building setback from the front street line for accessory structures. The existing detached garage is set back a minimum of nine feet from the eastern property line along Bealle Hill Road. The applicant is requesting approval of a variance of 51 feet (per VSE-4568) to validate the existing garage. Section 27-230 provides the following findings for approval of a variance:

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

The subject lot is a through lot; that is, it has street frontage along its eastern and western boundaries with no legal rear yard. The applicant's Statement of Justification asserts that it is the shallowness of the lot in conjunction with the two abutting roadways that has created an extraordinary condition. The Board concurs that the lot is so shallow as to make it impossible to accommodate an accessory building within the permitted setback locations. In addition, the lot tapers toward the north end of the property as a result of the road curvature toward where Livingston Road and Bealle Hill Road eventually converge. Of the three contiguous through lots in the immediate area (Lots 7, 8, and 9), Lot 9, the subject property, is the shallowest. The Board finds the lot is exceptionally shallow for a through lot.

(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 this Subtitle will result in peculiar and unusual practical difficulties to the owners of the property. The existing garage that encroaches into the required "front" street yard was constructed in its current location some time between 1968 and 1993. Permit records were not immediately accessible, so there is no way of ascertaining whether the garage was permitted and inspected. The applicants purchased the property in 2006 with the intent of expanding their current day care business. Their plan was to utilize the main structure and renovate the garage for the proposed day care use. The applicants applied for and obtained a permit for renovations to the garage in 2007. At that time, no governmental agency indicated structures on the lot violated any provisions of the Zoning Ordinance. Strict compliance with the front yard setback requirement is not possible, as the shed would have to be located 60 feet from both Livingston Road and Bealle Hill Road and be located in the rear yard of the existing dwelling. In order to meet the 60 foot setbacks the shed would have to be relocated to the property's side yard, which is not permitted. The renovated square footage of the garage is an integral component in day care center's program, and is included in an approved state education grant. Should the variance be denied, it would result in the revocation of the state grant. For these reasons the Board finds the strict application of the Subtitle would result in peculiar and practical difficulties to the owners of the property. The Board further notes the property is screened from Bealle Hill Road by a six-foot-high fence. The setback violation is not clearly visible from the street.

(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 1993 Subregion V master plan. The plan recommends "Low Suburban" residential development (1.6–2.6 dwelling units/acre). The day care center is a use permitted by special exception in the R-R Zone and is therefore presumed to be compatible with the surrounding residential area, absent any evidence to the contrary.

13. **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 general purposes of this Subtitle are to protect the health, safety, and welfare of the community. The proposed uses and accompanying site plan are in harmony with the purposes of this Subtitle. The conditions of approval will further ensure that the purposes of the Subtitle are met.

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

The applicant has generally met all the applicable requirements and regulations with one notable exception. The Board found that the site plan erroneously shows a two-foot rear yard setback from Bealle Hill Road. Because the lot is a through lot, with road frontage on both the east and west sides of the property, there is no rear yard, only two front yards and two side yards. The existing 32 X 26 foot garage does not meet the 60 foot front street line setback requirement from Bealle Hill Road; therefore, the applicant must obtain a variance to validate the structure or have it removed. The applicant has submitted a variance application as there is no location on the site that can legally accommodate the structure and the structure is necessary to the operation of the day care facility. The Board recommends that the rear yard notation be removed from the site plan. In addition, the site plan should be revised to accurately identify all existing and proposed improvements on the site plan (and label them as such), including the shed, its height and dimensions, and landscape plantings. The applicants have indicated the driveway accessing Bealle Hill Road will need to be widened to accommodate emergency vehicles; this revision must be shown on the site plan as well.

(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.

This application is subject to the 1993 Subregion V Study Area master plan. The subject property is located within the Rural Residential (R-R) Zone, which allows up to 2.6 dwelling units per acre. The use is compatible within the current zone. Thus, 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.

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

None of the responses from any referring agencies indicate that the proposed day care center, with the included conditions, will adversely affect the health, safety or welfare of residents or workers in the area.

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

In consideration of the above transportation and other findings, the Board finds the proposal for a day care facility will not pose unanticipated capacity or safety issues on adjacent roadways or any other adverse impacts and thus, 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.

This property is exempt from the provisions of the Prince George's County Woodland Conservation Ordinance because the site is less than 40,000 square feet in area and contains less than 10,000 square feet of woodland.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and recommends to the District Council for Prince George's County, Maryland that the above-noted application be approved, subject to the following conditions:

1. Prior to issuance of the use and occupancy permit, the following revisions shall be made to the site plan:
 - a. The site and landscape plan shall accurately reflect what is proposed and what is existing on the property, including dwellings, sheds, fences, signs and plant material. The height and dimensions of all structures shall also be provided.
 - b. The play area fence detail shall indicate that the chain link is black vinyl clad.
 - c. The proposed five Linden trees adjacent to the play area shall be replaced with two to three shade trees of a plant species that does not attract bees.
 - d. A Maple tree that is shown on the site plan as located in the play area shall be deleted from the site plan.
 - e. References to compliance with the *Landscape Manual* (i.e. bufferyard schedules) shall be removed from the site plan.
 - f. The two-foot rear yard setback notation shall be removed from the site plan.
 - g. The site plan notes shall be revised to reflect the correct calculation for determining required parking.
 - h. Directional signage shall be provided to designate the entrance only and exit only driveways.
 - i. The applicant shall indicate the location of all proposed signage advertising the day care facility. The area, height and location of all signage shall be in accordance with all zoning requirements.

- j. The driveway from Bealle Hill Road shall be 20 feet wide to accommodate emergency vehicles.
- 2. No more than 25 children are to be in the primary play area at a given time. A note stating as such shall be included on the site plan.
- 3. Outdoor play shall be limited to the hours between 8:00 a.m. and 6:00 p.m. during daylight hours. A note stating as such shall be included on the site plan.
- 4. Lighting details shall be provided prior to issuance of the use and occupancy permit. The details shall reflect that all lighting higher than six feet will be shielded, full cut-off fixtures to minimize light spillage and glare.
- 5. All shade trees shall be installed according to the plant schedule on Sheet 2, at the 2.5- to 3-inch caliper.
- 6. Prior to ZHE review, the second play area shall be shown on the site plan. The play area shall be located at least 25 feet from the adjoining residential property; it shall provide a minimum of 75 square feet per child for a minimum of 6 children and a maximum of 12 children to play at one time; and, it shall provide a source of shade for the children to protect them from the sun.

The Board further recommends APPROVAL of VSE-4568, a variance of 51 feet from Bealle Hill Road to validate the existing accessory building.

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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 Clark, seconded by Commissioner Squire, with Commissioners Clark, Squire, Vaughns and Cavitt voting in favor of the motion, and with Commissioner Parker absent at its regular meeting held on Thursday, February 14, 2008, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 6th day of March 2008.

Oscar Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator