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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on August 6, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 1, August 6, 1991, (Tape 1), Scheduled case of:

9:00 A.M. MOUNT VERNON COMMUNITY PARK & PLAYGROUND ASSOCIATION, SPA 75-V-185-1, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to amend SP 75-V-185 for community recreation club, tennis courts, and swimming pool, to allow replacement of equipment shed and waiver of dustless surface requirement on approx. 10.8 acres located on Fairfax Rd., zoned R-3, Mt. Vernon District, Tax Map 102-2((3))A, & D; 102-4((1))3A, 4, & 11B; 102-4((17))B. (CONCURRENT WITH SE 91-V-006)

Chairman DiGiulian called the applicant to the podium and Mrs. Thonen told the Board that the application had been deferred for decision only. Mrs. Thonen believed that the case had been deferred so that the applicant could first have a special exception heard. Mr. Ribble said that may have been true, but that the special permit amendment had not been heard previously. After a bit of discussion, it was determined that this case had not been heard at the time of its previously scheduled hearing.

Mrs. Thonen asked when the special exception would be heard and Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that it had been heard by the Board of Supervisors at 2:30 a.m. that morning.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Fede replied that it was.

Robby Robinson, Staff Coordinator, presented the staff report, stating that the subject property is located at 8042 Fairfax Road at the intersection of Lafayette Drive and consists of 10.8 acres zoned R-3. He said that the site is used as a private community park and playground. Mr. Robinson said that the applicant was requesting approval of a special permit amendment for a community recreation club, to permit replacement of an equipment shed/manager's office, and waiver of the dustless surface requirement. He said that the area which is proposed to be maintained as a gravel surface would be used primarily for automobile parking, and no changes in membership or hours of operation were being proposed. Mr. Robinson said that the applicant was also requesting modification of the transitional screening requirement to allow existing vegetation to serve as the required screening. He said that the proposed use was in harmony with the Plan and purpose of the R-3 district, and satisfied the requirements of the applicable Standards for special permit uses. Mr. Robinson said that staff recommended approval of the application, subject to the Proposed Development Conditions contained in the staff report, as amended by revising Condition 8 by deleting the first sentence which reads: "There shall be a minimum of 200 parking spaces provided."

Roberta Fede, 9000 Beatty Drive, Alexandria, Virginia, Past President and Agent acting on behalf of the applicant, stated the following: The applicant is a non-profit community park which opened in 1954 for the Hollin Hall community and now has approximately 575 member families from the surrounding communities. They are open for three months out of the year, Memorial Day to Labor Day. The applicant was requesting permission to replace a maintenance shed which is a lean-to wooden structure, 400 square feet in size; it was built thirty-eight years ago by the members, and is in very bad condition, having been damaged by carpenter ants and termites. The shed is too small to accommodate some of the equipment, which is being subjected to deterioration because it was being stored outside. The new shed was proposed to be in the same approximate location as the present shed, which is in a wooded area of the Park, away from most of the other activities in the Park, and well-screened. The shed will be constructed according to requirements for flood plain and a member architect is assisting the other members with the drawings.

Ms. Fede noted that a parking complaint had been registered against the applicant and stated that the applicant had addressed the issue. She said that, approximately three weeks ago, they had met with Gerald W. Hyland, Supervisor, Mount Vernon District, and the neighbor who had complained about inadequate parking. Ms. Fede said they had discussed the issue and had worked out a solution which called for posting signs at the entrance to the park; telling members that they must park on-site and posting a sign at the gate house telling them the same thing; handing out fliers to the members as they came into the park so that they would be aware that it is not acceptable to park on surrounding streets, that they have adequate parking on-site and they must use it; taking the liberty of roping off a piece of adjacent vacant property, which does not belong to them or the neighbor, because the neighbor does not want anyone parking there; hiring parking attendants or having member volunteers for the few events which they have during the summer; and having agreed to provide twenty-one additional permanent parking spaces in the Park, which would be done as soon as the park closed, approximately three weeks hence.

Mrs. Harris asked Ms. Fede what the overflow parking area was presently being used for. Ms. Fede said it was just open space. Mrs. Harris asked if there were any mitigating measures in use to prohibit parking too close to the pond. Ms. Fede said yes, they had roped off the area to preclude anyone going beyond a certain distance from the pond. Ms. Fede said they had also roped off other areas, prohibiting traffic too close to large stands of trees in an environmental effort to preserve the beauty of the area.

Chairman DiGiulian asked if there was anyone to speak in favor of the application and there was no response. He asked if there was anyone to speak in opposition and also received no response.

Mr. Hammack asked staff why they wanted to delete the first sentence of Development Condition 8, saying that there should be a minimum of 200 parking spaces provided. Mr. Robinson said that, when the permanent parking and the overflow parking were added together, they added up to 200 parking spaces, and inserting additional language might cause confusion with DEM's (Department of Environmental Management's) enforcement of the figures. Mr. Hammack referred to Ms. Fede's statement about twenty-one additional spaces being provided and asked Mr. Robinson if they showed up on the plat. Mr. Robinson said that he did not know which spaces were designated as permanent.

Mrs. Harris asked Mr. Robinson if the additional parking spaces would be in the permanent overflow area. Doug Denney, a member of the Park Association's architectural staff, said that he had been helping with the plans and approvals, and he showed on the viewgraph where the existing permanent spaces were located and showed the area designated for the overflow. He said that the twenty-one additional spaces were a recent designation and they had not really studied it in detail. He showed on the viewgraph where they would probably put them. Mr. Denney stated that they had never come close to needing the number of spaces which they already have, even on holidays.

Mr. Hammack referred to the plat and asked staff if the overflow parking shown along the asphalt path was permitted under the Code. Mr. Robinson said that the parking was not on the walk, but adjacent to the walk, right below the pond. Mr. Hammack said that the area he was referring to showed the overflow parking going from the tree line to the other side of the asphalt walk. With the use of the viewgraph, Mr. Hammack pointed out the area to which he was referring. Mr. Denney said that the area was used as a drive for the temporary parking and that the parking was not on the walk itself. Mr. Hammack said that it appeared to him that the asphalt walk was also being used by someone wanting to play tennis or get to the bathhouse. Mr. Denney said the drive had never been used for parking but, if it were needed, people could walk along the pond or through the trees if they parked there.

Mr. Pammel addressed Mr. Denney, stating that Mr. Denney had said that he had not previously encountered the need for overflow parking. It was Mr. Pammel's observation, from the number of letters which had been received, that the members were parking out on the street and causing problems in the neighborhood. Mr. Pammel asked Mr. Denney if the Association distributed a newsletter announcing activities, etc. Mr. Denney said they put out a newsletter twice a year; the next one would be going out in February. He said that Mr. Hyland had also recommended distributing fliers to the people who came into the Park to make them aware of the policy. Mr. Pammel suggested to Mr. Denney that he emphasize in the next newsletter that there is parking on-site and that the participants should not use the public streets for parking. Mr. Denney said that they intended to do that, and to inform the membership that it was a condition of their special permit.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SPA 75-V-185-1 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1991, as amended by deleting the first sentence from Condition 8, previously explained.

Mrs. Harris remarked that she was in a quandary and would like to see where the parking spaces were located. She said she believed that there was a lot of floodplain and tree preservation, and she would not object to having the parking spaces placed in an appropriate area. She expressed discomfort at approving a plat that does not have all the parking clearly delineated, and proposed deferring decision until a proper plat could be provided.

Mr. Hammack said that he had planned to oppose the motion for the same reasons as Mrs. Harris. He did not believe that the applicant had satisfied the parking requirements, showing the parking spaces on top of the aisles and in trees and other places. He was further concerned about neighbors' complaints concerning off-site parking, to which he was sympathetic, and he believed the plat should show where the on-site parking was located.

Mr. Hammack also was concerned about not knowing where the overflow parking is to be located and conversation among the Board members suggested that this situation was not uncommon. The discussion about parking continued for some time.

Mrs. Thonen said it was her impression that the application before the Board was only for the shed and that the Board of Supervisors had already approved the special exception which addressed the other aspects involved.

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Ms. Kelsey asked to be allowed to clear up any confusion about the twenty-one additional parking spaces. She referred to Mrs. Thonen's remarks about the special exception and said that the special exception was for filling in the flood plain for the shed, on which the Board of Supervisors did place conditions relating to other aspects of the use, including the parking. Ms. Kelsey explained that an effort had been made to have the special exception consistent with the special permit and to have the same conditions on both. Ms. Kelsey said that it became apparent that the sixty-five permanent parking spaces were not sufficient to satisfy the requirement and that eighty-four spaces would be required to satisfy the usage on the site. It was Ms. Kelsey's understanding that it could be made conditional and that the additional twenty-one parking spaces would be to the north on the plat and would not affect the area about which Mr. Hammack had been concerned. She said that the 116 spaces were not required parking. She said that the Board had previously imposed a condition stating that the Association should have 200 spaces, but they also had said at that time that there should be 50 permanent and 150 overflow spaces. Ms. Kelsey said that the Ordinance had been changed and the Park now needed more parking to meet the requirement. She said that the fact that the applicant was requesting replacement of the storage shed caused them to fall under the new requirement and now they would need 84 permanent spaces. Ms. Kelsey suggested that, in order to insure precise compliance regarding the placement of the gravel for the permanent parking spaces, the Board could state exactly where the applicant should put the twenty-one additional spaces.

Mr. Hammack said that he also was concerned that the plat showed overflow parking on the travel aisles which lead to the bathhouses and which testimony had just shown would be used to drive on.

Ms. Kelsey said she realized that there was an error which showed parking on the curbed area; however, she said that staff counted where the engineer had placed thirty spaces and scaled it off to determine whether or not thirty could be fit into the area and believed that it could. She said that it was not staff's understanding that the parking would block the aisle and that the architect was present and might be able to shed more light on the situation.

Even after further discussion, Mr. Hammack said that he could not support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 75-V-185-1 by MOUNT VERNON COMMUNITY PARK & PLAYGROUND ASSOCIATION, under Sections 3-303 and 8-915 of the Zoning Ordinance to amend SP 75-V-185 for community recreation club, tennis courts, and swimming pool, to allow replacement of equipment shed and waiver of dustless surface requirement, on property located on Fairfax Rd., Tax Map Reference 102-2((3))A, & D; 102-4((1))3A, 4, & 11B; 102-4((17))B, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10.8 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-303 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), Structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc. dated November 8, 1990, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum number of employees on site at any one time shall be eight (8).

6. The maximum number of family memberships shall be 600.

7. The regular hours of operation for the park shall be limited to 8:00 A.M. to 9:30 P.M., Monday through Saturday and 12:00 P.M. to 9:30 P.M. on Sunday.

8. All parking shall be on site. There shall be provided a minimum of eighty-four (84) permanent parking spaces, either paved or gravelled, and 116 overflow parking spaces in an area generally contiguous to existing parking.

9. The mature existing vegetation shall be preserved to the maximum extent possible. Supplemental plantings in the cleared area between the proposed equipment shed/manager's office and the existing vegetation shall be provided subject to review and approval by the Branch Chief of the Urban Forestry Branch (formerly the County Arborist).

10. Proper pool cleaning procedures shall be implemented. Pool waters shall be properly neutralized prior to being discharged during draining or cleaning operations. The recommended method involves adding sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters. This requires a minimum concentration of 4.0 milligrams per liter. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

11. The gravel surfaces for the parking lot, travel way and loading area shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall run for the period of time specified in the Zoning Ordinance.

    Speed limits shall be kept low, generally 10 mph or less.

    The areas shall be constructed with clean stone with as little fines material as possible.

    The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

    Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

    Runoff shall be channeled away from and around driveway and parking areas.

    During dry periods, application of water shall be made in order to control dust.

    The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

    The entrance shall be paved to a point at least twenty-five (25) feet into the site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 5-2. Mrs. Harris and Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this special permit.

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9:15 A.M. DR. LEONARD H. JARVIS, VC 91-D-064, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 5 lots and 1 outlot, proposed Lots 2 & 3 each having lot width of 11.89 ft. (150 ft. min. lot width required by Sect. 3-106) on approx. 5.5585 acres located at 6500 Georgetown Pike, zoned R-1, Dranesville District, Tax Map 22-3((1))5, 7A. (CONCURRENT WITH SP 91-D-024)

9:15 A.M. DR. LEONARD H. JARVIS, SP 91-D-024, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow detached structure (garage) to remain 7.0 ft. from rear lot line (10 ft. min. rear yard required by Sect. 10-104) on approx. 5.5585 acres located at 6500 Georgetown Pike, zoned R-1, Dranesville District, Tax Map 22-3((1))7A. (CONCURRENT WITH VC 91-D-064)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Schiller replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained that the staff reports had been originally assigned to Bernadette Bettard, Staff Coordinator, but were completed by Lori Greenlief, Staff Coordinator, and would be presented by Ms. Kelsey.

Ms. Kelsey said that the property was located on the north side of Georgetown Pike, west of its intersection with Chain Bridge Road; is contiguous to Langley High School on the north and east; and is surrounded along the other portions of the property by R-1 zoned land which is developed with single family residential dwellings, with the exception of the church across Georgetown Pike. She said that the applicant was requesting a variance to subdivide two lots, Lots 5 and 7A, into 5 lots, with proposed Lots 2 and 3 having lot widths of 11.89 feet. Ms. Kelsey brought the Board's attention to new plats which had been submitted by the applicant after the staff report had gone to print. Ms. Kelsey pointed out that the Zoning Ordinance requires a minimum lot width of 150 feet; the applicant was requesting a variance of 138.11 feet for each of the two lots; the applicant was also requesting a special permit to allow an existing garage to remain 7 feet from the rear lot line, requiring a variance of 3 feet to the minimum rear yard requirement.

Ms. Kelsey said that there were no Building Permits in the file, allowing staff to make no concrete findings on how the building was constructed in error; nor did the letter submitted by the applicant's agent shed any light on that aspect and she suggested that, perhaps, the applicant might be able to address that issue. Ms. Kelsey said that it was determined from the site visit that there was a shed located to the rear of the garage. She said that, if the shed were removed, it appeared that the applicant might meet the rear yard requirement. Ms. Kelsey said that, on December 28, 1988, the applicant filed a special exception application for the two subject lots, at which time staff had recommended denial of the application. It should be noted that the Comprehensive Plan was somewhat different at that time and the Zoning Ordinance, as it related to cluster subdivisions, was also somewhat different; it would be difficult to guess what staff's recommendation would be today if the applicant were to apply for a subdivision. Many of the aspects of the former application were the same as the present application. Ms. Kelsey said that staff had concluded that the application did not satisfy the Standards for a variance, as contained in the Zoning Ordinance. Staff also had analyzed the variance in conjunction with the Comprehensive Plan and the Comprehensive Plan text recommends one dwelling unit per acre, whereas three of the lots exceed that density. Ms. Kelsey said that staff believed approval would set an undesirable precedent for pipestem lots in the area; there are other lots in the are which could be similarly subdivided with pipestem lots; but the area does not presently appear to contain any pipestem lots, except within a cluster subdivision, which had been determined to meet specific criteria and the environmental integrity of the Plan.

John F. Schiller, Land Surveyor, 6063 Arlington Boulevard, Falls Church, Virginia, presented the statement of justification, stating that the subdivision in which the doctor's house is located had been in existence for twenty to twenty-five years. He pointed out that the applicant's current driveway accessed Georgetown Pike at one point, very near the bottom of a hill on a slight rise, going up toward Langley High School. He said that the sight distance is adequate for ingress and egress to the Pike; the church's access to the Pike is right across the street; and the entire traffic pattern passing through the site, down the hill, approaching the School, is heavily wooded with very large trees. Mr. Schiller said that he had spoken to many neighbors about the application. He claimed it would be a hardship to the doctor, the neighbors, and everyone in the area to deprive them of the beauty of the historic area and all of the surrounding trees. Mr. Schiller said that the Civic Association had

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asked that the minimum size of any lot be 36,000 square feet, stating that a conventional subdivision would have an average lot size of 36,000 and a total of one acre overall. Mr. Schiller described the proposed project in great detail. He said that water from the Langley School parking lot came down through a pipe directly above the applicant's land in two places, cascading down and eroding and wiping out the tree trunks. Mr. Schiller said that he had worked with the Special Projects Branch of Department of Environmental Management and had found a solution to the problem, similar to what is used in stream bottoms to break and protect streams. He said that the 4 cubic square feet of water generated by the subdivision would be stored in a detention pond.

Mr. Schiller addressed the special permit application for what he called a little garage addition. He said the garage has been in place for a very long time; there is a 10 foot high shed on the back, 7 feet from the property line; the woods are so dense that the shed is not visible. He asked that the shed be allowed to remain.

Mrs. Harris noted that five houses would be entrancing and exiting through one pipestem which is 18 feet wide and expressed concern about the feasibility of such an arrangement on Georgetown Pike. She pointed out that there is no place for overflow parking on Georgetown Pike and questioned how blocking the entrance and exit could be avoided if one of the property owners did have the need for overflow parking. Mr. Schiller suggested that overflow parking might be directed to the Korean Church parking lot across the street, which is only used on Sundays.

Mrs. Harris referred to the letters of opposition and asked if a comparison had been done of the runoff which would be generated into the Turkey Run tributary with the proposed plan, as opposed to the special exception which the applicant received from the County. Mr. Schiller said that he had, and that the applicant was being subjected to complete runoff from a two-parking lot area at the high school and a 36 inch pipe crossing Georgetown Pike; the entire swale generates approximately 250 cubic square feet of water. Mrs. Harris referred to Mr. Schiller's previous reference to that problem being taken care of by a stormwater management technique.

Mrs. Thonen referred to a letter from the applicant's surveyor, stating that they had been processing a conventional five-lot R-1 subdivision plan through DEM and were almost ready for bonding; further, the letter said, the conventional plan they had prepared was straightforward in that it had public streets and all the amenities required for acceptance into the State and County systems. Mrs. Thonen said that, if the applicant now had full use of the property by right, why was a variance required. Chairman DiGiulian explained that the request for the variance was being supported by a claim that the applicant would be saving trees and cutting down on the amount of stormwater runoff at the development, and that the community approved of the plan.

Mr. Hammack referred to the special exception plat where Jarvis Court expanded near the property line with Schnyder, which he said appeared as if it were going to extend onto the Schnyder property if it is ever developed. He said there is also a 20 foot outlet shown and asked Mr. Schiller to explain why Jarvis Court would need to extend onto the Schnyder property if they already have ingress and egress. Mr. Schiller said it was a typical standard procedure to allow full access to the next one-acre parcel owner, previously designated as Schnyder but now designated as Bowman. He said that in the case of subdivision, the County required the street to be extended if anyone wished to go through the property; however, in this case, no one wanted to extend the street and, in dealing with DEM, it ceased to be a problem.

The following people spoke in support of the applications: Sally Oldham, President of the Turkey Run Citizens Association, President of Scenic America, an architectural historian by training, 6456 Georgetown Pike, McLean, Virginia; John Bowman, 6456 Georgetown Pike, McLean, Virginia; and Millicent T. Lang, 6444 Georgetown Pike, McLean, Virginia.

The major concerns of the speakers were: preservation of the scenic and historic qualities of Georgetown Pike; preservation of the trees and the terrain of the area; preservation of Turkey Run; aesthetic properties of vehicle access to the development; and the applicant's garage being in violation of the Ordinance.

It was stated by the speakers that the members of the Citizens Association were in support of the applicant because they believed he offered the best compromise, even though the density would exceed what they would prefer to have. They spoke of understanding that the two lots could be developed by right, with a less satisfactory result upon the environment. They stated that the applicant's plan was more environmentally sound because it would cause less disturbance to the area and contained less asphalt surface. Reference was made to a letter from Gregory M. Luce, Vice President and Counsel for the Citizens Association; a copy was distributed to the Board and made a part of the file.

It was stated that the runoff problem was primarily created by the high school, not the development; and that the remedial structures also should be located on County property, not just on the applicant's property.

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It was requested that, if the variance were approved as requested, a requirement be included to the effect that the agreements be binding on subsequent property owners.

Mrs. Harris spoke of having given these applications a great deal of consideration and thought. She said, however, that a variance of this type on Georgetown Pike, with just an 18 foot street, was very difficult for her to accept. She spoke of possibly reducing the number of houses to four in the subdivision.

Mr. Pammel complimented Ms. Oldham and her organization for the amount of work they had done in working with the applicant, and he agreed that the proposal before the Board would probably be the most sensitive design from the environmental aspect. On the other hand, Mr. Pammel said, the criteria would suggest that the most appropriate method of handling this and any other such application, would be to go back to the District Supervisor and suggest that greater flexibility be provided within the Ordinance in cases where there is conflict with the environment.

Ms. Oldham spoke of a previous issue of this type which managed to elicit a change in the Ordinance at the Supervisor's initiative, but it took two and one-half years to bring about the change. More discussion ensued and Mr. Pammel said that he believed the variance would more appropriately be handled as a special permit.

John Bowman read a letter dated August 6, 1991, from him to the Board and the letter was made part of the file. He said that, since he shared the largest private sector boundary with Dr. Jarvis, he would be most impacted by the development plans. In addition to other items previously covered, Mr. Bowman was also concerned about Dr. Jarvis' garage, which he believed to be in violation, and which he strongly believed should not be covered under special permit.

In reply to a question from Mr. Pammel, Mr. Bowman said that his wife, Grace Schnyder, was the original owner of the property, dating back to the early 1970's.

Chairman DiGiulian asked Mr. Schiller if he would like to take some rebuttal time, but Mr. Schiller said he thought it would be repetitious.

Mrs. Harris noted that the Comprehensive Plan states clearly that lots in this area were to be one acre in size; it also states that pipestems should be larger than the surrounding property. She said she could not accept the fact the three of the proposed lots would be less than one acre. Mr. Schiller said that one pipestem, Lot 3, would be 50,000 feet, which would be more than an acre; and Lot 2 would be 42,579, feet compared to 43,560, about one thousand feet less than an acre. Mrs. Harris referred to the high degree of attention being given to environmental issues and said that it would be more environmentally sound to have four lots, which would allow the applicant to easily comply with the Comprehensive Plan. She asked Mr. Schiller if this alternative had ever been explored. Mr. Schiller said they had not considered four lots, and he did not believe the applicant would consider four lots.

Chairman DiGiulian asked if anyone else wished to speak and, receiving no response, closed the public hearing.

Mr. Hammack made a motion to deny SP 91-D-024 for the reasons outlined in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-024 by DR. LEONARD H. JARVIS, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow detached structure (garage) to remain 7.0 feet from rear lot line, on property located at 6500 Georgetown Pike, Tax Map Reference 22-3((1))7A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.5585 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

008

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Pammel seconded the motion which carried by a vote of 4-3; Mrs. Thonen, Mr. Kelley and Mr. Ribble voted nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991.

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Mr. Hammack made a motion to deny VC 91-D-064 for the reasons outlined in the Resolution.

Mr. Hammack complimented Mr. Schiller on coming in with what he believed to be a very good plan and Dr. Jarvis for trying to save trees and address the ecological issues. He said it was regrettable that the hardship requirements had not been met under the State and County Codes.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-064 by DR. LEONARD H. JARVIS, under Section 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 5 lots and 1 outlot, proposed Lots 2 & 3 each having lot width of 11.89 ft., on property located at 6500 Georgetown Pike, Tax Map Reference 22-3((1))5, 7A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.5585 acres.
4. The hardship requirements have not been met under the State Code and the County Zoning Ordinance.
5. The architect's plan is probably a better development of the site than would be allowed under the standard subdivision, but the Board must look at the narrow context of the Ordinance.
6. The architect candidly admitted that he could develop the property as a matter of right, that a variance is not required. There is some concern about the width of the 18 foot street under the proposal because there is really not enough room for overflow parking. There is a safety issue that has not been satisfied entirely. The hardship requirements really have not been met.
7. The effect of Turkey Run upon this application is no different than any other properties in close proximity to the many such streams in Fairfax County and in other areas where there are ecological constraints imposed upon them. This is not a unique situation.
8. The applicant did not show that the claimed hardship is not shared by other properties in the vicinity. Creeks run all through the areas and result in similar situations.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   - A. Exceptional narrowness at the time of the effective date of the Ordinance;
   - B. Exceptional shallowness at the time of the effective date of the Ordinance;
   - C. Exceptional size at the time of the effective date of the Ordinance;
   - D. Exceptional shape at the time of the effective date of the Ordinance;
   - E. Exceptional topographic conditions;
   - F. An extraordinary situation or condition of the subject property, or
   - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

009

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991.

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Mrs. Harris asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, if there was any way that the runoff problem at the Langley School could be brought to the attention of the people at the School, and wanted to know if the school had a special exception/special permit with a Condition that runoff was to be contained on-site. Ms. Kelsey said that she would have to defer that question, at least in part, to DEM, concerning the runoff and what types of methods they use to control such a situation. Ms. Kelsey said that public schools are permitted, subject to approval through the 456 Hearing process, and do not require a special exception or special permit. Mrs. Harris wanted to know if there was some safeguard concerning runoff off-site and damage to other property. Ms. Kelsey said that she had not seen the school site plan and would be happy to check with DEM. She suggested that the Board make a motion to this effect.

Mrs. Harris made a motion to have staff look into the off-site runoff problems which were being generated by Langley School, and report back to the Board to see if there are any mitigating measures which the Board could recommend to the appropriate bodies. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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Page 9, August 6, 1991, (Tapes 1 & 2), Scheduled case of:

9:30 A.M. WILSON J. ROBERTS, VC 91-V-065, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 9.9 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207) on approx. 13,011 s.f. located at 9108 Peartree Landing, zoned R-2 (developed cluster), Mt. Vernon District, Tax Map 110-1((26))4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Roberts replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property is located in the Union Farm subdivision; surrounding lots are zoned and developed in a manner similar to the subject property which is developed under the cluster provisions of the Zoning Ordinance, with a two-story single family detached dwelling and an integral two-car garage. He said that the applicant was requesting a variance to the minimum rear yard requirement to permit construction of a sunroom on top of a basement extension, 9.9 feet from the rear lot line. Since the Zoning Ordinance requires a minimum rear yard of 25 feet in the R-2 District, the applicant was requesting a variance of 15.1 feet to the minimum rear yard requirement.

010

Wilson J. Roberts, 9108 Peartree Landing, Alexandria, Virginia, came to the podium and presented the statement of justification. He said that the property is extremely shallow toward the rear property line, the closest point to the rear property line being 25.1 feet. If he wanted to build just an open deck that extends more than 12 feet from the house, he said he would need a variance to do so. He said that any other type of structure, such as a deck with lattice work, screened porch, etc., would also require a variance. Mr. Roberts said that, due to the location of the house on the lot, most of the yard is in the front and on the side of the house, and strict application of the Zoning Ordinance would cause an undue hardship if he tried to make normal use of the property, a hardship not shared by his neighbors. He said that most of the neighboring homes have decks and sunrooms, having adequate space to build to the rear without being restricted by minimum yard requirements. He said that the rear lot line borders a wooded flood plain which separates the Union Farm subdivision from Fairfax County Grist Mill Park and there are no homes or structures in the area. He said that the proposed addition would pose no substantial detriment to the surrounding environment, nor to any adjacent properties; nor will the granting of this variance change the character of the zoning district; it will be in harmony with the intended spirit and purpose of the Zoning Ordinance.

Mrs. Harris told Mr. Roberts that she believed the size of the variance was excessive and asked if he had considered a different design which might encroach less into the rear yard. Mr. Roberts said that he had but, because of the type of sunroom he wanted to have, he believed the size was appropriate and cutting down the size would change the sunroom design, which was a typical Long Signature sunroom with Chippendale lattice work around the top.

Mr. Pammel asked Mr. Roberts why the trees in the back yard were cut off at a height of approximately 5 feet. Mr. Roberts said that they were scrub trees, hanging over the back part of the house, which the builder neglected to take away when the house was built; so he cut them off because they were overhanging part of the family room and that part of the house.

Chairman DiGiulian asked if there was anyone else to speak in support of or in opposition to the application and, hearing no response, he closed the public hearing.

Mr. Ribble made a motion to grant-in-part VC 91-V-065 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1991, and subject to the submission of new plats.

Mr. Ribble acknowledged that Mr. Kelley had introduced an idea to flip the addition, still keeping it 17 feet by 20 feet, but switching the length with the width. This idea was explored but was found not to be feasible because the addition would run into a bay window if it were flipped.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-065 by WILSON J. ROBERTS, under Section 18-401 of the Zoning Ordinance to allow addition 9.9 ft. from rear lot line **(THE BOARD AGREED TO ALLOW ADDITION NO CLOSER THAN 12.9 FT. FROM REAR LOT LINE)**, on property located at 9108 Peartree Landing, Tax Map Reference 110-1((26))4, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 13,011 s.f.
4. The lot has an exceptional shape.
5. The position of the house on the lot is exceptional.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;

011

C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Kenneth W. White, dated May 22, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the Board of Zoning Appeals (BZA) because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 11, August 6, 1991, (Tape 2), Scheduled case of:

9:40 A.M. MICHAEL & ARMEDA S. PALLONE, VC 91-S-066, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.3 ft. from side lot line and open deck 18.7 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 36,015 s.f. located at 6511 Burke Woods Dr., zoned R-1, Springfield District, Tax Map 88-1((23))1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Foster replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, as follows: The subject property is located in Section IA of the Burke Lake Meadows subdivision; surrounding lots are zoned and developed in a manner similar to the subject property, with a two-story single family detached dwelling and an integral two-car garage; the subdivision's entrance wall and sign are located in front of the dwelling. He said that the request was for a variance to the minimum side yard requirement to allow construction of decks and patios 5.3 feet and 18.7 feet from the side lot line. Mr. Jaskiewicz said that, since the Zoning Ordinance requires a minimum side yard of 20 feet in the R-1 zoning district, the applicant was requesting a variance of 14.7 feet and 1.3 feet to the minimum side yard requirement.

012

Mrs. Harris asked how many feet from the lot line the dwelling on Lot 2 is located. Mr. Jaskiewicz said that it is located 35 feet from the lot line.

David P. Foster, 6121 Rockwell Court, Burke, Virginia, Agent, came to the podium and presented the statement of justification as follows: The original house was located only 23.3 feet from the side lot line; since it is a corner lot, it has two front yards; because of its proximity to the side lot line, and the 20 foot side yard requirement, 3.3 feet would be all that was left for any proposed construction. Construction to the rear of the dwelling is precluded by two exits which are elevated. The adjacent neighbor, who would be most impacted, had no objection to the proposed additions, and had submitted a letter to that effect.

Mr. Kelley asked Mr. Foster when the home had been built. Mr. Foster said that it had been built about two years ago and had been used as a model home. The applicants have owned the home since August 1990, but have not yet moved in because of the proposed construction.

Mrs. Harris asked Mr. Foster if he would settle for a granting-in-part. Mr. Foster said that he did not believe the applicants would settle for that.

Chairman DiGiulian asked if there was anyone else to speak in support of or opposition to the application and, hearing no response, closed the public hearing.

Mrs. Harris made a motion to deny VC 91-S-066 for the reasons outlined in the Resolution.

Mr. Kelley seconded the motion and said he agreed with Mrs. Harris in that he would not have any trouble with the 18.7 foot portion of the request, but the 5.3 feet is too close and too ambitious. The motion carried by a vote of 7-0.

Chairman DiGiulian declared the application denied.

Mr. Foster asked if it were possible for the applicant to request additional footage on the patio side, as 3.3 feet was not enough to build anything on. Mr. Kelley reminded Mr. Foster that Mrs. Harris had earlier asked if he would be willing to accept less of a variance than the application requested and he had said no. Mrs. Harris said she did not believe it was the job of the Board to plan construction of the deck.

Mr. Kelley made a motion to waive the twelve-month wait for rehearing. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-066 by MICHAEL & ARMEDA S. PALLONE, under Section 18-401 of the Zoning Ordinance to allow additions (decks/patios) 5.3 ft. from side lot line and 18.7 ft. from side lot line, on property located at 6511 Burke Woods Dr., Tax Map Reference 88-1((23))1, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 36,015 s.f.
4. Testimony did not reveal that any hardship would result from denial of the variance; reconfiguration would allow access from the sunroom with a lesser variance.
5. A lesser variance might be feasible on the one side near the sunroom.
6. The gazebo and some part of the deck and patio fall within the building restrictions.
7. The variance would be more of a convenience, rather than a necessity to allow reasonable use of the land.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

013

2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mr. Kelley seconded the motion which carried by a vote of 7-0.

Mr. Kelley made a motion to waive the twelve (12) month limitation on rehearing. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991.

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Chairman DiGiulian relinquished the Chair to Vice Chairman Ribble, who called for the next case.

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Page 13, August 6, 1991, (Tape 2), Scheduled case of:

9:50 A.M. JOHN P. AND CONNIE A. SULLIVAN, VC 91-P-067, appl. under Sect. 18-401 Of the Zoning Ordinance to allow addition 15.1 ft. from front lot line and 9.8 ft. from side lot line (30 ft. min. front yard required, 10 ft. min. side yard required by Sect. 3-407) on approx. 6,384 s.f. located at 2757 Woodlawn Ave., zoned R-4, Providence District, Tax Map 50-2((4))46.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sullivan replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located in an area south of Lee Highway, which borders the corporate limits of the City of Falls Church, and east of Graham Road; surrounding properties are also zoned R-4 and are developed with single family detached dwellings. She said that the applicants were requesting a variance to construct an addition consisting of a bedroom and a bath 15.1 feet from the front lot line and 9.8 feet from the side lot line; a minimum front yard of 30 feet and a minimum side yard of 10 feet are required by the Zoning Ordinance; accordingly, the applicants were requesting a variance of 14.9 feet from the minimum front yard requirement, and a variance of 0.2 feet from the minimum side yard requirement. She said that research revealed that the dwelling on adjacent Lot 45, to the north, is located approximately 8.1 feet from the shared side lot line. Ms. Dickey noted one change to Proposed Development Condition 3: replace the word "garage" with the word "dwelling." The Condition now reads:

014

"The addition shall be architecturally compatible with the existing dwelling."

Mrs. Harris asked Ms. Dickey to confirm that the footprint of the house would not change and she did so.

John Patrick Sullivan, 2757 Woodlawn Avenue, Falls Church, Virginia, presented the statement of justification, stating that he had purchased the house in 1977, knowing of the proximity of the lot lines which have shifted since he purchased the house. He said that the house had been within the acceptable minimum yard requirement at the time, which was 7 feet. He said that the lot is very narrow, less than 50 feet wide; whereas, the current minimum requirement is 70 feet. He said the lot is 125 feet deep on the left side and 130 feet deep on the right side; it is not a very deep lot. He said that, in comparison to the last two cases heard, he had approximately one-half and one-sixth of the acreage to work with. The house was built in 1931, ten years prior to the inception of Fairfax County zoning regulations; it was his understanding that the house was built before Woodlawn Avenue was built, which he believed to be the main reason for the house being so close to the street. When the County widened the street, he said he lost a small portion of his front yard. He offered photos to the Board for their review. Mr. Sullivan believed his situation to be unique in the neighborhood, having probably the second smallest lot on the street, and being closer to the street than any other house, since most houses are approximately 30 feet from the street. He said that most houses in the neighborhood had already been developed with a second story and four bedrooms; whereas his house is a bungalow type home. Mr. Sullivan said that the house is too small for the size of his family; he has two daughters, who soon will be teenagers, sharing a bunk bed in one of two small bedrooms which measure 10 feet by 10 feet. He would like to provide each of his daughters with her own room in the existing bedrooms and build a small master bedroom above the flat roof, with an additional bath. Mr. Sullivan described his property in great detail.

Mrs. Harris asked Mr. Sullivan about the front stoop and the proposed new roof to go over it. The applicant said that if this was a stumbling point, he would work around it.

Vice Chairman Ribble complimented Mr. Sullivan on his presentation, and said the Board would be happy to review the architect's renderings.

Mr. Pammel told Mr. Sullivan that he would be pleased to know that his house was built eleven years before the first Zoning Ordinance.

David A. Papile, Architect, 11572 Embers Court, Reston, Virginia, came to the podium and said that consideration was given to adding on to the back of the house and staying within the minimum yard requirements, but that type of expansion would diminish the already undersized yard and would conflict with the existing garage; the only way to enter any addition to the rear would be through an existing bathroom, making it necessary to build another bathroom. Mr. Papile said that the proposed addition would not exceed the height of the houses on either side of the applicant. He mentioned an effort by the Housing and Community Development group to upgrade the neighborhood and said that he proposed maintaining the same type of roof lines and materials already established in the neighborhood. Vice Chairman Ribble remarked that it looked like a good plan.

Vice Chairman Ribble asked if there was anyone else to speak in support of or in opposition to the application and, hearing no response, closed the public hearing.

Mr. Kelley made a motion to grant VC 91-P-067 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1991, as amended by changing the last word in Condition 3 from "garage" to "dwelling." The Condition now reads: "The addition shall be architecturally compatible with the existing dwelling."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-067 by JOHN P. AND CONNIE A. SULLIVAN, under Section 18-401 of the Zoning Ordinance to allow addition 15.1 ft. from front lot line and 9.8 ft. from side lot line, on property located at 2757 Woodlawn Ave., Tax Map Reference 50-2((4))46, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

015

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 6,384 square feet.
4. The lot has exceptional narrowness.
5. The footprint of the dwelling will not change.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat (prepared by James H. Guynn, dated May 13, 1977 and revised by David A. Papile, A.I.A, dated February 14, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The addition shall be architecturally compatible with the existing dwelling.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. DiGiulian were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 16, August 6, 1991, (Tape 2), (INFORMATION ITEM:)

Vice Chairman Ribble relinquished the Chair to Chairman DiGiulian, who called for the next case.

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Page 16, August 6, 1991, (Tape 2), Scheduled case of:

10:00 A.M. D. STEPHEN CRANDALL, VC 91-S-068, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached structure (garage) 8.0 ft. from side lot line and 8.0 ft. from rear lot line (12 ft. min. side yard required, 15.0 ft. min. rear yard required by Sects. 3-307 and 10-104) on approx. 15,860 s.f. located at 8110 Dabney Ave., zoned R-3, Springfield District, Tax Map 79-4((2))151.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Crandall replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located north of Old Keene Mill Road and east of Rolling Road; the subject property and surrounding lots are zoned R-3 and developed with single family detached dwellings. She said that the applicant was requesting a variance to construct a detached garage as captioned above, adding that a minimum side yard of 12 feet and minimum rear yard of 15 feet are required by the Zoning Ordinance; accordingly, the applicant was requesting a variance of 4 feet to the minimum side yard requirement and a variance of 7 feet from the minimum rear yard requirement. She said that the dwelling on adjacent Lot 152, to the west, is located approximately 14 feet from the shared side lot line; the dwelling on adjacent Lot 150, to the northeast, is located approximately 19 feet from the shared side lot line. Ms. Dickey noted one change to Proposed Development Condition 3: replace the word "garage" with the word "dwelling." The Condition now reads: "The addition shall be architecturally compatible with the existing dwelling."

D. Stephen Crandall, 8110 Dabney Avenue, Springfield, Virginia, presented the statement of justification, stating that this was his second attempt to have a variance granted; he and his wife are the original owners of the property which they acquired in 1962, and since then, have suffered because of the lack of cover for their car. He said that most of the houses in the development have either attached garages or carports. He said that he and his wife own three vehicles, two of which can be parked in the driveway, but the third car must be parked on the street. Mr. Crandall said that there had been some vandalism of parked cars and accidents in the area and, when traveling, they would prefer not to leave the cars exposed during their absence. Mr. Crandall said that the property sits on a hill and backs up to a floodplain, which makes the minimum yard requirements restrictive. He believed that the reason why the variance was denied the first time was due to his inability to express the unique nature of his property. At the time of his first application, he said a comment was made that the garage was too large and too close to the lot line to allow a variance. As a result, he said, he had reduced the size of the garage and had used the reduction in size to move it further away from the lot line. Mr. Crandall called the Board's attention to the fact that there is only 17 feet of clearance on the left side of the house, which would normally be the ideal location for the garage because it is in line with the driveway; however, there is not enough room on that side of the house. At the time the house was built on a corner lot, a minimum front yard of 40 feet and a minimum side yard of 40 feet were required, explaining why the house was crowded so close to the lot line. He said that other dwellings in the area are more centrally located on their lots, allowing them room on either side in some cases. They considered building a garage on the right side of the house, but a steep hill on that side precluded the possibility. Mr. Crandall continued to create a picture of the topographical impediment of the hill on which the house sits, presenting views from several angles on the viewgraph. He called the Board's attention to the 50 foot distance from the nearest point of the proposed garage to the neighbors house on one side; on the other side the distance is about 56 feet. He said that Lot 50 accommodated a house below the level of his property. Mr. Crandall said that the proposed location of the garage was the only conceivable place to put it. He said that the area around his property is all heavily wooded and/or flood plain and would probably not be considered appropriate for construction by the Ordinance. Mr. Crandall emphasized the uniqueness of his situation.

Chairman DiGiulian asked if there was anyone to speak in support of or in opposition to the application and, hearing no response, closed the public hearing.

Mrs. Thonen remarked that the Board was in receipt of letters and a petition which she said would be made a part of the record.

Mr. Hammack made a motion to grant-in-part VC 91-S-068 because he could not support the 8 foot distance from the lot lines; however, he said he believed a hardship existed on the part of the applicant due to the configuration of the property, the fact that it is on a cul-de-sac and is almost a peninsula on the southeast corner. He said that the house is centered fairly well, but any additional structure, at least a two-car garage, would require a variance; although the applicant might be able to put a one-car garage somewhere on the property without requiring a variance. Mr. Hammack said he believed that there were some constraints on the property, and he was willing to make a motion that would allow the

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applicant to construct the garage, provided that it would be 10 feet from each property line, thereby reducing the variances sought by another 2 feet on each side.

Mrs. Harris asked Mr. Hammack if he considered that the applicant would not be able to get into the garage as he presented the motion.

Mr. Pammel seconded the motion.

Mrs. Harris continued by saying that the garage could not be just moved over to the east without moving it south in order to allow access. Some discussion ensued among the Board members.

Mrs. Harris asked the applicant if the grade would prevent him from putting a garage on the Dabney Court side of his property and he replied that it would require going up a steep slope just to get to the back yard. He said it would be extremely expensive and not very practical. Mrs. Harris said to Mr. Hammack that she had been in the area of the applicant's property and there is a lot of wooded area in vicinity. Further, she said, considering Chairman DiGiulian's drawing of where the building restriction lines are located, the applicant's choices were very limited.

Mrs. Thonen said she would have to agree with Mrs. Harris and that this request meets more of the Standards for a variance than anything which had come before the Board, considering the unusual shape of the lot, the exceptional topography, the placement of the house on the lot, and finding no other place to build.

Chairman DiGiulian asked for a vote on Mr. Hammack's motion, which failed by a vote of 2-4; Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, and Mr. Ribble voted nay. Mr. Kelley was not present for the vote.

Mrs. Thonen made a motion to grant VC 91-S-068 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1991.

Mr. Hammack said he believed that the application failed last year and what the applicant had done this time was to take two feet off the sides of the garage. He said that he still believed that the size of the proposed structure was large, that the applicant could build a one-car garage without a variance, if he chose to do so, and he preferred a minimum variance. He said that his motion would have allowed the applicant to move the garage over, re-position it to keep it off the lot line; or, possibly, reduce the size of the garage a little on one side or the other, if he chose to do so; but he would not be required to do so if he wanted to re-position the garage. For the foregoing reasons, Mr. Hammack said he would oppose Mrs. Thonen's motion.

Ms. Dickey asked for a clarification of whether Mrs. Thonen's motion included the amendment to the Development Conditions. Mrs. Thonen did amend her motion by changing the last word in Condition 3 from "garage" to "dwelling." The Condition now reads: "The addition shall be architecturally compatible with the existing dwelling."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-068 by D. STEPHEN CRANDALL, under Section 18-401 of the Zoning Ordinance to allow detached structure (garage) 8.0 ft. from side lot line and 8.0 ft. from rear lot line, on property located at 8110 Dabney Ave., Tax Map Reference 79-4((2))151, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,860 square feet.
4. The property possesses topographical problems.
5. The lot is irregular in shape.
6. The setbacks leave almost no land on which to build.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific detached garage structure shown on the plat (prepared by DeLashmutt Associates, LTD. dated May 1962 and revised May 20, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The detached garage structure shall be architecturally compatible with the existing dwelling.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 4-2; Mr. Hammack and Mr. Pammel voted nay. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this variance.

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The Board took a short recess at this time.

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Page 18, August 6, 1991, (Tapes 2 & 3), Scheduled case of:

10:10 A.M. MARY ANNE DUFFUS/THE BROOKSFIELD SCHOOL, SPA 87-D-051-2, appl. under Sect. 3-303 of the Zoning Ordinance to amend SP 87-D-051 for child care center and nursery school to allow increase in daily enrollment and add use of private school of general education on approx. 5.08 acres located at 1830 Kirby Rd., zoned R-3, Dranesville District, Tax Map 31-3((1))59.

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Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Carroll replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the subject property, described above, is located on Kirby Road, north of its intersection with Noble Drive; is presently developed with two special permit uses: St. Dunstans Church and the Brooksfield School. The Brooksfield School is presently approved as a child care center with a maximum daily enrollment of 49 students; the School is the subject of this special permit amendment application, requesting the addition of a private school of general education and an increase in the maximum daily enrollment from 49 to 99 students. Mr. Riegle said staff's understanding was that the private school component will have a maximum daily enrollment of approximately 25 students and the child care component will have a maximum daily enrollment of 74 students, totaling 99 students. He asked the Board to note that the plat reflected steep slopes in the northwestern portion of the site and quality hardwood vegetation, prompting the Environmental and Heritage Resources Branch of OCP to determine that an Environmental Quality Corridor (EQC) exists on the slopes; however, there is no new construction proposed in conjunction with the application which might disrupt the existing vegetation, the EQC, or any of the other vegetation on the site. Mr. Riegle said that Proposed Development Conditions 9 and 10 require preservation of existing vegetation which had been installed pursuant to the previous approvals, and also require that the EQC be protected in accordance with the environmental recommendations of the Comprehensive Plan. Mr. Riegle said that the applicant had indicated agreement with the Conditions and, in staff's opinion, the implementation of the Development Conditions is sufficient to adequately resolve any land use or environmental issues associated with the application. He said that staff's outstanding issues center on the transportation impacts associated with the proposed expansion of the use, which are described in detail on pages 4 and 5 of the staff report, and are largely a question of when the use is proposed to operate and the existing conditions on Kirby Road. Mr. Riegle asked the Board to note from the staff report that the Fairfax County Office of Transportation had estimated that the proposed intensification would generate nearly 500 vehicle trips per day; staff believed that these impacts would be amplified by the fact that the proposed hours of operation would result in nearly all the vehicle trips to the site occurring within the peak a.m. and p.m. rush hours. He noted that Kirby Road is designated as a minor arterial in the Comprehensive Plan and the Plan states that a minor arterial is intended to facilitate through traffic movement. Mr. Riegle said that it was staff's belief that the number of turns into the site could impair the proper function of the roadway. He also called attention to Appendix 8 of the staff report, reflecting traffic counts performed on July 10, 1991, which staff believed are illustrative of the conditions on Kirby Road and the number of vehicle trips which the proposed intensification of the use may generate. He said that the counts indicated nearly 1,400 vehicles were traveling southbound on Kirby Road during a two-hour period on a Wednesday morning; further, the count indicated that the existing use on the site was generating approximately 94 vehicle trips on the morning of the study. Mr. Riegle noted that staff from the Brooksfield School advised BZA staff that, on the day the counts were conducted, a summer day camp program with a maximum daily enrollment of 30 was in operation; that is less than one-third of what is proposed in the subject application and, accordingly, it was staff's belief that the actual trip generation associated with the maximum daily enrollment would be substantially higher than that observed on July 10. The staff report noted that there were solutions to the unresolved issues and, as described in the report and reflected in Proposed Development Conditions 13 and 14, it was staff's belief that right and left turn lanes and a right-of-way dedication to forty-five feet from the existing center line of Kirby Road is necessary for this use to be in harmony with the transportation recommendations of the Comprehensive Plan. He said that staff had not received a commitment from the applicant to provide the recommended turn lanes, nor the right-of-way dedication; absent that commitment, from a transportation perspective, it was staff's belief that the application was not in harmony with the Comprehensive Plan, pursuant to General Standard 1; further, it was staff's opinion that the use was not in compliance with General Standard 4, which stipulates that the traffic associated with the use shall not conflict with existing traffic in the area. He said that, based on this belief, the General Standards had not been met and staff recommended denial of the subject application.

Mr. Riegle advised that Angela Kadar Rodeheaver, Chief, Site Analysis Section, Transportation Planning Division, Office of Transportation, was available for questions about the counts, methodology used, and any other associated transportation impacts.

Mrs. Harris asked for confirmation that the present enrollment was 49 students and Mr. Riegle confirmed it.

Mr. Kelley asked Mr. Riegle to confirm that there was a prior recommendation to provide Conditions similar to 13 and 14, which were not imposed by the BZA in previous approvals of this use, and Mr. Riegle confirmed it. Mr. Riegle said that previous staff reports reflected staff's belief that, even with an enrollment of 49, conditions on Kirby Road and the hours of operation warranted the turn lanes even more because of the proposed expansion. Mr. Kelley asked whether the minuscule traffic increase generated by the expansion justified the concern.

Angela Kadar Rodeheaver, Office of Transportation, said the problem was that, without a left turn lane, the cars turning left would cause a back-up of through traffic. Mr. Kelley asked

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for confirmation that cars turning left were going against the prevailing traffic flow and Ms. Rodeheaver said that the count which had been done was of the prevailing traffic and the split of traffic flow was about fifty-fifty. Mr. Kelley said, "the rush hour traffic was going the other way," and Ms. Rodeheaver said yes.

Mr. Pammel asked staff about Condition 9 in the 1988 special permit and asked if the requirements on transitional screening within the transitional area and the parking area had been complied with and whether those plants were all in place. Mr. Riegle said that they were, and that there was an inquiry following the 1988 approval, prompting a visit to the site by an Inspector from Zoning Administration. Mr. Riegle contacted the Zoning Inspector who made that inspection and was informed that the case was closed and it was the Inspector's belief that the Conditions had been complied with. Mr. Riegle said it was staff's position that the current Proposed Development Conditions are much stronger than those imposed in 1988, as a commitment has now been received to protect the EQC and all existing vegetation, as opposed to just a requirement for some supplemental planting. Mr. Pammel asked if Ms. Kelsey's staff had gone out to see if the Conditions had been complied with. Mr. Riegle said that staff had been out to the site last year in conjunction with the renewal for 49 students, and also had been out to the site this year, and the Conditions had been complied with, to the best of their knowledge. He noted that Non-Residential Use Permits had been issued following each of the recent approvals. Mr. Riegle reiterated that the current Conditions are even stronger and it was staff's position that the use was adequately screened, subject to the implementation of the Conditions before the Board. Mr. Pammel said that, while the Conditions might be strong, allegations had been made that plantings, if they were put in, have since died and that there was inadequate planting in the areas adjacent to the residences.

Mrs. Harris asked what the 74 children number was based on. Mr. Riegle asked if she was referring to the 74 children in the child care center component and she said that, in the staff recommendations, the Development Condition referenced a maximum daily enrollment of 74 children. Mr. Riegle said that the figure was based on a meeting with the applicant in the course of processing the application, and the reason staff wanted the specificity was that there are different parking requirements for a child care center as opposed to a private school of general education, and the information was needed to compute the parking requirements. Mr. Riegle said that the combined total was still 99 students.

Andrew Carroll, attorney with Land, Clark, Carroll & Mendelson, P.C., 600 Cameron Street, Alexandria, Virginia, represented the applicant. He said that the applicant had been asked by staff what she thought the number of nursery school children would be, compared to first and second graders, and she had it would be about 74 to 25. He requested that the Condition be deleted, because he did not believe the impact would be any different if the students were first graders or nursery school children; he said he believed that the attendance at the school itself should be able to dictate the numbers which are involved. Mr. Carroll said that parking was not an issue; there are 95 parking spaces at the church anyway, which more than meet any requirements necessary for either first grade, second grade, or nursery school. Mr. Carroll addressed the vegetation issue and said that there had been no complaints until this application was put forward. He said that he had asked Ms. Duffus if there had been any vegetation which had died and she said that there was a tree which had died, but it was replanted. She said she had been informed by the County that the school had met the imposed Conditions.

Mr. Carroll said, as far as the operation of the school since 1987 was concerned, there had never been a formal complaint against the school made to school staff; except for last year, when there had been some complaints by a number of the neighbors, but never a formal complaint.

Mr. Carroll said that the staff report noted that the majority of the students departed the school between 3:30 and 5:00 p.m. He said that was not true and that, with regard to the nursery school, the departure window is between 12:00 Noon and 3:00 p.m.; and there were five children who stayed until their parents could pick them up at 5:00 p.m. He said that the vast majority of students departed before 3:00 p.m. and, if the Board granted this request, he said he did not believe that the additional first and second graders would impact on later departure because school is over at 3:00 p.m. for first and second graders. Mr. Carroll said that the applicant was seeking a deletion of Conditions 6 and 7, as he mentioned previously; as well as the deletion of Conditions 13 and 14. He said that, other than the issues he mentioned, he believed the staff report was favorable. Referring to Conditions 13 and 14 pertaining to the construction of the turn lanes and the dedication of land, Mr. Carroll said that his client is a tenant at St. Dunstans Church, and it would be impossible to dedicate land that she does not own. He said there were a number of reasons why a request to construct the turn lanes was unreasonable: Ms. Duffus obtained an estimate from Virginia Paving as to the cost of putting in the turn lanes and was advised that it could cost between $80,000 and $90,000; the school is a non-profit organization with a small enrollment, and such a request penalized Ms. Duffus unjustly, especially since the need was not great. He said the applicant had a permit for 50 students and not 49, and the number of vehicle trips generated by the increase from 50 to 99 students would only increase by 100 trips. He said that, when compared with the number of actual vehicles traveling that road, mentioned in the

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1985 staff report as 12,830, he believed the proposed increase in traffic generated by the site was so small that it did not justify the left turn lane. Mr. Carroll said that testimony by upcoming speakers would further support his statements. He noted the staff report's reference to "stacking" and said that there was construction being done at Kirby Road and, possibly, Noble Drive, at the time of research for the staff report. Mr. Carroll said that there had never been an accident at the location in question.

Mr. Pammel asked Mr. Carroll if Ms. Duffus had an "open door" policy with respect to members of the community coming in and sitting down to discuss and attempt to resolve issues of mutual concern. Mr. Carroll said that Ms. Duffus did have an "open door" policy and had, in the past, met with the local community group and the group had told her not to worry, that they had given her their support every other year and that there was no problem. Mr. Carroll acknowledged that there were several neighbors who live on Noble Drive who have complained about the noise since 1987. He said that he noticed today that there was mention in a letter of a traffic problem; to his recollection, that was not a problem on any other occasion.

Mrs. Thonen said that she was concerned because the Board had said that the playground was to be screened and she was also under the impression that the playground had been moved. Mr. Carroll said that it had not been moved from what had been approved. He said that the playground had been shielded by being placed between two large buildings, as well as having conventional screening, to protect the neighbors from the noise.

Mrs. Harris referred to the fact that there were 30 students present when the traffic count was made and noted the problems associated with only that number of students; putting the problems within the window of rush hour traffic, she said she would not find it unbelievable that cars trying to turn left would stack up to as many as eight on a road so well-traveled. She said that the attendance of all enrolled students would undoubtedly exacerbate the stacking problem.

Mr. Carroll continued to discuss the traffic, stating that he believed that any additional traffic would be minimal, and that there was virtually no oncoming traffic.

Mrs. Harris said she found it difficult to believe that there was no oncoming traffic. Mr. Carroll said it was too little to impact the area because arrivals at the school would be staggered. The discussion of traffic continued along these lines between Mrs. Harris and Mr. Carroll.

Mr. Kelley asked Mr. Carroll how many students were scheduled to be enrolled in the school next year. Mr. Carroll said that they have approximately 50 students now and plan to have 15 additional students next year. Mr. Kelley asked how many of those would be first and second graders and Mr. Carroll said three. Mr. Kelley said that what Mr. Carroll was requesting, then, was far in excess of what was needed and Mr. Carroll said that was true for the present, but that they were projecting so that they would not need to come back before the Board every year.

Chairman DiGiulian asked if there was anyone to speak in support of the application and the following people came forward: David Graling, 1947 Friendship Place, Falls Church, Virginia; and Joseph Webb, 9370 Robnel Place, Vienna, Virginia.

Mr. Graling said that his daughter has attended the Brooksfield School for the past four years; he does not live in the neighborhood. He said he is a member of St. Dunstans Church and is currently Chairman of the Transportation Committee of the McLean Citizens Association, so he had some idea of what the traffic situation is all about. Mr. Graling chose to address his remarks specifically to the necessity of installing the turning lane leading into the school. He said that he drove his daughter to school each morning, leaving his house at 7:30 a.m. and arriving at the school at 7:45 a.m. He said he traveled northbound on Kirby Road, from Great Falls Street to the School, which is approximately three miles. Mr. Graling said that the "choke" point along the route has been at Westmoreland Street, where there is no left turn lane, so the traffic backs up on Kirby Road, about half a mile from the Westmoreland Street intersection and, due to the timing of the light, only a few cars have time to get through the intersection. He said that, because of the "choke" point situation at Westmoreland Street, when he has arrived at the school, there has been very little traffic behind him to cause a stackup, even with his having to stop to make a left hand turn. He said there rarely has been traffic traveling southbound on Kirby Road and that all of the rush hour traffic has been heading northbound into the Chesterbrook Road area. He said he rarely has had to wait. Mr. Graling also addressed the sight distance issue and said he has had no problem with sight distance while turning left into the school parking lot. He said that, in conclusion, he believed that the left hand turn lane was not required.

Joseph Webb, Rector of St. Dunstans Church since 1988, addressed the traffic on Kirby Road, specifically turning left, and arriving between 7:30 a.m. and 9:00 a.m. He said that he traveled northbound on Kirby Road and infrequently had to stop for traffic coming toward him in order to turn left, possibly 20-25% of the time. He said that he has never been aware of more than a car or two behind him, and has never seen eight cars stacked up. He did not feel that there was a turning problem.

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Chairman DiGiulian asked if there was anyone else to speak in support of the applicant and, hearing no response, asked if there was anyone to speak in opposition. Carl H. Sebenius, 6420 Noble Drive, McLean, Virginia, spoke in opposition to the application. He said that his property is contiguous to the church property. Mr. Sebenius said that he urged the Board in the strongest terms to deny the application. He said approval would double the size of the student population and gave a short history of the school. He said that the original special permit had been granted to the School, which is a business, against the strong opposition of the contiguous residents and the surrounding community, which is zoned R-1, R-2, and R-3. Mr. Sebenius said that he considered the transportation problem to be very serious and a great burden on the community. He said that the plantings did not comply with the Conditions imposed; the children were not restricted to the playground area; the traffic was admittedly 50-50 in both directions; there has been no communication between the community and the School.

Chairman DiGiulian asked Mr. Carroll if he had anything to say in rebuttal. Mr. Carroll said that there had been no problems to discuss with the community and that there was adequate screening.

Mrs. Thonen said that, in 1988, the applicant was given thirty days to provide transitional screening and read aloud the details of the Condition. She said she wanted to know if the screening had been installed as outlined in the staff report. Mr. Carroll deferred to Ms. Duffus for a response. Ms. Duffus said that all of the specified plantings had been made in the parking lot area and, every year since then, on the School's anniversary, they had a tree planting ceremony on the premises and planted trees on the boundary facing Noble Drive. Mrs. Thonen said that she wished she knew who to believe and Ms. Duffus said that she would welcome staff coming out to the School again. She said that she had discussed this subject with staff during the past week, and that staff had told her that they had been out to the site and that the applicant had far exceeded the required screening, because there was also screening provided by the Church. Mrs. Thonen was concerned about the neighbors saying that the applicant was not in compliance with the planting requirements, that the School had activities going on until 8:45 p.m., and that she did not know how to determine who was correct. Ms. Duffus said that she believed they had sent notices out to twenty-five residents and that there were only three letters of opposition. She said that the three opposing families were the same ones who had come to speak in opposition in the beginning, and the only three in the entire group of twenty-five residents on Noble Drive and Sheraton Court who came out in opposition.

Mrs. Thonen said that, during a previous hearing, staff reported a history of drainage runoff problems onto adjacent lots. She asked Ms. Duffus if that problem had been solved. Ms. Duffus said that she had never received a phone call from the neighbors, complaining about any of the issues, and that she was at the School every day.

Mr. Carroll said that County staff had visited the applicant's property on many occasions and Mrs. Thonen said that BZA staff had not visited the site. Mr. Riegle said that BZA staff had visited the site last year and this year. Mrs. Thonen asked if Mr. Riegle had looked at the Conditions to check that they had been complied with. Chairman DiGiulian asked Mr. Riegle if he knew who was out there. Mr. Riegle said that Zoning Enforcement was there in 1988 in response to an inquiry about the plantings and they had said that the Conditions had been fulfilled and, subsequently, a Non-RUp was issued. BZA staff, including Mr. Riegle, was at the site this year investigating the adequacy of screening, and it was their position that the use was adequately screened, subject to the implementation of the Conditions presently before the Board.

Mr. Carroll noted that, originally, there were five neighbors who hired an attorney to express their opposition; whereas, today there were only two.

Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 87-D-051-2 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 30, 1991, with the following changes. In Development Condition 6, 74 has been changed to 70. The Condition now reads: "The maximum daily enrollment of the nursery school and child care center shall be 70 children." In Development Condition 7, 25 has been changed to 20. The Condition now reads: "The maximum daily enrollment of the private school of general education shall be 20 children." Mr. Kelley said that the minuscule amount of traffic which would be generated by the intensification of the use does not justify the dedication of property and providing a turn lane; therefore, Conditions 13 and 14 were deleted.

Mr. Kelley noted that the applicant would be required to return in five years, at which time he said he would like staff to report on what the traffic situation is at that time. He said he would also suggest that the applicant may wish to talk to the Church officials about possible future
dedication.

Mr. Pammel said that he would support the motion because staff had assured the Board that all of the requirements and Conditions which had been set forth in the original special permit

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had been met and the conditions imposed in the present special permit amendment would be even more stringent.

Mrs. Harris said that she could not support the motion because, having driven on Kirby Road frequently, she believed that the intensification required adequate turning lanes. Realizing that the cost to a lessee was substantial, she said a left turn during rush hour traffic was unsafe without the dedicated turn lane. She said that if the applicant could not afford to put in the left turn lane, she could not support the increase in daily enrollment.

Mrs. Thonen said that she could not support the motion because she believed that the problems within the neighborhood had not been worked out and that grade school children would make an even greater impact than the younger children. She said she did not believe that the increase was small, and she did not want to see expansion of the use.

Mr. Hammack said that, after first thinking that he might support the motion, he believed that the increase proposed in the motion was larger than he could support because he was also concerned about the traffic conditions. He believed that the addition of another type of use was an expansion on which the Board should move more slowly.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-D-051-2 by MARY ANNE DUFFUS/THE BROOKSFIELD SCHOOL, under Section 3-303 of the Zoning Ordinance to amend SP 87-D-051 for child care center and nursery school to allow increase in daily enrollment and add use of private school of general education, on property located at 1830 Kirby Rd., Tax Map Reference 31-3((1))59, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is R-3.
3. The area of the lot is 5.08 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-305, and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with the application, as qualified by these development conditions.

3. This use is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this approval shall be in conformance with the approved Special Permit Plat entitled Church Building St. Dunstans Episcopal Church, prepared by Donald J. Olivola & Associates dated 5-27-63, printed by Bengston, DeBell, Elkin & Titus on 4-17-91 and these conditions.

4. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

5. The hours of operation for the nursery school, child care center, and private school of general education shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.

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6. The maximum daily enrollment of the nursery school and child care center shall be 70 children.

7. The maximum daily enrollment of the private school of general education shall be 20 children.

8 There shall be a minimum of sixteen (16) parking spaces for the child care/ nursery school and a minimum of five (5) spaces for the private school of general education.

9. All existing vegetation, including that required in conjunction with the approval of SPR 87-D-051-2, which lines the periphery of the site shall be retained and shall be deemed to satisfy the requirements for transitional screening along all lot lines.

10. The barrier requirements shall be waived.

11. The outdoor play area shall be approximately 4,100 square feet and shall be located as shown on the special permit plat.

12. The Environmental Quality Corridor (EQC) as delineated in the Environmental Analysis contained in Appendix 8 of this report shall be preserved as private open space. Within the EQC there shall be no accessory structures except those permitted by the Comprehensive Plan, as approved by the Environment and Heritage Branch, OCP, and there shall be no grading or clearing of any vegetation except for dead or dying trees.

13. This special permit is approved for a period of five (5) years.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 4-3; Mrs. Harris, Mrs. Thonen and Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 24, August 6, 1991, (Tape 3), Scheduled case of:

10:30 A.M. DOUGLAS WILLIAM FAGUE, A 91-S-009, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that Par. 9 of Sect. 11-102, which provides that off-street parking spaces may not be located closer than 10.0 ft. to any front lot line, does not apply to a townhouse development known as Winding Ridge Subdivision, Phase II, zoned R-1, R-8, Springfield District, Tax Map 65-2((11))83-141, D.

Chairman DiGiulian advised that the Board of Zoning Appeals (BZA) had a request from the Board of Supervisors (BOS) and Mr. Fague to defer hearing the appeal. Chairman DiGiulian asked Mr. Fague to briefly outline his reasons for the request. Mr. Fague said that, regarding his previous appeal hearing on A 91-S-004, he got the impression that the BZA ruled against him because the BOS and the Planning Commission had approved "what was out there," through the PFM and through the Zoning Ordinance. He said that the previous evening when he was before the BOS, they had taken exception to that. He said he had spoken with several people who indicated that they did not approve of what was going on and what is going into Phase I and Phase II of Winding Ridge. He also said that he had a copy of the staff report in which he felt that all of the issues had not been addressed. He said that Elaine Jensen, Assistant to the Zoning Administrator, and William E. Shoup, Deputy Zoning Administrator, had refused to meet with him in person to discuss the staff report or the other case, in general, early on. He said that, as Mrs. Thonen had indicated the previous week, he did not have "a lot of stuff" in writing, and that he needed the extra time to document on paper, so that he could respond legitimately.

Mrs. Thonen said that she took exception to the fact that Mr. Fague said that he did not have any meetings with staff, because she never saw a staff report that showed as many meetings with staff and other people as he had.

Mr. Fague said that he had written many letters but had received very few in return. As to meeting with staff, he said that he had only met with a limited number of staff. He said that he had never met with Ms. Jensen, nor Mr. Shoup, to discuss the case. He said that Mr. Shoup called back to indicate that he could not meet with him. Mrs. Harris said that she was sure that Mr. Shoup took that position because it was probably the legal thing to do.

Mrs. Harris said that the question she had, in her understanding of appeals, was that Mr. Fague appealed Zoning Enforcement's finding that Zoning Article 11-102-9 does not apply to the standards (non-garage) townhouse development. She said that seemed to be a very narrow parameter in which she did not see where the BOS or anyone else had any bearing. She said that she would still like to know what possible reason anyone would have for a deferral because the BZA had Mr. Fague's position on the statement and they had the County's position. Mrs. Harris said that she did not understand why meeting with Mr. Shoup, or what happened during the last meeting, would have any bearing at all on the appeal. Mrs. Harris asked Mr. Fague to tell the BZA why he wished to have the hearing deferred, based on the nature of the appeal.

Mrs. Thonen said that another issue was whether the appeal was timely filed. Chairman DiGiulian interjected that the BZA was only discussing the deferral now. Mrs. Harris reiterated that she would like Mr. Fague to address the issue as she had outlined it.

Mr. Fague said that, concerning the 10 foot offset, the Zoning Ordinance requires a 10 foot offset for parking. He said that Phase II did not go before the Planning Commission per an administrative directive arising out of rezoning application RZ 82-S-021.

Chairman DiGiulian interrupted to tell Mr. Fague that he was arguing his case instead of answering the specific question of why he needed a deferral.

Mr. Fague said he needed a deferral so that his case could go before the Planning Commission. He said he had made a request of Peter Murphy, Chairman, Fairfax County Planning Commission, in writing, via Certified Mail, over the phone, and through messages, to submit it. Mrs. Harris asked him, to submit what? She said that the Planning Commission did not hear appeals. Mr. Fague asked if the Planning Commission could pull the appeal. Mrs. Harris told Mr. Fague that the Planning Commission had absolutely no justification for doing that. She told him that the BZA hears appeals. Mr. Fague said that the Planning Commission would hear it, but that they would simply pull it to review it. He asked if the Planning Commission could not pull it to review it and provide a recommendation. Chairman DiGiulian said that he believed the Planning Commission could pull the case and provide a recommendation and Mr. Fague said that is what seemed to be the intent of the BOS the previous evening. He said that they had been quite concerned with the 10 foot offset not being enforced and the fact of his previous appeal not being heard the previous week.

Mrs. Thonen asked if the BOS had anything from the Planning Commission and Mr. Fague said that the people with whom he had spoken the previous evening told him that, "it was their policy not to put things in writing and to respond." Mrs. Thonen said that was not so. Mr. Fague said that he had often been told that. Mrs. Thonen told Mr. Fague that the Planning Commission sends requests in writing if they wished to pull items. She said she could not remember a time when they had pulled an appeal, but they had pulled applications for special permits.

Mr. Fague said that he was trying to give the BZA information so that they could make the right decision. He said that staff would not meet with him and that the staff report did not address certain portions of the appeal and that the BOS had requested a deferral so that they could look into it and have staff specifically report back to them in writing. He said that he felt it was justified.

Mr. Kelley told Mr. Fague that he did not believe that staff had any God given right to meet with him to discuss the appeal. Mr. Kelley said that he was sympathetic to the request so that Mr. Fague could properly prepare his case, and he did believe that included deferral at the request of the BOS, but Mr. Fague was starting to give him reasons why the appeal should not be deferred.

Mrs. Harris said she would like to hear other people's opinions on the issue. Chairman DiGiulian asked to hear from the Zoning Administrator and anyone else who had an interest in the deferral.

Jane W. Gwinn, Zoning Administrator, said that she did not have any objection to a deferral. She said that she was aware that the issue had been raised before the BOS the previous evening and it was her understanding that they had passed a motion asking the BZA to defer. In response to Mr. Fague's concerns about staff, Ms. Gwinn said it was her position that he had filed an appeal and staff had responded with a staff report addressing the issues before

the BZA, so she did not believe it was necessary for staff to meet with Mr. Fague. Ms. Gwinn referenced the other appeal about the mountable curb, saying that it had not been decided at this point. She reiterated that she had no objection if the BZA was inclined to defer the appeal before them.

Mr. Kelley asked Ms. Gwinn if she had any idea how long the BOS would like the BZA to defer the appeal. Ms. Gwinn said that the action had been taken at about 1:30 a.m. that morning and she had not heard what the BOS asked for. It was her understanding that the BOS wanted staff to respond to them in terms of what the issues were, so that the they could have a better understanding of the situation. She said that the BOS had also authorized the advertisement of the Zoning Ordinance Amendment which referenced the staff report on the new appeal and addressed the 10 foot issue.

Mrs. Harris asked Ms. Gwinn if it were possible that there was confusion between whether or not the zoning article is a good one, as opposed to the issues in the appeal. Chairman DiGiulian interjected that the issue before the BZA at this time was whether or not to defer the appeal. Mrs. Harris still wanted to know whether the BOS requested the deferral because of the Zoning Ordinance or because of the appeal. Chairman DiGiulian said that Ms. Kelsey was, at that moment, trying to get the information by phone. Ms. Gwinn said that it was her understanding that Mr. Fague spoke to the BOS the previous night and she did not know what was said.

Ms. Gwinn said that Mr. Farrell was present, representing the developer, and that it might be appropriate to allow him to address the issue. Chairman DiGiulian said that anyone present would be allowed to address the deferral and asked Mr. Farrell if he wished to speak.

John W. Farrell of the law firm of Odin, Feldman & Pittleman, P.C., said that he represented the developer of Winding Ridge, Curtis F. Peterson, Inc., and said his client opposed the granting of a deferral on this appeal. Mr. Farrell said that it was his understanding that the deferral of this appeal would carry it over to sometime in November, or later. He said that Section II of Winding Ridge was currently undergoing development and, to have the appeal remain outstanding between now and November, would have a negative impact, not only on Curtis F. Peterson, Inc., but also on Ryland Homes who is the developer. Mr. Farrell referred to material which he had distributed to the BZA concerning whether or not the appeal had been timely filed, and whether or not the appellant had standing to raise the issue as regards the property. Mr. Farrell said that he believed the BZA was in a position to address the issues and to decide that the appeal was not timely filed, and that the appellant does not have standing to raise the issue; which findings would be harmony with the findings the BZA made the previous week. Mr. Farrell asked that the BZA rule according to his outline so that the appeal could be disposed of, as he believed there was no reason to get into the merits.

Mrs. Harris made a motion to recess. Mrs. Thonen seconded the motion, which carried by a vote of 6-0; Mr. Hammack was not present for the vote. The BZA recessed at 12:35 p.m. and reconvened at 12:40 p.m., in order to obtain the information necessary to proceed.

Chairman DiGiulian said that he wished to state for the record that he had spoken with Anthony H. Griffin, Deputy County Executive for Planning and Development, by phone and the only information Mr. Griffin had was that the BOS had directed him to investigate the happenings as related by Mr. Fague; he did not have a time frame as to when the Planning Commission would hear his findings or when he would be back to them with his information.

Mrs. Harris said that, based on the information presented by Chairman DiGiulian, the fact that the BZA did not have a great deal of information to go on, and because the BOS moved that the appeal be deferred, she would make a motion to defer hearing this appeal until the first meeting in September. Mrs. Thonen said that she believed it should be heard sometime in November. Mrs. Harris said that the BZA should have the benefit of receiving information about why the BOS took this action and what information they based it on. Chairman DiGiulian said that he believed that the BZA had all the information they would get. Mrs. Harris said that she would like to listen to the tape and hear both sides, and that the BZA owed both parties a timely hearing. She said that Mr. Farrell's case was well-put, but that Mr. Fague should also be afforded due process; if the BOS felt there were issues needing to be looked into to help the BZA make their decision, she felt they should also accept that information.

Mrs. Thonen said that she would like to have the appeal deferred at least to the last of October, because she believed that much time was necessary for staff to research the issues because of the number of vacations anticipated at this time of the year.

Mr. Kelley said that he would not mind hearing the appeal on the timeliness issue only. He said that, if the BZA was not going to hear the appeal because of timeliness, he believed that issue could be resolved that day. He believed the other issues needed to be deferred, including the standing issue.

Mrs. Harris said she agreed with Mr. Kelley, but that may have been part of Mr. Fague's presentation to the BOS and the reason why they asked for a deferral. Mr. Kelley said that he could not see how the BOS would have any standing on whether or not the BZA acted upon the

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timeliness issue. Chairman DiGiulian and Mrs. Thonen said that they agreed. The BZA members agreed among themselves that it was their responsibility to determine the timeliness issue.

Chairman DiGiulian asked if the motion to defer to the first meeting in September had been seconded. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the BZA that they had eleven cases, one of which was an appeal, scheduled for the first hearing date in September, which would be the 10th; she said that September 17 was a night meeting, but an appeal was scheduled for that meeting which was due to be withdrawn, so September 17 would be a better time, but that October would be more preferable.

Mrs. Harris said that, because of the points raised during the discussion, the appeal could adequately be fit in on September 17 and it would be the earliest possible time. Mrs. Harris changed her motion from September 10 to September 17. Mr. Ribble seconded the motion.

Mr. Kelley introduced a substitute motion to hear the timeliness issue immediately and, if the BZA decided not to hear the timeliness issue immediately, he would support the motion by Mrs. Harris.

Mrs. Thonen seconded the substitute motion, which failed by a vote of 3-3; Mrs. Harris, Mr. Pammel, and Mr. Ribble voted nay. Mr. Hammack was not present for the vote.

Chairman DiGiulian called for a vote on the main motion to defer until September 17, 1991, at 8:00 p.m., which carried by a vote of 5-1; Mrs. Thonen voted nay. Mr. Hammack was not present for the vote.

Mrs. Harris requested that any further documentation on this appeal be made available to the BZA at least two weeks previous to the hearing date. Chairman DiGiulian said he would appreciate having the material at least the Friday before the hearing as he did not believe they could get it as far ahead as two weeks. Mrs. Harris then said she would appreciate receiving the material as soon as possible.

Ms. Kelsey asked if that portion of the dialogue wherein Mrs. Harris requested the documentation in advance of the hearing was a part of the motion and the answer was that it was not. Ms. Kelsey asked if "as soon as possible" was the request and Mrs. Harris said yes.

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Mrs. Thonen left the meeting at 12:45 p.m.

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Page 27, August 6, 1991, (Tape 3), Scheduled case of:

11:15 A.M. NORTHERN VIRGINIA ELECTRIC COOPERATIVE, SP 91-S-021, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement on approx. 4.8768 acres located on Compton Rd., zoned R-C, WS, Springfield District, Tax Map 65-3((1))74. (CONCURRENT WITH SE 91-S-008)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Bonner replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, stating that the property is located south of Compton Road; the Upper Occoquan Sewage Authority borders it on one side; the property to the southeast and the west is zoned R-C and is located in WSPOD; across Compton Road is property developed with townhouses and is zoned R-8. Since the viewgraph was not working, Ms. Kelsey asked the BZA to refer to the staff report and notice that the proposed substation driveway would be paved approximately 25 feet from the edge of the pavement, as requested by staff. She said that the Development Conditions imposed in conjunction with the approval of special exception SE 91-S-008 early that morning by the Board of Supervisors (BOS), were as follows: a temporary sediment basin in a location outside of the EQC; adequate erosion and sediment controls maintained on the periphery; a development pad to stabilize soils and adherence to the limits of clearing and grading. She said that the Conditions also required the implementation of landscaping, particularly with the 25 foot wide buffer along Compton Road. Ms. Kelsey said staff believed that, with the implementation of the Development Conditions, and additional Development Condition 6 contained in the staff report for the special permit (covering the maintenance and construction methods for the gravel surface), the application to be in conformance with all of the applicable standards for the use; therefore, staff recommended approval in accordance with the Proposed Development Conditions.

Scott H. Bonner, agent for the applicant, said that they concurred with staff's recommendations and Development Conditions and, as staff said, the related special exception was unanimously approved that morning. He respectfully requested that the BZA approve the special permit and, if approved, waive the eight-day waiting period.

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Mrs. Harris asked Mr. Bonner if any transitional screening had been planted between the station and the townhouses located behind the station. Mr. Bonner said that the subject property was located across Compton Road from the townhouses and that there was a requirement of a 35 foot transitional screening yard on the Compton Road frontage, to which they had additionally provided dedication and a berm. Mrs. Harris asked if that would protect the townhouse owners from dust. Mr. Bonner said that the entire pad area of the substation was a gravel surface by National Electric Safety Code and helped them to meet their BMP criteria to use gravel in the driveway.

Ms. Kelsey said that she had neglected to point out a correction to Condition 4, seconded sentence, which now reads: "...approved Special Permit plat by R. B. Thomas, Jr., Ltd., dated January 9, 1991 as revised April 18, 1991...."

Chairman DiGiulian asked if there was anyone to speak in support of the applicant and, hearing no response, asked if there was anyone to speak in opposition. There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SP 91-S-021 for the reasons outlined in the Resolution, subject the Proposed Development Conditions contained in the staff report dated July 23, 1991, as corrected.

The Board waived the eight-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-021 by NORTHERN VIRGINIA ELECTRIC COOPERATIVE, under Section 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement, on property located on Compton Rd., Tax Map Reference 65-3((1))74, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 4.8768 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the gravel surfaces indicated on the plat prepared by R. B. Thomas, Jr. Ltd. dated January 9, 1991 as revised dated April 18, 1991.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by R. B. Thomas, Jr. Ltd. dated January 9, 1991 as revised dated April 18, 1991.

5. The waiver of the dustless surface shall be approved for a period of five (5) years to begin from the final approval date of this special permit.

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6. The gravel surfaces shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but may not be limited to the following:

Speed limits shall be limited to ten (10) mph.

During dry periods, application of water shall be made in order to control dust.

Runoff shall be channelled away from and around driveway and parking areas.

The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

Routine maintenance shall be performed to prevent surface unevenness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mrs. Thonen was not present for the vote.

Mr. Pammel made a motion to waive the eight-day waiting period. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 6, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 29, August 6, 1991, (Tape 3), Scheduled case of:

11:30 A.M. KIL HO CHO, SP 91-A-003, appl. under Sect. 5-503 of the Zoning Ordinance to allow indoor golf driving range on approx. 7,300 s.f. of approx. 6.47 acres located at 5589 Guinea Rd., zoned I-5, Annandale District, Tax Map 77-2((1))29C. (DEFERRED FROM 7/23/91 FOR BOS TO ACT ON PARKING AMENDMENT ON SUBJECT PROPERTY)

Mr. Pammel said that the case had been heard previously on July 23, 1991, and was before the Board of Zoning Appeals (BZA) for decision only.

Mrs. Harris asked staff for the results of the hearing of SE 91-S-008 by the Board of Supervisors (BOS) early that morning.

Carol Dickey, Staff Coordinator, advised the BOS had approved the requested amendment to the previously approved parking reduction for the Guinea Road Industrial Park, which relates to the current SP 91-A-003 and SP 91-A-018. She said that the amendment did include the indoor golf driving range as a proposed use, with 16 parking spaces specified for the use. She said that a copy of the BOS's Summary of Actions with the approval noted as Item 25 on Page 4, and a copy of the Department of Environmental Management (DEM) staff report, were at that moment being distributed to the BZA.

Ms. Dickey said that, with the approval of the amendment to the special exception, the outstanding concerns with the special permit had been satisfied and staff now supported the application, with the following amendments to the Proposed Development Conditions, dated July 16, 1991. On Condition 7: 12:30 a.m. was changed to 12:30 p.m.; on Condition 8: 7 was changed to 16 parking spaces and the last line of that Condition was deleted. The Conditions shall now read as follows:

Condition 7: Hours of operation shall be limited to 7:00 a.m. until 10:00 p.m., Monday Through Saturday and 12:30 p.m. until 10:00 p.m. on Sunday.

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Condition 8: The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 16 parking spaces or additional spaces as determined by DEM. All parking shall be on-site and shall be designed according to the Public Facilities Manual (PFM) requirements.

Mr. Hammack made a motion to grant SP 91-A-003 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 16, 1991, as modified.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-A-003 by KIL HO CHO, under Section 5-503 of the Zoning Ordinance to allow indoor golf driving range, on property located at 5589 Guinea Rd., Tax Map Reference 77-2((1))29C, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is I-5.
3. The area of the lot is 7,300 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application as the special permit area of 7,300 sq. ft. of the Guinea Road Industrial Park, located at 5589 Guinea Road, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by LBA Limited, dated January 1991 and revised March 1991) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum number of employees associated with this use shall be limited to two (2) on-site at any one time.

6. The maximum number of persons on-site at any one time shall not exceed 17, including two (2) employees. No more than one person shall use a golf tee at any one time.

7. Hours of operation shall be limited to 7:00 a.m. until 10:00 p.m., Monday through Saturday and 12:30 p.m. until 10:00 p.m. on Sunday.

8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 16 parking spaces or additional spaces as determined by DEM. All parking shall be on-site and shall be designed according to the Public Facilities Manual (PFM) requirements.

9. There shall be no food preparation or serving of food on-site.

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10. There shall be no retail sales of any items on-site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twelve (12) months after the approval date* of the Special Permit unless the activity authorized has been legally established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley left the meeting at 1:00 p.m.

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Page 31, August 6, 1991, (Tape 3), Scheduled case of:

11:35 A.M. SPORTS JUNCTION, JOHN J. AND SANDRA G. BAXTER, SP 91-A-018, appl. under Sect. 5-503 of the Zoning Ordinance to allow indoor recreational use (baseball/softball batting cages) on approx. 4,777 s.f. of 6.47 acres located at 5609 E Sandy Lewis Drive, zoned I-5, Annandale District, Tax Map 77-2((1))29C. (DEFERRED FROM 7/23/91 FOR BOS TO ACT ON PARKING AMENDMENT ON SUBJECT PROPERTY)

The applicant, John J. Baxter, 11225 Henderson Road, Fairfax Station, Virginia, came to the podium.

Chairman DiGiulian asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, if this case was before the Board of Zoning Appeals (BZA) for decision only and she said yes.

Mike Jaskiewicz, Staff Coordinator, advised the BZA that this application was in the same industrial park as the previous application and, while staff had originally recommended denial based on two issues: the on-site parking which was resolved with a letter prior to the last meeting; and the second issue was resolved when the Board of Supervisors (BOS) approved the related special exception. Mr. Jaskiewicz said that staff, therefore, recommended approval of the application, with one change to Condition 9, the elimination of the last sentence, brought about by BOS approval of the special exception. Condition 9 now reads:

9. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 12 spaces. All parking shall be on-site and shall be designed according to the Public Facilities Manual (PFM) requirements.

Mr. Hammack asked Mr. Jaskiewicz if the number of parking spaces required was 12 and he said that it was.

Mrs. Harris said that this case had not been previously heard and the BZA should allow time for the applicant to speak. Chairman DiGiulian said that he had asked that question earlier and the hearing had been summarily dismissed. Chairman DiGiulian asked if there was anyone who wished to address this case.

The applicant, John J. Baxter, said that he agreed with staff.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 91-A-018 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 16, 1991, as modified.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-A-018 by SPORTS JUNCTION, JOHN J. AND SANDRA G. BAXTER, under Section 5-503 of the Zoning Ordinance to allow indoor recreational use (baseball/softball batting cages), on property located at 5609E Sandy Lewis Drive, Tax Map Reference 77-2((1))29C, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the lessees of the land.
2. The present zoning is I-5.
3. The area of the lot is 4,777 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application as the special permit area of 4,777 sq. ft. of the Guinea Road Industrial Park, located at 5609E Sandy Lewis Drive, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by LBA Limited, dated April, 1991) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. There shall be no more than 1,342 net square feet of floor area devoted to the accessory retail use (sales of team-related items and an embroidery and lettering service associated with the primary use).

6. The maximum number of persons on-site at any one time in the indoor commercial recreation area shall not exceed six (6), and two (2) employees.

7. The maximum number of employees associated with this use shall be limited to two (2) on-site at any one time.

8. Hours of operation shall be limited to 9:00 a.m. until 9:00 p.m., Monday through Saturday and 1:00 p.m. until 9:00 p.m., Sunday.

9. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 12 spaces. All parking shall be on-site and shall be designed according to the Public Facilities Manual (PFM) requirements.

10. There shall be no food preparation or serving of food on-site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date of the Special Permit unless the activity authorized has been legally established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this special permit.

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11:45 A.M. MOON-KYUNG CHOI & PHILLIP S. CHO, SP 91-S-007, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement on approx. 5.742 acres located at 15461 Lee Highway, zoned R-C, WS, Springfield District, Tax Map 64-1((1))9. (CONCURRENT WITH SE 89-S-024) (DEFERRED FROM 7/30/91 FOR DECISION ONLY)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the Board of Supervisors (BOS) had approved the related special exception early that morning.

Mrs. Harris made a motion to grant SP 91-S-007 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 17, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-007 by MOON-KYUNG CHOI & PHILIP S. CHO, under Section 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement, on property located at 15461 Lee Highway, Tax Map Reference 64-1((1))9, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the lessees of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 5.742 acres.
4. Testimony indicated that this would be a wholesale plant storage area and not open to the public.
5. The applicants agreed to the conditions set forth in Appendix 1.
6. The Board of Supervisors had reached its conclusion in SE 89-S-024.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat dated April 17, 1991 as revised through May 2, 1991 prepared by Moon-Kyung Choi & Phillip S. Cho and approved with this application, as qualified by these development conditions.

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3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Exception plat and these development conditions.

5. The gravel surfaces for the parking lot, travel way and loading area shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall run for the period of time specified in the Zoning Ordinance.

   a) Travel speeds in the parking areas shall be limited to 10 mph or less.

   b) The areas shall be constructed with clean stone with as little fines material as possible.

   c) The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

   d) Resurfacing shall be conducted when stone becomes thin and/or uneven and the underlying soil is exposed.

   e) Runoff shall be channeled away from and around the travel way, loading area and parking areas.

   f) During dry periods, application of water shall be make in order to control dust.

   g) The applicant shall perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of stone surface.

   h) The entrance and driveway shall be paved 25 feet into the site from the front property line.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been legally established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Pammel seconded the motion which carried by a vote of 4-0-1; Mr. Hammack abstained. Mrs. Thonen and Mr. Kelley were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 34, August 6, 1991, (Tape 3), Scheduled case of:

11:55 A.M. FAIRFAX COUNTY WATER AUTHORITY (FCWA), SP 90-L-076, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement on approx. 8.06 acres located at 6903 Hill Park Dr., zoned I-5, Lee District, Tax Map 99-2((4))16. (CONCURRENT WITH SE 90-L-049) (DEFERRED FROM 7/30/91 FOR DECISION ONLY)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board of Zoning Appeals (BZA) that the application had been deferred to give the BOS time to hear the related special exception, which they had heard and granted early that morning. Ms. Kelsey said that the applicant was present but the Staff Coordinator on this case had gone to Centerpointe to attend another meeting, and had not yet returned. Ms. Kelsey said that she was not sure whether or not there were any changes to the Proposed Development Conditions.

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Chairman DiGiulian asked if there was anyone present to address the application but received no response.

Ms. Kelsey said she understood that there had been an additional letter received, dated August 5, 1991, from Capital Concepts, who also testified at the previous public hearing, but she was not sure whether or not the previous public hearing had been closed to new submissions. It was Ms. Kelsey's understanding that the previous public hearing had been closed, except for submission of the results from the BOS hearing.

Marc Schwartz, Chief of Engineering Design for the Fairfax County Water Authority, came to the podium and said that he did not know if there were any outstanding issues which needed to be addressed. Ms. Kelsey asked Mr. Schwartz if any changes had been made to the Development Conditions at the previous hearing and he said there were none.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 90-L-076, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 16, 1991.

Mr. Hammack said that he normally would fall right in line and support anything that the Fairfax County Water Authority wanted to do, but he believed testimony indicated that there would be a great deal of loading and unloading in the back of the lot and, knowing that the BZA tended to go along with public utilities, he said he had reservations about granting all the parking and waiving the dustless surface in this case. He said that it would impact on businesses nearby, and he would oppose granting the request on those grounds.

Mr. Pammel said that he also would oppose the motion because he was concerned about the complaint from an adjacent business about dust; no matter how little dust, it still represented a problem. He said that it was suggested at some point that a transitional yard in the neighborhood of 25 to 35 feet of plantings would, over a period of time, alleviate the problem and act as a filter or screen for the dust.

Mrs. Harris asked Mr. Pammel to correct her if she was wrong, but she believed that there had been existing vegetation between the site of the warehouse and the business from whom the complaint had been received.

Mr. Hammack said that, even with the existing vegetation, the complainant was having a problem. He said that was the reason why he had a problem supporting such a large dustless surface waiver.

Mrs. Harris quoted, "...there is no doubt that if dust generated from the gravel covered supply yards entered our warehouse, our posters would be ruined...." She said that it was her understanding that the complainant was referring to increased dust, not the dust presently generated. Mr. Ribble said he read it the same way. Mrs. Harris said she called for the question.

Mr. Hammack said that the applicant estimated 90 to 160 vehicles per day per acre can be considered normal from a facility of this type. He said he considered that to be a lot of traffic, along with the activity in the back. Mr. Hammack said that testimony did not satisfy him that all of that activity would not impact adversely on the surrounding businesses. He said there was a possibility that he might support the application at some point, but not at this point. He said he was referring to heavy equipment like tractors and forklifts. Mr. Hammack said that the applicant said that they had no problem with the lot in Chantilly, but he did not know anything about the lot in Chantilly, or if anyone had complained; in this case, someone had complained. He said that he felt that there was an obligation to look into the matter.

Mrs. Harris asked if there had been a term put on this application in the Development Conditions and Ms. Kelsey said not specifically, but the BZA might wish to do so.

Mrs. Harris asked why the BZA could not put a one-year time limit on the special permit and have the applicant come back. She said that, at that time, the BZA could evaluate whether the concerns now being waived are significant enough to warrant more action. She asked whether the maker of the motion would consider this and Mr. Ribble said yes, and that it bothered him that the BZA could hear about something after the hearing was over and have to consider it. Ms. Kelsey made reference to a previous letter and a previous speaker at the last hearing.

Chairman DiGiulian said that an amended motion was on the floor, and had been seconded, to grant the dustless surface waiver for one year. After one year's time, the special permit would be re-evaluated by the BZA.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-076 by FAIRFAX COUNTY WATER AUTHORITY (FCWA), under Section 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement (**THE BOARD GRANTED A ONE-YEAR TERM**), on property located at 6903 Hill Park Dr., Tax Map Reference 99-2((4))16, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 6, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is I-5.
3. The area of the lot is 8.06 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location on the application property and is not transferable to other land.

2. This Special Permit is granted for the gravel surfaces indicated on the Special Permit plat entitled FCWA/EASPY Lee District and prepared by Paciulli, Simmons & Associates, Ltd., which is dated March, 1990, as revised through June 7, 1991, approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This use shall be subject to the provisions set forth in Article 17, Site Plans.

5. Signs shall be subject to the provisions of Article 12 of the Zoning Ordinance.

6. The gravel surfaces shall be maintained in accordance with the Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire one (1) year from the date of approval of this special permit.

   Speed limits shall be kept low, generally 10 mph or less.

   The areas shall be constructed with clean stone with as little fine material as possible.

   The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

   Resurfacing shall be conducted when stone becomes this and the underlying soil is exposed.

   During dry seasons, water or calcium chloride shall be applied to control dust.

   Runoff shall be channelled away from and around driveway and parking areas.

   The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

   The entrance shall be paved to a point a minimum of twenty-five (25) feet into the site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use

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Permit (Non-RUP) through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Section 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 14, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 37, August 6, 1991, (Tape 3), Action Item:

Request for Reconsideration
Mildred N. Mansfield, SP 91-L-023

Mr. Ribble said that he could not make the motion because it was a close call and someone on the prevailing side would have to make the motion.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that there was a copy of the Resolution included with the packet of Resolutions which the Board of Zoning Appeals (BZA) had received that morning. She said that the vote was 3-3, with Vice Chairmen Ribble, Mr. Hammack and Mrs. Thonen voting for the motion, and Mrs. Harris, Mr. Pammel and Mr. Kelley voting against the motion.

Mr. Hammack said that the application was very controversial and, while it was unfortunate that it was denied, he did not believe that the BZA should reconsider the decision.

Mrs. Harris said that, then, it was either up to Mr. Pammel or her and she did not feel like reconsidering it.

Chairman DiGiulian said that the request was denied; because there was no motion to reconsider, the request died.

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Page 37, August 6, 1991, (Tape 3), Action Item:

Approval of Resolutions from July 30, 1991 Meeting

Mr. Ribble made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 37, August 6, 1991, (Tape 3), Action Item:

Approval of Minutes from June 18, 1991 Meeting

Mr. Pammel made a motion to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 37, August 6, 1991, (Tape 3), Action Item:

Request for Date and Time
Vacom, Inc. Appeal

Chairman DiGiulian said that the Clerk suggested October 21, 1991, at 11:00 a.m. and Mr. Pammel made a motion to that effect. Mrs. Harris seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 38, August 6, 1991, (Tape 3), Action Item:

Request for Additional Time
Mt. Vernon Swim & Racquet Club, SPA 80-L-085-2

Mr. Hammack made a motion to grant the request for additional time. Ms. Kelsey asked if that meant two years for the second phase as well, as the applicant was asking for additional time both to begin construction and to begin the second phase. Mr. Hammack said that was no problem. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote. The new expiration date is September 22, 1993.

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Page 38, August 6, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing
First Baptist Church of Merrifield, SPA 87-P-073-1

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board of Zoning Appeals (BZA) that the applicant had been under the impression that they would be would not be permitted to stay open if they did not get their application heard; but, since the Zoning Ordinance says that, if they have their application in the process, they will not be closed down, the applicant has no problem with not getting an out-of-turn hearing.

Mrs. Harris made a motion to deny the request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 38, August 6, 1991, (Tape 3), Action Item:

Approval of Minutes from June 25, 1991 and July 9, 1991 Meetings

Mr. Hammack made a motion to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 38, August 6, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing
Lynn Kahler Berg, VC 91-V-077

Mrs. Harris said that she had read the letter of request. She said that the applicant has a 6 foot high fence that she wishes to keep in the front yard. The applicant will be out of town on September 24, the scheduled hearing date, and will not return until October 16. Mrs. Harris made a motion to deny the out-of-turn hearing and schedule the case after October 16, when the applicant will have returned. Mr. Hammack made a motion to issue an Intent to Defer. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 38, August 6, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing
South Run Baptist Church, SPA 87-S-078-1

Mr. Hammack made a motion to deny the request. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

Mrs. Harris said she would like to ask the applicant a question. Clifton Barnes, Building and Lands Director, South Run Baptist Church, came to the podium. Mrs. Harris asked Mr. Barnes how he knew the scheduled date of the hearing was not appropriate if he did not know what the scheduled hearing date was. Mr. Barnes said that he had presented the application to Virginia Ruffner of the Application Acceptance Section, in June of 1991. He said that changes to the application had been required and they had hoped to be heard in September. He said that after the changes had been made and the application returned to Ms. Ruffner, Ms. Ruffner suggested to him that he request an out-of-turn hearing so that he could be heard before the fall influx of applications. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the application had not yet been received by the Special Permit and Variance Branch but, if it were to be received on that day, it would be scheduled for November 7, 1991. Ms. Kelsey advised the Board of Zoning Appeals (BZA) that the earliest possible time that the BZA's schedule could accommodate the application would be October 22, 1991. Mr. Hammack said that the difference of two weeks was not enough to go through the process of granting an out-of-turn hearing. Mr. Barnes still asked to be heard as soon as possible, even if only two weeks earlier than when they would normally be scheduled.

Page 39, August 6, 1991, (Tape 3), (SOUTH RUN BAPTIST CHURCH, SPA 87-S-078-1, continued from Page 38)

Mrs. Harris made a motion to grant the request and schedule the application for October 22, 1991, at 9:00 a.m. Mr. Pammel seconded the motion. Chairman DiGiulian reminded the BZA that a motion to deny had already been made, seconded and voted upon. Mr. Hammack withdrew his motion to deny.

Mrs. Harris again made a motion to grant the request and schedule the application for October 22, 1991, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote. Ms. Kelsey requested that the applicant contact her office on the next day, to confirm that everything was in order and that there were no outstanding issues.

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Page 39, August 6, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing
Hunter Mill Swim & Racquet Club, SPA 82-C-014-1

Mrs. Harris said that she knew something about this request. She said that the Solotar Swim Club no longer has facilities in its former place of operation. She said that they had many talented swimmers, some of whom were preparing for the Olympics. She said that they had no other place to practice. She said that they had made an agreement with Hunter Mill Swim Club that if they get the bubble on their pool, they would be able to continue practicing throughout the winter. Mr. Hammack asked what they had done before this time. Mrs. Harris said that the swim club had a place in Reston, to which they no longer have access. Mrs. Harris asked if this case could be scheduled for the same date as the previous out-of-turn hearing and Ms. Kelsey said she thought it could be accommodated on that date.

Mrs. Harris moved to grant the out-of-turn hearing and schedule this application for October 22, 1991 at 9:20 a.m. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 39, August 6, 1991, (Tape 3), Action Item:

Request for Out-of-Turn Hearing
Grace Presbyterian Church, SPA 73-L-152-1

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented this request and distributed the letter of request to the Board of Zoning Appeals (BZA). She said that the application was still lacking some information to make it acceptable but that she had been assured by the applicant that the information would be forthcoming immediately. Ms. Kelsey said that, if this application proved to be acceptable, it would also be scheduled on November 7, 1991, so the earliest time to which it could be moved up would be October 22, 1991, but the BZA had already added two additional out-of-turn cases to that agenda and an appeal was also scheduled for that date. Chairman DiGiulian questioned the completeness of the application and Ms. Kelsey said that the information it lacked was the gross square footage and the number of seats, which was required for the parking computation. Mrs. Harris said that she did not believe that a two-week time period would make a tremendous amount of difference in the application and she also believed that, with the amount of staffing and review necessary, she would rather allow staff the extra two weeks and have them do their normal excellent job.

Mrs. Harris made a motion to deny the request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Kelley were not present for the vote.

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Page 39, August 6, 1991, (Tape 3), Information Item:

Woodlawn Country Club, SPA 74-V-107-2

Chairman DiGiulian said that Mr. Kelley had intended to make a motion on this item but, since Mr. Kelley could not be present, he had asked that it be deferred until September. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the item would be scheduled for September 10, 1991.

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Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board of Zoning Appeals (BZA) that a copy of the two Proposed Zoning Amendments that Barbara A. Byron, Director, Zoning Evaluation Division, had earlier explained to them. Ms. Kelsey advised that the proposed amendments where scheduled to go before the Board of Supervisors and the

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Planning Commission and asked the BZA members to let Ms. Byron know if they had any additional comments.

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As there was no other business to come before the Board, the meeting was adjourned at 1:25 p.m.

Geri B Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: October 22, 1991

APPROVED: October 29, 1991

041

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on September 10, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:25 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 41, September 10, 1991, (Tape 1), Scheduled case of:

9:00 A.M. KAYID SHAWISH, VC 91-M-069, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot and an outlot into 3 lots, proposed Lots 1 and 2 having lot width of 6 ft. and proposed Lot 3 having lot width of 8 ft. (80 ft. min. lot width required by Sect. 3-306) on approx. 2.217 acres located at 3455 Annandale Road, zoned R-3, Mason District, Tax Map 60-1((25))3, A.

Chairman DiGiulian noted that a letter requesting deferral had been received by the Board of Zoning Appeals (BZA). Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant had advised staff that he wished to withdraw the request for deferral. Chairman DiGiulian called the applicant to the podium and asked if he would like to be heard, Mr. Shawish stated he would. The Chairman then asked if the affidavit before the BZA was complete and accurate. Mr. Shawish replied that it was.

Mrs. Harris expressed her concern as to whether the public had been informed that the case would be deferred. Ms. Kelsey said that the case had been advertised for public hearing, staff had informed all callers that although the applicant had requested deferral, the BZA must defer the case at the advertised public hearing. She explained that the applicant was withdrawing the request due to the large turnout of concerned citizens.

After a brief discussion and a poll of the audience, it was the consensus of the BZA to hear testimony regarding the deferral.

Chairman DiGiulian called for speakers to the deferral and the following citizens came forward.

Leonard Tambor, 7338 Hill Drive, Annandale, Virginia, addressed the BZA. He stated that his property abuts the applicant's property and expressed his desire to go forward with the public hearing. Mr. Tambor explained that the applicant had requested the deferral in order to negotiate with the abutting neighbors to obtain additional land or an easement. He informed the BZA that he was not interested in such an arrangement.

In response to Mr. Kelley's question as to his knowledge regarding the request for deferral, Mr. Tabor said that he had been told about the deferral request, but was cautioned that the BZA may elect either to defer or to proceed with the public hearing.

Mrs. Thonen noted that the BZA does not make the decision on whether to grant a deferral until the scheduled public hearing.

The Chair ruled to proceed with the public hearing.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a variance to allow the subdivision of a lot into three lots with Lots 1 and 2 having lot widths of 6.0 feet each and Lot 3 having a lot width of 8.0 feet. The Zoning Ordinance requires a minimum lot width of 80 feet in the R-3 District; therefore, the applicant was requesting a variance of 74.0 feet to the minimum lot width requirement for Lots 1 and 2 and a variance of 72.0 feet to the minimum lot width requirement for Lot 3.

Ms. Dickey stated that staff believed that the application failed to meet several of the standards for variance approval as noted on page 7 of the staff report. She said that the lot has existed in its present configuration since 1960, without adequate lot width on a public street, and was purchased by the applicant with the knowledge of its configuration. She expressed staff's concern regarding the precedent which may be set by the approval of a variance to allow a pipestem driveway serving up to four dwellings that have direct access onto an arterial street. Ms. Dickey said that approval of the variance would also locate the pipestem driveway approximately 14.0 feet from an existing dwelling which abuts the subject property, and would have a detrimental effect on abutting properties on the north and south sides.

In summary, Ms. Dickey stated that staff believed the stacking of lots along a pipestem drive was not characteristic of subdivisions in the vicinity and would not be in harmony with the Comprehensive Plan goals for compatible infill development in the area. She noted that one variance application for a pipestem lot was approved south of the site and one application was denied to the north of the site, so there is precedent for both actions in this area.

The applicant's representative, Zia U. Hassan, an engineer with Design Management Group, 8221 Old Courthouse Road, Suite 200, Vienna, Virginia, addressed the BZA. He stated that the 2.17 acre irregularly shaped lot with a 20.0 foot frontage on Annandale Road met the criteria for a variance. Mr. Hassan noted that the applicant was merely requesting a subdivision for three lots and under the R-3 zoning could subdivide into six lots.

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Mr. Hassan stated that the applicant was unaware that the 20.0 foot frontage would create a problem and had assumed that under the present zoning he would be allowed to subdivide the property. He said that except for necessary clearing, all existing vegetation would be preserved and that a turnaround driveway would be installed for safety reasons. He expressed his belief that the traffic generated from the three lots would have no detrimental impact, the request was compatible with the Comprehensive Plan, and asked the BZA to grant the request.

As there were no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens, came forward.

Mr. Tambor returned to the podium. He noted that although the applicant has included proposed improvements, all but one of the adjacent property owners were present to oppose the granting of the variance. He complimented staff and expressed support for the highly professional and comprehensive analysis contained in the staff report.

Mr. Tambor stated that the applicant was aware of the restrictions before purchasing the property, that the applicant does not own the additional 10.0 feet necessary for the driveway access, and that if an easement was granted it would be 6.0 feet from the structure on Lot 2. He asked the BZA to deny the request.

Betty Ragen, 3453 Annandale Road, Falls Church, Virginia, addressed the BZA. She stated that by deed, her property has a 20.0 foot easement on the subject property and asked the BZA to deny the request.

John Peters, 7336 Hill Drive, Annandale, Virginia, addressed the BZA. He said that the findings and conclusion of the staff report were excellent and reflected a solid and carefully thought-out analysis. Mr. Peters stated that even with the proposed improvements, the subdivision would be detrimental to the community and asked the BZA to deny the request.

Connie Frederickson, 7336 Hill Drive, Annandale, Virginia, addressed the BZA and expressed her support for the staff report. She stated that the request would be detrimental to the neighborhood and noted the proposal was based on an easement that has not been granted.

Mrs. Harris noted that there was a 20.0 foot easement on Lot 51 and asked whether proposed Lot 2 would provide the additional 10.0 feet. Mrs. Frederickson said that it would.

Cynthia Margulies, 7335 Hill Drive, Annandale, Virginia, addressed the BZA and added her support for the staff report, especially the transportation analysis. She said that for 25 years she has travelled Annandale Road and expressed her belief that unless a safe access was provided, the application should be denied.

There being no further speakers in opposition, Chairman DiGiulian called for rebuttal.

Mr. Hassan stated that the turn-around provision would provide safe access for the proposed lots. He noted that the applicant had tried, without success, to consolidate the area by purchasing more land and had also attempted to join other property owners in a mutual consolidation.

In response to a question from Chairman DiGiulian regarding the date the applicant had purchased the property, Mr. Hassan said the applicant went to settlement in May of 1990.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to deny VC 91-M-069 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-069 by KAYID SHAWISH, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot and an outlot into 3 lots, proposed Lots 1 and 2 having lot width of 6 feet and proposed Lot 3 having lot width of 8 feet, on property located at 3455 Annandale Road, Tax Map Reference 60-1((25))3, A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the co-owner of the land.
2. The present zoning is R-3.

3. The area of the lot is 2.217 acres.
4. The application does not meet the standards necessary for the granting of a variance, specifically standards 2, 4, 5, 6, 7, and 8.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1991.

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Page 43, September 10, 1991, (Tape 1), Scheduled case of:

9:20 A.M. LAURA LEA GUARISCO, VC 91-D-071, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard (4 ft. max. height allowed by Sect. 10-104) on approx. 15,306 s.f. located at 6354 Linway Terr., zoned R-3, Dranesville District, Tax Map 31-3((40))1.

Chairman DiGiulian stated that the agenda indicated that the case was to be deferred to September 24, 1991 at 9:40 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and said that because the required notification letters had been mailed one day late, the case could not be heard.

Mrs. Thonen made a motion to defer VC 91-D-071 to the suggested date and time. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 43, September 10, 1991, (Tape 1), Scheduled case of:

9:30 A.M. EDWARD & PATRICIA LEAHY, SP 91-D-033, appl. under Sect. 8-918 of the zoning Ordinance to allow accessory dwelling unit on approx. 21,825 s.f. located at 6026 Orris St., zoned R-1, Dranesville District, Tax Map 31-2((3))12. (OTH GRANTED 7/16/91)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Yantis replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting an accessory dwelling unit in the addition presently under construction at the rear of the existing dwelling. He noted that the addition was developed by-right and was being constructed within the bulk requirements of the R-1 District. Mr. Riegle further noted that the addition would consist of approximately 3,300 square feet, and the accessory dwelling unit will occupy 870 square feet of the addition. He stated that because the applicants' son was permanently disabled, the accessory dwelling unit would be used to house his caretakers.

Mr. Riegle said that the application met all the necessary zoning requirements and staff recommended approval subject to the development conditions contained in the staff report dated September 3, 1991.

The applicant's agent, Susan K. Yantis, with the firm of DeWberry and Davis, 8401 Arlington Boulevard, Fairfax, Virginia, addressed the BZA. She stated that the applicant was requesting the use of an accessory dwelling unit in the addition presently under construction. Ms. Yantis submitted statements from the applicants' doctors which attested to the fact that the applicants' six year old son was severely handicapped and needed constant care. She explained that the overwhelming physical demands on his parents necessitated the additional help for his care.

Ms. Yantis stated that the accessory dwelling unit would contain two bedrooms, living room, dining room, kitchen, and bath for a total of 870 square feet. She noted that adequate parking for both uses would be provided in the garage and in the driveway.

She stated that the applicants were present to answer any questions and thanked the BZA for granting the out-of-turn hearing. Ms. Yantis expressed her belief that the application met all the necessary standards and asked the BZA to approve the request.

In response to Mrs. Harris' question as to the number of garage bays, Ms. Yantis stated there were two. She used the viewgraph to explained that the circular driveway adjoined another driveway to the rear of the property which would provide adequate parking. Ms. Yantis confirmed that there would be no covered parking for the addition and the area between the addition and the house would be asphalted.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SP 91-D-033 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-033 by EDWARD AND PATRICIA LEAHY, under Section 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 6026 Orris Street, Tax Map Reference 31-2((3))12, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1 and HC.
3. The area of the lot is 21,825 square feet.
4. The application meets all the standards necessary for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the building and uses indicated on the plat submitted with this application by Dewberry & Davis dated May 22, 1991 and received in this office on June 28, 1991. This condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. A building permit for the kitchen shall be obtained in accordance with Chapter 59 of the County Code.

4. The accessory dwelling unit shall occupy no more than 870 square feet.

5. The accessory dwelling unit shall contain no more than two (2) bedrooms.

6. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

8. This special permit shall be approved for a period of five (5) years from the final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.

9. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

10. Parking shall consist of four (4) spaces and shall be provided in accordance with Par. 7 of Sect. 8-918 of the Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 46, September 10, 1991, (Tape 1), Scheduled case of:

9:45 A.M. GRAHAM ROAD UNITED METHODIST CHURCH, SP 91-P-040, appl. under Sects. 3-403 and 8-914 of the Zoning Ordinance to allow church and related facilities, child care center, and modification to minimum yard requirement due to error in building location to allow shed to remain 5.3 ft. and to allow building to remain 7.7 ft. from side lot lines (10 ft. min. side yard required by Sects. 3-403 and 10-104) on approx. 1.91 acres located at 2929 Graham Rd., zoned R-4, Providence District, Tax Map 50-3((8))48,47A,47B; 50-3((7))10,11. (OTH GRANTED 7/16/91)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Heironimus replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a special permit to allow the addition of a second child care center and approval of additional on-site parking. Additionally, as the existing church and child care center predated the Zoning Ordinance amendments which made these special permit uses in

the R-4 District, the special permit application will also serve to bring the existing church and child care center uses under special permit. Mr. Riegle said that the applicant was further requesting approval of a special permit for a modification of the minimum yard requirements based on an error in building location to allow an existing shed to remain 5.3 feet, and existing building to remain 2.3 feet from the side lot line.

He stated that the hours of operation for the church are Sunday mornings between 10:00 a.m. and 12:00 noon for worship services and Sunday School. Sunday evenings from 4:00 p.m. until 8:00 p.m. for worship services. Also there are various weekday evening church related activities and meetings. He noted that there are three employees associated with the church use. Mr. Riegle said that the existing child care center was established in 1967 and is not affiliated with the church. It presently has a maximum daily enrollment of 40 children and operates Monday through Friday between the hours of 9:30 a.m. and 12:00 noon, with six employees associated with the use.

Mr. Riegle stated that the proposed child care center would be a separate program operated by the church and would be called Graham Road Child Development Center. The proposed maximum daily enrollment would be 40 students, would operate from 7:00 a.m. and 6:00 p.m., Monday through Friday, and would employee approximately seven to ten persons.

Mr. Riegle stated that the applicant met the necessary standards and said that staff recommended approval subject to the development conditions contained in the staff report dated September 3, 1991.

In response to Mrs. Harris' question as to the location of the play area, Mr. Riegle used the viewgraph to point out the site which staff believed would be adequate subject to the restriction imposed by the Health Department.

In response to Mr. Pammel's question regarding the proposed uses, Mr. Riegle said that application would bring the existing church and the existing child care center under special permit and would establish the Graham Road Child Development Center. He deferred to the applicant to explain the differences between the two child care uses.

The Director of the Graham Road Child Development Center, Stephanie Johnson, 7140 Parkview Avenue, Falls Church, Virginia, noted that the existing use had been established approximately 25 years ago as a mothers day out program and had grown into a pre-school. She explained that although it was grandfathered, they would like to have it validated under the special permit. She stated that it operated Monday through Friday from 9:30 a.m. to 12:00 noon; on Monday and Friday they care for ten children who are two years of age; and, on Tuesday, Wednesday, and Thursday they care for thirty children.

She explained that the proposed use would be a full-day child development center for children from two to five years of age. Ms. Johnson said that it would operate separately but in the same building. She stated that the use was being established due to the critical need for good child care in the area.

The applicant's agent, Dean Heironimus, 3151 Kenney Drive, Falls Church, Virginia, addressed the BZA and expressed his appreciation to staff for their cooperation.

He stated that the church has been noted for its outreach into the community since its conception approximately fifty years ago. Mr. Heironimus stated that church members have studied the need for child care in the area, the feasibility of providing the service, and the center's ability to conform with County requirements. He explained that only after thoroughly researching the matter did the church decide to go forward with the plan in keeping with their tradition of providing essential services to the community.

Mr. Heironimus stated that the various County agencies have conducted inspections, the day care area had been remodeled to accommodate children, teachers have been hired, and the center was ready to open pending the approval of the special permit.

In conclusion, Mr. Heironimus requested Development Condition 4 which required a site plan be deleted. He asked the BZA to waive the eight-day waiting period.

Mrs. Harris made a motion to grant SP 91-P-040 for the reasons reflections in the Resolution and subject to the development conditions contained in the staff report dated September 3, 1991 with the following sentence added to Condition 4: "The Board of Zoning Appeals has no objection to a Site Plan waiver if requested by the applicant."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-P-040 by GRAHAM ROAD UNITED METHODIST CHURCH, under Section 3-403 and 8-914 of the Zoning Ordinance to allow church and related facilities, child care center, and modification to minimum yard requirement due to error in building location to allow shed to remain 5.3 feet and to allow building to remain 7.7 feet from side lot

lines, on property located at 2929 Graham Road, Tax Map References 50-3((8))4B, 47A, 47B, and 50-3((7))10, 11, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 1.91 acres.
4. The application is in harmony with the Comprehensive Plan.
5. The special permit will bring a use that was established prior to the Zoning Ordinance under compliance.
6. There will be no detrimental transportation impact on the area.
7. There will be no adverse impact on the community.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance and the standards for modification to the required yards based on error in building location set forth in Sect. 8-914.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat prepared by Kenneth W. White dated July 22, 1991, and revised through August 15, 1991, approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Kenneth W. White, dated July 22, 1991, revised through August 15, 1991, and these development conditions. The Board of Zoning Appeals has no objection to a Site Plan waiver if requested by the applicant.

5. The maximum number of seats in the main area of worship shall be 120 with a corresponding minimum of 30 parking spaces. All parking for the church shall be on site. At such time as the additional eleven (11) spaces shown on the approved Special Permit Plat are constructed, the seating capacity of the church may be increased to 150.

6. The hours of operation for the existing child care center shall be 9:30 a.m. until 12:00 p.m. Monday through Friday. The maximum number of children in this program shall be limited to forty (40). A minimum of eight (8) parking spaces shall be required for this use.

7. The hours of operation for the Graham Road Child Development Center shall be 7:00 a.m. until 6:00 p.m. Monday through Friday. The maximum number of children in this child care center shall be limited to forty (40). Eight (8) parking spaces shall be required for this use.

8. The maximum number of children who shall be on the play area shared by the two child care centers shall not exceed forty-five (45) at any one time.

9. As depicted on the approved special permit plat, a six (6) foot wood fence shall be constructed along southern and western side of the play area.

10. The points of access to the parking area site from Graham Road and Rosemary Lane shall be marked as one-way entrances or exits as determined necessary by the Department of Environmental Management.

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11. Right-of-way dedication to 26 feet from the existing centerline of Rosemary Lane shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary construction easements shall be provided to facilitate these improvements.

12. All existing vegetation on the site shall be retained and shall be deemed to fulfill the requirement for Transitional Screening 1 along all of the site's boundaries as may be acceptable to the Urban Forestry Branch, DEM. The existing chain link fence shall be deemed to fulfill the Barrier requirement.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

Mrs. Harris made a motion to waive the eight-day waiting period. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 10, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 49, September 10, 1991, (Tape 1), Scheduled case of:

10:00 A.M. JEROME S. & BURNHAM S. MORSE, VC 91-D-072, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.2 ft. from side lot line, to allow existing house to remain 6.6 ft. from side lot line and existing deck to remain 4.6 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 10,550 s.f. located at 1935 Rockingham St., zoned R-2, Dranesville District, Tax Map 41-1((13))(8)10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Morse replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to the minimum side yard requirements to permit construction of an addition and deck to 5.2 feet from the side lot line and to allow the existing dwelling and deck to remain 6.6 feet and 4.6 feet, respectively, from the side lot line. The Zoning Ordinance requires dwellings and other structures to be located no closer to the side lot line than the minimum side yard requirement, which in the R-2 Zoning District is 15 feet, and requires decks greater in height than 4.0 feet to maintain this same distance. Therefore, given that the existing and proposed heights of the decks exceed 4.0 feet, the applicants were requesting a variance of 9.8 feet to the minimum side yard requirement for the proposed addition and deck and a variance of 8.4 feet and 10.4 feet to the minimum side yard requirement for the existing dwelling and deck.

Mrs. Harris stated that it was her understanding that Lot 10 had been part of Lots 9, 10, and 20, and was purchased in its present condition. Mr. Jaskiewicz said she was correct.

The applicant, Burnham S. Morse, 1935 Rockingham Street, McLean, Virginia, addressed the BZA. She stated that the house was a very lovely old Victorian cottage which had been built before the enactment of the Zoning Ordinance. She explained that in order to provide adequate room for her growing family, she would like to add two rooms to the rear of the structure. Ms. Burnham stated that the addition would enable her family to make the house their permanent home. She confirmed the fact that she had purchased the lot in its present configuration.

In response to Mrs. Harris' question as to whether Lot 20 was a buildable lot, Ms. Burnham stated that Lot 20 was presently used as a drainage area and she believed it was not buildable.

In response to Mr. Ribble's question regarding Lot 9, she stated she did not know who owned the property and also stated that she had no information regarding the past subdivision of the property.

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Mr. Pammel asked if the strict application of the Zoning Ordinance would unreasonably restrict the use of the property. Ms. Burnham stated that strict application would cause the removal of the house. She also explained that if the variance for the addition was not granted, her family would have to move.

Mr. Ribble made a motion to grant VC 91-D-072 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 3, 1991.

Mrs. Harris and Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Harris stated that the addition would be no closer to the side lot line than the existing house; therefore, the request was for a minimal variance.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if Mr. Ribble had accepted Mrs. Harris finding as part of the motion. Mr. Ribble said that he not only accepted it, he had endorsed it.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-072 by JEROME S. AND BURNHAM S. MORSE, under Section 18-401 of the Zoning Ordinance to allow addition 5.2 feet from side lot line, to allow existing house to remain 6.6 feet from side lot line and existing deck to remain 4.6 feet from side lot line, on property located at 1935 Rockingham Street, Tax Map Reference 41-1((13))(8)10, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,550 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. Exceptional narrowness existed at the time of the effective date of the Ordinance.
6. Lot 20, which abuts the property, is not a buildable lot.
7. Lot 9 is large enough to accommodate a structure that would have adequate distance from the subject property.
8. The addition will not extend any further into the side yard or toward the side lot line than the existing structure.
9 The request is for a minimal variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific additions shown on the Variance plat, entitled Site Plan and dated June 5, 1991, and stamped and sealed by David Cumins Mitchell, Certified Architect, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the Board of Zoning Appeals (BZA) because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris and Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 49, September 10, 1991, (Tapes 1 and 2), Scheduled case of:

10:10 A.M. EMMANUEL BAPTIST CHURCH, SP 91-L-026, appl. under Sect. 3-203 of the Zoning Ordinance to allow addition of modular unit and existing church and related facilities, on approx. 4.3525 acres located at 3801 Buckman Road, zoned R-2, Lee District, Tax Map 101-2((1))6A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor Hatfield replied that it was.

Mike Jaskiewicz, Staff Coordinator, present the staff report. He stated that the applicant was seeking approval of a Special Permit for a church and related facilities and an addition (portable classroom trailer). Mr. Jaskiewicz said that the church office would be open daily from 9:00 a.m. to 3:00 p.m. He further stated that the church would hold worship services on Sundays between 9:15 a.m. and 12:30 p.m. and 6:45 p.m. and 8:15 p.m. and on Wednesdays between 6:45 p.m. and 8:45 p.m. He noted that there are two full-time employees on the site which presently contains a one-story church sanctuary with 163 seats, a storage shed, and a paved parking lot with 44 vehicle spaces. The floor area ratio allowed is .20 and this application provides .04.

Mr. Jaskiewicz stated that the proposed classroom trailer will be used to accommodate 48 people for Sunday School from 9:30 a.m. to 10:45 a.m. He noted there are no existing child care facilities on site and no changes other than the portable classroom addition were proposed.

He said that staff found that the portable classroom trailer and the existing church and related facilities can co-exist with minimal intensification of the site and would be in harmony with the Zoning Ordinance and the Comprehensive Plan provided that they are adequately screened from the adjacent residential uses. Mr. Jaskiewicz stated that staff believed that such screening should include both transitional landscape screening, as well as physical barriers such as trailer skirting to alleviate visual and noise impacts. Furthermore, the placement of the trailer would be for a temporary classroom use and should be conditioned for a five year term. Mr. Jaskiewicz noted that staff supported the application subject to the development conditions contained in the staff report dated September 3, 1991.

The applicant, Pastor O. P. Hatfield, Emmanuel Baptist Church, 3801 Buckman Road, Alexandria, Virginia addressed the BZA. He stated that the church served an area that has an

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international population. He explained that since the area was comprised of low income people with numerous needs, the church's resources were constantly being stretched to the limit. Pastor Hatfield said that although the church employed two persons, the main ministry was provided by volunteers.

Pastor Hatfield said that the modular units were needed in order to accommodate the growing congregation. He expressed his belief that the expansion would help provide the critically needed finances. Pastor Hatfield stated that in cooperation with various County agencies, the church was involved in feeding the homeless and also in ministering to the congregation's emotional, spiritual, and physical needs. He further stated that the area has a high rate of drug abusers and the church was actively engaged in ministering to their needs. He stated that due to the high cost of building, the church was unable to finance permanent classrooms and the modular building would provide the classrooms at a reasonable cost.

In summary, Pastor Hatfield thanked the BZA for their consideration and complimented staff on the quality of the staff report.

Mrs. Thonen stated that she wanted to compliment Pastor Hatfield on his work in the community. She noted that the church had been actively engaged in community work since 1962 and expressed her support for the request.

Mr. Kelley stated that he was familiar with the area and also wanted to add his support for the church. He asked if the development conditions were agreeable, Pastor Hatfield said that the church could not guarantee that a permanent building could be constructed after the five year term expired. He again explained that the congregation contributed as much as possible, but the many critical needs of community strained their limited resources.

Mrs. Thonen explained that the church would be allowed to renew the request when the term expired if their were no complaints filed. Pastor Hatfield stated that the congregation took pride in the fact the church property was well maintained.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Kelley asked staff if it would be appropriate to allow administrative extensions of the five year period by the Zoning Administrator. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that it would be if it were added to Condition 10 of the development conditions.

Mr. Kelley made a motion to grant SP 91-L-026 subject to the development conditions contained in the staff report dated September 3, 1991, with the following modification to Development Condition 10: "The Zoning Administrator shall be permitted to make annual extensions for an additional period of five (5) years". Mr. Ribble seconded the motion.

Chairman DiGiulian asked whether Mr. Kelley would consider adding the following statement to Condition 4: "The BZA did not object to the approval of the site plan waiver". Mr. Kelley agreed to incorporate the statement into his motion. Mr. Ribble seconded the incorporation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-026 by EMMANUEL BAPTIST CHURCH, under Section 3-203 of the Zoning Ordinance to allow addition of modular unit and existing church and related facilities, on property located at 3801 Buckman Road, Tax Map Reference 101-2((2))6A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 4.3525 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Kenneth W. White dated May 1, 1991 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. The Board of Zoning Appeals has no objection to a Site Plan waiver if requested by the applicant.

5. The maximum seating capacity in the main area of worship shall be limited to a total of 163 seats with a corresponding minimum of 41 parking spaces. There shall be a maximum of 44 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements. All parking shall be on site.

6. Transitional Screening 1 and Barrier D, E, or F shall be provided along the rear and both side lot lines. Existing trees and vegetation may be supplemented to satisfy this requirement where appropriate, as determined by the County Urban Forester, so as to be equivalent to Transitional Screening 1. Where sufficient area is available, landscaping shall be provided between the parking lot and the residential uses along Buckman Road. This landscaping shall provide adequate sight distance. Interior parking lot landscaping shall be provided in the existing parking lot islands in accordance with Article 13. The County Urban Forester shall review and approve the size, type, location and quantity of all the above plantings.

7. Skirting and building foundation plantings shall be provided along the rear and both sides of the proposed modular unit in order to enhance the visual appearance of the structure and to soften the impact of this building mass upon the adjacent residential use to the south and west. The species, location, planted height and number of plantings shall be reviewed and approved by the County Urban Forester at the time of Site Plan review.

8. Any proposed lighting of the parking areas shall be in accordance with the following:

   The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

   The lights shall focus directly onto the subject property.

   Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

9. The height of the proposed modular unit (Sunday School classroom trailer) shall not exceed 12 feet, and its Floor Area Ratio (FAR) shall not exceed 0.04, as depicted on the Special Permit plat, dated May 1, 1991.

10. The proposed modular unit (Sunday School classroom trailer) shall be approved for a period of five (5) years from the final approval date of Special Permit SP 91-L-026. The Zoning Administrator shall be permitted to make an annual extension for an additional period of five (5) years. The modular unit shall only be used for Sunday School purposes between the hours of 9:30 a.m. and 10:45 a.m. on Sunday.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required SP 91-L-026 Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

Mr. Kelley made a motion to waive the eight-day waiting period. Mr. Ribble and Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 10, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 53, September 10, 1991, (Tape 2), Scheduled case of:

10:20 A.M. KAMLA PATEL, SP 91-D-027, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 14,985 s.f. located at 1950 Kirby Rd., zoned R-3, Dranesville District, Tax Map 40-2((21))21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Patel replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a Special Permit to allow an accessory dwelling unit of 991.0 square feet to be located in the lower level of the existing dwelling.

Mr. Jaskiewicz said that staff's review of the proposal relative to the applicable provisions of the Zoning Ordinance revealed compliance with all of the standards except Standard No. 7 of Sect. 8-918 requiring the BZA to determine if the parking shown would be sufficient to meet the needs of both the principal and accessory dwelling units. He expressed staff's belief that the existing driveway, while providing the two required vehicle spaces for the principal use and a vehicle space for the accessory dwelling use, would not allow simultaneous street access for each use in its present 8.0 foot wide configuration. Mr. Jaskiewicz stated that staff recommended that the driveway's parking pad be widened so as to allow two vehicles to park side-by-side and thereby allow simultaneous street access.

The applicant, Kamla Patel, 1950 Kirby Road, McLean, Virginia, stated that she was 62 years of age, worked for the Department of the Army at Fort Monmouth, New Jersey, and planned to live in the house upon retirement. She said that she would acquiesce all the development conditions including the one regarding the parking pad.

Ms. Patel complimented staff for their fine analytic research. She expressed her belief that Fairfax County had the right to be proud of the fine work being done by the staff and asked the BZA to grant the request.

In response to Mr. Kelley's question as to the person who would be living in the accessory dwelling, Ms. Patel stated that she plans on having one of her sons live there. She said only if her son does not live there, would she consider leasing. Ms. Patel explained that she could not afford the house without additional income and had a financial statement which indicated her projected income after retirement.

Mrs. Thonen's stated that it was her understanding that there was a 55 years of age requirement for the owner of a house with an accessory dwelling, but no age requirement for the lessee. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that Mrs. Thonen was correct.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SP 91-D-027 subject to the development conditions contained in the staff report dated September 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-027 by KAMLA PATEL, under Section 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 1950 Kirby Road, Tax Map Reference 40-2((21))21, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,985 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the building and uses indicated on the plat submitted with this application by Kenneth W. White dated September 25, 1991. This condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. This Special Permit is subject to the issuance of a building permit for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 991 square feet.

5. The accessory dwelling unit shall contain no more than one bedroom and shall be occupied by no more than two (2) persons.

6. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

8. This special permit shall be approved for a period of five (5) years from the final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.

9. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

10. The existing paved parking pad adjacent to the subject principal dwelling unit shall be widened so as to accommodate two (2) vehicles parked side-by-side, and shall taper back to the existing curb cut on Kirby Road in such a manner so as to provide street access to two (2) vehicles at any one time. Parking shall consist of three (3) required spaces.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 5-1 with Mr. Kelley voting nay. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:48 a.m. and reconvened at 11:05 a.m.

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10:30 A.M. JIM ZARIN, VC 91-Y-073, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 16.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 13,154 s.f. located at 13154 Pavilion Ln., zoned R-3 (developed cluster), WS, Sully District, Tax Map 45-1((3))(25)41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Rydell replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a variance to allow the construction of an addition to be located 16.0 feet from the side lot line. The proposed addition would enclose an existing concrete patio that is 12.0 feet by 15.0 feet. Section 3-307 of the Zoning Ordinance requires a minimum rear yard of 25.0 feet; thus, a variance of 9.0 feet to the minimum rear yard was requested.

In response to Mrs. Harris' question as to whether the proposed solarium would be the same size as the existing concrete pad, Mr. Zarin confirmed that it would.

The applicant's agent, William Rydell, 8601 Collingwood Court, Alexandria, Virginia, addressed the BZA and stated that the applicant would like to add a family room onto his small house. He noted that the proposed location was the only possible site for the solarium.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 91-Y-073 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-073 by JIM ZARIN, under Section 18-401 of the Zoning Ordinance to allow addition 16.0 feet from rear lot line, on property located at 13154 Pavilion Lane, Tax Map Reference 45-1((3))(25)41, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster), and WS.
3. The area of the lot is 13,154 square feet.
4. The placement of the house on the lot precludes any building addition.
5. The request is for the minimum possible variance and does not require any side yard variance.
6. An unusual topographical condition exists with the abutting property to the rear. It is an open field with a trail and the variance would not create a hazardous risk for that property.
7. Strict application of the Zoning Ordinance would prohibit reasonable use of the property.
8. Any addition would require a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the addition to the specific dwelling shown on the plat (dated April 17, 1991) prepared by John K. White and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 56, September 10, 1991, (Tape 2), Scheduled case of:

10:40 A.M. FRANK W. & EMMA E. KANIA, SP 91-B-025, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (workshop) to remain 0.8 ft. from side lot line and 1.7 ft. from rear lot line (12 ft. min. side yard and 10.6 ft. min. rear yard required by Sects. 3-307 and 10-104) on approx. 10,674 s.f. located at 5307 Easton Dr., zoned R-3, Braddock District, Tax Map 71-3((1))(22)13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Kania replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a reduction to the minimum yard requirements based on an error in building location to allow a 10.6 feet high accessory (detached) structure (workshop) to remain 0.8 feet from side lot line and 1.7 feet from the rear lot line. Section 3-307 requires a minimum side yard of 12.0 feet in the R-3 Zoning District and Section 10-104 requires that an accessory structure which exceeds 8.5 feet in height not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line. Therefore, modifications of 11.2 feet from the minimum side yard requirement and 8.9 feet from the minimum rear yard requirement were requested.

Ms. Bettard stated that staff believed that due to the visibility of the accessory structure from the street, the area should not be used for storage. She expressed staff's concern regarding the noise generated by the workshop activity and noted that a condition relating to this issue had been included in the staff report. Ms. Bettard said that staff recommended approval based on the development conditions contained in the staff report dated September 3, 1991.

The applicant, Emma E. Kania, 5307 Easton Drive, Springfield, Virginia, addressed the BZA. Ms. Kania stated that she and her husband had lived in the house since 1956 and explained that the drainage area on the property precluded the building of a garage. She said that the shed, which is used to refurnish furniture, was built on the only dry area of the backyard. Ms. Kania informed the BZA that she had hired a builder, questioned him on the setback requirements, and was told the shed would be built in conformance with the Zoning Ordinance. She explained that the builder was deceased and asked the BZA to grant the request.

In response to Mr. Ribble's question as to whether she agreed with the proposed development conditions, Ms. Kania said she did.

Mrs. Harris expressed her concern regarding the applicant's knowledge of setback requirements before the construction of the shed. Ms. Kania said that she did not realize that the lot line angled and narrowed to the rear of the property. She stated that she too wished the shed was set further back from the fence as it was very hard to maintain the area.

In response to Mr. Ribble's question as to whether she knew the shed would be too close to the lot line, Ms. Kania stated that she did not realize it would be so close to the property line. She noted that when the property was purchased, an aluminum shed was standing on the existing shed's location and the contractor removed the aluminum shed and merely poured the new concrete slab over the existing slab.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 91-B-025 subject to the development conditions contained in the staff report dated September 3, 1991. He stated that there was enough confusion to lead him to believe the non-compliance was done in good faith and through no fault of the property owner.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-B-025 by FRANK W. AND EMMA E. KANIA, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (workshop) to remain 0.8 feet from side lot line and 1.7 feet from rear lot line, on property located at 5307 Easton Drive, Tax Map Reference 71-3((1))(22)13, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 10, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

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F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the specific structure shown on the plat (dated May 31, 1991) prepared by Kenneth W. White and submitted with this application.

2. This Special Permit is granted only for the accessory structure indicated on the Special Permit Plat approved with this application, as qualified by these development conditions.

3. A Building Permit shall be obtained and inspections finaled for the accessory structure if required by the Department of Environmental Management.

4. No power tools shall be operated in the accessory structure (workshop) prior to 9:00 a.m. on week-ends and holidays or prior to 8 a.m. on other days during the year, or after 8 p.m. in the evening; and all applicable Noise Ordinances of the County shall be complied with.

5. The front porch of the accessory structure (workshop) shall not be used for storage or workshop activities.

This approval contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mrs. Thonen seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 58, September 10, 1991, (Tapes 2 and 3), Scheduled case of:

11:00 A.M. FOREMAN OF VIRGINIA APPEAL, A 91-L-010, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the Floor Area Ratio for a warehouse use of wholesale liquor storage is calculated based on the standard for bulk storage of materials including grain and petroleum on approx. 208,000 s.f. located at 7550 Accotink Park Rd., zoned I-5, Lee District, Tax Map 80-1((1))3A.A)

Chairman DiGiulian called for location of the property and for a staff report.

The Zoning Administrator's representative, William Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and stated that the property is located at 7550 Accotink Park Road, on 200,042 square feet of land zoned I-5, Tax Map 80-1((1))3A. Mr. Shoup stated that the issue was the Zoning Ordinance definition of gross floor area which states that the gross floor area devoted to bulk storage of materials including but not limited to grain elevators and petroleum storage tanks shall be computed by counting each 10.0 feet of height or fraction thereof, as being equal to one floor. He noted that gross floor area is used for determining Floor Area Ratio (FAR) on a lot. Mr. Shoup said that it was the Zoning Administrator's position that warehouse buildings constitute structures that are devoted to the bulk storage of materials; therefore, each 10.0 feet of height or fraction thereof for a warehouse is considered to be one floor.

Mr. Shoup stated that the appellant's use was principally a warehouse establishment involving the storage of bottled and packaged liquor for distribution to retailers in the Washington area. He noted that a site visit revealed that much of the 28.0 foot interior height of the

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structure was used for storage. Mr. Shoup explained that in 1982, when the site plan was approved for the original structure, the gross floor area and FAR were incorrectly calculated in that only one floor of the gross floor area was computed instead of three floors. However, in spite of the error, the original structure did satisfy the 1.0 FAR that is required for the I-5 District.

Mr. Shoup said that the appeal was prompted by the proposal to construct a 32,000 square foot addition. He stated that it was staff's position that the appellant's warehouse constitutes a structure devoted to bulk storage; therefore, each 10.0 feet of height or fraction thereof, for both the original structure and the proposed addition must be computed as being equal to one floor for the gross floor area purposes. Therefore, since the total gross floor area and the FAR would exceed that which is permitted in the I-5 District, the proposed addition would not be permitted.

Chairman DiGiulian asked if it was staff's position that all warehouses are considered to be bulk storage and Mr. Shoup confirmed that it was. Chairman DiGiulian noted the definition in the Zoning Ordinance did not stipulate warehouses and expressed his belief that if it had been intended that bulk storage be used in defining warehouse, which was a more prevalent use than a grain elevator or petroleum storage tank, it would have included warehouse. Mr. Shoup said he did not know why the term "warehouse" had not been used. He suggested that the terms grain elevators and petroleum storage tanks may have been included because they are such different facilities and were provided for clarification. Mrs. Harris asked if there were a special delineation in Article 20 that deals specifically with warehouses for gross floor area, Mr. Shoup said there was not. He further stated that the 32,000 square feet referred to the footprint of the structure.

The appellant's agent, Frank W. Stearns, Wilkes, Artis, Henrick and Lane, 11320 Random Hills Road, Suite 600, Fairfax, Virginia, addressed the BZA. He stated that the structure was used for storage for wholesale distribution of liquor in the area. Mr. Stearns said that he disagreed with staff's interpretation that any warehouse was a bulk storage facility. He explained that both the grain elevator and the petroleum storage tank are filled with a single product consisting of loose material which can be distributed by a single lever; whereas, the appellant's facility has approximately 2,000 different items, that must be stored and inventoried separately. Mr. Stearns noted that in order to accommodate the operation at the appellant's facility, the aisles are approximately 12.0 feet in width. He noted that this constituted the fundamental difference in density. He expressed his belief that the Board of Supervisors did distinguish the bulk storage from normal warehouse storage by using the terms "grain elevator and petroleum storage tanks."

Mr. Stearns stated that he had investigated other operations that were similar to the appellants. He said that he had found the six warehouses picked at random had all been counted with no phantom floors. For example, one building which is sixty-six feet in height was counted as a four story building; another building fourteen feet in height was counted as a one story building; another building seventeen feet in height was counted as a one story building; and another building twenty-two feet in height which has the part of the building used for the office being considered as two floors and the part of the building used for warehouse being consider as one floor. Mr. Stearns went on to explain that the site plan on another warehouse building has stipulated that no bulk storage would be allowed in the warehouse. He expressed his belief that the warehouses investigated were consistent with the appellant's position.

Mrs. Harris asked what part of the Zoning Ordinance more closely defined a warehouse. Mr. Stearns stated the first part of the Zoning Ordinance defines everything, i.e. house, office buildings, warehouses, and then stipulates that bulk storage facilities should be calculated differently. He explained that because of the weight, boxes can only be stored to 20 feet.

Mrs. Thonen asked whether staff considered bulk storage and storage of package goods as the same type of operation. Mr. Shoup stated that staff considered the storage of package goods as being the bulk storage of materials. He further explained that although the materials were not packaged loose, the dictionary definition of "bulk" also included large quantities, magnitude volume and size. He stated that it was staff's position that warehouses traditionally store materials in great quantity, high volume, large turnover, therefore were considered bulk storage.

In response to Chairman DiGiulian's question as to whether operations such as Giant Food Stores and Shoppers Food Warehouse were charged with two floors, Mr. Shoup said they were not because the principle use was for retail.

In response to Mr. Pammel's question regarding an auto supply center that supplies parts to dealers throughout the area, Mr. Shoup stated that judging from the description given by Mr. Pammel it would be considered a warehouse.

Mrs. Harris stated that in Part 3 of Article 20 it states, "The sum of the total horizontal areas of the several floors of all buildings." She noted that the appellant's building only consisted of one floor. Mr. Stearns again stated that it was his belief that the language used by the Board of Supervisors had indicated that it was their intention that the Ordinance provision be used in cases of bulk storage such as grain elevators or liquid storage tanks.

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There being no speakers to the appeal, Chairman DiGiulian asked for staff comments.

Mr. Shoup stated that it was the appellant's contention that the storage of prepackaged materials should not be regulated as bulk storage. He noted that the building's height was the equivalent to a three story building, but would be calculated as only one floor of gross floor area if the provision is not applied. He explained when a warehouse structure is considered to be a three story building it is calculated to have a FAR that is consistent with other structures. Bulk regulations were imposed to restrict the bulk on a site and if the provision is not applied to uses such as the appellants, they would enjoy an advantage that others do not. Mr. Shoup said that it has been a longstanding interpretation that warehouses come under come under the same restriction as the loose bulk storage facilities.

In response to Mrs. Thonen's question as to when the provision was adopted, Mr. Shoup stated it came into effect in 1978. He explained that the amount of storage was used as the guideline. In referring to Shopper's Warehouse and the Price Club, Mrs. Thonen stated that there must be more leeway given to a retail establishment because they both have an enormous amount of storage area. Mrs. Harris stated that these two business sell one item at a time to the general public, whereas the appellant does not.

Mr. Stearns stated that due to the nature of the business, the appellant stacks materials, has wide aisles, has constant inventories, and must have goods readily available to customers. He noted that the grain elevator and storage tanks are designed to be filled to the top with one single product that can easily be distributed to a customer. Mr. Stearns said that the distinct difference in the product, the distribution, and the type of storage required for the bulk storage versus the storage of 2,000 diverse items led the Board of Supervisor to use the language in the provision.

Mr. Kelley expressed concern regarding the six other warehouses that were not calculated under the bulk storage regulations and noted there had not been a consistent application of the provision.

Chairman DiGiulian noted that Marlo's furniture store is approximately 30 feet in height and stores furniture from floor to ceiling and asked if it would come under the bulk provision. Mr. Shoup stated that the Zoning Ordinance addresses that certain types of businesses as a combination of warehouse/retail use with a 60/40 use. He stated that without reviewing the site plan, he could not give an accurate answer regarding a specific property.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to reverse the Zoning Administrator's determination that based on the current definition of gross floor area, the Floor Area Ratio (FAR) for a warehouse use for wholesale liquor storage is calculated in accordance with the standard that is applicable to floor area devoted to bulk storage of materials, including but not limited to grain elevators and petroleum storage tanks. He stated that it had been a very difficult determination and noted that the records had indicated that there had been a comedy of errors regarding the case. Mr. Pammel said that the issue of definition would have been addressed by the BZA in 1982 or 1983 had the applicant presented a site plan to the County with the correct information on it, as per the definition of the Code at that time. The issue did not surface until an adjustment was made in the Ordinance with respect to the 1989 changes. And then there were a number of different opinions that were expressed at that point of time. Mr. Pammel stated that it was interesting because of the several definitions in the Ordinance that basically mean the same thing. He noted that under the I-5 Industrial District, Number 6 refers to a permitted use as establishments of the production, processing, assembly, manufacturing, compounding, preparation, cleaning, service, testing, repair, or storage of materials, goods, or products. Furthermore, there is a blanket term, warehousing and associated retail establishments. He referred to the parking requirements or minimum required spaces for industrial and related uses, and noted that the requirements are based on manufacturing establishment, or establishment for production, processing, assembly, compounding, preparation, cleaning, service, servicing, testing, repair or storage of materials, again, the term "storage of materials." Mr. Pammel stated that it was his belief that by definition, a warehousing establishment was a building used primarily for the holding or storage of goods and merchandise. He stated that the testimony questioned how the term bulk should be used in reference to the storage of goods, and expressed his belief that bulk is an interim process, and does not refer to the final process or packaged goods. Mr. Pammel stated that with respect to Foreman's issue, it was a packaged good. He said that since they are storing packaged goods in the warehouse to be distributed to dealerships throughout the area, it is not bulk storage. He stated that it was a final packaged product that has been processed, packaged, and was ready for distribution. He stressed the distinction and noted that bulk storage items are not packaged into smaller quantities and distributed. Mr. Pammel stated that based on that interpretation, he would make a motion to find in favor of the appellant. He stated that their establishment is a warehouse for goods that have been processed and packaged and are ready for distribution; therefore, the standards for a warehouse should be applied to their use.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mr. Kelley, Mr. Ribble, and Mr. Pammel voting aye; Mrs. Harris and Mrs. Thonen voting nay. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 18, 1991. This date shall be deemed to be the final approval date of this appeal.

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The Board of Zoning Appeals recessed at 12:03 p.m. and reconvened at 12:13 p.m.

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Page 61, September 10, 1991, (Tape 3), Action Item:

Additional Information on Woodlawn County Club
SPA 74-V-107-2

Mr. Kelley stated that he had had several discussions with representatives of the Department of Environment Management (DEM) and had yet to receive a satisfactory explanation as to why DEM will not acquiesce to the Board of Zoning Appeals (BZA) decisions regarding specific cases. He noted that in the instance of Woodlawn Country Club, the BZA had specifically removed a proposed development condition requiring a trail to run through the golf course. DEM having full knowledge of the BZA decision, still insisted that the Country Club provide the trail.

After a brief discussion, it was the consensus of the BZA to have staff prepare a memorandum to the Director of DEM expressing the BZA's concerns regarding the issue.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that staff meet with the BZA to discuss preventative measures so that situations such as the trail do not reoccur.

During a brief discussion, the BZA expressed its desire to include in future motions a development condition specifically stating that a proposed development condition has been removed, instead of just deleting the condition.

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Page 61, September 10, 1991, (Tape 3), Action Item:

Additional Time
La Petite Academy, SP 89-V-042
8803 Hooes Road
Tax Map Reference 97-2((2))35, 36

Mr. Pammel made a motion to grant the additional time. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting. The new expiration date will be May 24, 1992.

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Page 61, September 10, 1991, (Tape 3), Action Item:

Out-of-Turn Hearing
Kirk M. Agon, SP 91-P-048

Mr. Pammel made a motion to grant the request and scheduled the case for November 12, 1991. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Page 61, September 10, 1991, (Tape 3), Action Item:

Rescheduling of Appeal
3-D Development Corporation Appeal, A 91-C-008

Mr. Pammel made a motion to grant the request with no specific date and time. He stated that Mr. Sanders had indicated that he was working with the County staff toward resolving the issue. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Page 61, September 10, 1991, (Tape 3), Action Item:

Out-of-Turn Hearing
James R. Jr. and Sharon Fisher, SP 91-D-042 and VC 91-D-086

Mr. Ribble made a motion to deny the request. Mr. Kelley and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Page 62, September 10, 1991, (Tape 3), Action Item:

Request for Scheduling of Appeal
Theresa Brown Veverka, Trustee for Clarence C. Brown's Estate Appeal
A 91-V-015

Mr. Pammel made a motion to schedule the case for November 7, 1991, at 11:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Page 62, September 10, 1991, (Tape 3), Action Item:

Request for Scheduling of Appeal
Harvey G. and Jaton L. West Appeal, A 91-Y-016

Mr. Kelley made a motion to schedule the case for November 19, 1991, at 8:00 p.m. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Page 62, September 10, 1991, (Tape 3), Action Item:

Request for Scheduling of Appeal
Shewood Lynn Eure (Blue Channel Seafood) Appeals, A 91-V-013 and A 91-V-014

Mr. Pammel made a motion to schedule the cases for October 29, 1991, at 11:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Page 62, September 10, 1991, (Tape 3), Action Item:

Additional Time
Providence Presbyterian Church and Trinity Christian School, SPA 82-A-039-3
9019 Little River Turnpike
Tax Map Reference 58-4((1))1

Mrs. Thonen made a motion to grant the additional time of six months. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting. The new expiration date will be March 6, 1992.

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Page 62, September 10, 1991, (Tape 3), Action Item:

Request for the Withdrawal of Appeal
R. L. Wilson Appeal A 91-D-007

Mrs. Thonen made a motion to allow the withdrawal of the referenced appeal. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Page 62, September 10, 1991, (Tape 3), Action Item:

Out-of-Turn Hearing
Federal Deposit Insurance Corporation, SP 91-D-050

Mr. Pammel made a motion to deny the request. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mr. Hammack was absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that Jane W. Gwinn, Zoning Administrator, had been present to answer questions regarding the new Zoning Ordinance Amendment on the Board of Zoning Appeals power to revoke special permits. Ms. Kelsey noted that William Shoup, Deputy Zoning Administrator, and Michael Congleton, Deputy Zoning Administrator for Ordinance Administration Branch, had indicated they would continue to be available to answer any questions the BZA may have.

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Page 63, September 10, 1991, (Tape 3), (ADJOURNMENT)

As there was no other business to come before the Board, the meeting was adjourned at 12:30 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 7, 1991

APPROVED: November 12, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on September 17, 1991. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:02 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 65, September 17, 1991, (Tape 1), Scheduled case of:

8:00 P.M. R. L. WILSON & ASSOCIATES, INC. APPEAL, A 91-D-007, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the western boundary line of the subject property is a rear lot line rather than a side lot line and that consequently the existing dwelling is located in violation of the rear yard requirement on approx. 82,046 s.f. located at 1101 Colvin Mill Court, zoned R-1, Dranesville District, 12-4((17))(2)4.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the Board had allowed the withdrawal of the appeal at its September 10, 1991 meeting and the case had inadvertently been left on the agenda.

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Page 65, September 17, 1991, (Tape 1), Scheduled case of:

8:00 P.M. DOUGLAS WILLIAM FAGUE, A 91-S-009, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that Par. 9 of Sect. 11-102, which provides that off-street parking spaces may not be located closer than 10.0 ft. to any front lot line, does not apply to a townhouse development known as Winding Ridge Subdivision, Phase II, zoned R-1, R-8, Springfield District, Tax Map 65-2((11))83-141, D. (DEF. FROM 8/6/91 AT REQUEST OF APPLICANT AND BOS)

The appellant, Douglas William Fague, 14096 Winding Ridge Lane, Centreville, Virginia, came forward and requested a deferral. Mrs. Thonen asked the reason for the deferral.

Mr. Fague explained that there are two pending Zoning Ordinance amendments, one dealing with the 10 foot offset for parking for townhouse lots, which he believed to be directly applicable to his case. He stated that the Planning Commission would hear the amendment within two weeks and it would then be scheduled to be heard by the Board of Supervisors. Mr. Fague added that there had been some question as to whether the interpretation issued that allowed the parking configuration was in substantial conformance, and he hoped that the Planning Commission and the Board of Supervisors could shed some light on what the original intent had been.

Vice Chairman Ribble polled the audience to determine if there was anyone present who wished to address the deferral request.

John Farrell, attorney with the law firm of Odin, Feldman, and Pittleman, 9302 Lee Highway, Suite 1100, Fairfax, Virginia, represented Curtis F. Peterson, owners of the property and developer of the subdivision on which the appeal has been filed. Mr. Farrell stated that he had noted at the August 6, 1991 public hearing that his client would object to any further deferrals as they did not believe that the appellant had any standing nor did they believe that the appeal had been filed in a timely manner. He asked the Board to dispose of the appeal on both issues so his client could remove a "cloud" that hangs over the head of their operation. Mr. Farrell stated that whatever the Board of Supervisors might do with the pending amendment would have no impact as to whether the appellant had any standing or whether the appeal was timely filed. He asked the Board to deny the request for the deferral.

In response to a question from Mrs. Thonen as to how the appeal was impacting the development, Mr. Farrell replied that the appeal had a chilling effect on the sales of the lots. He stated that the question arose as to his client's obligation and what effect the appeal had upon the lender's decisions when citizens were attempting to obtain loans to purchase the lots.

Mr. Farrell stated that although his client was, at the moment, able to get building permits he believed that the County staff might be more "tender" when dealing with the lots then they normally would be. He stated that the greater concern had to do with the outside lenders. Mr. Farrell added that the case had been deferred from August 6, 1991, to allow time for input from other sources and that he was not sure that those other sources would have any input into the appellant's standing or the timeliness issue.

Mrs. Harris noted she had been to the site and the building was continuing and that it appeared to be a "cloud" over the developer rather than damaging to the developer. Mr. Farrell agreed that the building was going on and stated that it was a "cloud as opposed to a hurricane". He stated that there was a concern clearly on the part of the home builder as to whether they were going to be able to go to closing, what the lender should be told, and what obligation the seller was under to discuss the appeal with potential purchasers.

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Vice Chairman Ribble asked if staff had any comments. William E. Shoup, Deputy Zoning Administrator, stated that staff had no objections to the deferral.

In response to questions from Mrs. Thonen about the pending Zoning Ordinance amendments, Mr. Shoup replied that if the amendment was approved it would make the appeal moot because the language would be very clear and what is currently on the site would be allowed. He stated that the amendment was scheduled to be heard by the Board of Supervisors on October 14, 1991.

Mr. Farrell came back to the podium and stated that if the appellant would stipulate that he agreed with staff that the passage of the recommended language would make the appeal moot, then his client would remove any objections to the deferral. It was the consensus of the Board that Mr. Farrell's suggestion would be an issue between the appellant and Mr. Farrell's client.

Vice Chairman Ribble stated that he was reluctant to grant a deferral but believed that was the only thing that the Board could do. A discussion took place among the Board members with regard to the granting of a deferral.

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Mr. Hammack arrived.

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Mrs. Thonen made a motion to deny the appellant's request for a deferral since the appeal had been pending for quite some time. Mr. Kelley seconded the motion and stated that the Board should make a decision as to whether the appeal had been timely filed. Mrs. Thonen agreed. The vote was 2-2-1 with Mrs. Thonen and Mr. Kelley voting aye; Vice Chairman Ribble and Mrs. Harris voting nay; Mr. Hammack abstaining. Mr. Pammel was not present for the vote. The request for a deferral was denied.

Mr. Kelley made a motion that the Board proceed with the issue of timeliness. Mrs. Thonen seconded the motion. The motion passed by a vote of 5-0 with Mr. Pammel not present for the vote.

Mr. Shoup stated that staff had not raised any issue with regard to timeliness or standing originally, that there were arguments both ways, and he was not prepared to address the issue.

Mr. Farrell came to the podium and stated that he had written a letter to Chairman DiGiulian dated July 30, 1991, raising a question about the timely filing of the appeal. He quoted from State statute wherein it states that any person aggrieved who wishes to appeal an order, requirement, decision, or determination made by any other administrative officer in the enforcement of the zoning, enabling act, or statutes adopted under the enabling act must file an appeal of that decision with the Board of Zoning Appeals (BZA) within 30 days of that determination. Mr. Farrell stated that it appeared to him that there were only two questions: 1) when was the determination made; and 2) when was the appeal filed with the BZA. He stated that the second answer was easy since the appeal was filed on May 17, 1991, and unless the determination appealed occurred on or before April 17, 1991, the appeal was not timely filed. Mr. Farrell stated that in his earlier letters he had focused on the approval of the site plan for Phase II that occurred on March 22, 1991, and that he had made a mistake. He stated that the issue before the BZA was not decided on March 22, 1991, but was in fact decided back in '88. Mr. Farrell called the Board's attention to the site plan that was approved by Paul Kraucunas, with the Department of Environmental Management (DEM), on June 3, 1988. He referenced sheet 2 of 9 that showed townhouses without garages with parking in the front yard. He stated that the issue was whether there could be parking spaces in the front 10 feet of a front yard of a residential townhouse and added that that determination, with respect to the subject property, was made in 1988. Mr. Farrell stated that the time lapse between the determination and the appeal was not just a couple of days but a couple of years. He pointed out that even if the BZA considered the March 22, 1991 date, it was still more than 30 days between the determination and the date the appeal was filed. Mr. Farrell disagreed with Mr. Fague's argument that the BZA in scheduling the appeal for public hearing had determined that the appeal was complete and timely filed and pointed out that the opponents to Mr. Fague's position had not had an opportunity to make a presentation to the BZA on June 4, 1991. He stated that the timeliness is what lawyers like to call "a jurisdictional matter" and would be an appropriate issue to raise either in the Circuit Court, the Supreme Court, or before the BZA.

Mrs. Harris stated that she had requested that the BZA be provided with a plat showing the configuration of the original seven townhouses. Mr. Farrell stated that copies had been provided to the BZA. Mrs. Harris stated that the issue before the BZA was whether or not the parking pads had been changed since 1988 and whether or not a revised plat had been submitted. Mr. Farrell stated that perhaps Mr. Layman could better respond to those questions.

Mrs. Thonen stated that in the background outlined in the staff report staff had indicated that by letter dated December 21, 1990, the request for redesign was approved and if so the appeal would have to have been filed in January 1991 to meet the 30 day time limitation.

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David Layman, with the Ryland Group, 4515 Daly Drive, Chantilly, Virginia, came forward.

Mrs. Harris asked how far it was from the townhouses to the front property line. Mr. Layman scaled off the property and replied that it was approximately 24 feet. He stated that the only difference between the configuration before the BZA and what is on the site now was a change in the parking requirements from 2.0 to 2.3 spaces per unit and that became effective under the new submission which required the driveways to be joined in the middle in order to meet the County's new guidelines for a 18 x 18 space.

Mr. Shoup called the BZA's attention to a viewgraph showing the layout of the new arrangement on the revision.

Mrs. Harris asked if the spaces were merely widened and Mr. Layman stated that was correct.

Mr. Fague came back to the podium and stated that he was at a disadvantage as he had not received the plat submitted by Mr. Farrell; therefore, he had not had time to review them. He stated that the reconfiguration approved several years ago was for a single space parking lot on each lot which was expanded to a 18 x 18 platform thus doubling the platform in size and it appeared to have been moved closer to the front lot line. Mr. Fague pointed out that the current configuration that he was appealing was approved through administrative finding on December 21, 1990, and the site plan revisions were approved on February 8, 1991. He stated that those revisions were to SP6743-SP02 and unfortunately at that time SP6743-SP02 was no longer valid, thus there had to be a second site plan for the one year deadline which was SP6743-SP03. Mr. Fague stated that under the current County Code, site plans are not grandfathered, and each time a site plan comes up again, not a revision, it has to meet current County Code. He stated that he believed that his "clock" started ticking when SP6743-SP03 was approved on March 22, 1991.

Mrs. Thonen stated that the staff report stated that SP6743-SP03 was approved on February 8, 1991. Mr. Fague stated that was a revision to the original site plan. Mrs. Thonen pointed out that the number was the same that he had referenced. Mr. Fague stated that SP6743-SP02-D-3 was approved on February 8, 1991.

Mr. Fague continued by stating that he believed that SP6743-SP03 was not grandfathered, that it was a new site plan, and that it had to meet the new regulations and was approved on March 22, 1991. He stated that he had also filed an Code Enforcement complaint of the plan approved on February 8, 1991.

Mrs. Thonen stated that appeals are filed with the BZA and the clock starts ticking at that time.

Mr. Fague stated that Zoning Administration determined on June 4, 1991, that A 91-S-009 was timely filed and that it had been his understanding that Zoning Administration continued to support that position. Mr. Kelley stated that Mr. Shoup had indicated that staff did not have a position.

Mr. Shoup stated that staff had not raised an issue with timeliness or standing and when the appeal was submitted to the BZA on June 4, 1991, the Zoning Administrator had stated in her judgment the appeal was complete and timely filed, which is the standard language.

Mr. Fague stated that on June 19, 1991, the appeal came to the BZA and it determined that the appeal was complete and timely filed. He added that Mr. Farrell had not taken exception to that ruling until 41 days after the BZA had made that determination.

Mrs. Thonen stated that she did not have the verbatim of the previous public hearing but she recalled that the BZA had indicated that it would hold the hearing to determine if the appeal was timely filed. Mr. Fague stated that was on his other appeal and noted that he had received a letter indicating that the BZA had found that the appeal was complete and timely filed and had scheduled the appeal for public hearing.

In response to a question from Mrs. Harris, Mr. Fague stated that he was appealing the current site plan, SP6743-SP03-1, and the one approved on February 8, 1991, was SP6743-SP02-D-3.

Mrs. Harris stated that it was her understanding that SP6743-SP03-1 was approved on March 22, 1991, and the appeal was filed on May 17, 1991. Mr. Fague stated that was correct. He added that he filed the appeal with the Zoning Administrator's office on May 17, 1991, but he had filed Code Enforcement complaints prior to that date. Mrs. Harris stated that was outside the 30 day time period. Mr. Fague stated that if it was correct that an appeal must be filed directly with the BZA within 30 days the record states that he did not make that cutoff.

Mr. Fague pointed out that he had taken action before March 22, 1991, to file Code Enforcement and Zoning Enforcement complaints. He stated that on February 20, 1991, 30 days before approval of SP6743-SP03 he filed a Zoning Enforcement complaint alleging violation of 11-102-9, 20 days after approval he filed a Code Enforcement complaint again alleging violation because Zoning Enforcement was taking an inordinate amount of time to make a determination. Mr. Fague stated that, if anything, it was the lack of response from Zoning

Enforcement that delayed his filing an appeal with the BZA. He asked the BZA to rule that the appeal was timely filed.

Vice Chairman Ribble polled the audience to determine if there was anyone present who wished to address the appeal and hearing no reply he closed the public hearing.

Mrs. Harris stated that she agreed that Mr. Fague had filed complaints, that he had worked through the County channels to address his concerns, but that she did not believe that the appeal was timely filed. She stated that the BZA had to go by the March 22, 1991 date for the site plan of 6743-SP03-1 for Phase II of the subdivision and since the appeal was not filed until May 17, 1991, it was not within the "30 day window." Mrs. Harris stated that she was concerned that although the number of the parking pads in the front of the townhouses was 7 when it was approved in 1988, they were not significantly different than those that are there today. She stated that the parking pads were reconfigured to accommodate a Board of Supervisors change in the amount of parking that is required by the Zoning Ordinance; therefore, she believed that the general reconfiguration of this type of parking pad being in the same general location and vicinity to the front lot line, that decision was made in 1988. Mrs. Harris stated that under both decisions, the first in 1988 of 6743-SP02-2 for Phase II of Winding Ridge subdivision and the revision to that filed on March 22, 1991, and the appeal did not fall within 30 days of either of the site plans, therefore the appeal was not timely filed.

Mr. Kelley seconded the motion which passed by a vote of 5-1 with Vice Chairman Ribble, Mrs. Harris, Mrs. Thonen, Mr. Hammack, and Mr. Kelley voting aye; Mr. Pammel voting nay. Chairman DiGiulian was absent from the meeting.

Mrs. Harris asked Mr. Shoup if the amendment being considered by the Board of Supervisors would allow this type of parking arrangement. Mr. Shoup explained that the amendment would clarify the language to allow parking spaces to within 10 feet of the front lot line for residential properties on individual residential lots.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 25, 1991.

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Page 68, September 17, 1991, (Tape 1), Scheduled case of:

8:10 P.M. L.V. PROPERTIES, L.P., SP 91-V-019, appl. under Sect. 3-103 of the Zoning Ordinance to allow outdoor recreational use (baseball batting cage, golf driving range and putting green) on approx. 19.86 acres located at 9316 and 9320 Ox Rd., zoned R-1, Mt. Vernon District, Tax Map 106-4((1))50,51.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Larry McDermott, planner with Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Mr. McDermott stated that last Thursday at a meeting with staff several issues were raised with respect to engineering changes and the applicant had not had ample time to respond to those issues. He asked the BZA to grant a deferral of at least a week or two to allow the applicant an opportunity to possibly resolve the outstanding issues and obtain information on the proposed lighting.

Vice Chairman Ribble asked Mr. McDermott to elaborate on the engineering changes. Mr. McDermott explained that it staff's policy to prestaff and staff cases and then go back to the applicant to discuss any issues that were raised during those meetings. Following staffing, he stated that the applicant showed a 91 foot dedication and right of way, a right turn lane, which the Office of Transportation (OT) had said was acceptable, and an interparcel access to both the north and south of the property. Mr. McDermott stated the applicant amended the plan by putting reservations at the north and south ends of the property to accommodate what the applicant believed to be staff's only concern with regard to transportation. During last Thursday's meeting, he stated that the applicant had been notified that OT had changed their mind and now wanted a left turn lane as well and there was not adequate time to do the engineering changes.

Vice Chairman Ribble asked staff to comment on the deferral request. Ms. Bettard stated that staff had no objections to a deferral and recommended that the case be deferred to October 1, 1991, at 10:00 a.m.

In response to a question from Mrs. Harris about the plat before the BZA, Mr. McDermott replied that the plat does not reflect the left turn lane. He stated that he planned to discuss the left turn lane with the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT) since it is not a standard left turn lane but a modification. Mr. McDermott added that staff had also raised a concern at the "eleventh hour" regarding the transitional screening on the eastern side of the property.

Mrs. Thonen asked why staff indicates to the applicant they have no problems with their application and then changes their mind during the process. Jane Kelsey, Chief, Special

Page 09, September 17, 1991, (Tape 1), (L.V. PROPERTIES, L.P., SP 91-V-019, continued from Page 68)

Permit and Variance Branch, explained that OT had not called staff's attention to the fact that a left turn lane would be required but upon receiving VDOT's comments which recommended that a left turn lane be provided based upon the number of vehicles travelling West Ox Road. She agreed that the applicant was told of the requirement at a late date but because of the 90-day clock that staff must work with, many times when VDOT's comments are received, staffing has already taken place, staff has already met with the applicant, and the staff report is being prepared. Mrs. Thonen suggested that the County and the State who make the decisions on the highways should get together and come up with a better system of communication.

Ms. Kelsey stated that the environmental issues were raised early in the process and the applicant had addressed those concerns. She added that development conditions were not contained in the staff report because staff had recommended denial, but copies of proposed development conditions had been distributed to the BZA and the applicant as the BZA had requested. Ms. Kelsey stated that staff and the applicant were not in agreement on all the development conditions.

Mr. Pammel expressed concern for citizens who might be present to hear the case and the BZA was considering deferring the case to a day meeting rather than a night. He suggested that the BZA proceed with the public hearing and hear the testimony.

Mr. Kelley suggested that the public hearing be scheduled to a night meeting. He then stated that it appeared to him that a two week deferral was not sufficient time for the applicant to respond. Mr. McDermott stated that he was not placing blame anywhere but that the applicant had been working feverishly since last Thursday to resolve the issues. He stated that the applicant and staff had come to an agreement on several of the development conditions but there were some very important ones still outstanding. Mr. McDermott stated that he believed that could be accomplished within two weeks.

In response to a question from Mrs. Harris, Mr. McDermott replied that the applicant had met with the citizens and they were not aware of any opposition to the application.

Vice Chairman Ribble polled the audience for anyone who wished to speak to the deferral and the following came forward.

Ann Malcolm, 3927 Barcroft Mews Court, Falls Church, Virginia, stated that her family owns the property immediately adjacent to the south of the subject property. She stated that she had not been contacted by the applicant about the application, that she had no objections to a deferral, and that she would be available no matter when the case was deferred to.

Ernest Petitt, 9214 Ox Road, Lorton, Virginia, stated that he was unaware of the request until he saw the posting on the property. He stated that staff had addressed many of his concerns in the staff report and that he would be available either in the day or evening.

Mrs. Harris stated that she would make a motion to defer the public hearing for longer than a two week period to allow the applicant to contact the neighbors, if they so desired, and to try to resolve the problems and to allow the neighbors to review the staff report.

Ms. Kelsey suggested October 29, 1991, at 11:20 a.m. Mrs. Thonen stated that she would like the case deferred to the October night meeting. Mrs. Harris amended her motion to reflect October 15, 1991, at 8:35 p.m. Mr. Kelley seconded the motion. The motion passed by a vote of 6-0 with Chairman DiGiulian absent from the meeting. Mr. McDermott stated that the applicant would not be available on October 15th. Ms. Kelsey stated that the November night meeting was November 19, 1991. It was the consensus of the BZA to go back to the original date of October 29, 1991, at 11:20 a.m.

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Page 69, September 17, 1991, (Tape 1), Action Item:

Approval of September 10, 1991 Resolutions

Mrs. Harris made a motion to approve the resolutions as submitted. Mr. Hammack seconded the motion which passed by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 69, September 17, 1991, (Tape 1), Action Item:

Approval of July 23, 1991 Minutes

Mr. Pammel asked staff to go back and review page 7, 3rd paragraph of the minutes for clarification. Jane Kelsey, Chief, Special Permit and Variance Branch, agreed.

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Page 70, September 17, 1991, (Tape 1), Action Item:

George, Joanne, and Margaret Nanos, VC 91-V-094
Out of Turn Hearing

Mrs. Harris asked why a variance was needed for a bay window. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that a bay window was allowed to extend a certain number of feet out from the house but staff had just received the file therefore had not had time to do any research. She stated that staff had no objections to the BZA granting the applicant's request for an out of turn hearing since staffing was not necessary on this application.

Mrs. Thonen made a motion to grant the out of turn hearing and schedule the application for November 7, 1991. Mr. Hammack seconded the motion which passed by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 70, September 17, 1991, (Tape 1), Action Item:

Jean B. Reynolds, SP 91-L-055
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the application was for an accessory dwelling unit and would be staffed on September 17, 1991.

Mr. Hammack made a motion to deny the request. Mrs. Harris seconded the motion.

Mrs. Thonen stated that she did not know that she would support the request for the accessory dwelling unit but when an applicant is having a difficult time that the BZA should go out of their way to give them a chance to present their case. Mr. Hammack stated that he would withdraw his motion.

Mr. Pammel made a motion to grant the applicant's request for an out of turn hearing and schedule the case on November 7, 1991. Mrs. Thonen seconded the motion which passed by a vote of 4-2 with Mrs. Harris, Mrs. Thonen, Mr. Hammack, and Mr. Pammel voting aye; Vice Chairman Ribble and Mr. Kelley voting nay. Chairman DiGiulian was absent from the meeting.

Mr. Kelley stated that he believed that the BZA was acting a little too hasty on accessory dwelling units and that was the reason for his "nay" vote.

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As there was no other business to come before the Board, the meeting was adjourned at 9:08 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: October 22, 1991

APPROVED: October 29, 1991

071

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on September 24, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Vice Chairman Ribble called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation.

Chairman DiGiulian, Mrs. Harris and Mr. Kelley came into the Board Room and Vice Chairman Ribble relinquished the Chair to Chairman DiGiulian. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 71, September 24, 1991, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY M. LEPON & CORA YAMAMOTO, VC 91-D-050, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard on corner lot (4 ft. max. height allowed by Sect. 10-104) on approx. 17,115 s.f. located at 1618 Carlin La., zoned R-3, Dranesville District, Tax Map 31-3((40))2. (DEF. FROM 7/2/91 TO ALLOW BOS TO ACT ON ZONING ORDINANCE AMENDMENT)

Chairman DiGiulian advised the Board that he was in receipt of a copy of a letter requesting a deferral.

Mrs. Thonen made a motion to defer VC 91-D-050.

Chairman DiGiulian asked if there was anyone present who would like to address the deferral, and heard no response.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested October 15, 1991, at 8:35 p.m. Mr. Hammack so moved; Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 71, September 24, 1991, (Tape 1), Scheduled case of:

9:10 A.M. PRAMODA K. AND RATNA K. MATURU, VC 91-D-074, appl. under Sect. 18-401 of the Zoning Ordinance to vary fence height as required by Par. 3B of Sect. 10-104 (to allow 6 ft. fence in front yard) on approx. 17,819 s.f. located at 1229 Old Stable Road, zoned R-2, Dranesville District, Tax Map 29-2((6))45.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Maturu replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, as follows: The property is zoned R-2 and is located at the northeast corner of Old Stable Road and Old Falls Road in an area west of I-495 and north of the Dulles Access Road. Surrounding lots are zoned R-1 and R-2 and are developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings. Lots south of Old Falls Road are zoned R-1 and are developed with single family detached dwellings. This request for a variance resulted from the applicants' request to allow a 6.1 ft. high fence to remain in the front yard of a corner lot. The Zoning Ordinance allows a maximum fence height of 4 ft. in a front yard in the R-2 District. Accordingly, the applicants are requesting a variance of 2.1 ft. from the maximum fence height requirement. In regard to surrounding uses, the dwelling on adjacent Lot 46 to the east is located approximately 16.1 feet from the shared lot line."

The applicant, Ratna K. Maturu, 1229 Old Stable Road, McLean, Virginia, read a short statement, as follows: The front of the house faces a pipestem, another side faces Old Stable Road, and the back faces Old Falls Road, on which side is the 6 foot fence in question. Lewinsville Road, a major thoroughfare, and a Metro bus stop are only twenty yards from the property line. The family room is only 13 yards from Old Falls Road and only 20 yards from stop and go traffic at Old Falls Road and Old Stable Road. The foregoing has contributed to the lack of security, privacy, and protection from noise and pollution. Besides the exceptional condition of extreme closeness and so many busy thoroughfares, the property has exceptional topographical conditions in that Old Falls Road slopes downward, starting from Lewinsville Road, up to Old Stable Road, and many a car has skidded and ended up in the back yard due to the slope. The back yard has seven large pine trees with many branches, and easy entrance and exit to Lewinsville Road from the property has been ideal for late nighttime gatherings of young adults who spend evenings there, littering the back yard with broken bottles and alcoholic beverage cans. This had been taking place only ten to fifteen yards from the family's sleeping area, but they did not interfere for fear of physical violence. Erection of the fence has eliminated the problem. As stated in the statement of justification, congregation parking from United Methodist Church, together with traffic from stop and go passing cars and pedestrians, often suspicious looking strangers and Metro bus stop passengers, left the applicant without privacy, quiet, and enough of a sense of security to even allow their children to play in their back yard. Erection of the fence has finally restored a sense of privacy. The Homeowners Association approved the erection of the fence along Old Falls Road, and a verbal approval had been received from Special Projects, Zoning Ordinance Division of Fairfax County.

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Mrs. Maturu referred to the statement of justification and incidents described therein. She stated that a 4 foot fence would not eliminate the adverse conditions previously mentioned, and said that a 6 foot fence was essential. Mrs. Maturu said that most of the neighbors expressed appreciation for the security which the fence brings to the neighborhood and that the fence did not create a visibility problem. She referred to having submitted written support from five neighbors and said she had additional written support from seven immediate neighbors.

Mr. Hammack asked Mrs. Maturu if, when the fence was originally erected, she had filed a written application with the Architectural Control Committee of the Homeowners Association. Mrs. Maturu replied that she had. She said that she had also included in the Board's package a statement of approval from the Homeowners Association.

Mr. Hammack asked how long the fence had been up and Mrs. Maturu said since June 1990.

Chairman DiGiulian asked if there was anyone else to speak in support of the application and the following people came forward: Carolyn Mooney, 1708 Stable Gate Court, McLean, Virginia, President of the Homeowners Association; and Robert Whitfield, 1219 Old Stable Road, McLean, Virginia. A statement was submitted to the Board, containing Ms. Mooney's remarks, beginning with the request to the Architectural Control Committee. The statement became a part of the record. Ms. Mooney gave a multitude of reasons why the Association approved of the fence, stating she believed it acted as a deterrent to the vandalism and theft which the neighborhood had been experiencing.

Mrs. Harris referred to a previous statement about other 6 foot fences having been approved by the Association and asked Ms. Mooney if the approval of other 6 foot fences by the Association had been in the front yards of the properties. Ms. Mooney said that they had been in back yards, but the Association considered the area under consideration a back yard, even though it was a front yard according to the Ordinance.

Mr. Whitfield defended the applicant's desire to keep the fence because of the unusual situation of what he considered to be a back yard being a front yard according to the Ordinance.

Mr. Ribble made reference to someone in the County having told Mr. Maturu to move the fence back.

Chairman DiGiulian asked if there was anyone to speak in opposition and received no response.

Mr. Kelley asked Mrs. Maturu if there had been any correspondence with the County when the applicants had been asked to move the fence back. Mrs. Maturu said that she found out that there was no formal system and her husband would be able to explain what he had done. Mr. Maturu came forward and said that he had called Zoning Information and they had referred him to the Board of Zoning Buildings and Permits, and he was told that, in Fairfax County, a permit was not required and he could erect a fence up to 7 feet high in a back yard. He said he told the person that his was a pipestem entrance, corner lot, and they told him that he should talk to someone in Special Projects. He said he explained the situation and the person told him that his was an unusual case and that he needed more time and would call him back. The person called Mr. Maturu back and said that, in his opinion, anything in the back is the back yard and anything in the front is the front yard. Mr. Maturu said that the first time he knew there was any problem was when he received a letter citing him for violation of the Ordinance because he has three front yards and no back yard.

Mrs. Harris asked Mr. Maturu if he had, at any time, given the County representatives the tax map number of his property. He said yes, they had asked him for his tax map number and his address, but it had all been done on the phone. He said that the company which had installed the fence had been a professional installer of fences. Mr. Maturu said that the man to whom he had given his tax map number and address was now retired.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 91-D-074 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1991.

Mrs. Harris asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, if there was any way she could find out what department Mr. Maturu had talked with. Ms. Kelsey said that, if he gave someone his tax map number and they still came back with the advice that the fence could be 6 feet tall, she believed that someone was not aware of the zoning regulations. Ms. Kelsey said that she could have Mr. Maturu try to explain to her in more detail the exact place that he went to; he had said Special Projects, which is part of the Department of Environmental Management. Ms. Kelsey said that she would be glad to speak with the Chief of that Branch to make sure that all the employees are aware of how to determine what is a front yard and what is not a front yard. However, she could not be sure that was the office the applicant had spoken with.

Mrs. Harris instructed Mr. Maturu to give Ms. Kelsey the benefit of his notes, so that incorrect information would not be given to applicants in the future.

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Ms. Kelsey said that she would talk with Mr. Maturu after the hearing.

Mrs. Thonen said that, if it had been her motion, she would have deferred it until she had obtained a ruling and interpretation from the Zoning Administrator about the three front yards and how to interpret such a situation. She said that she believed the Zoning Administrator should give some attention to this type of a situation and that, if a property owner had three front yards, it should be addressed by the Ordinance and not by having to obtain a variance.

Mr. Pammel said that, if there are three front yards on a lot, it clearly deprives the owner of the degree of privacy to which they are entitled; he said he believed that privacy included the right to put up a 7 foot fence to enclose the area which they want to be private. Mr. Pammel said that he believed this constituted a hardship.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-074 by PRAMODA K. AND RATNA K. MATURU, under Section 18-401 of the Zoning Ordinance to vary fence height as required by Par. 3B of Sect. 10-104 (to allow 6 ft. fence in front yard), on property located at 1229 Old Stable Road, Tax Map Reference 29-2((6))45, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 17,819 square feet.
4. An unusual condition exists in that the subject property has a front yard applicable to a back yard.
5. The applicants have moved the fence in, away from the property line, in order to allow improved visibility at the intersection.
6. There is support within the community for the application.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

074

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific fence shown on the plat (prepared by Alexandria Surveys, Inc., dated May 8, 1991) submitted with this application and is not transferable to other land. This fence shall not be greater than 6.1 feet in height.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 6-1; Mrs. Thonen voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 74, September 24, 1991, (Tape 1), Scheduled case of:

9:20 A.M. THEODORE C. & MARTHA P. POLING, SP 91-D-030, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 10,662 s.f. located at 1532 Sinclair Dr., zoned R-3, Dranesville District, Tax Map 30-4((17))146.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Clauson replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report as follows:
The subject property is located on the west side of Sinclair Drive, generally north of I-66 and east of the Dulles Access Road. The subject lot and surrounding properties are zoned R-3 and are developed with single family detached dwellings. The applicants are requesting approval of a special permit to allow the establishment of an accessory dwelling unit within the existing dwelling. The accessory dwelling unit would consist of 1,231 square feet or 31.6% of the total dwelling, and would be located on the basement level of the dwelling. The principal dwelling is occupied by two persons, both over the age of 55, and the two proposed occupants of the accessory dwelling unit are related to the applicants. Research in the records of the Zoning Administration Division indicates that the dwelling on adjacent Lot 145, to the north, is located approximately 28.0 ft. from the shared side lot line, and the dwelling on adjacent Lot 147, to the south, is located approximately 10.1 ft. from the shared side lot line. Accordingly, it is staff's judgment that this request for an accessory dwelling unit meets the applicable standards for approval, subject to the implementation of the Proposed Development Conditions.

Ms. Dickey closed her presentation by offering to answer any questions.

Richard Thomas Clausen, 210 N. Lee Street, Alexandria, Virginia, architect and agent for the applicant presented the statement of justification, stating that his clients were requesting the accessory dwelling unit to accommodate their daughter and son-in-law because both applicants are elderly and feel they require the presence of this young couple for an element of security and to help in the maintenance and repair of the house and environs.

Mr. Clausen said that it was his understanding, after working with staff, that the applicants met all of the thirteen criteria necessary, and that the design of the accessory dwelling unit would meet all building codes and other regulations of the County.

Chairman DiGiulian asked if there was anyone else to speak in support of the application and received no response.

Mrs. Harris asked Mr. Clausen how many parking spaces had been designated on-site and he said four. Mrs. Harris asked for confirmation that there was no garage and Mr. Clausen confirmed that fact. He said the Ordinance precluded having a garage because the applicants could not meet the minimum yard requirements. Mr. Clausen said that he had designed a new circular driveway which would accommodate at least four cars.

075

Chairman DiGiulian asked if there was anyone to speak in opposition and, hearing no response, closed the public hearing.

Mr. Pammel made a motion to grant SP 91-D-030 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1991.

Mrs. Thonen seconded the motion.

Chairman DiGiulian asked for discussion and Mr. Hammack asked that Development Condition 11 be added, requiring that the Development Conditions be recorded in the land records of Fairfax County. Mr. Pammel amended his motion and Mrs. Harris seconded it.

Mr. Kelley said that he would like to state why he could not support the motion, saying he believed that the number of requests for accessory dwelling units was getting out of control, that he did not see any hardship, and that it could change the character of the neighborhood. He noted that the staff report stated that there were no other accessory dwelling units in the immediate area, and he asked staff what difference that made. He asked the Board to consider what would happen if half the people in a one-block-area decided to install accessory dwelling units. He said it would certainly change the character of the neighborhood.

Ms. Dickey said that part of the Ordinance standards was that staff was required to research the neighborhood for possible other accessory dwelling units in the same area. Mr. Kelley asked if staff would recommend denial if the people living next door to the applicant applied for an accessory dwelling unit. Ms. Dickey said that staff would advise the Board that there was another request for an accessory dwelling unit in the neighborhood and that the possibility existed that, at some point, an accumulation of the use might tend to change the character of the neighborhood, and the Board would need to make a decision. Mr. Kelley said that they could not treat applicants inequitably, which would be the case if someone was approved because their request was first. Mr. Kelley concluded by saying that he believed the Board should look at this type of a request more carefully.

Mrs. Thonen said that she agreed with Mr. Kelley, but she could not vote against the motion because the applicant met all of the Standards. She said she agreed that there was no hardship, but in the case of a special permit, the applicant did not need to prove hardship.

Mr. Kelley said that, if the Board turned down some of the requests for accessory dwelling units, it would force an Ordinance change that would tighten it up and address the concerns that he and Mrs. Thonen shared.

Mrs. Harris asked Mr. Kelley on what grounds he would base denial. She said she had looked at the application and could find no reason to deny it. Mr. Kelley said the grounds were that it changed the character of the neighborhood.

Mr. Ribble said that, in this case, the addition had already been built, or was practically finished, and that bothered him.

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Mrs. Thonen made a motion to request from Jane W. Gwinn, Zoning Administrator, that the accessory dwelling unit amendment be tightened up, and that she report back to the Board members with some recommendations on how they might control the situation. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-030 by THEODORE C. & MARTHA P. POLING, under Section 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 1532 Sinclair Dr., Tax Map Reference 30-4((17))146, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,662 square feet.

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AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the building and uses indicated on the plat submitted with this application by Alexandria Surveys, Inc., dated April 18, 1991 and received in this office on June 6, 1991. This condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. This Special Permit is subject to the issuance of a building permit for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 1,231 square feet of the structure.

5. The accessory dwelling unit shall contain no more than one bedroom.

6. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

8. This special permit shall be approved for a period of five (5) years from the final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.

9. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

10. Parking shall consist of four (4) spaces and shall be provided as depicted on the approved building permit for the additions to the primary dwelling unit.

11. The Clerk shall record this decision among the land records of Fairfax County.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 5-2; Mr. Kelley and Mr. Ribble voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 11, September 24, 1991, (Tape 1), Scheduled case of:

9:30 A.M. GERALDINE E. MARKLEY, VC 91-L-075, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached accessory structure (car shelter) 4.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 8,485 s.f. located at 3311 Clayborne Ave., zoned R-2, Lee District, Tax Map 92-2((17))80.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Markley replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the subject property is located generally west of Route 1; is zoned R-2; contains 8,485 square feet of land; and surrounding properties are also zoned R-2 and are developed with single family detached dwellings like the subject property. He said that the applicant was requesting a variance to allow the construction of a car shelter at the rear of the existing dwelling, 4 feet from the side lot line; in the R-2 district, a minimum side yard of 15 feet is required, and the applicant is requesting a variance of 11 feet. Mr. Riegle said that records in the Zoning Administration Division indicated that the dwelling on adjacent Lot 79 is located approximately 9 feet from the shared lot line, and aerial photographs indicate that the majority of dwelling on Clayborne Avenue are generally aligned in a manner similar to the subject property.

Mrs. Harris asked Mr. Markley if sheds A, B, and C would be removed if the proposed carport were to be erected. Mr. Markley said that shed C had already been removed, leaving sheds A and B, which he said are small sheds.

Mrs. Thonen remarked upon the narrowness of the applicant's lot, which she said was not typical of an R-2 area. Mr. Markley confirmed that the proposed car shelter would be 24 foot square. Mrs. Thonen said that she could not recall the Board ever having approved a 24 foot wide carport, and she asked Mr. Markley if he could live with a 22 foot wide carport. Mr. Markley said that their parking alternative was the street, which is very narrow, and left the vehicles exposed to tree sap from an abundance of trees. Mrs. Thonen asked Mr. Markley if he could not get two cars into a 22 foot carport. Mr. Markley said that most lumber is measured out in eight foot lengths and it works out close to 24 feet.

Chairman DiGiulian asked Mr. Markley to continue with his presentation.

Mr. Markley said that the property owner of Lot 21 has a garage approximately 5 feet from the shared rear property line; on Lots 78 and 79, there is a garage which is approximately 35 feet long, approximately 8 feet from the shared side property line. Mrs. Thonen asked Mr. Markley if they had obtained a variance and he said he did not know because they were there when the Markleys moved in. Mr. Markley said that the asphalt area which he proposed to cover was there when they purchased the house, as was the driveway. Mr. Markley said he did not believe that his proposed plan would change the character of the neighborhood.

Mrs. Harris asked Mr. Markley if he had a rendering of what his carport would look like and he said he did not have one. Mr. Markley said he planned to put eight posts in the ground and put a roof over them, with no sides or anything else.

Mrs. Harris asked staff what the normal minimum side yard requirement was in the R-2 district, and they replied that it was 15 feet. Mrs. Harris asked if a carport could extend 5 feet into the side yard without needing a variance and Mr. Riegle said that was correct, except that the proposed structure in this instance does not qualify as a carport because it is not attached to the principal dwelling; it is classified as an accessory structure.

Mrs. Harris asked Mr. Markley if there was any reason why he could not reduce the east/west dimension of the carport so that it would be no closer than the dwelling from the side lot line, which is 7.1 feet. Mr. Markley said that would make it harder to enter and exit the car shelter. Mrs. Harris said that he could also reduce it in size. Mr. Markley said that, since his car is 18 feet long, it would not be entirely covered.

Mrs. Harris told Mr. Markley that, in order to obtain a variance, an applicant would need to prove that, if the car could not be fit into the structure as proposed, the applicant would be deprived of use of the property to the point of confiscation. She said that he would have to prove a hardship. Mrs. Harris asked him if he could make the east/west dimension 3 feet less, making it 19 ft. on one side and less of an encroachment into the side yard. Mrs. Thonen said that she would be hesitant to cut it down to 19 feet because she knew how difficult it could be to get cars in and out. Mrs. Harris suggested 20 feet as a good size. Mrs. Thonen said that the applicant did have a hardship because he is in an R-2 District, but he his land area is more like that found in an R-4 District.

Chairman DiGiulian asked if there were further questions.

Mr. Ribble asked staff if the three sheds would be removed and Mr. Riegle deferred to the applicant who said that shed C already had been taken down, leaving sheds A and B.

Mrs. Harris asked Mr. Markley if he could not remove the sheds and put the carport in the southern area of the lot, where a gravel area is indicated on the plat. Mr. Markley said that they have four vehicles and three are presently parked where the proposed carport will be and the other one was in the area where the gravel was indicated. He said he was trying to keep the cars off the street, as many of the neighbors parked on the street and it was a problem. Mrs. Harris explored several possibilities in an attempt to locate the carport in an area that did not require a variance.

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Chairman DiGiulian asked if there was anyone to speak in support of the application and, hearing no response, asked if there was anyone to speak in opposition, and there was no response. Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant-in-part VC 91-L-075, allowing the accessory structure 6.0 ft. from the side lot line, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 17, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-075 by GERALDINE E. MARKLEY, under Section 18-401 of the Zoning Ordinance to allow detached accessory structure (car shelter) 4.0 ft. **(THE BOARD GRANTED 6.0 FT.)** from side lot line, on property located at 3311 Clayborne Ave., Tax Map Reference 92-2((17))80, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 8,485 square feet.
4. The hardships in this area are very real because the lots in this area are very narrow.
5. While the lots are zoned R-2, the acreage resembles R-4 acreage, which creates a hardship.
6. The property is being ruled under a much higher standard than could ever be met.
7. There are some topographical problems.
8. The roads are very narrow and parking on them could create safety problems.
9. The property is of exceptional size.
10. The existing hardships, under strict interpretation of the Ordinance, would effectively prohibit the use of the land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location and the specific accessory structure shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion which carried by a vote of 6-1; Mrs. Harris voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and will became final October 29, 1991, the date that the revised plat was approved. That date shall be deemed to be the final approval date of this variance.

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9:40 A.M. LAURA LEA GUARISCO, VC 91-D-071, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard (4 ft. max. height allowed by Sect. 10-104) on approx. 15,306 s.f. located at 6354 Linway Terr., zoned R-3, Dranesville District, Tax Map 31-3((40))1. (DEFERRED FROM 9/10/91 - NOTICES NOT IN ORDER)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mohey-El-Dien replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the subject property is just north of Old Dominion Drive; abutting property to the west is zoned R-1 and is developed as St. Johns Church; lots to the north and east are zoned R-3 and are developed with single family detached dwellings. Mr. Riegle said that the applicant was requesting a variance to allow an existing wrought iron, 6 foot high fence to remain in the front yard; Section 10-104 stipulates that a fence shall not exceed 4 feet in height in the front yard and a variance of 2 feet in height was being requested. Mr. Riegle pointed out that the subject property is adjacent to the application which had been scheduled earlier and deferred, VC 91-D-050, by Jeffrey M. Lepon and Cora Yamamoto, which is on Lot 2, on Linway Terrace. Mr. Riegle noted that the photographs before the Board showed both fences.

Mr. Mohey-El-Dien said that he did not have a prepared statement and said he believed that there had been a change in the variance requirements stating that, if a house is on a major road with the driveway in any front yard on the lot, a fence or a wall not exceeding 4 feet in height is permitted; however, in that portion of the front yard on a residential corner lot that abuts a major thoroughfare, a solid wood or masonry fence or wall not exceeding 8 feet in height is allowed. Mr. Mohey-El-Dien said he was trying to determine if Linway Terrace was considered a major road.

Mr. Riegle interrupted to make a point of clarification, stating that the applicant was referring to the Ordinance amendment recently adopted by the Board of Supervisors; however, he pointed out that Part B of the amendment, a copy of which he provided, stipulates that the fences which are affected must be of solid wood or masonry construction, and the fence in question is a wrought iron fence. Mr. Riegle said that he believed it was the intent of the amendment to provide a sound barrier, and it was staff's interpretation that a wrought iron fence would not meet the requirements of the recently adopted amendment.

Mr. Mohey-El-Dien said that the reason they installed the fence when they purchased the property last year was to protect their two children from the 30 foot drop in the back yard. He said that there is only 8 feet between the back of the house and the retaining wall where the children may play; thus, the only play area is the front yard. He said that the 6 foot fence provides security; they are adjacent to the church which has a big parking lot where youngsters play and they have a problem with alcoholic beverage containers being thrown into their yard. Mr. Mohey-El-Dien said that they had decided to use a wrought iron fence in the front in order not to change the character of the area. He said that the property adjacent to them has had a 6 foot wood fence for the last two or three years. Mr. Mohey-El-Dien said that they did not know whether the complaint came from a neighbor or the fencing company

which did not get the job to install the fence. Mr. Mohey-El-Dien said that they installed the gate in the fence on the side instead of in the front, in order not to change any of the characteristics. He said they also used a 6 foot black chain fence in the back which appears to be higher because of the lay of the land. Mr. Mohey-El-Dien said that they also did some major planting in front of the fence which he said would eventually grow to cover part of the fence, not all of it. The Board reviewed photographs submitted by the applicant.

Chairman DiGiulian asked if there was anyone to speak in support of the application and, hearing no response, asked if there was anyone to speak in opposition, to which he also received no response.

Mr. Mohey-El-Dien presented a letter to the Board from a neighbor who did not oppose a see-through fence, which fits the description of the applicant's fence.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny VC 91-D-071 because, although the subject property has an unusual topographic condition, she said she did not believe the unusual topographic condition exists where the 6 foot high fence is located. She said that, in looking at the pictures and going out to the house, she saw that the back of the yard has extreme topographical conditions; but, where the 6 foot high fence is located, the property is flat and there is no topographical reason why the fence should be 6 foot high. Mrs. Harris said that she believed that the strict application of the Ordinance would not produce an undue hardship, the applicant would simply need to lower the fence in that area. Mrs. Harris said that she believed that a granting of the fence in this area would be a convenience, as opposed to a demonstrable hardship.

Mr. Pammel said he would second the motion for the purpose of discussion.

Chairman DiGiulian asked for discussion.

Mr. Pammel said that he was in a dilemma, and believed that Mrs. Harris had indicated rather clearly that the hardship issue had not been proven. He said that he considered Linway Terrace to be a major thoroughfare and, from that point of view, he said he thought there probably was justification for a fence on the property, whether 8 foot, 6 foot, or 4 foot.

Mrs. Thonen said she would like to point out to the Board that it had just passed a motion for a fence in a front yard in McLean, and she said she believed that this application showed just as much hardship as the one in McLean, and that she would like to see the Board be consistent in what they do.

Mrs. Harris said that she believed the difference between this request and the previous request was that the topographical lay of the land was much lower than the house in the previous request, and the fence was used as a noise barrier and as a safety barrier. She said she looked at the present application as being an open fence, and the fence's location would lend itself to being easily lowered to meet the requirement.

Chairman DiGiulian said that he recalled testimony to the effect that the lot is approximately 30 feet higher in the back; he did not see where else the applicants could put a fenced area for their children to play in, and he believed that to be a hardship. He said that testimony indicated a topographical hardship.

Mrs. Harris withdrew her motion, and Mr. Pammel seconded the withdrawal.

Mr. Hammack made a motion to grant VC 91-D-071 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 3, 1991.

Mr. Pammel said that he believed that the Board was operating in a vacuum because, earlier in the meeting, it had deferred an application for a variance on property immediately next door to the present applicant, and he would have preferred to hear both applications together. He said that he would prefer to defer this application and hear it with the other application.

Mr. Pammel made a motion to table this item and bring it forth on October 15, 1991, coincident with the other application, on adjacent property. Mrs. Harris asked if he meant for decision only and he said yes. Mrs. Harris seconded the motion.

Chairman DiGiulian asked if there was any discussion on the substitute motion.

Chairman DiGiulian called for a vote, which failed 2-5; Chairman DiGiulian, Mrs. Thonen, Mr. Hammack, Mr. Kelley, and Mr. Ribble voted nay.

Chairman DiGiulian called for a vote on Mr. Hammack's motion to grant, which carried by a vote of 4-3; Mrs. Harris, Mrs. Thonen and Mr. Pammel voted nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-071 by LAURA LEA GUARISCO, under Section 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard, on property located at 6354 Linway Terr., Tax Map Reference 31-3((40))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 24, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,306 square feet.
4. There are extreme topographical conditions on the lot.
5. The rear yard is practically unusable.
6. Another unusual situation is that Linway Terrace and Old Dominion Drive come together at that point which makes it a heavily traveled intersection, which is not found in many other locations around the County, as well as Linway Terrace being a major cut-through.
7. The area has the unusual topographical condition that the house sits down below the grade of Old Dominion Road.
8. Hardship has been shown by the applicant.
9. The County has amended the Ordinance to allow up to 8 foot wood fences of certain types in some areas and, while this doesn't fall into that category of fences permitted, the amendment indicates that, under some circumstances, some fences may be permitted as a matter of right; and in other circumstances, it indicates that different types of fences should be considered, such as a wrought iron, as opposed to a solid wood which is clearly allowable; and it shows a change in the County's intent to allow fences of even up to 8 feet in some yards and, under those circumstances, it appeared appropriate to allow this fence.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific fence shown on the plat included with this application and is not transferable to other land.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 4-3; Mrs. Harris, Mrs. Thonen and Mr. Pammel voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 82, September 24, 1991, (Tape 1), Action Item:

Request for Additional Time
St. Mark's Coptic Church, SP 80-S-013

Mr. Hammack made a motion to grant this request for additional time. Mrs. Harris seconded the motion, which carried by a vote of 7-0. The new expiration date is July 4, 1992.

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Page 82, September 24, 1991, (Tape 1), Action Item:

Approval of Minutes from July 23, 1991
(previously considered September 17, 1991)

Mr. Pammel explained that the minutes had come before the Board on September 17, but were returned at his request for changes to more closely reflect what he said.

Mr. Pammel made a motion to approve the minutes as now submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 82, September 24, 1991, (Tape 1), Action Item:

Stephen Keller and Kathy Regan, VC 91-D-027
Granted 8/6/91, New Plats Required

Jane C. Kelsey, Chief, Special Permit and Variance Branch, asked Mr. Jaskiewicz to give the Board the copy of a corrected plat which had been received from the applicant. Ms. Kelsey said that, when the Board approved the application, the following Condition was imposed.

The existing gravel driveway shall be removed, the curb cut eliminated, and the area revegetated with grasses as part of the approved variance. There shall be only one access on Lorraine Avenue and new plats are required.

Ms. Kelsey said that the problem was that it was not really clear cut because the applicant had changed the location of the entrance to where the existing entrance used to be, and then put in a turn-around, which may be noted on the plat.

Mrs. Harris asked if this case was the one where the house had the garage on side and they wanted to switch it to the other side by a road that was not dedicated.

Mike Jaskiewicz, Staff Coordinator, answered Mrs. Harris, saying that she was correct.

Mrs. Harris asked if the Board had not told the applicants that they had to take out a driveway and recalled some other aspects of the case. She asked if she remembered correctly that the applicant were told that they could not keep both entrances, but could only keep one, and Mr. Jaskiewicz said she was correct.

Mr. Jaskiewicz said that the revised plat showed the elimination of the carport and a switch in the location of the proposed driveway. He called the Board's attention to the location of some of the existing trees shown on the plat, saying that the plat also showed a wide turn-around and showed the existing gravel driveway remaining right past the crest of the hill.

Ms. Kelsey advised that Mr. Pammel had moved that the Board approve the application. Mr. Pammel said that he did not like what he saw on the plat.

Several discussions ensued at one time, making them inaudible.

Mrs. Harris remarked that what she saw on the plat was not what she remembered that the Board had agreed upon. Chairman DiGiulian said, if that was the consensus, the applicant should be told that the plat was not acceptable.

Mr. Hammack asked staff if they had gone back and listened to the discussion. Ms. Kelsey pointed out that the Resolution conveyed the Condition which the Board had agreed upon.

Mr. Hammack requested a written transcript of the Condition as imposed by the Board. Mr. Pammel seconded the motion, which carried by a vote of 7-0. Ms. Kelsey said that the June 25, 1991, Minutes had already been completed and that staff would read them to confirm the wording of the Condition.

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: October 29, 1991

APPROVED: November 7, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 1, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:30 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 85, October 1, 1991, (Tape 1), Scheduled case of:

9:00 A.M. WOLFTRAP MEADOWS APPEAL, A 89-D-018, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Evaluation Director's decision that Tax Map 19-3((13))K satisfies the Zoning Ordinance definition of usable open space and therefore meets the provisions of Condition Number 22 of Special exception SE 83-D-106 on approx. 4 acres located on Days Farm Drive, zoned R-1, Dranesville District, Tax Map 19-3((13))K. (DEF. FROM 3/13/90, 5/22/90, 9/20/90, 12/20/90, 2/26/91 AND 5/28/91 AT APPLICANT'S REQUEST)

Mrs. Harris stated that a letter had been presented to the Board of Zoning Appeals (BZA) which requested withdrawal of the appeal.

Mr. Hammack made a motion to withdraw Appeal, A 89-D-018. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 85, October 1, 1991, (Tape 1), Scheduled case of:

9:15 A.M. MARKEY BUSINESS CENTER APPEAL, A 91-S-002, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that ingress/egress and public access easements for interparcel access must be provided on appellant's property before December 1, 1990 on approx. 4.34 acres located at 14522 and 14524 Lee Road, zoned I-4 & I-5, Sully District (formerly Springfield) Tax Map 34-3((8))4522 A-J and 4524 A-J. (DEFERRED FROM 6/4/91 AT APPLICANT'S REQUEST)

Mr. Pammel stated that he has a financial interest with the law firm that is representing the appellant; therefore, he would abstain.

Mrs. Harris noted the multiple deferrals that had been granted to the appellant and recommended a lengthy deferral.

Mr. Hammack made a motion to defer A 91-S-002 until January 14, 1992, at 9:15 a.m. He stated that the letter requesting deferral had indicated the appellant anticipated a settlement of the matter and hoped that they would be able to withdraw the appeal. Mrs. Harris seconded the motion which carried by a vote of 3-0 with Mr. Pammel abstaining and Mr. Kelley and Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 85, October 1, 1991, (Tape 1), Scheduled case of:

9:30 A.M. ARTHUR G. & MARGARET J. METHVIN, VC 91-M-078, appl. under Sect. 18-401 of the Zoning Ordinance to allow two additions, each 14.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-407) on approx. 9,667 s.f. located at 4022 Thornton Ct., zoned R-4, Mason District, Tax Map 60-3((28))97.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Methvin replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to permit construction of two additions to the rear of the existing dwelling. The additions would consist of a breakfast nook and a screened porch at a location 14.0 feet from the rear lot line. He stated that in the R-4 district a minimum rear yard of 25.0 feet is required; thus, the applicants were requesting a variance of 11.0 feet to that requirement.

Mrs. Harris asked whether Lots 2 and 2B abut Lots 5 and 6 and noted that the small plat and the area plat did not coincide. Mr. Riegle stated that the small plat had been certified by the applicants' engineer.

Mr. Pammel stated that he believed that a new nine lot subdivision had been recorded. Mr. Riegle said that Mr. Pammel was correct and that Lots 2 and 2B had been renumbered as Lots 5 and 6.

In response to Mrs. Harris' question as to whether the required notification had been correctly done, Mr. Riegle confirmed that it had. He explained that the subdivision was new, but that the boundary of Lot 2B had not changed. He noted that the houses on Lots 5 and 6

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are approximately 50.0 feet from the shared lot line.

The applicant, Margaret J. Methvin, 4022 Thornton Court, Annandale, Virginia, addressed the BZA. She said that the additions would not be detrimental to the neighbors, would not be visible from the street, and would only be visible to two of the adjacent neighbors. Ms. Methvin stated that the exceptional irregularity and shallowness of the lot imposed an undue hardship. She noted that the school property directly behind the proposed construction was wooded. In summary, Ms. Methvin explained that she and her husband would retire in a few years; therefore, due to financial considerations they would like to complete the necessary renovations before retirement.

Mr. Hammack made a motion to grant VC 91-M-078 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 24, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-078 by ARTHUR G. AND MARGARET J. METHVIN, under Section 18-401 of the Zoning Ordinance to allow two additions, each 14.0 feet from rear lot line, on property located at 4022 Thornton Court, Tax Map Reference 60-3((28))97, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 1, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 9,667 square feet.
4. The application meets the necessary standards required for the granting of a variance.
5. The shape of the lot, as well and the placement of the house on the lot, restricts reasonable development.
6. The applicants are seeking a minimum variance.
7. Under the circumstances, the request for a 12.0 foot depth addition is reasonable.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 87, October 1, 1991, (Tape 1), Scheduled case of:

9:40 A.M. TERRANCE L. & NANCY M. BRACY, VC 91-D-080, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 11.47 ft. from front lot line of corner lot (30 ft. min. front yard required by Sect. 3-307) on approx. 9,375 s.f. located at 1258 Beverly Rd., zoned R-3, Dranesville District, Tax Map 30-2((4))(J)1A, 3 and 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Brady replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval of a variance to construct a two story addition which would consist of a garage on the lower level and living space on the second level. He used the viewgraph to depict that the proposed addition would be located 11.47 feet from the front lot line. He noted that in the R-3 District a minimum front yard of 30.0 feet is required, thus a variance of 18.53 feet was requested. Mr. Riegle noted that the other existing dwellings on Beverly Road were set back a distance similar to that of the applicants.

The applicants' agent, Jack Brady, 1711 Connecticut Avenue, Washington, D.C., addressed the BZA. He used a model of the existing house, along with a model of the proposed addition, to depict the care that had been taken in order to ensure that the two structures would be architecturally aesthetic. He noted that in an effort to preserve the existing trees, the applicants had reduced the size of the addition and moved it further from the property line. Mr. Brady stated that the proposed addition would consist of a garage on the lower level and a library/guest bedroom on the main level.

Mr. Brady stated that the corner lot had exceptional narrowness, shallowness, and size. He noted that a conventional corner lot in the R-3 District is required to have a minimum of 105.0 feet in width and 10,500 square feet in area. He further noted that the location of the house, as well as the dimensions of the lot, precluded the placement of the addition in the backyard. Mr. Brady stated that the fact that the subject lot contains 9,375 square feet instead of the required 10,500 square feet constituted an exceptional reduction in size. In summary, he stated that if the addition were placed elsewhere on the lot, the existing drainage swell which runs along the western property line and across the front of the property would prevent vehicular access to the garage. Mr. Brady assured the BZA the neighbors had been consulted and had expressed their approval for the addition.

Mrs. Harris asked why the proposed deck had to be placed between the house and the garage. Mr. Brady explained that in order to architecturally blend the two roofs, a space between the existing structure and the addition would be essential. Mr. Brady said that the lighting, the ventilation, the aesthetics value, and the need for access from the garage to the main floor had also been taken into consideration when planning the addition. He expressed his belief that the proposed addition would be beneficial to the community and asked the BZA for approval.

Chairman DiGiulian called for speakers in support and the applicant came forward.

The applicant, Terrance L. Bracy, 1258 Beverly Road, McLean, Virginia, addressed the BZA. He stated that because of the mature trees and the Japanese garden in the yard, the proposed location was the only possible site for the addition.

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In response to Mr. Pammel's question as to whether the corner lot was the sole hardship issue, Mr. Bracy stated that one of the reasons for the request was that his elderly mother and mother-in-law may have to live with him. He explained that when he realized he would have to provide accommodations for them, he researched the housing market and found that he could not afford to buy a larger home.

In response to Mr. Hammack's question as to how many houses are on Beverly Street, Mr. Riegle stated although he did not conduct a site visit, the aerial photo indicated that there are no more than five houses on the street.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-D-080 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 24, 1991.

Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he could not support the motion. He explained that the request was for a maximum variance and would set a bad precedent for Beverly Street.

Mr. Kelley stated he supported the motion because of the excellent architectural plans and the fact that accommodations for the applicants' parents were required.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-080 by TERRANCE L. AND NANCY M. BRACY, under Section 18-401 of the Zoning Ordinance to allow addition 11.47 feet from front lot line of corner lot, on property located at 1258 Beverly Road, Tax Map Reference 30-2((4))(J)1A, 3, and 5, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 1, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,375 square feet.
4. The application meets the necessary standards required for the granting of a variance.
5. The lot has an unusual shape and is more than 10 percent less than the minimum lot size for the District in which it is located.
6. It is a corner lot with two front yard requirements which makes it difficult to use.
7. The property is in a substandard subdivision which required the consolidation of lots to create a buildable lot. It is still substandard in terms of the requirements of the Zoning Ordinance.
8. The applicant testified that the architectural considerations such as the roof lines, the style of the structure, as well as the preservation of the aesthetic landscaping had caused the need for the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

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5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mr. Kelley, Mr. Pammel and Mr. Ribble voting aye; Mrs. Harris and Mr. Hammack voting nay. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 89, October 1, 1991, (Tape 1), Scheduled case of:

9:50 A.M. YUN FANG JONGBLOED, SP 91-B-032, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (shed) to remain 5.6 ft. from rear lot line and 6.6 ft. from side lot line (11 ft. rear yard and 12 ft. side yard required by Sects. 10-104 and 3-307) on approx. 10,720 s.f. located at 5314 Nutting Dr., zoned R-3, Braddock District (formerly Annandale), Tax Map 79-2((3))(11)12.

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Fang replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a reduction to the minimum yard requirements based on an error in building location to allow an accessory (detached) structure (shed) to remain 5.6 feet from the rear lot line and 6.6 feet from the side lot line. She said that the height of the accessory structure is 11.0 feet. Ms. Bettard noted that Section 3-307 requires a minimum side yard of 12.0 feet in the R-3 Zoning District. She further noted that Section 10-104 requires that an accessory structure which exceeds 8.5 feet in height not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line. Therefore, modifications of 5.4 feet from the minimum side yard requirement and 5.4 feet from the minimum rear yard requirement are requested for the structure.

Ms. Bettard stated that staff believed that in order to be harmonious with the surrounding neighborhood, the shed should be painted an earth tone color and should not be used for any activity that produces harmful impacts related to noise and glare.

The applicant's agent, Kan Fang, 4904 Sideburn Road, Fairfax, Virginia, addressed the BZA. He stated that the applicant had not realized that the shed was in violation until notified by the County. Mr. Fang explained that the shed was in existence when the house was purchased and expressed the applicant's willingness to comply with the proposed development conditions.

In response to Mr. Hammack's question as to when the house was purchased, Mr. Fang stated that the applicant had purchased the house approximately 2 years ago.

Mrs. Harris asked what part of the Zoning Ordinance addressed the requirement regarding the painting, noise, and glare standards. Ms. Bettard noted that the shed had an electrical outlet and stated the application must comply with the standards in Sect. 8-006 which relates to adversely impacting surrounding areas.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 91-B-032 subject to the development conditions contained in the staff report dated September 24, 1991.

Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he would support the motion if a condition requiring an electrical inspection by the appropriate County Official be included in the development conditions.

Mrs. Harris added the following condition: "An electrical inspection shall be conducted by the Department of Environmental Management (DEM), and an electrical permit shall be obtained".

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-B-032 by YUN FANG JONGBLOED, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (shed) to remain 5.6 feet from rear lot line and 6.6 feet from side lot line, on property located at 5314 Nutting Drive, Tax Map Reference 79-2((3))(11)12, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 9, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

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2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED, with the following development conditions:

1. This Special Permit is approved for the location of the specific structure shown on the plat (dated June 18, 1991) prepared by CNB Associates, Inc. and submitted with this application.

2. This Special Permit is granted only for the accessory structure indicated on the Special Permit Plat approved with this application, as qualified by these development conditions.

3. No power tools shall be operated in the accessory structure (shed) prior to 9:00 a.m. on week-ends and holidays or prior to 8 a.m. on other days during the year, or after 8 p.m. in the evening; and all applicable Noise Ordinances and Glare Standards of the County shall be complied with.

4. An electrical inspection shall be conducted by the Department of Environmental Management (DEM), and an electrical permit shall be obtained.

This approval contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1991. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack asked whether the proposed Fairfax County Zoning Ordinance regarding the twelve (12) inch height for grass had been approved and if any implementation had been planned. Jane Kelsey, Chief, Special Permit and Variance Branch stated that although the Ordinance had been approved, she did not know how the Ordinance would be implemented. She advised Mr. Hammack that she would look into the matter and report her findings to him at the next public hearing.

Mr. Hammack stated that when he had conducted a site visit on the neighboring lot, the grass on Lot 11 was very high. Mr. Hammack asked that Zoning Enforcement be advised of the situation on the property owned by Margaret and William Timmon, 5312 Nutting Drive, Springfield, Virginia.

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Page 91, October 1, 1991, (Tape 1), Scheduled case of:

10:00 A.M. DENNIS FINDLEY, VC 91-D-079, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (carport) 8.0 ft. from side lot line (10 ft. min. side yard required by Sect. 2-412 and 3-207) on approx. 15,213 s.f. located at 1045 Clover Dr., zoned R-2, Dranesville District, Tax Map 21-3((10))35.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Findley replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a variance to allow the construction of a carport addition 8.0 feet from the side lot line. She noted that Section 3-207 of the Zoning Ordinance requires a minimum side yard of 15.0 feet in the R-2 District. She further noted that Sect. 2-412 allows carports to extend 5.0 feet into any minimum side yard, but not closer than 5.0 feet to any side lot line; therefore, the carport could be located 10.0 feet from the side lot line. Ms. Bettard said that the applicants were requesting that the carport be located 8.0 feet from the side lot line, therefore, a variance of 2.0 feet to the minimum side yard requirement was requested.

The applicant, Dennis Findley, 1045 Clover Drive, McLean, Virginia, addressed the BZA. He stated that after renting the house for approximately one year, he had purchased it in May of 1991. Mr. Findley stated many large trees line the driveway and he was requesting a carport because his car had been damaged from fallen tree limbs. Mr. Findley noted that the house has limited storage space and expressed his desire to include a storage area within the carport. He stated that although the lot is large, it is trapezoidal.

Mr. Findley stated that he is an architect and had designed the carport to be aesthetically compatible with the surrounding structures. He said that the neighbors had been advised of the plans and had expressed their support.

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There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 91-D-079 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 24, 1991.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that the placement of the house on the lot, as well as the extra 7.0 feet which had been allowed on the north side, precluded any other site for the carport.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-079 by DENNIS FINDLEY, under Section 18-401 of the Zoning Ordinance to allow addition (carport) 8.0 feet from side lot line, on property located at 1045 Clover Drive, Tax Map Reference 21-3((10))35, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 9, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,213 square feet.
4. The application meets the necessary standards required for the granting of a variance.
5. The lot has an exceptional trapezoidal shape.
6. The proposed site is the only possible location for the carport.
7. The variance would not be detrimental to the adjacent properties.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the carport addition to the specific dwelling shown on the plat (dated June 3, 1991) prepared by Dennis Findley and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 93, October 1, 1991, (Tapes 1 and 2), Scheduled case of:

10:15 A.M. MONTESSORI SCHOOL OF ALEXANDRIA, INC., SPA 80-L-033-2, appl. under Sect. 3-403 of the Zoning Ordinance to amend SPA 80-L-033-1 for child care center and private school of general education to allow increase in maximum daily enrollment, change in hours of operation, and change in previously approved conditions on approx. 3.6293 acres located at 6300 Florence La., zoned R-4, Lee District, Tax Map 82-4((1))17B, 17A; 82-4((36))A. (DEFERRED FROM 7/16/91 FOR APPLICANT TO COMPLY WITH CONDITIONS PREVIOUSLY IMPOSED BY BZA)

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Thomas replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the application had been deferred from July 16, 1991 to allow the applicant to comply with previously imposed conditions. Ms. Dickey said the Zoning Inspector, the Urban Forester, and staff had visited the site prior to the public hearing. She presented photographs of the site to the BZA and noted that the primary deficit of the application was screening and landscaping. Ms. Dickey noted that the Urban Forester had outlined, in the memorandum presented to the BZA, the necessary steps that must be taken to complete the landscaping requirements. She stated that the applicant was proposing to comply with the transitional screening requirements on the northern border by placing the trees on an adjacent property. Ms. Dickey noted that it would involve a private agreement between the applicant and the property owner, over which the BZA or the County staff would have no control; thus, staff continued to recommend approval in-part. She noted that staff recommended expanding the hours of operation by one-half hour, increasing the student age to 12 years of age, and to deny the request to increase the maximum enrollment to 99 students.

The applicant's attorney, William C. Thomas, Jr., with the law firm of Fagelson, Schonberger, Payne, and Deichmeister, 401 Wythe Street, Alexandria, Virginia, addressed the BZA. He presented pictures of the site, along with a letter of support, to the BZA and stated that he would answer any questions the BZA may have.

Chairman DiGiulian requested that Mr. Thomas advise the BZA as to what the applicant's intentions were regarding the landscaping and screening requirements. Mr. Thomas stated that when the original application was submitted to the BZA, the applicant had been unaware of the site's deficiencies. He expressed his belief that although the applicant's intentions were good, the transitional screening requirements imposed by the County could not be met without substantially detracting from the existing playground. Mr. Thomas stated that the applicant was requesting that the transitional screening requirements be modified or be waived. He said that an agreement had been reached with the adjoining neighbor, Evelyn Brown, 6210 Florence Lane, Alexandria, Virginia, to plant a line of trees on her property. Mr. Thomas asked that these trees, along with a line of evergreen trees which would be planted on the school property, be substituted for the 25.0 foot transitional screening requirements. He noted that the Urban Forester had visited the site and had made the landscaping suggestions that were presently before the BZA.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Eileen Pressley, 3314 Fallen Tree Court, Alexandria, Virginia; Mary Dixon, 3206 South Stafford, Arlington, Virginia; Brenda Lester, 6028 Florence Lane, Alexandria, Virginia; Sandra J. Sawin, 6249 Gentle Lane, Alexandria, Virginia; and Mary Ellen Hopkins, 7409 Rebecca

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Drive, Alexandria, Virginia, addressed the BZA and stated that their children attended the school. They expressed their belief that the school allows children to grow and learn at their own pace, and the teachers are professional , intelligent, and loving. They noted the school has provided quality education and care for the children which has resulted in a stress-free situation for the families. They emphasized the need for an increase in enrollment along with an extension of hours. They stated that although the school is located in a residential neighborhood, there is no detrimental traffic impact and asked the BZA to approve the application.

Mr. Pammel stated that although the BZA understood the parents' concerns for quality education, the application must be in harmony with the community.

Jean Adolphi, 1111 Trinity Drive, Alexandria, Virginia, addressed the BZA and stated that when the school was established the playground was placed 25.0 feet from the lot line. She noted that two years later, due to Virginia State regulation that no child under five years of age can be on any piece of equipment that is over 4.0 feet in height, a new playground had to be installed. Now because of County Ordinance requirements regarding screening, the existing playgrounds must be moved. She noted that the requirement would mean that the walkways and landscaping would have to be redone at great expense. She expressed her belief that by limiting the school's ability to choose the location for the playground, the BZA was penalizing the children.

Mrs. Harris stated that although the applicant had agreed to the development conditions at the 1986 public hearing, they had installed the playground on the area that had been committed for transitional screening. She expressed her belief that the applicant was giving the impression that the BZA was imposing a new condition on the school, when in fact the BZA was inquiring as to why previously imposed conditions had not been implemented by the applicant.

Mr. Pammel stated that the difficulties facing the applicant were due to the fact that after they had received the special permit in 1986, the applicant disregarded the development conditions and preceded to install the playground according to their own desires.

Mrs. Harris explained that when an applicant receives a special permit to have a commercial establishment in a residential neighborhood, certain criteria must be met and the applicant must honor their commitments.

Mr. Kelley explained that while the BZA was not questioning the quality of the school, it must consider the impact on the community.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Robert Redmond, President, Huntington Forest Homeowners Association, 6250 Gentle Lane, Alexandria, Virginia, addressed the BZA. He stated that he would support the application for an increase in the enrollment, if the applicant would show good faith and comply with the previously imposed development conditions.

In response to Mr. Kelley's question as to whether Mr. Redmond would support the request for an increase in enrollment if the 1986 development conditions were implemented, Mr. Redmond stated that the Homeowners Association had not addressed that issue because the prior conditions had not been met. He stated that the present traffic conditions were acceptable.

Hendrik Browne, 6211 Florence Lane, Alexandria, Virginia, addressed the BZA and stated that he lived directly across the street from the school. He said that although the school had an excellent staff and served the needs of the community, the school management was errant in their commitment to the community. Mr. Browne expressed his concern that the school management had not advised their own personnel about the development conditions that had been agreed upon. He noted that without any guidance from the management, the playground had been installed in an area that had been designated for transitional screening. He expressed his belief that the school management has completely disregarded the neighborhood concerns and has not shown good faith in their dealings with the community.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Thomas stated that while the educational process was run efficiently, the management of the school was inadequate. He emphasized the fact that the only outstanding issue was the side yard transitional screening requirement. Mr. Thomas expressed his concern that if the BZA held the applicant to their previous agreement it would severely limit the capacity of the school to function. He explained that the school must provide separate playgrounds due to the Virginia State Regulations. In summary, Mr. Thomas asked that the BZA disregard the applicant's previous negligence and grant the request with a modification or a waiver of the transitional screening requirements.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant-in-part SPA 80-L-033-2 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 9, 1991, with the following addition "19: The special permit amendment is granted for a period of three (3) years".

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he had seriously considered denying the application but would support the application because of the proposed development conditions presented by staff. He said that the application must come into compliance with the terms of the special permit and demonstrate that it can operate within the guidelines of the Zoning Ordinance. He explained that the BZA has no jurisdiction over the State of Virginia requirements. Mr. Hammack noted that the Zoning Ordinance requirements applied to all the schools that appear before the BZA and that this applicant had chosen to ignore these requirements.

Mr. Pammel noted that the applicant had never obtained a Non-Residential Occupancy Permit (NON-RUP). He said that in order to operate the school legally, the applicant must comply with the development conditions and obtain the NON-RUP.

Mrs. Harris stated that when an applicant agrees to development conditions, it is a bond of faith to the County and to the community. She explained that it was the applicant's responsibility to comply with all the development conditions and expressed her belief that Mr. Thomas would convey this information to the applicant.

Mr. Kelley stated that he would like to advise the applicant that the BZA has the power to revoke an application if the development conditions contained in the special permit are ignored.

Mr. Hammack stated that although the school has an excellent program, the BZA had a duty to consider the land use issue, the impact on the community, and the compatibility of the use with the neighborhood. Again, he emphasized all applications that are approved by the BZA must acquiesce to the development conditions.

Mr. Thomas addressed the BZA and explained that the applicant had mistakenly agreed to development conditions that could not possibly be met. He stated that it was not exceptional for the BZA to modify the transitional screening, and asked the BZA to reconsider the motion and to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application Amendment SPA 80-L-033-2 by MONTESSORI SCHOOL OF ALEXANDRIA, INC., under Section 3-403 of the Zoning Ordinance to amend SPA 80-L-033-1 for child care center and private school of general education to allow increase in maximum daily enrollment, change in hours of operation, and change in previously approved conditions **(THE BOARD GRANTED A CHANGE IN HOURS OF OPERATION AND A CHANGE IN A PREVIOUSLY APPROVED CONDITION TO ALLOW INCREASE IN THE MAXIMUM STUDENT AGE)**, on property located at 6300 Florence Lane, Tax Map Reference 82-4((1))17B, 17A and 82-4((36))A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 1, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 3.6293 acres.
4. The applicant has to comply with the terms of the previous conditions and demonstrate that it can operate under the County Zoning Ordinance.
5. The school's administration complained about changes in the Virginia State Law, but the Board of Zoning Appeals does not have jurisdiction over those changes.
6. The school's administration has ignored the previously imposed conditions and has not come into compliance. The Board requires all applicants to be in compliance. Other schools and day care centers, as well as other Montessori schools have complied with the Zoning Ordinance, and this applicant must also abide by the conditions that they agreed to when they received their special permit.
7. When the applicant demonstrates that they are in compliance and can satisfy the development conditions, then the Board will consider the additional proposals.
8. The Board will not consider expansion of the magnitude requested when the applicant has had five (5) years to come into compliance and has not done so.
9. The development conditions proposed by staff are reasonable. They allow the continuation of the school and only require they come into compliance.
10. It would be unfair to require other applicants to comply with the Zoning Ordinance if this applicant does not have to do so.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with some of the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sects. 8-303, 8-305 and 8-307 of the Zoning Ordinance for the request noted above.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Holland Engineering, dated July 6, 1981) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum daily enrollment shall not exceed seventy-five (75) children, ages toddlers to 12 years.

6. The maximum number of employees shall be limited to twelve (12) on-site at any one time.

7. Hours of operation shall be limited to 7:30 a.m. until 6:00 p.m., Monday through Friday.

8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of nineteen (19) spaces. All parking shall be on site and shall be designed according to the Public Facilities Manual (PFM) requirements. Compliance with the requirements shall be determined at site plan review by the Director of DEM.

9. All parking and driveway areas shall be paved with a dustless surface within sixty (60) days of final approval of this special permit.

10. Transitional Screening 1 shall be provided along all lot lines. Existing vegetation shall be used where possible, and supplemented where necessary, to satisfy this requirement. The degree and nature of supplementary plantings shall be determined by the Urban Forester. Screening along the eastern lot line shall be designed in such a manner so as not to interfere with the provision of adequate sight distance at the property's entrance. All play equipment shall be relocated outside the required screening yards.

11. Interior parking lot landscaping shall be provided in accordance with Article 13. Landscaping shall be provided within the grassed median shown on the approved plat, per the Urban Forester's review and approval.

12. Barrier requirements shall be waived along the south, west and the western half of the north lot lines. A six (6) ft. wood fence shall be relocated between the required screening yard and the existing structure along the east half of the north property line. All other fences shown on the Special Permit plat shall be maintained to satisfy the buffer requirement.

13. The applicant shall submit to the Urban Forester for review and approval a tree preservation plan to protect and preserve existing trees. The limits of clearing and grading shall be established to include the EQC and the existing tree line as shown on the SP plat. Vegetation located within the EQC shall remain undisturbed and in its natural state. Trees located within the developed portion of the site and depicted on the SP plat shall be preserved, per the Urban Forester review and approval. This tree preservation plan shall be approved prior to the approval of a site plan and the issuance of a Non-Residential Use Permit. Attachment 1 depicts the approximate limits of the EQC.

14. The site entrance shall be constructed to meet all applicable VDOT standards and shall be located to match, as nearly as possible, the centerline of Wooden Valley Court. Entrance improvements shall be constructed within six (6) months from the date of final approval of this special permit.

15. All trash shall be stored on-site in appropriate containers and shall be screened from view.

16. The maximum number of vehicle trips per day generated by this use shall be limited to 140 vehicles per day. Monitoring is to be conducted by the applicant and submitted to the Zoning Enforcement Branch, OCP for review of compliance with this condition once during the fall term, 1991, within three (3) months of the school opening and once during the spring term for a one-week period each and at such time when the school is at maximum enrollment. If the number of vehicle trips per day is determined to exceed 140, the applicant, within thirty (30) days of the determination, shall submit a program for management of trip generation to the Zoning Enforcement Branch for review and approval of how this requirement shall be met and shall institute such plan within sixty (60) days of approval of such management program.

17. In order to increase the effectiveness of the internal circulation system, lane striping and directional arrows shall be added to the travel aisles to provide more efficient two-way traffic flow.

18. All conditions imposed pursuant to the approval of SPA 80-L-033-1 not otherwise modified herein shall be satisfied within six (6) months of the date of final approval of this special permit, unless specifically stated otherwise, or the special permit shall be null and void.

19. The special permit amendment is granted for a period of three (3) years.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, six (6) months after the approval date* of the Special Permit unless the activity authorized has been legally established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

The Board waived the twelve-month waiting requirement for the refiling of the same application.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 9, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 97, October 1, 1991, (Tape 2), Action Item:

Approval of Resolutions from September 24, 1991 Hearing

Chairman DiGiulian called for the approval of the Resolutions from the September 24, 1991 public hearing with the exception of VC 91-L-075, Geraldine E. Markley, which was being held for revised plats. Mrs. Harris made a motion to approve the Resolutions as submitted by the Clerk. Mr. Hammack and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 97, October 1, 1991, (Tape 2), Action Item:

Request for Additional Time
St. Mark's Catholic Church, SPA 81-C-081-3
9970 Vale Road
Tax Map Reference 37-4((1))42

Mr. Kelley made a motion to grant the additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting. The new expiration date will be October 4, 1992.

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Page 98, October 1, 1991, (Tape 2), Action Item:

Request for Additional Time
Sleepy Hollow Preschool, Inc., and St. Alban's Episcopal Church, SPA 81-M-008-1
6800 Columbia Avenue
Tax Map Reference 60-4((1))10

Mr. Kelley made a motion to grant the additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting. The new expiration date will be July 26, 1992.

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Page 98, October 1, 1991, (Tape 2), Action Item:

Request for Intent to Defer
United Land Appeal, A 91-L-014

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the appellant and the Department of Environmental Management (DEM) are working to resolve the matter. She explained that although the agent for the appellant had submitted the request, DEM was in concurrence with the request. Mrs. Harris made a motion to grant an intent to defer. The Chair so moved.

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Page 98, October 1, 1991, (Tape 2), Action Item:

Approval of Minutes from July 16, 1991 Hearing

Mrs. Harris made a motion to approve the Minutes as submitted by the Clerk. Mr. Hammack and Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Mrs. Harris thanked staff for responding to the BZA's request for information regarding the run-off at the Langley School. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that Supervisor Lilla Richards and representatives from the Department of Environmental Management (DEM) had met with the representatives from the Langely School to assist in resolving the issue.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 26, 1991

APPROVED: December 3, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 8, 1991. The following Board Members were present: Vice Chairman Hammack; Martha Harris; Mary Thonen; and James Pammel. Chairman John DiGiulian; Robert Kelley; and, John Ribble were absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:30 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Hammack called for the first scheduled case.

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Page 99, October 8, 1991, (Tape 1), Scheduled case of:

9:00 A.M. UNITED LAND COMPANY APPEAL, A 90-L-014, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of Department of Environmental Management's decision that all building permits must be obtained in order to extend the approval of a site plan, and that the issuance of a Building Permit for the construction of a retaining wall does not extend the approval of the entire site plan on approx. 13.49 acres of land located at 3701 thru 3736 Harrison Lane and 3600 thru 3657 Ransom Pl., zoned R-8, Lee District, Tax Map 92-2((31))Parcel C and Lots 1 thru 86. (DEF. FROM OCTOBER 30, 1990, AT APPLICANT'S REQUEST. DEF. FROM 2/12/91 AT APPLICANT'S REQUEST. DEF. on 6/25/91 AT APPLICANT'S REQUEST) (BOARD ISSUED INTENT TO DEFER ON 10/1/91)

Vice Chairman Hammack noted that the appellant was requesting another deferral.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board of Zoning Appeals (BZA) had issued an intent to defer A 90-L-014 at its October 1, 1991 meeting. She suggested January 7, 1992, at 9:00 a.m. for the new public hearing.

Mrs. Harris made a formal motion to defer A 90-L-014 to the date and time suggested by staff. Mrs. Harris and Mr. Pammel seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Page 99, October 8, 1991, (Tape 1), Scheduled case of:

9:20 A.M. BRENDA SEIDMAN, VC 91-D-054, appl. under Sect. 18-401 of the Zoning Ordinance to allow accessory structure 8.0 ft. from side lot line (10 ft. min. side yard required by Sects. 3-407 and 10-104) on approx. 10,239 s.f. located at 6625 Gordon Ave., zoned R-4, Dranesville District, Tax Map 40-4((5))61. (DEF. FROM 7/9/91 - NOTICES NOT IN ORDER)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Seidman replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the subject property contains 10,239 square feet, is zoned R-4, and is located at 6625 Gordon Avenue in the Brilyn Park subdivision near Falls Church. Lot 61 is developed with a split-level single family detached dwelling and the surrounding lots are zoned and developed in a manner similar to the subject property. Mr. Jaskiewicz stated that the applicant was requesting a variance to the minimum side yard requirement to permit construction of a 10 foot high detached accessory structure (storage shed) 8 feet from the side lot line. Since the Zoning Ordinance requires that accessory storage structures greater than 8.5 feet in height be located no closer to the side lot line than the minimum side yard dimension, which in the R-4 Zoning District is 10 feet, the applicant was requesting a variance of 2 feet to the minimum side yard requirement for the proposed accessory structure.

The applicant, Brenda Seidman, 6625 Gordon Avenue, Falls Church, Virginia, presented her justification by stating that if the shed was one foot shorter there would be no need for a variance, that the structure was an attractive structure, and there were no objections from the neighbors.

In response to a question from Mrs. Harris regarding the location of the shed, Ms. Seidman replied that the lot is graded towards the back. She added that the existing shed is located in the triangular part of the lot which is right on the property line. Ms. Seidman stated that the location of the proposed shed will afford her privacy as well as her neighbors. She noted that there is also a patio area on the property.

Mr. Hammack asked if the shed could be moved over 2 feet to negate the need for the variance. Ms. Seidman explained that the shed cannot be moved because there is a gateway which will allow access to the proposed patio.

In response to a question from Mrs. Thonen, Ms. Seidman replied that the shed would be constructed of materials similar to those on the house. She added that she was requesting the 10 foot height for comfort and for architectural reasons. Mrs. Thonen stated that if the shed was 8.5 feet in height the applicant would not need a variance. Ms. Seidman replied that she was aware of that.

There were no speakers either in support or in opposition and Vice Chairman Hammack closed the public hearing.

Mr. Pammel made a motion to grant the request as he believed the applicant had an unusual situation and that he was always concerned when he looked at lots that have a width that is less than required by the zoning district where they are located. He stated that he believed that it did remove flexibility on the part of the owners for making home improvements and to make improvements that are architecturally compatible with the lot.

The motion failed for the lack of a second.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution. Mrs. Thonen seconded the motion which passed by a vote of 3-1 with Mr. Pammel voting nay. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

Following the vote, Ms. Seidman asked what options were available to her now.

Vice Chairman Hammack stated that she could either reduce the height of the shed or appeal the decision to the Circuit Court. He suggested that she discuss her options with staff. Jane Kelsey, Chief, Special Permit and Variance Branch, asked the applicant to call her office on October 9th since she would be in the Board Room most of the day.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-054 by BRENDA SEIDMAN, under Section 18-401 of the Zoning Ordinance to allow accessory structure 8.0 ft. from side lot line, on property located at 6625 Gordon Avenue, Tax Map Reference 40-4((5))61, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,239 square feet.
4. The property does have unusual lot size, it seems to be no more unusual than some of the other lots in that area.
5. The strict application of the Ordinance would not produce undue hardship.
6. The applicant could lower the top of the shed and move it so that a variance would not be required.
7. The applicant did not make clear what hardship would be overcome by the granting of the variance.
8. The applicant stated architectural and comfort reasons which according to the Ordinance do not produce confiscation of the property.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Thonen seconded the motion which carried by a vote of 3-1 with Mr. Pammel voting nay. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1991.

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Page 101, October 8, 1991, (Tape 1), Scheduled case of:

9:30 A.M. JOHN F. & BARBARA J. HARTZELL, VC 91-L-081, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing detached structure (garage) which exceeds 30% of minimum rear yard coverage to remain (no more than 30% coverage allowed by Sect. 10-103) on approx. 10,500 s.f. located at 4611 Lawrence St., zoned R-3, Lee District, Tax Map 101-1((5))(9)5. (CONCURRENT WITH SP 91-L-038))

9:30 A.M. JOHN F. & BARBARA J. HARTZELL, SP 91-L-038, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow detached structure (garage) to remain 4.9 ft. from side lot line and 4.1 ft. from rear lot line (12 ft. min. side yard and 13.1 ft. min. rear yard required by Sects. 10-104 and 3-307) on approx. 10,500 s.f. located at 4611 Lawrence St., zoned R-3, Lee District, Tax Map 101-1((5))(9)5. (CONCURRENT WITH VC 91-L-081)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marlene M. Hahn, Esquire, agent for the applicants, replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the subject property is located at 4611 Lawrence Street in the Mt. Vernon Valley subdivision, in an area generally south of Huntley Meadows Park, east of Fort Belvoir Military Reservation, and north and west of Richmond Highway (Rt. 1) near Mt. Vernon. The applicants are the owners of Lot 5 which is zoned R-3 and developed with a one-story single family detached dwelling and a one-story garage structure. Mr. Jaskiewicz stated that the applicants were requesting concurrent approvals of a variance and a special permit.

Mr. Jaskiewicz addressed the variance request by stating that the applicants were requesting approval to allow the existing detached garage structure to cover 41 percent of the required minimum rear yard. Since the Zoning Ordinance requires that all uses and structures accessory to single family detached dwellings cover no more than 30 percent of the area of the required minimum rear yard, the request was for a variance of 11 percent to the area allowed to be covered in the required minimum rear yard. He stated that the storage portion of the garage structure was constructed separately, and is approximately 280.5 square feet in area.

With respect to the special permit, Mr. Jaskiewicz stated the applicants were also requesting concurrent approval of a special permit for a modification to the minimum yard requirements based on an error in building location to allow the existing garage to remain 4.9 feet from the side lot line and 4.1 feet from the rear lot line. Since the Zoning Ordinance requires a minimum side yard of 12 feet, the request was for a modification of 7.1 feet to the minimum side yard requirement. Since the Zoning Ordinance requires that the 13.1 foot high garage shall not be located closer than a distance equal to its height to the rear lot line, the request was also for a modification of 9 feet to the minimum rear yard requirement for the garage structure.

Mr. Pammel noted that there was a 11 foot high framed shed located to the east of the garage shown on the plat which also appeared to be in violation. Mr. Jaskiewicz explained that the applicants have now removed the shed.

Marlene M. Hahn, Esquire, Attorney at Law, 10560 Main Street, Suite 415, Fairfax, Virginia, came forward and stated that the applicant purchased the property in 1974. She stated that she had a copy of the original plat showing that the garage existed at that time and the applicant purchased the property without any notice of any potential problems with respect to the zoning rules applicable at that time. Ms. Hahn stated that she had discussed the situation with the staff in the Zoning Administration Office and it was her understanding that in 1974 the original two car garage structure did not fall outside the zoning

regulations. Mr. Hahn stated in or about 1976 or 1977, the addition was erected by the present owners by professional contractors. She explained that the addition is separate insofar as it has a slanted roof but it is built upon a concrete slab and built within the specification but constructed without a building permit. Ms. Hahn stated that the structure was erected for storage and to create a buffer for privacy. She explained that the applicants learned of the non-compliance after they had put their house up for sale and had some inquiries from a perspective purchaser. The applicants have taken steps to bring the property into compliance and are acting in good faith. Ms. Hahn stated that if the applicants were required to remove the structure from the property it would pose a tremendous hardship since it would involve the removal of a concrete slab and a cinder block building. She added that she believed the removal of the garage would diminish the value of the property because a two car garage is considered an asset when purchasing a house. Mr. Hahn stated that she believed that the granting of both the variance and the special permit would alleviate a demonstrable hardship to the applicants approaching confiscation as distinguished from a special privilege because the applicant had acted in good faith. She stated that the applicants purchased the property without any knowledge or understanding that the structure was not in compliance; the addition was constructed by contractors who did not advise the applicants that a building permit was needed; the applicants did not intend to harm the community or change the nature of the zoning regulations; and it was not built for a commercial purpose, for additional living space, or to change the character of the property. She stated that the addition was constructed with the purpose of improving the quality of the property and the neighborhood. Ms. Hahn added that she had received three telephone calls in response to the notice letters that were mailed to the surrounding property owners and all were in support of the applicants' request.

Mr. Pammel stated that the BZA was normally concerned with the compatibility of the structure with the rest of the property and he believed that the addition was totally incompatible with the garage. He stated that it stood out like "night and day" as though there had been no attempt to blend the addition in with the garage. Ms. Hahn stated that the applicants had indicated that they would paint the garage white to match the existing garage and the doors so that it would all blend together.

Mrs. Thonen asked staff if it was correct that in 1974 the Zoning Ordinance required a 25 foot setback of the building from the lot line with a 12 foot side setback. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that was correct with respect to the principle dwelling but the requirement for sheds and garages was different. Ms. Kelsey said that sheds could be 4 feet from a side or rear lot line if it was fireproof, 2 feet if it was not. She apologized to the BZA that she could not remember the 1974 setbacks for detached garages.

In response to a question from Mrs. Harris about the original garage not being in compliance with the building permit, Ms. Hahn replied that from the appearance on the plat it did not appear that way but there was no documentation stipulating the dimensions of the garage. She stated that the plat shows a one car garage, but the plat that the applicants obtained when they purchased the property showed the garage and that an above grade pool and a storage shed had been removed. Mrs. Harris stated that it could be assumed that the placement of the garage location according to the house location survey was in accordance with the Zoning Ordinance under which it had been built and that it was simply embellished upon when it was built. Ms. Hahn stated that was her understanding. Mrs. Harris stated that she believed that the applicants had no bad faith in building the existing garage but there was a question regarding the accessory storage shed.

In response to a question from Vice Chairman Hammack, Ms. Hahn replied that the storage shed was built in the 1976-1977 timeframe by licensed contractors. She stated that Mr. Hartzell was present if the BZA had specific questions. Ms. Hahn added that it was her understanding that if a homeowner built a structure for his/her own use a permit was not needed and stated that she believed that the County's rules were a lot more lax at that time.

Mrs. Harris asked if the applicant had checked before constructing the shed and that she did not believe that the County had been lax at any time. Ms. Hahn explained that she was not referring to the County being lax in enforcing the regulations but that the overall view with respect to zoning was not as stringent.

Ms. Kelsey replied to Mrs. Thonen's earlier comment regarding the setbacks in 1974. She stated that the building permit contained in the file was fairly illegible because it had to be reduced but staff could submit the copy of the building permit staff had obtained from Mr. Hahn. Ms. Kelsey pointed out the structure that was built was not like the existing structure; therefore, staff could not establish when the structure was built which was the reason the structure had to be brought under today's Code. She added that if there had been a building permit for the particular garage of the size that was built today then staff would have been able to establish when it was constructed.

The applicant, John F. Hartzell, came forward and stated that he had hired DMP Landscaping who was no longer in business. He stated that the work had been done on a bartering system. Mr. Hartzell explained that the storage shed had been cut into the existing block and had become a part of the existing garage.

In response to a question from Vice Chairman Hammack, Mr. Hartzell replied that the contractor had assured him that a building permit was not needed.

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Vice Chairman Hammack called for speakers in support of the request and the following came forward.

George Farmer, 7262 Fairchild Drive, Alexandria, Virginia, stated he was the contract purchaser of the property and that he was not for or against the request but would like to see the property cleared of any violations. He asked that the BZA stipulate that both buildings receive electrical inspections.

Herman Wilson, 4609 Lawrence Street, Alexandria, Virginia, spoke in support of the application.

There were no additional speakers and Vice Chairman Hammack closed the public hearing.

Ms. Kelsey noted for the record that there was no electrical permit contained in the file.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution.

Mrs. Thonen stated that the applicant is an electrical contractor and should have known not to compound the error. She agreed that the removal of the small addition was better than denying the garage.

Mr. Pammel stated that the area figures provided in the staff report indicated that the original garage structure was 545 square feet and the addition was a little over 50 percent of the original garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-081 by JOHN F. AND BARBARA J. HARTZELL, under Section 18-401 of the Zoning Ordinance to allow existing detached structure (garage) which exceeds 30% of minimum rear yard coverage to remain **(THE BOARD DIRECTED THE APPLICANT TO REMOVE THE STORAGE SHED ATTACHED TO THE GARAGE AND ALLOWED THE GARAGE TO REMAIN)**, on property located at 4611 Lawrence Street, Tax Map Reference 101-1((5))(9)5, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.
4. The subject property is approximately the same size as other property in the neighborhood and no unusual topographic conditions exist on the property.
5. The strict application of the Ordinance would not produce an undue hardship.
6. The granting of the variance would not alleviate a hardship approaching confiscation.
7. The 30% coverage in a rear yard is a good thing to maintain and the removal of the additional storage area will bring the garage structure under compliance and in harmony with the other properties in the neighborhood.
8. There are both one and two car garages in the neighborhood and the applicant's structure, in comparison with other structures in the neighborhood, is much larger.
9. The applicant is an electrical contractor and should have known not to add and compound the error that existed when he purchased the property.
10. The removal of the small addition is better than denying the whole garage.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Thonen seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1991.

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Mrs. Harris made a motion to grant the applicant's request for the reasons noted in the Resolution subject to the development contained in the staff report dated October 1, 1991, with one addition:

4. A Building Permit, an electrical permit, and any other required permits shall be obtained and all inspections requested shall be approved prior to reconstruction or demolition.

At the request of Mrs. Thonen, Mrs. Harris revised Condition Number 3 to read as follows:

3. The applicants shall remove the unpainted attached storage structure, refinish the garage's eastern facade in a manner similar to the rest of the garage, and plant 6 foot evergreen plantings with a 4 foot spread 10 feet on center along the east, south and west sides of the garage so as to screen the structure from adjacent properties.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-038 by JOHN F. AND BARBARA J. HARTZELL, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow detached structure (garage) to remain 4.9 feet from side lot line and 4.1 feet from rear lot line **(THE BOARD DIRECTED THE APPLICANT TO REMOVE THE STORAGE SHED ATTACHED TO THE GARAGE AND ALLOW THE GARAGE TO REMAIN)**, on property located at 4611 Lawrence Street, Tax Map Reference 101-1((5))(9)5, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

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B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

3. The applicant was not involved in the building of the structure at all. It was done before the applicant purchased the property and whether the original owner of the property built this structure in good faith or not does not fall into this special permit request.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED, with the following development conditions:

1. This approval is granted to the applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the plat dated May 20, 1991, and approved with this application, as qualified by these development conditions.

3. The applicants shall remove the unpainted attached storage structure, refinish the garage's eastern facade in a manner similar to the rest of the garage, and plant 6 foot evergreen plantings with a 4 foot spread 10 feet on center along the east, south and west sides of the garage so as to screen the structure from adjacent properties.

4. A Building Permit, an electrical permit, and any other required permits shall be obtained and all inspections requested shall be approved prior to reconstruction or demolition.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.

Mrs. Thonen seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 105, October 8, 1991, (Tape 1), Scheduled case of:

9:50 A.M. DANNY G. & SUZZANNE B. WIKE, SP 91-S-037, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (shed/garage) to remain 2.4 ft. from side lot line and 4.6 ft. from rear lot line (8 ft. min. side yard and 11.5 ft. min. rear yard required by Sects. 10-104 and 3-307) on approx. 14,653 s.f. located at 7510 Mullinger Ct., zoned R-3 (developed cluster), Springfield District, Tax Map 89-4((21))45.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval to modify the minimum required yards to allow a detached accessory structure to remain 2.4 feet from the side lot line, and 4.6 feet from the rear lot line. Mr. Riegle added that the structure has a height of 11.5 feet which established a rear yard requirement of 11.5 fest and the Zoning Ordinance requires a minimum side yard of 8 feet in the R-3 District when developed under the cluster provisions of the Ordinance. He stated the applicants were requesting a modification of 6.9 feet to the minimum rear yard requirement and 5.6 feet to the minimum side yard requirement. Mr. Riegle pointed out that the applicants had not obtained a building permit prior to the placement of the structure on the lot.

Suzanne B. Wike, 7510 Mullinger Court, Springfield, Virginia, stated that she and her husband decided a few months ago that they would like to put a storage shed in their back yard to house their wet bike that sets on a 8 foot trailer, as well as a riding lawn mower and two push mowers. She stated that they have a two car garage with very limited space. Mrs. Wike stated that they explored the possibility of purchasing two small sheds but decided that the sheds would wear in time and not look as good as they expected and they proceeded to construct their own. She stated that she and her husband were told by a shed dealer that a permit was not necessary and concluded that they did not need a permit for a shed that they built themselves. Mrs. Wike submitted photographs to the BZA showing that the materials used to construct the shed are similar to those on their house. With respect to the letter received by the BZA from the homeowners association, Mrs. Wike explained that they planned to meet with the association on Sunday morning.

In response to a question from Vice Chairman Hammack, Mrs. Wike replied that they had not contacted County staff because the shed dealer had told them that they did not a building permit for the prefabricated sheds, therefore they assumed that they did not need a building permit for any type of shed.

She continued by stating that the day after they were contacted by the Zoning Inspector she came to the County and filed the necessary papers.

Mrs. Thonen asked why the storage shed was heated. Mrs. Wike explained that the propane tank was not hooked up to the shed and has been removed since the photographs were taken. Mrs. Thonen stated that the prefabricated storage sheds do not need a permit if they are within the height limitation. Mrs. Wike stated that they had to order a special garage door in order for the wet bike to fit inside.

Mr. Hammack asked the size of the prefabricated sheds the applicants looked at and Mr. Wike stated that the sheds were 12 x 17, 12 x 25, and 15 x 20. He added that he would have had to remove a portion of the fence in order to get a prefabricated shed onto the property. Mr. Wike stated that the sole purpose of the shed was to clear out as much of the garage as possible in order to make a play area for their two year old daughter.

Mr. Pammel asked if there was electricity in the shed and Mr. Wike replied there was not.

There were no speakers to address the request and Vice Chairman Hammack closed the public hearing.

Mr. Pammel stated that it was a very difficult dilemma but he believed that it was a situation where the applicants failed to contact the County about the restrictions prior to construction. He stated that he would reluctantly make a motion to deny the request.

Mrs. Thonen stated that the applicants seemed to be sincere about obtaining other building permits and the fact that some sheds are allowed closer to the lot line than others could confuse citizens; therefore, she would not support the motion.

Mrs. Harris stated that she would support the motion, that the applicants had constructed a nice shed, but she was disturbed with the size of the shed.

Mr. Pammel stated that it was a nice looking structure but it is a large structure that does not belong in its present location. He apologized to the applicants.

Mrs. Wike asked if there was anything they could do to bring the structure into compliance. Mr. Pammel stated that they would have to relocate the shed.

The motion carried by a vote of 3-1 with Mrs. Thonen voting nay. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

Mr. Pammel asked staff to pursue a procedure that could be distributed to all shed dealers noting for their information when permits are required. Mrs. Thonen said that had been done about three years and the Zoning Ordinance had been changed to reflect the height of the prefabricated sheds.

Mr. Hammack stated that approvals are not needed for small sheds but the applicants have constructed a shed as large as a two car garage.

Ms. Kelsey reminded the BZA that if it was their intent to waive the 12-month time limitation for filing a new application so the applicants could reduce the variance request it must be done before anyone interested in the case left the room.

Page 107, October 8, 1991, (Tape 1), DANNY G. & SUZZANNE B. WIKE, SP 91-S-037, continued from Page 106)

Mr. Pammel made a motion to do so. Mrs. Harris seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

Ms. Kelsey stated that she would pass the BZA's concern on to the Information Center, Department of Environmental Management (DEM), which is responsible for the distribution informational brochures.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-037 by DANNY G. AND SUZZANNE B. WIKE, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow accessory structure (shed/garage) to remain 2.4 feet from side lot line and 4.6 feet from rear lot line, on property located at 7510 Mullinger Court, Tax Map Reference 89-4((21))45, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 1991; and

WHEREAS, the Board has made the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Harris seconded the motion which carried by a vote of 3-1 with Mrs. Thonen voting nay. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

The Board waived the 12-month waiting period for filing a new application if the applicants desires to do so.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1991.

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The BZA took a short recess before proceeding with the next case.

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Page 107, October 8, 1991, (Tapes 1-2), Scheduled case of:

10:00 A.M. MICHAEL H. GOLDBERG, M.D., SP 91-D-034, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow tennis court lights to remain 7.5 ft. from rear lot line and 18.0 ft. from side lot line (20.3 min. rear yard and 20 ft. min. side yard required by Sects. 3-107 and 10-104) and allow accessory structure (tennis court fence) to remain 9.7 ft. from rear lot line and 12.8 ft. from side lot line (10 ft. min. rear yard and 20 ft. min. side yard required by Sects. 3-107 and 10-104) on approx. 43,370 s.f. located at 7310 Linganore Ct., zoned R-1, Dranesville District, Tax Map 21-3((23))8.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Keith Martin, attorney for the applicant, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She stated that the staff report was prepared by Staff Coordinator, Carol Dickey, who was not able to be present at the public hearing.

Ms. Kelsey stated that the property is located in the northwest quadrant of I-95, 495, and Georgetown Pike, the surrounding properties are zoned R-1, and to the rear of the subject property is the Dranesville District Park. She stated that the dwelling on adjacent Lot 11 is located approximately 85 feet from the shared lot line and the dwelling on adjacent Lot 7 is located approximately 25 feet from the shared lot line and set back a distance which is similar to the dwelling on the subject property. Ms. Kelsey stated that the applicant was requesting a modification to both the rear and side yards in order to allow the existing tennis court and the lights to remain. She called the BZA's attention to the plat and stated that the closest point for the fence to remain in the rear is 9.7 feet, the light is 7.5 feet, and on the side lot line the light pole is 18 feet, and the fence is 12.8 feet. Ms.

Kelsey explained that the two measurements, 18 feet and the 9.7 feet, are both less than the 10 percent, therefore the two distances would need to be approved by the Zoning Administrator. She added that the other two distances, the 7.5 and 12.8, would be addressed by the BZA. Ms. Kelsey stated that staff had researched the application to try to determine how the error had occurred and the applicant had indicated in the statement of justification that the lights and the fence were constructed in good faith and through no fault of his. She noted that the applicant stated that the tennis court lights were installed in their present location based on conversations with County personnel, issuance of permits, and inspections by County personnel. The applicant did obtain an electrical permit but electrical inspectors do not address zoning restrictions. She called the BZA's attention to a letter in the file from the applicant to the Zoning Enforcement Branch which indicated that the applicant was aware prior to construction that the tennis court should have been located 10 feet from the rear lot line and 20 feet from the side lot line.

In response to questions from Mr. Pammel, Ms. Kelsey used the viewgraph to discuss the question of the 30 percent coverage problem. She stated that she did not know whether or not the Staff Coordinator had calculated the 30 percent coverage.

Keith C. Martin, Esquire, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Blvd., 13th Floor, Arlington, Virginia, represented the applicant. He stated that the non-compliance was done in good faith, the reduction will not impair the purpose or intent of the Ordinance, and no there is detriment to the use or enjoyment of other properties, no unsafe condition has been created, compliance with the Ordinance would cause the applicant undue hardship, and there is no increased density. Mr. Martin addressed each comment individually.

Mr. Martin stated that the error clearly exceeds 10 percent and the main point of the case before the BZA was scrutinizing the good faith involved in the non-compliance. He stated that he had introduced a chronology of the events to the BZA showing what the applicant had done from 1985 to the present. Mr. Martin stated that the applicant repeatedly asked the correct questions of County staff prior to building the fence in 1986 and prior to installing the lights in the fall of 1990 and was repeatedly given incorrect information. He stated that the incorrect information was carried further by several County inspectors looking at the court and the lights, before, during, and after construction with either no violation notice, or with a confirmation of compliance. Mr. Martin stated that the applicant knew that he would be scrutinized by at least one neighbor and wanted to make sure that the construction was done under the strict letter of the law. The applicant also requested and received from the master developer two releases of the underlying restrictive covenants for the subdivision which allowed him to construct the tennis court and the lights. Mr. Martin stated that the applicant, in good faith, tried to research the County's laws and believed that it was reasonable to ask zoning, Office of Comprehensive Planning, and permit branches what he could do. He stated that after numerous approvals the applicant thought it was reasonable to rely on the County information.

Mr. Martin noted a correction to the applicant's letter of December 11, 1990, to Claude Kennedy, Senior Field Inspector, by stating that the applicant was originally told by zoning officials that the 10.0 foot high tennis court fence could be located 10 feet from the side and rear lot lines, not 20.0 feet. He stated that the letter incorrectly stated 20.0 feet because the applicant had just gotten off the telephone with another County official who had quoted the correct 20 figure and the figure "stuck in the applicant's head" when he wrote the letter out of pure frustration. Mr. Martin stated that he believed that good faith had been established.

He then addressed the criteria dealing with the reduction by stating that the request will not impair the purpose and intent of the Ordinance, that it will not be detriment to the use and enjoyment of other properties, and will not create an unsafe condition. Mr. Martin stated that the lights have been inspected by the County and have met the glare standard and the applicant spent additional monies when ordering the lights to have the optional glare shields put on the lights. The applicant also specifically ordered the black light poles because the company believed them to be the less visually obtrusive. He stated that the existing vegetation and the vegetation recommended by staff in the development conditions will quickly screen the lights in question. Mr. Martin stated alternative locations of the lights would be more detrimental to the adjacent properties if the lights were moved into a location that would be in conformance with the Ordinance.

Mr. Martin stated that the applicant's good faith attempt to build under the law of the County, the applicant being provided with incorrect information, the cost of the public hearing, filing the application, attorney's fees, engineering fees, removal of the three poles, cutting the tennis fence down, and the cost of rewiring the lights, he believed approached punitive measures. He stated that there is no increase in density by approving the applicant's request and that he believed this was a perfect example as to why the Ordinance section was adopted. Mr. Martin stated that the section was adopted to correct good faith errors which would otherwise impose undue hardship and added that there had been good faith reliance on County information by the applicant and should not be necessary for an applicant to hire a team of lawyers and take dispositions of County officials in order to build a tennis court. He stated that the bottom line was, the system failed and the question to be answered by the BZA was, "should a citizen be penalized by the County as a result of incorrect information from the County."

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In response to questions from Mr. Pammel, Mr. Martin replied that the applicant's purchasing the property was contingent upon a tennis court being built, the grading took place, the neighbors asked what was going on, and the grading stopped. He stated that the contractor of the house talked to the applicants to determine whether or not to proceed with the construction of the house and the applicants told him to proceed. Mr. Martin added that Mr. Goldberg contacted the County and he was told that if the tennis court was less than 5,000 square feet in grading activity and less than 18 inches in topographic change a grading permit was not needed. He stated that the site grading plan had not shown a tennis court.

Mr. Martin stated that it was his understanding that the Zoning Ordinance did not require permits for the tennis court and the County inspectors had no problem with the tennis court when they reviewed the plans. Mr. Pammel stated that the inspectors may have indicated that everything was fine but when a citizen is improving a lot they are required to show all improvements which must pass County inspection. Mr. Martin stated that the house was complete and an Occupancy Permit was issued prior to beginning the construction of the tennis court.

Mrs. Thonen called the BZA's attention to a letter dated November 2, 1990, from the law firm of Adams, Porter & Radigan in the staff report. She stated at that time all the violations were pointed out and she could not believe that the County would state that there was no violation with respect to the height of the lights. Mrs. Thonen stated that after looking at the photographs she believed that it did impact the neighbors. Mr. Martin asked if was reasonable for a citizen to rely on information received from the County or rely on an irritated neighbor who used "firm letterhead" to express his opinion. Mrs. Thonen stated that neighbors should be listened to because the Zoning Ordinance stipulates that neighbors should not be impacted by a use.

In response to questions from Mrs. Harris, Mr. Martin replied that a tennis court light company had installed the lights but the applicant did the research as to where the lights should be located. He stated that when the applicant received the November 2, 1991 letter, he contacted the County and talked with Melinda Artman, with the Zoning Administration Division, and was told that the lights were legal and he need only comply with the glare requirements. Mr. Martin stated that Ms. Artman told the applicant to install the lights, have the lights inspected, and forward the inspection letter to her. She stated that she would write him a letter showing compliance so that he could show the letter to the neighbor.

Mrs. Harris asked if Ms. Artman without reviewing a plat, without knowing the height or location of the light poles, had determined that the lights were in compliance. Mr. Martin stated that the applicant described the layout to Ms. Artman. Mrs. Harris stated that many times someone's description as to where something is and where something actually is are two different things. She stated that she found it hard to believe that a County official would make a determination without actually seeing a plat. Mr. Martin suggested that Dr. Goldberg come forward. Mrs. Harris agreed.

Michael H. Goldberg, 7310 Linganore Court, McLean, Virginia, explained that an electrical contractor obtained an electrical permit and installed the lights. He stated that six times over two years he contacted the County and was told each time that the importance of a light dealt with the glare on to a neighbor's property.

Mrs. Harris asked if Ms. Artman had questioned how far the lights were from the property line. Dr. Goldberg stated that he had described very specifically the fence, the light poles, and the location because of past problems with his neighbor. He stated that he was told that the location did not matter because the lights were not considered a structure.

Mrs. Harris asked Jane Kelsey, Chief, Special Permit and Variance Branch, if it was possible to have Ms. Artman come to the Board Room. Ms. Kelsey asked if the BZA would like to defer the public hearing to another date and request Ms. Artman to be present. The BZA agreed. It was the consensus of the BZA to poll the audience to determine if anyone was present who wished to speak to the case.

Mr. Martin stated that he had discussed relocating the lights with William Shoup, Deputy Zoning Administrator, and Michael Congleton, Deputy Zoning Administrator, Ordinance Administration Branch. He pointed out that relocating the lights to a location where they would be in compliance with the Zoning Ordinance would be more detrimental to the neighbors. (Mr. Martin used the viewgraph to show how the layout of the lights would change.)

Mrs. Harris stated that unfortunately what the neighbors like or dislike was not the issue before the BZA but whether the BZA should grant a special permit to allow the lights and the tennis court to remain.

Vice Chairman Hammack called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Bill Freyvogel, owner of Lot 11, stated that he was a neighbor who most affected by the tennis court and the lights and referenced his letter dated September 10, 1991, to the BZA. He stated that he had talked to twelve of the fourteen homeowners within the subdivision and nine of those had signed a petition in opposition to the request. (Mr. Freyvogel submitted the petition and photographs to the BZA.) He stated that the photographs could not show the BZA the noise from the squeaking of the tennis shoes and the "blink" of the tennis balls until 11 o'clock at night when the applicants are playing doubles tennis. Mr. Freyvogel

stated that the applicants had promised in 1986 that lights would never be installed on the court and that appropriate landscaping would be installed to minimize the impact of the court. He stated that there is absolutely no landscaping between his property and the applicant's property and only minimal landscaping between the applicant's property and the neighbor on the other side which was done late last year after the neighbor complained to Zoning Enforcement. Mr. Freyvogel stated that he was disappointed with the landscaping suggested by staff in the Development Conditions since it would be years before the plantings would have any impact on the light problem which was the basis for his objection. He added that he was offended by the applicant's statement that the speaker was a bad neighbor and again pointed out the petition signed by others in the neighborhood. Mr. Freyvogel asked the BZA to deny the application.

In response to questions from Mrs. Harris, Mr. Freyvogel stated that he would be concerned with relocating the lights to bring them into compliance with the zoning regulations. He added that he believed that it would be far more responsible for the applicant and his lawyer to propose solutions to accommodate the concerns of the neighbors instead of trying to "stuff it down their throats." Mr. Freyvogel stated that the three lights adjacent to Lot 11 present the greatest problem as the lights tower over his property even when they are turned off, they are extremely visible when the lights are turned on, and that he had not given much thought as to whether or not relocating the lights would eliminate the problem but it would put everything on a different angle in relation to his property.

He stated that it would be enormously expensive for the applicant to put 20 foot high trees along the entire property line nor has the applicant volunteered to do so. Mr. Freyvogel added that he believed the only alternative would be for the BZA to deny the application and let the informal process take over and perhaps the applicant would have more legitimate concern for his neighbors.

Mrs. Thonen asked if the tennis court lights was the speaker's only concern. Mr. Freyvogel stated that if he had his way the tennis court would not have been constructed in the first place, but he did not object to the court based on what the applicant told him prior to construction. He stated that he has lived with the tennis court by putting up a privacy screen on the property line, planted a significant number of pine and spruce trees, and had just gotten to the point where the vegetation was screening most of the fence and tennis court activity when the lights were installed. Mr. Freyvogel stated that he did not have a problem with the portion of the application that relates to the placement of the fence, but that he did have a problem with every aspect of the application relating to the lights.

In response to questions from Mr. Pammel, Mr. Freyvogel replied that the difference in natural elevation is probably only several feet as there is a gradual sloping from the applicant's property on through his back yard to the neighboring property on Lot 12. He explained that the reason that the relative heights appeared to be exaggerated in the photographs is because when he constructed his swimming pool he cut into the side of the slope in order to minimize the impact on the neighbors. Mr. Freyvogel stated that when his family is on the swimming pool deck the tennis courts are approximately 10 feet higher than where his family sits.

Mr. Pammel asked the speaker if he was an attorney with the law firm noted on the letterhead which he had used to write to the BZA and asked whether he was representing himself or the neighborhood. Mr. Freyvogel stated that he was an attorney with the law firm noted on the letterhead, that he was representing himself, and that he did not purport to formally represent the homeowners who had signed the petition.

The next speaker was Arthur Kales, 7312 Linganore Court, McLean, Virginia, who strongly objected to the BZA granting a special permit to allow the tennis light structures to remain. He stated that in 1986 he and the previous speakers met with the applicant to discuss their concerns regarding the impact that the tennis court might have on their properties. Following that discussion, Dr. Kales stated that he felt substantially better about the tennis court after the applicant assured them that he would provide screening landscaping and that he would not install lights. He stated that all were aware that the fence height exceeded zoning restrictions but he and Mr. Freyvogel chose not to press the issue since they were satisfied with the applicant's assurances on the other matters. Dr. Kales stated that he was disappointed when the original landscaping between the tennis court and his yard proved to be just three pine trees. He added that the additional trees shown in the photographs were placed on the applicant's property following a complaint filed with the Zoning Enforcement Division. Dr. Kales stated that the situation was tolerable until the lights appeared since the tennis court is located immediately to his property and is 6 to 8 feet above his property and the lighting towers add another 20 feet. He stated that the lights are truly intrusive at night but they are fortunate that most of their windows do not face the court and the portion of the back yard where they would have liked to have built a patio or extended the existing deck is rendered unusable because of the lights. Dr. Kales stated although he believed that landscaping would soften the impact of the lights he believed that it would take too long and would not be sufficient.

There were no additional speakers and Vice Chairman Hammack asked Ms. Kelsey if she had been able to contact Ms. Artman. Ms. Kelsey stated that she had been unable to contact Ms. Artman but had contacted the Zoning Administrator who had requested that the BZA defer action for two weeks to allow her time to review all the facts. Mrs. Thonen stated that she believed that Ms. Artman and the Inspector needed to appear before the BZA to respond to questions and that she would make that a part of her motion for deferral.

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Mr. Martin asked if he would have a chance for rebuttal. Vice Chairman Hammack suggested that he forgo rebuttal until the next public hearing if it was the BZA's desire to defer action.

Ms. Kelsey stated that she did not know the name of the Zoning Inspector and Mrs. Thonen told her that it was in the staff report.

Mrs. Thonen made a motion to defer action for two weeks in order for Ms. Artman, Ms. Brown, Mr. Kennedy, and Ms. Gwinn to be present to respond to questions from the BZA and to tell the BZA why they had ruled the way they did. Mrs. Harris seconded the motion.

Ms. Kelsey suggested 11:00 a.m. on October 22, 1991.

Vice Chairman asked Mr. Martin and the speakers if the date and time was agreeable and they indicated that it was. The motion carried by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Page 111, October 8, 1991, (Tape 2), Scheduled case of:

10:10 A.M. EUGENE & BARBARA CENITCH, SP 91-C-039, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 16,181 s.f. located at 2111 Freda Dr., zoned R-2 (developed cluster), Centreville District, Tax Map 38-1((26))20. (CONCURRENT WITH VC 91-C-083)

10:10 A.M. EUGENE & BARBARA CENITCH, VC 91-C-083, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207) on approx. 16,181 s.f. located at 2111 Freda Dr., zoned R-2 (developed cluster), Centreville District, Tax Map 38-1((26))20. (CONCURRENT WITH SP 91-C-039)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dick Bier, agent for the applicants, replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicants were requesting approval of an accessory dwelling unit consisting of approximately 618 square feet located within a proposed addition to the eastern side of the dwelling.

In addition, the applicants were requesting a variance to the minimum rear yard requirement to allow the addition 21 feet from the rear lot line. Section 3-207 requires a minimum rear yard of 25 feet; therefore, the applicants were requesting a variance of 4 feet to the minimum rear yard requirement.

Ms. Bettard stated that staff believed that with the adoption of the proposed Development Conditions in Appendix 1, the proposal presented in the application would be in harmony with County policies and would be in conformance with all applicable standards for approval provided by the Zoning Ordinance. She pointed out that the Conditions included a requirement that evergreen plantings 6 feet in height be provided along the northern and southern sides of the addition to soften the visual impact of the larger structure from the abutting properties and that the proposed addition be reduced so that the variance would not be needed.

In closing, Ms. Bettard noted that an application for an accessory dwelling unit on Lot 25 was currently being evaluated by staff. She stated that the proposal is for an 1,164 square foot unit in an existing 3,590 square foot dwelling and the application will be considered by the BZA on December 3, 1991.

Richard B. Bier, Architect/Agent, 1951 Horseshoe Drive, Vienna, Virginia, came forward and stated that he believed that the special permit request was fairly obvious. He explained that the accessory dwelling unit would house the sister-in-law of the applicants.

Mr. Bier addressed the variance request by stating that the lot has an irregular shape and there is a storm drainage easement 5 feet off the edge of the addition that slopes to the catch basin which is 6 feet below the corner of the existing house at the front. He added that the area of the triangle at the rear corner is approximately 15 square feet. Mr. Bier pointed out there is a line of trees to the east which screens the addition from Lot 14 and Lot 15 is quite a bit above the addition. He agreed there will be some impact and noted that the building will be approximately 60 feet away from the neighboring dwellings. Mr. Bier explained that the addition was designed to relate as closely as possible to the existing dwelling. He stated that the width of the addition was determined by the kitchen entry and closet and that the addition could not be any smaller than 18 feet. Mr. Bier added that the addition could not be moved any closer to the front and to expand the width of the addition would change the shapes of the rooms. (Mr. Bier submitted photographs to the BZA showing the property.)

In response to questions from Mrs. Harris, Mr. Bier replied that there would be no connecting door between the principle dwelling and the accessory dwelling unit. He stated that the entrance to the unit would be at the back.

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Mrs. Harris expressed concern that there was not a connecting door and quoted from the additional standards for accessory dwelling units by stating, "An accessory dwelling unit shall be located within the structure of a single family detached dwelling unit." She stated that the unit cannot be within the principle dwelling if there is no connecting door. Mr. Bier stated that he was unaware of that interpretation.

Mrs. Thonen stated that she was aware that the BZA had granted other accessory dwelling units to make it easier on an elderly person, but that it bothered her that staff recommended approval when the applicant needed a variance in order to construct the addition. Ms. Bettard stated that staff had recommended that the applicant redesign the addition in order to eliminate the need for a variance and this had been addressed in the Development Conditions.

Vice Chairman Hammack asked how staff interpreted Paragraph 2 of the Ordinance which states, "It will be located within the structure of a single family detached dwelling." Mrs. Thonen added that the Development Conditions only stipulates, "that the addition shall be architecturally compatible with the existing building," and does not say anything about redesigning the addition. Ms. Bettard pointed out that the BZA had two sets of Development Conditions, one for the variance and one for the special permit.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she was not aware that the Ordinance read that there had to be an interior entrance into the principle dwelling. She stated if an applicant has a lot that is larger than 2 acres the applicant could have an accessory dwelling unit in a separate structure.

A discussion took place between the BZA and staff regarding whether or not a entrance way was required between the accessory dwelling unit and the principle dwelling.

Vice Chairman Hammack asked what the applicants planned to do when the special permit expires. Ms. Kelsey stated she did not have an answer.

Mr. Bier explained that if the occupant of the accessory dwelling unit leaves or if the applicants sell the house, the addition must be made accessible from the inside of the house. He stated that he did not believe that being contained within a structure necessarily required access from the inside of that structure.

Mrs. Harris stated that the word "duplex" came to her mind and she questioned whether that was the intent of the Ordinance. Mr. Pammel stated that when defining a "structure" for building code purposes it would be classed as a structure. The BZA disagreed.

In response to a question from Vice Chairman Hammack about whether the applicant would be granted a building permit to build the structure as he was proposing, Ms. Kelsey stated that she did not know.

Mrs. Thonen stated that she believed the request would be raising the density.

Vice Chairman Hammack called for speakers in support of the request and hearing no reply called for speakers in opposition.

Bill Reardon, owner of Lot 15, came forward and stated that he was not really in opposition to the request but he was concerned with what would happen when the property was sold. Vice Chairman Hammack explained that the request would be recorded in the land records of the Circuit Court and it could not be sold as two dwellings.

There were no further speakers and Vice Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to deny the special permit for the reasons noted in the resolution.

Mrs. Harris seconded the motion and stated that she questioned the wording, "within the structure." She stated that she believed that the BZA had interpreted in the past that the accessory dwelling unit not be an appendage to the house but as a part of the house.

Vice Chairman Hammack stated that the applicant's agent had testified that when the accessory dwelling unit was discontinued the applicants would then construct an entrance between the two units. He stated that he believed that the unit had to be an integral part of the structure.

Mr. Pammel noted that Provision 5 of the Ordinance states, "one of the dwelling units be owner occupied, and one of the dwelling units shall be occupied by a person 55 years of age or older, or a person permanently or totally disabled." He stated that wording indicated to him the need for a connection between the two units.

Vice Chairman Hammack stated that he believed that the request would also change the residential character of the neighborhood.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-C-039 by EUGENE AND BARBARA CENITCH, under Section 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 2111 Freda Drive, Tax Map Reference 38-1((26))20, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 16,181 square feet.
4. The applicants have not met the standards.
5. The special permit did not meet the standards due to the fact that it doesn't have any inside connection to the principal dwelling which could make it come under the heading of extra density. When you have two pieces of property on one lot it becomes higher density, which is against the rules and the Board cannot do anything that would raise the density.
6. Accessory dwelling units should not be allowed when a variance is needed in order to meet the standards for an accessory dwelling.
7. The denial of the request might be a way to allow the applicant to appeal the decision and then the Zoning Administrator would be present to offer a determination with respect to whether or not the accessory dwelling unit and the principal dwelling have to have an interconnecting entrance way.
8. The Board has previously granted accessory dwelling units when they are located within the house so that in the future it can again become an integral part of the house.
9. Provision 5 of the Zoning Ordinance requires that one of the dwelling units be owner occupied and one of the units shall be occupied by a person 55 years of age or older, or a person permanently or totally disabled. The Board believed this to be a clear indication of the need for a connection between the dwellings.
10. The request would change the residential character of the neighborhood because in a single family detached neighborhood the request would give a distinct duplex character which would not be permitted on an original building permit application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mrs. Harris seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble was absent from the meeting.

The Board waived the 12-month waiting period for filing a new application if the applicants desire to do so.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1991.

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Mrs. Thonen then made a motion to deny the applicant's request for a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-083 by EUGENE AND BARBARA CENITCH, under Section 18-401 of the Zoning Ordinance to allow addition 21.0 feet from rear lot line, on property located at 2111 Freda Drive, Tax Map Reference 38-1((26))20, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

Page 114, October 8, 1991, (Tape 2), EUGENE & BARBARA CENITCH, SP 91-C-039 and VC 91-C-083, continued from Page 113)

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 8, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 16,181 square feet.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble was absent from the meeting.

The Board waived the 12-month waiting period for filing a new application if the applicant wished to do so.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 16, 1991.

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The Board took a short recess before proceeding with the next scheduled case.

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Page 114, October 8, 1991, (Tapes 2-3), Scheduled case of:

10:20 A.M. APOSTOLIC CHURCH OF WASHINGTON, INC., SP 91-Y-036, appl. under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities on approx. 11.871 acres located at 11800 Braddock Rd., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 67-2((1))1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Mitteredor, agent for the applicant, replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report by stating that the subject property is located on the north side of Braddock Road just east of First Street and is abutted on the north, south, east, and west by properties zoned R-C and WSPOD that are vacant

or developed with single family dwellings. Ms. Bettard added that the applicant was requesting approval to construct a church with related facilities on property that is currently developed with a single family dwelling, the church will be a 26,000 square feet two story structure consisting of 600 seats and will be served by public water and a private water system, services will be held on Sunday between 8:00 a.m. and 6:00 p.m. with additional uses occurring on Fridays from 6:00 p.m. to 8:30 p.m., and there will be two full time employees associated with the church. Ms. Bettard stated that staff believed that with the low FAR, the low building height, and the provision of transitional screening above the minimum requirements, the application will be in harmony with the Comprehensive Plan recommendations for very low residential development for the area. She stated that staff also believed that the use met the applicable standards of the Zoning Ordinance; therefore, staff recommended approval provided the applicant complied with the proposed Development Conditions contained in the staff report.

Ms. Bettard noted there is an existing church on Lot 33 and there are two proposed churches to be constructed on Lots 34 and 41 on the south side of Braddock Road.

Mark Mittereder, AIA, ArchVest, Inc., 4300 Evergreen Lane, §306, Annandale, Virginia, came forward and showed the BZA a display of the proposed layout that had been decided upon following meetings between his staff, the civil engineer, and the landscape architect. He outlined the points of the plan: (1) the access will be from a proposed median break on Braddock Road and as Braddock Road is widened to six lanes there will be good left and right turn access into the property; (2) the parking lot on the downslope of the topography will effectively mitigate any noise or visual impact on Braddock Road and there will be a lot of green space left around the building which will have the added benefit of helping to control the storm water better; (3) the property has an Environmental Quality Corridor (EQC) running along the rear of the property and the plan will preserve a large number of trees and existing trees will be maintained along all lot lines and there will be a lot of parking lot landscaping. Mr. Mittereder stated there is a requirement of 5 percent parking lot landscaping and the applicant will provide over 20 percent, the screening requirement is a minimum of 25 percent and the applicant will provide a minimum of 35 percent on the sides and several hundred feet towards the back. Mr. Mittereder stated that from the very beginning they tried to be sensitive to the lot and have tried to design the best possible project that they could. He stated that the applicant was initially requesting a waiver of the barrier requirement but following input from the neighbors the applicant has agreed to include a barrier along the east side of the property and the neighbor to the north expressed concern with the parking lot lights. Mr. Mittereder explained that there is 400 feet between the parking lot and the lot line and over 500 feet from the parking lot and the other lot line. He stated that on other projects where this concern has been raised a row of evergreen trees has been planted to provide additional screening and the applicant was willing to do this on the north side of the property.

In response to a question from Mrs. Harris about the realignment of Braddock Road, Mr. Mittereder replied that during rush hour he was aware that commuters travel too fast for the road conditions. He stated that the entrance to the existing house is right at the corner of the property but the applicant plans to eliminate that entrance and the church will not contribute to the morning or evening rush hour. Mr. Mittereder stated he believed that by moving the entrance to the west the sight distance would be greatly improved and will be more so when Braddock Road is widened.

Mrs. Harris stated that she was concerned when vehicles were traveling down Braddock Road during off hours at 50 mph and coming to the curve in front of the church property. Mr. Mittereder stated that he believed that the sight distance was adequate but that would have to be verified during the site plan review. He added that the church is willing to dedicate a considerable amount of land so that the curve on Braddock Road in front of the subject property can be cut off and made less sharp and perhaps the church would be willing to do so the widening of Braddock Road.

Mr. Pammel asked if Lot 34 which is designated as proposed egress/ingress is a part of the application. Mr. Mittereder stated that it was not. Mr. Pammel expressed concern that the property to be used as an ingress/egress was not part of the application. Mr. Mittereder stated that staff had not raised that issue but the church did have a signed easement from the owner of Lot 34.

Vice Chairman Hammack asked staff to respond. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that in the past staff had allowed churches to have ingress/egress easements over a piece of property without that property being a part of the special permit; therefore, staff had not considered it to be an issue. She stated that staff had submitted the easement to the County Attorney's office to assure that it was properly executed and had incorporated their comments into Development Condition Number 16.

Mrs. Harris asked if the special permit would be binding on the property owner giving the easement. Ms. Kelsey stated that if the easement could not be put into a form that could be approved by the County Attorney's Office then the special permit would be null and void. The BZA recalled other cases when the applicant had been required to show documentation that the property owner giving the easement was made a part of the application. Ms. Kelsey stated that had been the BZA's determination not staff's.

A discussion took place among the BZA as to how to proceed. Mr. Pammel stated that he believed that the BZA should defer action until the applicants have modified the application

to include the additional land area, mail new notices to the surrounding property owners, and readvertise the revised application.

In response to a comment from Vice Chairman Hammack, Ms. Kelsey stated that in her discussion with the County Attorney's Office she had not posed the specific question, "should Lot 34, or a portion thereof, be a part of the special permit." She stated that she had only discussed the legality of the easement across the property.

Vice Chairman Hammack suggested that the BZA proceed with the public hearing and then defer decision. Mr. Pammel disagreed since it would require a whole new public hearing if the County Attorney agreed with his interpretation that Lot 34 had to be a part of the application.

Vice Chairman Hammack polled the audience to determine if there was anyone present who wished to address the application and five people raised their hand. A speaker from the audience stated that the speakers would be willing to return for another public hearing.

Mrs. Thonen made a motion to defer the public hearing. Ms. Kelsey suggested October 29, 1991, and Mr. Pammel stated that he would not be present on October 29th or November 7th. Ms. Kelsey stated that the citizens had asked that the case be scheduled on a night meeting and suggested November 19, 1991, at 8:35 p.m. if the applicant agreed. Mrs. Thonen so moved. Mrs. Harris seconded the motion. The motion passed by a vote of 4-0 with Chairman DiGiulian, Mr. Kelley, and Mr. Ribble absent from the meeting.

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Page 116, October 8, 1991, (Tape 3), Scheduled case of:

Request for Reconsideration
Montessori School of Alexandria, SPA 80-L-033-2

Vice Chairman Hammack called the applicant's agent to the podium. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that there were two letters to the BZA, one from Mr. Brown, an adjacent property owner, and one from the applicant's agent requesting the reconsideration.

William C. Thomas, Jr., Esq., attorney with the law firm of Fagelson, Schonberger, Payne, & Deichmeister, P.O. Box 297, 401 Wythe Street, Alexandria, Virginia, came forward and stated that he was not comfortable appearing before the BZA to request a reconsideration. He stated that he was present only to address the issue regarding the transitional screening as the applicant has accepted the Development Conditions and has indicated willingness to comply with the Conditions. Mr. Thomas assured the BZA that he would do his best to see that the applicant did comply with the Conditions fully.

Mr. Thomas stated that the transitional screening on the side of the property that abuts the Brown property has been in existence since the beginning of the school. He stated that the requirement that the existing fence be moved 25 feet into the property would severely distract from the functional ability of the school to provide a play area that was reasonable. (Mr. Thomas used the viewgraph to point out the location of the play area and discussed how the 25 foot requirement would impact the play area.) He stated that Mrs. Brown has indicated her willingness to allow the school to plant a row of evergreens along the lot line. Mr. Thomas stated that he was only concerned with the children, not with the school, not with the School Administrator, nor with the owners of the school.

Mr. Pammel read a portion of the letter received by the BZA from Hendrick Brown into the record and stated that it appeared to him that the Browns were endorsing the requirement for Transitional Screening 1. Mr. Thomas stated that he had gotten the impression from his discussions with the adjacent property owners that they were only concerned with Mrs. Brown being satisfied with the outcome.

Vice Chairman Hammack asked if the applicant would be willing to relocate the play area. Mr. Thomas stated that it could and that was his recommendation to the applicant. He stated that Mrs. Brown lives approximately 100 feet from the play area and if that property is ever redeveloped he believed that the developer would be happy that the buffer has already been started.

Mrs. Harris asked if there would be enough room for a play area for the children if the 25 foot screening was provided. Mr. Thomas stated that the school tried to provide more play area than was required. Mrs. Harris stated that removing the 25 feet of play area would not impact the operation of the school and Mr. Thomas said that the requirement would not put the school out of business. Mrs. Harris pointed out that the applicant had made no attempt to relocate the sand box or play equipment out of the 10 foot encroachment area even after they knew that it was not in compliance. Mr. Thomas stated that he would be agreeable to a lesser modification which allowed the play ground equipment to be relocated outside the strip and substantial plantings be placed within, but not to the point where it impedes on the functional use of the play ground.

Mrs. Harris stated that she appreciated Mr. Thomas' candor but that it showed the inflexibility when the plan was drawn up not to budge at all. Mr. Thomas stated that it was easy for him in retrospect to say that the applicant should have done this or that and that

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but they had not offered to move the play ground equipment because the school had pointed out the cost involved and no one had told him that if the equipment was moved that the request might be more palatable. Mrs. Thonen pointed out that the BZA never tells someone how to develop their property and that he knew what the Ordinance says. Mr. Thomas stated that the Ordinance also allows for waivers or modifications when the circumstances warrant it. Mrs. Thonen stated that it had been five years and the applicant still had not complied with the Conditions.

Mr. Pammel asked if with the relocation of the play area would the applicant provide the full 25 foot transitional screening as provided in the original special permit. Mr. Thomas replied in the affirmative.

Mrs. Harris stated that she believed that all the testimony noting how worthwhile and necessary the school is to the neighborhood was good and she believed that the applicant now had some idea of what the County requirements are. She stated that she would like to do two things, one being to deny the request for reconsideration, and at the same time remove the 12-month waiting period as she believed the changes to be made to the plat were so significant that the applicant should reapply. Mrs. Harris stated that she would not feel comfortable granting the reconsideration since she believed that the applicant should work with the neighborhood to come up with a good plat and the things that the BZA was being asked to reconsider should be in a new application.

Mrs. Thonen seconded the motion. She pointed out that the fence looked like it was need of repair and that she would like to see all the violations cleared up before the applicant came back before the BZA.

Mr. Thomas stated that if the BZA moved to deny the reconsideration and waive the 12-month time limitation that the applicant would still be under the Development Conditions that were approved on October 1, 1991, and would be finalized on October 8th stipulating that the 25 foot transitional screening yard be put in place and the fence relocated, thus the applicant would have no reason to come back to the BZA.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if it was the BZA's intent to approve the October 1, 1991, Resolution and deny the request for reconsideration which stipulated that the applicant must comply with all Conditions including the 25 feet transitional screening and the applicant puts in the screening yard why come back to the BZA to take it out. Mrs. Thonen stated that the applicant had to submit new plats. Ms. Kelsey stated that if the applicant moves the play area out of the transitional screening yard, moves the fence to the inside of the transitional screening yard, puts the plantings on the other side, the applicant has met the Conditions and there would be no reason to file a new application. She added that if the applicant does not comply with the Conditions approved on October 1, 1991, and if the BZA approved the reconsideration it would require readvertising.

Mr. Pammel suggested that the BZA approve the October 1, 1991, Resolution and deny the request for reconsideration. He pointed out that the applicant still had to obtain a Non-Residential Use Permit (NONRUP) to be legally operational and that had to be done fairly shortly. Mr. Thomas stated that the NONRUP could not be issued until the transitional screening requirement had been satisfied. Mr. Pammel stated that if the applicant did not act quickly the County would be following up on the violation. Mr. Thomas stated that he understood and assured the BZA that the applicant would bring the site up to compliance or file an application which would hold the violation in abeyance while the applicant completed the process.

Ms. Kelsey stated that it would be up to the Zoning Administration Division as to whether or not the violations would be held in abeyance. The BZA said that they had been in abeyance for five years another couple of months should make no difference. Mr. Thomas said that the applicant realized they had no choice and would bring the site into compliance. Vice Chairman Hammack pointed out that the applicant had six months to bring the site into compliance as stated in the Development Conditions. Mr. Thomas stated that if the applicant filed a new application within five months that set forth a way to provide the transitional screening he hoped the applicant would not be cited with a violation.

Mrs. Thonen stated that if the applicant came before the BZA with a new application and the violations that have been pending for five years have not been taken care of she would not support the application. Mr. Pammel agreed.

Mrs. Harris called for the question. The motion to deny the reconsideration passed by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

Mr. Thomas then requested a waiver of the 12-month time limitation for filing a new application. Mr. Pammel so moved. Mrs. Harris seconded the motion. The motion passed by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Page 117, October 8, 1991, (Tape 3), Scheduled case of:

Scheduling of Surinder Khanna Appeal

Mr. Pammel pointed out that the Zoning Administrator had indicated that the appeal was timely filed but had indicated that the appeal had not been filed with the Clerk to the Board of Zoning Appeals (BZA) which is a requirement set forth in the Zoning Ordinance. He made a motion that although the appeal was timely filed it had not been properly filed with the

Page 118, October 8, 1991, (Tape 3), SCHEDULING OF SURINDER KHANNA APPEAL, continued from Page 117)

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Clerk; therefore, the appellant did not have standing before the BZA. Mrs. Harris seconded the motion.

Mrs. Thonen asked why the Zoning Administrator's office had accepted the appeal when a copy had not been filed with the Clerk. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she could not answer the question since she did not how the appeal had been transmitted.

Vice Chairman Hammack suggested that perhaps the BZA should defer action to allow the BZA to discuss the submission requirements with the Zoning Administrator. Mr. Pammel agreed. Mrs. Harris pointed out that there was two applications and the square footage was different. Ms. Kelsey stated that it appeared that the appellant's agent had amended the application.

Mrs. Harris suggested that the appellant's agent also be present. Mr. Pammel stated that he believed that a two week deferral was appropriate to allow time for both the Zoning Administrator and the appellant's agent to be present. Ms. Kelsey suggested October 22, 1991, as an After Agenda Item. The BZA agreed.

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Page 118, October 8, 1991, (Tape 3), Scheduled case of:

Temple Baptist Church, SPR 85-D-009-2
Additional Time

Mrs. Harris made a motion that the BZA approve the applicant's request making the new expiration date February 28, 1992. Mrs. Thonen seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Page 118, October 8, 1991, (Tape 3), Scheduled case of:

Ameribanc Savings Bank, SP 91-Y-059
Out of Turn Hearing

Mrs. Harris asked if the application required staffing. Jane Kelsey, Chief, Special Permit and Variance Branch, replied no and suggested November 26, 1991. Mrs. Thonen stated that she would like to schedule it earlier than that since settlement is scheduled for November 27, 1991. Ms. Kelsey suggested November 12, 1991.

Hearing no objection the Chair so ordered.

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Page 118, October 8, 1991, (Tape 3), Scheduled case of:

Approval of October 1, 1991, Resolutions

Mrs. Thonen made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, asked the BZA to give serious thought to delay approval of a resolution that the BZA has granted in part to allow the applicant to submit revised plats. She stated that she believed that this would alleviate confusion on the part of the applicant and allow the BZA to review the plat prior to granting the resolution. The BZA agreed.

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As there was no other business to come before the Board, the meeting was adjourned at 1:40 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 26, 1991 APPROVED: December 3, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 15, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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Chairman DiGiulian called the meeting to order at 8:05 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 119, October 15, 1991, (Tape 1), Scheduled case of:

8:00 P.M. JOHN A. & JULIA P. RESHOFT, VC 91-M-082, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (carport) 5.0 ft. from side lot line (7 ft. min. side yard required by Sects. 3-307 and 2-412) on approx. 13,743 s.f. located at 6531 Renwood La., zoned R-3, Mason District, Tax Map 60-4((22))126.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Reshoft replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property is in Annandale, south of Columbia Pike, and east of the Mason District Park, in the Sleepy Hollow subdivision. He said that the applicants' lot is developed with a one-story, single family detached dwelling, with a parking pad and a storage shed to the rear of the dwelling. Mr. Jaskiewicz said that the applicants were requesting a variance to the minimum side yard requirements to permit construction of a one-story carport addition, 5 feet from the side lot line. He said that, although the Zoning Ordinance requires a minimum side yard of 12 feet in the R-3 District, carports are allowed to extend 5 feet into any minimum required side yard; therefore, the request was for a variance of 2 feet to the minimum side yard requirements.

The applicant, John A. Reshoft, 6531 Renwood Lane, Annandale, Virginia, came to the podium and presented the statement of justification, stating that the proposed addition would be as shown on the plat; that the neighbors had been contacted, including the ten neighbors who had been required to receive notice of the hearing; and that the neighbors had all been supportive of the applicants' plan.

Mr. Reshoft said that the carport would be similar to those which had been attached to many of the other one-story ramblers in the neighborhood. He said it would be a wooden structure, painted white, on a concrete slab, and the roof lines would conform to the roof lines of the dwelling, which would be re-shingled simultaneous to the shingling of the carport. Mr. Reshoft said that the carport would be open on three sides, except for a low fence-type railing along the back side. He said that the carport would have a flat ceiling and a storage space which would be accessible from a pull-down ladder. Mr. Reshoft said that the carport would be harmonious with the existing carports in the neighborhood, on houses of a similar design, and would be a very simple structure. He said that the width of the carport was very critical because the asphalt driveway is very steep at the approach to the proposed carport, and part of the opening would be obscured by the hood of the car, bearing in mind that there would not actually be 10.4 feet clearance because of the post; he guessed there would probably be 10 feet of clearance at that point. Mr. Reshoft said that other conceivable locations for the carport had been explored, from the topographical standpoint; but the only one other possible location, onto Whispering Lane, would require the construction of a new driveway, and the destruction of: two oak trees, 17 inches and 25 inches in diameter; several other trees and shrubs; an 18 foot magnolia; and four 12-foot-high holly trees. He said that the alternate location would also cause the obliteration of the brick patio shown on the diagram; it would block all of the windows in one of their downstairs bedrooms and the French door in the downstairs family room. He said that, at that location, access to the carport from the kitchen would require 12 or 13 steps from the kitchen, down into the family room, across the entire length of the family room into the hallway, and out of the basement door. He said that none of the other ramblers in the neighborhood had a carport in any other place than where he was proposing to place it, next to the kitchen door.

Mr. Reshoft referred to a letter, previously submitted, from Dr. and Mrs. Johnson, in support of the proposal; as well as another letter of support received from another neighbor.

Mr. Reshoft said that, in measuring the width of various carports in the neighborhood, he found that they average 10.4 feet in width, with two of them being 12 feet wide and 12.5 feet wide. Mr. Reshoft said that his car was 6 feet wide and, with both doors open, it measured 12 feet.

Mr. Reshoft said that the carport would not intrude on any of the neighbors, nor interfere with any of their activities; it would not affect the property values of the neighbors' property, nor would it cause any drainage problems.

Mr. Hammack inquired about the two neighbors who, Mr. Reshoft had said supported his application and asked him to identify them. Mr. Reshoft named only Dr. Johnson who is on Lot 125.

Mrs. Harris inquired about Mr. Reshoft alluding to an entrance from Whispering Lane being inconvenient because it would require destruction of existing vegetation, saying that it also looked like there was a very steep grade in that area. She asked if that would be a

dangerous place to put the carport. Mr. Reshoft said that it is not as steep as their present driveway; but it would come out on Whispering Lane, which has a great deal of commuter traffic.

Mr. Ribble inquired about the two large oak trees and said that they should be saved.

Chairman DiGiulian asked if there was anyone to speak in support of the application and, hearing no response, asked if there was anyone to speak in opposition, to which he also received no response.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 91-M-081 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 8, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-082 by JOHN A. & JULIA F. RESHOFT, under Section 18-401 of the Zoning Ordinance to allow addition (carport) 5.0 ft. from side lot line, on property located at 6531 Renwood La., Tax Map Reference 60-4((22))126, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 15, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,743 square feet.
4. The applicants' testimony indicates that, if the carport were put on the back of the house, or the entrance off Whispering Lane, thirteen steps down would be required to reach it, placing it on a completely different level than the house; and it would not be in conformance with the architectural standards in the community because the existing driveway is located at the house level.
5. Strict application of the Ordinance would effectively restrict the use of the property.
6. The variance sought is minimal, as only a narrow sliver of the garage requires the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.

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9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific carport shown on the plat prepared by Payne Associates, dated July 1, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 23, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 121, October 15, 1991, (Tape 1), Action Item:

Request for Reconsideration
Eugene & Barbara Cenitch, SP 91-C-039

Mr. Cenitch made an unscheduled appearance at the hearing and distributed a letter to the Board of Zoning Appeals (BZA) requesting that the BZA reconsider the decision made on October 8, 1991, to deny the above-referenced special permit.

Mr. Hammack read the request for reconsideration, stating that he had been present when the application had been denied and he believed the decision had been appropriate. He said that he did not want to reconsider the decision. He explained to Mr. Cenitch that it was not just the absence of access from the primary dwelling to the accessory dwelling which caused him to vote against the application, another deciding factor was also the substantial size of the addition. Mr. Hammack said that the statute states that the accessory dwelling should be within an existing dwelling and, even if a doorway were to be constructed between the existing dwelling and the proposed structure, he did not believe it could be considered one structure. He believed the proposed plan did not satisfy the spirit of the Ordinance.

Mr. Hammack alluded to duplexes, as they might relate to the consideration of accessory dwellings. He said that, in this case, it might be considered a house and a half. He also said that there were other sub-sections cited, which caused the BZA to vote as they did. Mr. Hammack said that the applicant would have to appeal to the Circuit Court if he felt that the BZA was in error in their application of the Ordinance.

Mrs. Harris said that she also was at the original hearing and referred to Mr. Pammel having cited the portion of the Ordinance which said that this option should be applicable to people over the age of 55 years and/or disabled individuals, leading him to believe that access from within the primary structure to the accessory dwelling unit was necessary to accommodate the language in the Ordinance. Mrs. Harris said it would not be feasible for a person to be required to go outdoors, to another entrance, to assist someone.

Mrs. Thonen said that her understanding of the Ordinance was that only one of the applicants was required to be at least 55 years of age and the other could be of any age. She said she believed this fact had caused some misunderstanding in the past. Mrs. Thonen also said she believed that the BZA was prohibited from taking any action which would increase the density on a piece of property and, in the case of a duplex, which is a separate dwelling, the density would be raised by virtue of creating two family units on the same lot. She said that her understanding of an accessory dwelling was a unit within the primary dwelling, with access to and from the primary dwelling.

Mr. Hammack reminded Mr. Cenitch that the BZA had waived the twelve-month waiting period, in order that he might have an opportunity to reconfigure the plans, should he choose to do so. Other than that, Mr. Hammack said he was not willing to reconsider.

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Mrs. Thonen seconded Mr. Hammack's motion to deny the request for reconsideration, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Mrs. Thonen made reference to having previously asked staff to request that the Zoning Administrator review the provision on accessory dwelling units, but said that it was now her understanding that the request should be made to the Board of Supervisors (BOS).

Mrs. Thonen made a motion that a Resolution be sent to the BOS, asking them to review the Ordinance Provision on accessory dwelling units to determine whether an accessory dwelling unit might raise the density and, if so, if raising the density was within the power of the Board of Zoning Appeals (BZA).

Mrs. Harris asked Mrs. Thonen if she would like to have a sample hearing of a case sent to the BOS, so that they might better understand how the BZA had been struggling with the guidelines. Mrs. Thonen said that she would like to have a sample case sent to the BOS, because it would help to understand what the BZA was talking about.

Chairman DiGiulian said that accessory dwelling units also change the character of the neighborhood and Mr. Hammack said that they raise the Floor Area Ratio.

Mrs. Harris seconded the motion.

Mr. Kelley said that his views on accessory dwelling units were well-known by the Board and he believed that the BZA should urge the BOS to review the Ordinance. Mr. Kelley said that, even under the present guidelines, the BZA might be creating duplexes.

Chairman DiGiulian suggested that staff prepare a memo to the BOS, incorporating all of the concerns of the BZA.

The vote was unanimous, 6-0. Mr. Pammel was not present for the vote.

Mr. Cenitch requested that he be allowed to ask a question and Chairman DiGiulian said that he could ask a question, but that the hearing was closed and would not be reopened.

Mr. Cenitch said that many additions to dwellings, to accommodate elderly family members, could be found throughout Fairfax County, which he believed made his request less than unique.

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Mr. Pammel arrived at 8:30 p.m.

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Page 122, October 15, 1991, (Tape 1), Scheduled case of:

8:25 P.M. OAKTON SWIM & RACQUET CLUB, INC., SPA 82-C-067-2, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 82-C-067 for community swim and tennis club to allow addition of 3 tennis courts on approx. 6.75214 acres, located at 11714 Flemish Mill Ct., zoned R-1, Sully District (formerly Centreville), Tax Map 46-2((13))A2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Baker replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the property consists of 6.75 acres, is zoned R-1, and is developed under the cluster provisions of the Ordinance, for the swim and racquet club, which was established as a special permit use in 1982. He said that the development approved in 1982 included a swimming pool, bathhouse, clubhouse, four lighted tennis courts, and 77 parking spaces. Mr. Riegle said that the property is surrounded by single family detached dwellings and open space, provided in conjunction with the surrounding cluster subdivision. In 1982, when the BZA approved this use, conditions were imposed, requiring evergreen plantings along the western edge of the original four tennis courts. The BZA also restricted the membership and the hours of operation of the pool and tennis facilities. A copy of the previously imposed Development Conditions were furnished in the staff report. The current application amendment requested permission for three additional lighted tennis courts. No building or parking amendments were proposed in connection with the request. Pursuant to the environmental recommendations contained in the Comprehensive Plan, the applicant had agreed to provide stormwater Best Management Practices (BMP's) to detain runoff from the proposed tennis courts, which was reflected in the Proposed Development Conditions, and provided an additional measure of detention and environmental protection, as the original application was approved without a requirement for BMP's. In staff's opinion, the issues in the application centered on whether the visual and noise impacts associated with the proposed tennis courts might be mitigated. As indicated in photos submitted with the application, the proposed courts would be located in a cleared area of the site, and their location would not disrupt any of the existing vegetation which lines the lot lines at depths of approximately 25 to 50 feet, depending upon

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the area of the site. Further, the Proposed Development Conditions would require the provision of additional evergreen trees and would restrict the hours of operation of the proposed tennis courts in a manner consistent with the existing courts. In staff's opinion, the requirements contained in the Conditions could mitigate the impacts of the additional development to a level which would be in harmony with the land use and environmental recommendations of the Plan. Based upon the analysis on pages 6 and 7 of the staff report, it was staff's conclusion that the application was in compliance with the applicable standards, and staff recommended approval of SPA 82-C-067-2, subject to the implementation of the amended Proposed Development Conditions dated October 15, 1991. The parking requirement had been adjusted from 73 to 77, which is the actual number of spaces on the site.

Mrs. Harris requested clarification of the location of certain dwellings on the site plan, asking Mr. Riegle how far away from the back lot line the dwellings were located. Mr. Riegle said that he did not have an exact figure, but that there was a average distance of approximately 51 feet from the edge of the tennis court to the lot line.

Mark W. Baker, Paciulli, Simmons & Associates, Ltd., 1821 Michael Faraday Drive, Reston, Virginia, represented the applicant and said he would provide some history on the application. He said that, on December 12, 1990, by proxy voting, the general membership of the Oakton Swim and Racquet Club, consisting of 472 families, voted to pursue the additional tennis courts. Mr. Baker stated that the application satisfied the general standards outlined in Section 8-006 of the Ordinance. He said that the applicant wished to preserve the existing vegetation for transitional screening around the perimeter of the property, and requested a waiver of the barrier as previously approved in SP 82-C-067. Mr. Baker said that the three proposed courts would be enclosed by a fence, and the addition of a barrier would be redundant. He referred to Condition 11 and said that the applicant had agreed to provide supplemental plantings along the boundary lines of Lots 408 and 409, if deemed appropriate by the Urban Forestry Branch. Mr. Baker indicated that, in a previous staff report, staff had indicated that the previously existing facility would not be disruptive to the community. He said that, because many of the members are able to walk to the pool and tennis courts, additional parking spaces would not be required to accommodate the additional tennis courts. Mr. Baker said that the applicant had selected a playing surface other than asphalt for the proposed tennis courts, in response to issues raised by staff. He said that the Hydrocourt system was mentioned in a pamphlet distributed to BZA members, and it also addressed environmental issues regarding water quality; should the court surface be insufficient to satisfy the Department of Environmental Management (DEM) criteria, alternative measures for water quality, as set forth in Condition 13, would apply.

Mr. Baker said that the gazebo was now called a tennis hut and had been moved approximately 100 feet.

Mr. Baker said that the Club operated and served the needs of the community in the same manner as other community clubs and requested that the BZA grant the application.

Mr. Baker addressed a question which had been asked earlier by Mrs. Harris. He said that, in the pamphlet referred to earlier, there were photographs showing the individual lots and indicating an approximate distance from the lot line.

Chairman DiGiulian questioned Mr. Baker about the wooded area shown, and asked if any additional clearing would need to be done in order to build the courts. Mr. Baker said that no additional clearing would be required.

Mrs. Harris said that the BZA members had just been handed a great deal of written material to read while they were trying to ask questions and conduct the hearing. She said that she wished that it were possible for the BZA to receive such material in advance, in order for them to have the time to properly review it before the hearing.

Mrs. Harris referred to a letter from Edward N. Baron and Mr. Baker said that he had seen the letter and read Mr. Baron's testimony. Mrs. Harris said that, if Mr. Baron was present, she wished Mr. Baker would take time to respond to the issues raised by Mr. Baron.

Mr. Pammel suggested that the hearing be allowed to continue and Mr. Baker could deal with the issues raised by Mr. Baron later in the hearing.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

Jan Hannigan, 3206 History Drive, Oakton, Virginia, spoke in favor of the application because of concerns about the lack of adequate swimming and tennis facilities, creating a situation whereby the children were denied access in order to accommodate the adults.

The following people spoke in opposition to the application: Edward N. Baron, 11745 English Mill Court, Oakton, Virginia; Harold Hughes, 11708 Flemish Mill Court, Oakton, Virginia; and Gary Prince, 11747 English Mill Court, Oakton, Virginia.

Mr. Baron referred to his written testimony, which became a part of the record, and said that he did not wish to add much, except to clarify points that he had made, and to hand out more material to the BZA. Mr. Baron said that the tennis hut is actually a freestanding electrified building, housing a commercial business involved in the sale of tennis equipment. He showed photos to the BZA, pointing out a sign on the fence in the area of the

tennis hut, as well as a trash can filled with beer cans. He said that the Club is an alcohol-free facility, except for Club-sponsored events. Mr. Baron said that he had a copy of the Club's tennis schedule, issued last summer, indicating the availability of tennis equipment for purchase from an independent contractor and lessons from an independent contractor. Mr. Baron told the BZA that, according to what a representative of the applicant had told him, the tennis courts would have high maintenance, professional playing surfaces, and that anyone under 16 years of age would be barred from using the courts, tying this fact into a statement made earlier to the effect that the additional courts were to give the youth in the neighborhood more playing time. He provided manufacturer's literature to the BZA on the proposed courts.

Mr. Baron said he did not believe that the applicant fully met the standards of the Group 4 use; that the Club's membership was not restricted to residents of the immediate area; and that there is no geographic restriction on membership. He referred to examples in his written testimony, and distributed a copy of the applicant's by-laws to the BZA, stating that they contain no restrictive language.

Mr. Baron said that he urged the BZA to consider why the Group 4 restriction on immediate area membership was put into the Zoning Ordinance. He said that it was put in to prevent hearings such as the one taking place, in which people who lived near the facility had to come before the BZA to ask that the request be denied. Mr. Baron said that membership in the Club, at the present time, did not require residence within the immediate area; and that, in the case of area residences being sold, the new owners would not automatically be eligible for membership, but would be put on a waiting list.

Mrs. Thonen remarked that the tennis hut was large and asked staff if the applicant had obtained permission to build the facility. Mr. Riegle said that a Building Permit had been issued subsequent to the 1982 BZA approval of the use, which also contained the site plan. He said that the Building Permit description said, "per site plan on file," with a handwritten note from someone in DEM, pointing to a small accessory structure and stating that it was a tennis hut. Mr. Riegle handed the file to the BZA for their review. Mrs. Thonen asked Mr. Riegle if the applicant could do what had been done, under a special permit, without coming back to the BZA. Mr. Riegle said that the tennis hut had been shown, although it had not been labeled, on the special permit plat which had been approved in 1982 by the BZA. Mrs. Thonen said that it was her belief that no changes could be made by an applicant without coming back before the BZA.

Mrs. Thonen asked if it was true that the Club was actually operating from 7:00 a.m. to 9:00 p.m., even though it was conditioned in the special permit to operate from 9:00 a.m. to 9:00 p.m., except in the event of swim meets. Mr. Riegle said that he had searched the street files of the Zoning Administration Division and had found no complaints on file. He said he believed that the applicant would be in a better position to comment on that question. Mrs. Thonen said that the applicant's written statement stated that they had been operating from 7:00 a.m. to 9:00 p.m. Mr. Baron pointed out that the permit gave the applicant permission to operate from 9:00 a.m. to 9:00 p.m., except for swim team practice which has included cheerleading and use of the public address system.

Chairman DiGiulian asked if there was anyone else to speak in opposition.

Mr. Hughes came forward and referred to written testimony which he had submitted the previous week. He said he would concentrate his remarks on three points. Mr. Hughes said that the proposed development was within 53 feet of his property line. He said that his first point concerned flooding, and that he had been informed by County staff that the proposed additional construction would be within the headwaters of Difficult Run. Mr. Hughes said that, when the applicant first received approval of the original application, it was conditioned against additional impervious or impermeable surface. He said that the space was to be left open because 77 parking spaces, a swimming pool with extensive concrete, and four tennis courts, were already in the process of being built. Mr. Hughes submitted photos taken from his property, across the open field, showing flooding runoff from the field, which exceeded the area of his house, greater than the length, and running along two sides. He described the flooding as swamp-like. He said the affect of the flooding lasted for days. Mr. Hughes referred to the request by the applicant for further impervious surface around the tennis courts. He said that the Har-Tru court proposed by the applicant is a clay court which must be kept moist, meaning that it would absorb almost no more water than a hard court would. Mr. Hughes said that, because the surface of the courts needs to be kept moist, extra water would run off. He said that, in view of the increased sensitivity to the headwaters of Difficult Run, the excessive runoff should be stopped before further construction is allowed.

Mr. Hughes said that his second concern was the fence that the applicant was proposing to build. He said that three parcels of open space and community common ground intersect at the point of proposed construction. Mr. Hughes said that when the area was built up and the additional 10 foot fences were put up, access would only be possible around the edges. He said that the community had strict standards against chain link fences and that they are absolutely barred from being used. He said that the applicant had already violated the standard and had constructed chain link fences, but that it should not be allowed to continue.

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Mr. Hughes referred to a map of the community and said that the Club is located near the western center of the community, and is served by only one dead end road. He said that the majority of people in the community who might wish to use the pool have either a one-mile drive or walk, or a cross through. Mr. Hughes said that all adjacent property owners suffered from trespassers, and that the Club had not enforced the rule against trespassing, other than to put up some signs which served no purpose at all.

Mrs. Thonen asked Mr. Hughes if the flooding on the photos had occurred during the past summer, as she did not think there had been enough rain to cause flooding. Mr. Hughes said that the photos had been taken the past summer after a rainfall which was not unusually heavy.

Ms. Prince submitted letters from residents and pool members opposing construction. She said they could not be present but were fervently opposed to the three additional courts. Ms. Prince said the neighbors opposed plowing up the field, erecting chain link fences, stadium lighting intruding into the back yards of residents, the high cost of purchasing and maintaining clay courts, the existing courts being underutilized except on rare occasions, and the impact on the dues as a result of the additional tennis courts.

Mr. Kelley advised Ms. Prince that some of the subjects of concern which she was speaking of did not have any bearing on the actions of the BZA, and she said that she realized that. She said, however, that she believed there was no just cause for the applicant to remove the open field which was used by residents for Little League practices, and soccer practices. Ms. Prince said that the Club Board did not notify, nor accept the opinion of members, about their use of the land. Other concerns which she mentioned were: late night parties; tennis court lights which stayed on as late as 11:00 p.m. and Midnight; 8:00 a.m. swim meets with Olympic decibel timers and stadium volume national anthems that awaken the neighborhood at 8:00 a.m.; non-stop trespassing by adults and children on bike and foot; and loud late-night adolescent gatherings.

Mr. Price asked for permission from the BZA to read into the record the testimony of Thomas A. Salahud of 11744 English Mill Court, Oakton, Virginia. He received permission and read the testimony. Mr. Salahud's concerns were: existing and worsening flooding if additional courts are constructed in the grass covered fields; additional proposed fencing which would adversely affect the character of the community; the adversity of the lighting; loss of the open space eliminating local picnicing, ball playing, and group activities; impediment of access to the reserved and committed lands; a continuing temptation for increased vandalism and non-policed youth gatherings, car racing, and malicious mischief occurring on a frequent basis; the traffic pattern which has evolved more seriously violating the private property rights of all the homes adjacent to the Club; and the new courts worsening the already abused short-cut trail.

Mr. Baker came to the podium to make his rebuttal, stating that Mr. Baron was correct in stating that no more facilities could be added to the particular site without the approval of the BZA. He said, in the previous staff report, dated July 15, 1982, that the people in the local community are given first refusal rights and that the remainder of the membership will come from nearby subdivisions, and that members can be expected to live within a two to three mile radius. He said that, with respect to the early hours of operation, swim meets begin at 9:00 a.m., as designated by the Northern Virginia Swim League. He said that anything occurring prior to that hour would be strictly limited to practice of the teams, with little or no public address system at that time, with the exception of calling one team out of the pool and calling another team back into the pool.

Regarding the commercial aspect of the tennis hut, Mr. Baker said that it was no different than that of any other tennis pro or lifeguard. He said that the tennis pro had been contracted to oversee and manage the tennis facilities, including maintenance, and giving lessons for pay. Mr. Baker said that the tennis hut was not a retail establishment for commercial retailing of tennis racquets.

Chairman DiGiulian asked if there was anything at all sold out of the tennis hut. Mr. Baker said that he was not aware of anything being sold out of the tennis shed.

Mrs. Harris said that she knew what a shop was and asked Mr. Baker if the tennis hut was a shop. Mrs. Harris and several of the BZA members referred to the Club's newsletter and provided a copy to Mr. Baker. Mr. Baker said that the people who were writing and authoring the newsletter were not really aware of the Zoning Ordinance definitions and the technicality of the terms. Mr. Hammack said that, regardless of the writers knowledge or lack thereof, he believed Mr. Baker had an obligation to explain the situation to them.

Mrs. Harris read from the newsletter, stating, "Tennis Shop: Once again, we will have a fully stocked tennis shop. Racquets, clothes, bags, sneakers, grips and accessories. For the month of May, there will be a 10% discount on all stringing. Give life to that racquet of yours with a new string job." Mrs. Harris said that (the author's) understanding of "shop" was very close to hers.

Mr. Baker said that it was easy to see from the photo that the tennis shop was not large enough to display racquets. Mr. Hammack said that the BZA was not asking what Mr. Baker thought, but rather what he knew the shop was doing and what was happening in the shop.

Mr. Baker said that fliers were available in the shop which described the racquets which were available for purchase. He said that the tennis pro had "demo" models in the shop, leaning up against the wall, that apparently are used by him to play and for other people to try; but, orders are taken for the racquets. Mr. Ribble asked if that was the case with the clothes, sneakers, and everything else. Mr. Baker said that there were no clothes. Mr. Kelley pointed out that the newsletter said the hut was fully stocked. Mr. Baker said he believed that meant availability, because there were no clothes and there was not enough room in that size hut for clothes.

Mr. Kelley said that the tennis hut was about the same size as the tennis pro shop at a club of which he is a member, which is fully stocked.

During most of the discussion between Mr. Baker and the BZA members, Mr. Baker was consulting back and forth with a gentlemen who was sitting in the audience. Mrs. Thonen suggested that she would like to have the case deferred for this reason and allow time for Mr. Baker to become more informed and have staff check out the facts.

Mr. Riegle said that he had asked staff from the Zoning Administration Division whether operating the tennis shop was something the applicant could do in conjunction with a special permit. He said he was told that, from a Zoning Ordinance perspective, a private club would not be prohibited by the Ordinance from selling products to its members, providing that they were serving only their members and not operating a tennis pro shop for all of Fairfax County or all of Northern Virginia. Mr. Riegle said that it would be up to the BZA to determine whether that type of use was appropriate from a land use perspective and, if it was the determination of the BZA that the retail use was having an adverse impact, the BZA members could condition it or regulate it as they saw fit, or eliminate it entirely.

Chairman DiGiulian asked if there was any indication in the original granting that a tennis shop had been planned on the site. Mr. Riegle said that there was no indication one way or the other. He said that, in 1982, the records were not as comprehensive as they are today.

Mrs. Harris asked if the tennis hut was an expansion of use. She said that she agreed with Mrs. Thonen that the applicant should comply with the original conditions before the BZA proceeded any further.

Mr. Pammel asked Mr. Baker to research what percentage of the Club membership resides outside of the Waples Mills Estate area. Mr. Baker said that approximately 330 members reside outside of the Waples Mills Estate area. Mr. Baker said that he would research the membership information and get a reliable figure.

Mr. Hammack told Mr. Baker that he would like to have some idea of the level of commercial activity in the tennis hut. He said that he was aware of clubs where lifeguards give swimming lessons, and there may be some sales incidental to a private club operation; however, he was not aware of very many, other than large country clubs, that have a tennis house the size of the applicant's, which is dedicated just to the operation of the tennis courts. Mr. Hammack said that he would like to know more about this situation, to determine if it was an expansion of a permitted use.

Mr. Hammack said he would also like to have more information about the water runoff, because he found the photos appalling. He said that, specifically, he would like staff to investigate further, to find out if the on-site detention pond or the local detention pond off-site would be adequate to address the runoff problem.

Chairman DiGiulian said that he would like staff to report back to the BZA regarding the pictures presented by the applicant, looking from the proposed tennis court area to the adjacent lots, which appeared to show dense woods; whereas the photos from one of the opposing speakers, showing the flooding, showed very sparse woods.

Following up on Chairman DiGiulian's request, Mrs. Harris referred to one of the conditions in the 1983 approval, third paragraph, last line, stating: The applicant shall provide transitional screening as approved by the Director along the common boundary lines with Lot 91, 92, 88, 87, 72, and 86. She said that, if she was reading it correctly, some of the pictures from the applicant and one of the people testifying, which showed two of those lots, appeared to show existing vegetation which was, according to one of the other conditions, allowed to act as a barrier. Mrs. Harris said that she would like to know if the Arborist investigated whether additional screening should have been planted per the condition, or had just allowed the existing vegetation to remain.

Mr. Baker told Mr. Hammack that, with respect to the water issue, when one looked at the topography and the general flow of the land on Lot 135, the water flowed in a direction that would cause water to form a pocket in the wooded area behind the house. He said that the problem was not generated by the application.

Mr. Hammack said that he would like to know if the grading that would be required for the tennis courts could possibly push the water onto any of the adjacent properties, because the flooded area looked large.

Chairman DiGiulian told Mr. Baker that it appeared to him, from the plat, that Lots 89 though 92, 88, 87, and 72 drain towards the tennis courts. Mr. Baker said that was correct.

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Chairman DiGiulian said that, if the individual who presented the pictures to the BZA had pictures of water standing in the transitional yard, it appeared to him that it was on the applicant's property. Mr. Baker said that he believed the picture was taken behind Lot 135, but could not be sure because he had not seen it. Chairman DiGiulian said that would be something Mr. Baker would also have time to address.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to defer SPA 82-C-067-2 until staff could look at the tennis hut and find out how the building permit was issued. She said that she could not find it on the original plat, nor the next one submitted. She said that she would like staff to go back and review proffers from 1983 forward, to see if the applicant has or has not lived up to the proffers. She said that she wished to know if tennis is being played from 7:00 a.m. until 10:00 p.m. or 11:00 p.m. Mrs. Thonen said that she would like to know what is being sold out of the shop and, if nothing is being sold, why they need such a large shop. Mrs. Thonen also asked that staff check on the runoff, because it looked like a river on the photos. She said that she would like to know what impact all of this has had on the neighborhood, because of the many petitions and people in opposition. Mrs. Thonen said that there must be some reason why neighbors are complaining about cut-throughs, too much traffic, and members coming from distant locations. She said it appeared to her that, before Mr. Baker comes back before the BZA, he should know the answers to those questions if he is representing the applicant. Mrs. Thonen said that she would like all of the previously stated issues looked into and asked how long it would take to accomplish. It was decided that the case would be deferred to December 17, 1991, at 8:30 p.m.

Chairman DiGiulian advised that he would like the BZA members to have all information delivered to them a week prior to the hearing and that verbal testimony would be limited to five minutes for each side. Mrs. Thonen made these remarks a part of her motion.

Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 127, October 15, 1991, (Tape 1 & 2), Scheduled case of:

8:35 P.M. JEFFREY M. LEPON & CORA YAMAMOTO, VC 91-D-050, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard on corner lot (4 ft. max. height allowed by Sect. 10-104) on approx. 17,115 s.f. located at 1618 Carlin La., zoned R-3, Dranesville District, Tax Map 31-3((40))2. (DEF. FROM 7/2/91 TO ALLOW BOS TO ACT ON ZONING ORDINANCE AMENDMENT - DEFERRED FROM 9/24/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lepon replied that it was.

Mr. Lepon advised the BZA that he had previously been before the BZA and that his case had been deferred.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the subject property is located east of St. John's Church, north of Old Dominion Drive in McLean, on the northwest intersection of Carlin Lane and Linway Terrace, developed with a single family detached dwelling and an integral two-car garage. He said that the applicants were requesting a variance to the maximum permitted height for an accessory structure, provided by Section 10-104 of the Zoning Ordinance, to allow an existing 6 foot high fence to remain in one of the two front yards adjacent to Linway Terrace. He said that, since the Ordinance states that, on a corner lot, a fence or wall not exceeding 4 feet is permitted, the request was for a variance of 2 feet to the height requirement for the existing fence. Mr. Jaskiewicz said that the case was originally heard on July 2, 1991, and was deferred until after the Board of Supervisors (BOS) could rule on a proposed Zoning Ordinance amendment regarding fences, which has since been adopted. He said that the amendment addresses lots fronting on major thoroughfares, and Linway Terrace is not a major thoroughfare. He also asked the BZA to note that the adjacent property owner's request for approval of a wrought iron fence, to the west of the subject property, was approved by the BZA on September 24, 1991.

The applicant, Jeffrey M. Lepon, 1618 Carlin Lane, McLean, Virginia, came to the podium and stated that, because the BZA had heard his presentation previously, he would not bore them by repeating his previous comments. He stated that his neighbors' situation, mentioned by Mr. Jaskiewicz, had brought him before the BZA initially. Mr. Lepon said that, because there had been a complaint against his neighbors' fence, a Zoning Inspector came out to investigate, at which time the Inspector also cited Mr. Lepon. Mr. Lepon remarked that his neighbors' fence had been approved and, unlike him, they do have a real front yard; whereas he was really the innocent victim, because he has a corner lot and has a fence tucked away on what normally would be his side yard.

Mrs. Harris said that she had not voted for the neighbors' application. She asked the applicant about statement 5: This situation is unique and not shared by other properties in the same zoning district. She asked him if he would like to change that statement, now that the person right next door has the same problem. Mr. Lepon said he did not believe that his

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problem was the same, in that his reason for requesting a variance was to protect a play area. He said that he had no other place to put a play area because of the sloping nature of his lot, and because he is on Linway Terrace. He said that his neighbors' house has a substantial back yard; but he believed that it was inappropriate to object to their fence or he would have joined with the many other neighbors who objected to the chain link fence which surrounds their yard, stating that it could have been at the back of the house instead of the front.

Mrs. Thonen asked staff if Linway Terrace was considered to be a major thoroughfare and asked how it fit into the newly adopted amendment pertaining to fences. She said that she knew an amendment was adopted to allow fences on corner lots up to 10 feet if they were on a major thoroughfare, to act as a sound buffer. Mr. Kelley defined a major thoroughfare as one which was dangerous for children to have easy access to.

Chairman DiGiulian asked if there was anyone to speak in favor of the application and, hearing no response, asked if there was anyone to speak in opposition, to which he also received no response.

Lori Greenlief, Staff Coordinator, provided the BZA members with a copy of the new amendment concerning fences. She said that there are two standard which must be met before an eight-foot high fence is allowed: one of the standards is the location of the lot on a major thoroughfare, and the other one is that the lot is not contiguous to a lot which has its only driveway entrance from the major thoroughfare. She said that the standards could not be met in this case, as the lot next door has its only driveway on Linway Terrace. She said that, even if Linway Terrace were a major thoroughfare, the application does not meet the second standard.

Chairman DiGiulian closed the public hearing.

Mr. Pammel advised that, that afternoon, he had taken the opportunity to go out and look at the subject property. He said that what the applicant had represented to the BZA was very true. Mr. Pammel said no lot he had ever seen had the extreme topography of this lot. He said that there is actually more than a 30 foot differential between the rear corner of the lot and the street. He said that there is no usable area on the lot for play purposes, other than for a sledding path, except for the area where the applicant has put the play area. He said the applicant had fenced off the play area and had done a beautiful job in landscaping the lot, and creating usable space, with a small deck. To give the BZA an idea of the how steep the lot is, he said that the lot was fit only for billy goats because of its topography, and that the applicant had two retaining walls.

Chairman DiGiulian said that Mr. Pammel's remarks sounded like a motion to grant the variance and Mr. Pammel said that he was very much in favor of that. Mrs. Thonen deferred to Mr. Pammel to make the motion.

Mr. Pammel made a motion to grant VC 91-D-050 for the reasons outlined in the Resolution, with particular emphasis on the exceptional topographical conditions, subject to the Proposed Development Conditions contained in the staff report dated June 25, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-050 by JEFFREY M. LEPON & CORA YAMAMOTO, under Section 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard on corner lot, on property located at 1618 Carlin La., Tax Map Reference 31-3((40))2, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 15, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 17,115 square feet.
4. The topography of the lot is extremely and exceptionally unique; there is more than a 30 foot differential between the rear corner of the lot and the street.
5. There is no usable area on the lot for play purposes, other than where the applicant has fenced off the play area, unless it was used for a sledding path.
6. The fenced off play area is the only level area on the lot that could be used for those purposes and is beautifully landscaped; but otherwise, the lot could only be used for raising billy goats.

7. There are two series of retaining walls in the front, as an example of how steep the lot is.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitation:

1. This variance is approved for the location and the specific fence shown on the plat prepared by C.W. Fotis, Jr. dated March 25, 1991, and is not transferable to other land.

This approval, contingent on the above-noted condition, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 23, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 129, October 15, 1991, (Tape 2), Action Item:

Request for Additional Time
Immanuel Baptist Church, SPA 80-A-058-1

Mr. Pammel made a motion to grant the request. Mrs. Harris seconded the motion, which carried by a vote of 7-0. The new expiration date is June 7, 1992.

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Page 129, October 15, 1991, (Tape 2), Action Item:

Request for Deferral of Consideration of Acceptance of Appeal
Lee's Gas Supply

Mrs. Harris asked if there was any reason why the appellant wanted to defer the consideration of whether to accept the appeal. Lori Greenlief, Staff Coordinator, advised that it was the

Page 130, October 15, 1991, (Tape 2), REQUEST FOR DEFERRAL OF CONSIDERATION OF ACCEPTANCE OF LEE's GAS SUPPLY APPEAL, continued from Page 129)

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Zoning Administrator's decision that the appeal was not timely filed, and the appellant wished to come before the BZA to argue that decision.

Mrs. Harris made a motion to defer the case until October 29, 1991. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

Note: See continuation of discussion later in meeting.

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Page 130, October 15, 1991, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Frank A. Fuerst, SP 91-D-062

Mrs. Thonen made a motion to grant an out-of-turn hearing because she believed this to be the case which had been inadvertently held up in the County process, but Mrs. Harris said this was not the case. Mr. Hammack made a motion to grant an out-of-turn hearing. Mr. Pammel seconded the motion, which carried by a vote of 7-0. The hearing is scheduled for December 3, 1991.

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Page 130, October 15, 1991, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Edwin W. Davis, SP 91-M-061

Mrs. Thonen made a motion to grant an out-of-turn hearing and scheduled the case for December 3, 1991. Mr. Pammel seconded the motion, which carried by 7-0.

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Page 130, October 15, 1991, (Tape 2), Action Item:

Request for Intent to Defer
Goodridge Drive Associates Limited Partnership Appeal, A 91-P-011
Now scheduled for October 29, 1991

Some discussion ensued and Mr. Hammack said that the appellant was waiting for action by the Board of Supervisors. Mrs. Harris made a motion to issue an Intent to Defer. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 130, October 15, 1991, (Tape 2), Action Item:

Approval of Resolutions from October 8, 1991 Hearing

Mr. Pammel made a motion to accept the Resolutions as submitted by the Clerk. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

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Page 130, October 15, 1991, (Tape 2), Action Item:

Request for Deferral of Consideration of Acceptance of Appeal
Lee's Gas Supply

Note: See previous discussion, earlier in meeting.

Mr. Pammel said that he would not be present when the BZA reviewed Lee's Gas Appeal and said that the way he read the decision of the Zoning Administrator was that she was saying that the appellant did not appeal in a timely manner from the time that the site plan waiver was denied. Chairman DiGiulian said that he believed the Zoning Administrator was saying from the time the violation was noted. Mr. Pammel said that the appellant then requested a waiver, went through the process, and was denied. He said that, five days after the denial, the Zoning Administrator informed the appellant that he was in violation. Mr. Pammel said that the appellant did file in a timely manner from that date, but he did not file in a timely manner going back to the date when his site plan waiver was denied. Chairman DiGiulian said that, apparently, the appellant went through a great deal of trouble to try to be in conformance, even to the point of removing things and ordering an underground tank for propane, and it appeared that the appellant maintained that the Zoning Administrator's position had changed. Mr. Pammel said that was also his belief, and he believed that the appellant has acted in a timely manner from the last official notice that came from the Zoning Administrator's office. Mr. Pammel wanted his position known because he would not be present at the hearing.

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Page 131, October 15, 1991, (Tape 2), Action Item:

The Board asked staff for a report on the condition of Jane C. Kelsey, Chief, Special Permit and Variance Branch, who was ill. Lori Greenlief, Staff Coordinator, updated the Board on Ms. Kelsey's condition. The BZA asked staff to give Ms. Kelsey their best wishes.

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As there was no other business to come before the Board, the meeting was adjourned at 9:30 p.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 19, 1991

APPROVED: November 26, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 22, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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Chairman DiGiulian called the meeting to order at 9:08 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 133, October 22, 1991, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH A. & YOLANDA S. DEGRANDI, VC 91-D-085, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 9.6 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207) on approx. 11,619 s.f. located at 1505 Highwood Dr., zoned R-2 (developed cluster), Dranesville District, Tax Map 31-2((17))20A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. DeGrandi replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the property is located on Highwood Drive in an area south of The George Washington Memorial Parkway and west of the Arlington County line. She said that the subject property and the surrounding lots are zoned R-2 and are developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings. Ms. Dickey noted that the request for a variance resulted from the applicants' proposal to construct a room addition 9.6 feet from the rear lot line. She stated that a minimum rear yard of 25 feet is required by the Zoning Ordinance on the lot; thus, the applicants were requesting a variance of 15.4 feet from the minimum rear yard requirement. Ms. Dickey said that in regard to the surrounding uses, research in the files of the Zoning Administration Division revealed that the dwelling on adjacent Lot 19-A to the south is located approximately 30 feet from the shared lot line and the dwelling on Lot 21-A to the north is located approximately 7.9 feet from the shared lot line. She noted Lot 18-A to the west is vacant.

The applicant, Joseph A. DeGrandi, 1505 Highwood Drive, Arlington, Virginia, addressed the BZA. He stated that the photographs presented to the BZA depicted the steep slope of the land and noted that the slope caused water to accumulate on the patio. He explained that because of the close proximity of the airport, the planes flying overhead preclude the use of the porch. Mr. DeGrandi stated that the addition would be aesthetically pleasing and the request had the neighbor's support.

In response to Mrs. Thonen's question as to what the use would be, Mr. DeGrandi stated that the addition would be used as a family room.

Mr. Pammel inquired as to whether the applicant had filed a formal complaint with the Federal Aviation Administration. Mr. DeGrandi stated that although he had not personally filed a complaint, several neighbors as well as the Homeowners Association had.

In response to Mrs. Harris' question as to what the hardship issue is that would justify the granting of such a great variance, Mr. DeGrandi stated that the hardship issues were the noise and pollution caused by the planes and the water accumulation which is caused by the steep slope that exists on the property. He explained that he was building the addition in order to accommodate his children and grandchildren when they visited.

Mrs. Thonen noted that the lot had exceptional shallowness, an exceptional shape, and a steep slope. She explained to Mr. DeGrandi that these land issues presented the hardship. Mrs. Thonen further noted that there is no other site on the land on which the addition could be built without a variance.

Mr. Pammel noted that Mr. DeGrandi's family was expanding and the additional area was need to accommodate them when they visited.

There being no speakers to the request, Chairman DeGiulian closed the public hearing.

Mr. Pammel made a motion to grant SP 91-P-048 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 5, 1991.

Chairman DiGiulian called for discussion.

Mrs. Harris asked if the fireplace chimney would intrude any further into the yard than the footprint submitted by the applicant depicted. Mr. DeGrandi assured the BZA that it would not.

Mrs. Thonen requested that the maker of the motion include the statement that, "The topographical conditions and the placement of the house on the lot precludes the addition from being built without a variance," Mr. Pammel agreed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-085 by JOSEPH A. AND YOLANDA S. DEGRANDI, under Section 18-401 of the Zoning Ordinance to allow addition 9.6 feet from rear lot line, on property located at 1505 Highwood Drive, Tax Map Reference 31-2((17))20A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 11,619 square feet.
4. The application meets the necessary standards required for the granting of a variance.
5. The lot is extremely shallow.
6. The 25.4 foot rear yard and the positioning of the structure on the lot also exacerbates the problem of meeting the requirements.
7. The topographical conditions and the placement of the house on the lot precludes the addition from being built without a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific room addition shown on the plat (prepared by DeLashmutt Associates, LTD., dated July 9, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Page 135, October 22, 1991, (Tape 1), JOSEPH A. & YOLANDA S. DEGRANDI, VC 91-D-085, continued from Page 134)

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3. The room addition shall be architecturally compatible with the existing dwelling.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 135, October 22, 1991, (Tape 1), Scheduled case of:

9:10 A.M. AURORA RODRIGUEZ, VC 91-D-093, appl. under Sect. 18-401 of the Zoning Ordinance to allow tennis court with 10 ft. fence and 20 ft. lights 5.0 ft. from side and rear lot lines (20 ft. min. side yard and 10 ft. min. rear yard for fence and 20 ft. min. rear yard for lights required by Sects. 3-107 and 10-104), allow structure (tennis court) to exceed 30% coverage of maximum rear yard (no more than 30% coverage allowed by Sect. 10-103) and allow accessory structure (7.0 ft. high fence) to remain in front yard (4 ft. max. height allowed by Sect. 10-104), on approx. 1.4343 acres located at 1175 Ballantrae La., zoned R-1, Dranesville District, Tax Map 31-1((2))32C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The attorney for the applicant, Christopher M. Kerns, 2848 Davenport Street, N.W., Washington, D.C., addressed the BZA and said that although he was not listed on either of the the affidavits, he would like to advise the BZA that Aurora Rodriguez was both the owner and the applicant. He noted that the original affidavit erroneously stated that one of the applicants was Jose Rodriguez.

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the BZA was complete and accurate. Mr. Levene the applicant's agent, as listed on both the affidavits, replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the property is located on Ballantrae Lane in an area west of the intersection of Rt. 123 and Georgetown Pike. She noted that the subject property and the surrounding lots are zoned R-1 and are developed with single family detached dwellings. Ms. Dickey said that the request for a variance resulted from the applicant's proposal to construct a tennis court with a 10 foot fence and 20 foot lights to 5 feet from the side and rear lot lines, to allow the tennis court structure to exceed 30% coverage of the minimum rear yard, and to allow a 7 foot fence to remain in the front yard. She noted that a 20 foot minimum side yard and a 10 foot minimum rear yard are required by the Zoning Ordinance for the tennis court fence and a minimum 20 foot rear yard is required for the tennis court lights. She further noted that maximum of 30% coverage of the minimum rear yard and a maximum 4 foot fence height is permitted by the Zoning Ordinance.

Ms. Dickey stated that the applicant was requesting a variance of 15 feet to the minimum side yard and 5 feet to the minimum rear yard for the fence, and a variance of 15 feet to the minimum rear yard for the lights. Ms. Dickey noted that the applicant was also requesting a variance of approximately 21.8% to the maximum coverage of the rear yard and a variance of 3 feet to the maximum fence height for the fence at the northwestern corner of the front yard and a variance of 1 foot to the maximum fence height for the fence on the western and southern sides of the front yard.

She stated that in regard to surrounding uses, research in the Zoning Administration Division files revealed that the dwelling on adjacent Lot 32F to the north is located approximately 31 feet from the shared side lot line and the dwelling on adjacent Lot 32D to the east is located approximately 51.2 feet from the shared lot line.

In response to questions from the BZA, Ms. Dickey stated that the case heard on January 11, 1982, was not granted on the subject Lot 32C, but on the adjoining Lot 32D which is also owned by the applicant and her husband, Jose Rodriguez. She noted that the structure on the subject Lot 32C had been demolished and the applicant was planning to build a new house on the lot.

The applicant's agent, Gary Levene, 1177 Ballantrae Lane, McLean, Virginia, addressed the BZA and stated that the architecture of the house as well as the proposed fence was planned to add aesthetic value to the neighborhood. He noted that the site of the tennis court was chosen because it would have a minimum impact on the neighbors. Mr. Levene stated that the problem stemmed from the decision to place the house on the lot so that it would blend in

with the surrounding community. He noted that this resulted in a small rear yard which does not meet the 30% coverage requirement.

Mr. Levene stated that the mature trees, as well as the additional evergreen trees which will be planted along the tennis court, will adequately screen the property. He further stated that the tennis court lights will be setback at least 25 feet from the property line and will in no way infringe upon the neighbor's property. Mr. Levene expressed his belief that the structure and tennis court would add value to the neighborhood and would architecturally blend in with the surrounding properties and asked the BZA to approve the request.

In response to Chairman DiGiulian's question as to whether the dwelling could be located closer to Ballantrea Lane, Mr. Levene said that the proposed location for the house was at the 60 foot minimum setback requirement.

In response to Chairman DiGiulian question as to whether the setback requirement was 60 feet, Ms. Dickey stated that the setback requirement was 40 feet.

Mr. Levene stated that in the event the house was set back another 20 feet, a variance would still be needed. He further noted that in order to meet the Zoning Ordinance requirements, the tennis court would have to be located unreasonably close to the house.

As there were no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Chung Wouk Lee, 1173 Ballantrae Lane, McLean, Virginia, addressed the BZA. He stated that his house was on the adjoining lot and the proposed tennis court would be located near his bedroom and study. He expressed his belief that the size of the applicant's house, along with the tennis court, pool, and cabana, would be too intense for the lot. He said that the proposed front yard fence would not conform with the neighborhood. Dr. Lee stated that his profession demands that he be available at all hours of the day and night and expressed concern that due to the proximity of the tennis court, he would be unable to get the necessary sleep and asked the BZA to deny the request.

Kenneth Hansen, 1179 Ballantrae Lane, McLean, Virginia, addressed the BZA. He stated that although he and the applicant have been neighbors and friends for over five years, he could not support the request. He stated that the tennis court would be too intense, would have a detrimental aesthetic and financial impact. He expressed his belief that the tennis court could be better located and asked the BZA to deny the request.

In response to questions from the BZA, Dr. Hansen explained where he believed the tennis court should be located.

Harry E. Ormston, 1170 Ballantrae Lane, McLean, Virginia, addressed the BZA. He stated that the proposed 7 foot fence would be an aesthetic detriment to the area. Mr. Ormston expressed his belief that the granting of the request would set an undesirable precedent in the community.

There being no further speakers in opposition, Chairman DiGiulian called for rebuttal.

Mr. Levene explained that the height of the proposed fence in the front yard would only be 5 feet in height and would be set back 1 foot from the property line.

Mr. Kerns stated that the tennis court would be located to the rear of the property and would be placed so that it would have the least impact on the adjoining properties. He noted that the 10 foot utility easement on the lot limited the placement of the tennis court. Mr. Kerns said that the applicant had cooperated with Dr. Lee by allowing him to plant a row of trees along the property line. He expressed his belief that the proposed plan would be aesthetically pleasing and would be beneficial to the community.

Mr. Levene noted that the tennis court could be placed by-right closer to Dr. Lee's property than the proposed location.

In response to Mr. Pammel's question on the relocation of the tennis court, Mr. Levene explained that the proposed location had been chosen because it would have the least impact on the neighbors.

Mrs. Harris expressed her concern with the intensity. She stated that by reconfiguring the house, the pool, and the tennis court, the applicant could build without a variance. Mr. Levene stated that he believed the proposed plans were the best for architectural and aesthetic reasons. He expressed his belief that the application would be in compliance with the Comprehensive Plan.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 91-D-093 for the reasons reflected in the Resolution.

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Mr. Kelley seconded the motion and stated that, although the lot may have an exceptional shape, it did not meet the necessary standards for the granting of a variance. He expressed his belief that the plans could be reconfigured.

Mrs. Harris stated that since the construction was in the planning stages and the lot was not on an arterial road, there was no reason for a fence to be higher than that allowed under the Zoning Ordinance. Mrs. Thonen stated that she would accept this statement in her finding of facts.

Mr. Hammack stated that with proper planning the project could be constructed without a variance. He expressed his belief that the applicant's proposal was too intense and would be for convenience, not hardship. He expressed his concern that the proposal would allow the tennis court lights to be within 5 feet of the property line.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-093 by AURORA RODRIGUEZ, under Section 18-401 of the Zoning Ordinance to allow tennis court with 10.0 foot fence and 20.0 foot lights 5.0 feet from side and rear lot lines and to allow structure (tennis court) to exceed 30% coverage of maximum rear yard and to allow accessory structure (7.0 feet high fence) to remain in front yard, on property located at 1175 Ballantrae Lane, Tax Map Reference 31-1((2))32C, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.4343 acres.
4. The application does not meet the standards necessary for the granting of a variance.
5. The lot does not have exceptional narrowness, shallowness, size, or any of the standards listed in Standard Number 2.
6. The variance would have an extreme detrimental impact on the neighborhood.
7. Environmental concerns preclude the covering of such a large area of the lot.
8. The hardship would be shared by the other property owners.
9. There is no justification for the fence. It is not an arterial road and it is not a high traffic area.
10. The fence should meet the Zoning Ordinance requirements.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Mr. Kelley made a motion to waive the 12 month waiting period. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991.

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Page 138, October 22, 1991, (Tape 1), Scheduled case of:

9:20 A.M. JAMES R. JR. & SHARON K. FISHER, VC 91-P-086, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 11.7 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 14,000 s.f. located at 1777 Chain Bridge Rd., zoned R-1, HC, Providence District, Tax Map 30-3((2))261, 262. (CONCURRENT WITH SP 91-P-042)

9:20 A.M. JAMES R. JR. & SHARON K. FISHER, SP 91-P-042, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow dwelling to remain 23.1 ft. from front lot line of corner lot and 11.7 ft. from side lot line (40 ft. min. front yard and 15 ft. min. side yard required by Sect. 30-2.2.2 of previous Z.O.) on approx. 14,000 s.f. located at 1777 Chain Bridge Rd., zoned R-1, HC, Providence District, Tax Map 30-3((2))261, 262. (CONCURRENT WITH VC 91-P-086)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Fisher replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval of a special permit for a modification to the minimum front and side yard requirement, based on an error in building location, to allow the existing dwelling to remain 23.1 feet from the front lot line and 11.7 feet from the side lot line. Mr. Riegle noted that when the subject dwelling was constructed in 1951 the Zoning Ordinance required a 30 foot minimum front yard and a 15 foot minimum side yard; thus, modifications of 5.2 feet to the minimum front yard requirement and 3.3 feet to the minimum side yard requirement were requested.

Mr. Riegle stated that the applicants were also requesting concurrent approval of a variance to the minimum side yard requirements to allow an addition to be constructed at a location 11.7 feet from the side lot line. Sect. 3-107 requires a minimum side yard of 20 feet in the R-1 District; therefore, a variance of 8.3 feet was requested.

In response to Mrs. Harris' question regarding the measurement from the rear lot line to the proposed addition, Mr. Riegle replied that it would be approximately 35.5 feet.

The applicant, James Fisher, 1777 Chain Bridge Road, McLean, Virginia, addressed the BZA. He stated that he had purchased the house in 1976 and had no knowledge of the setback deficiency. He explained that the house had been constructed in 1951 by the previous owner. Mr. Fisher said strict enforcement of the Zoning Ordinance would cause an undue hardship, a financial burden and liability, and would unjustly penalize the property owners in the area.

Mr. Fisher stated that in the past, variances had been granted to other homeowners in the area. He expressed his belief that the granting of the variance would allow improvements that would enhance the aesthetic and financial value of the property. Mr. Fisher said that he had the community's support for the request and asked the BZA approve the request.

In response to Chairman DiGiulian's question as to whether the proposed addition would intrude any further into the side yard than the existing dwelling, Mr. Fisher stated that it would not.

Vice Chairman DiGiulian called for speakers in support of the request and the following citizen came forward.

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Mary Holback, 1608 Colonial Lane, McLean, Virginia, addressed the BZA. She stated that the applicant was an asset to the community. Ms. Holback expressed her belief that the addition would be aesthetically pleasing and, would have a beneficial impact on the neighborhood and asked the BZA to grant the request.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 91-P-042 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 15, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-P-042 by JAMES R. JR. AND SHARON K. FISHER, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow dwelling to remain 23.1 feet from front lot line of corner lot and 11.7 feet from side lot line, on property located at 1777 Chain Bridge Road, Tax Map Reference 30-3((2))261, 262, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The applicant did not build the house in 1951.

I. It would be an undue hardship to require that the applicant correct the problem.

J. The granting of the special permit would not be detrimental to the Zoning District or the character of the neighborhood.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and the specified dwelling shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Harris made a motion to grant VC 91-P-086 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 15, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-086 by JAMES R. JR. AND SHARON K. FISHER, under Section 18-401 of the Zoning Ordinance to allow addition 11.7 feet from side lot line, on property located at 1777 Chain Bridge Road, Tax Map Reference 30-3((2))261, 262, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1, HC.
3. The area of the lot is 14,000 square feet.
4. Although the lot is flat, it has double frontage.
5. When the two lots were consolidated, the house was placed extremely close to the eastern lot line.
6. The addition will not intrude any closer to the side lot line than the existing structure.
7. A rear yard variance will not be needed.
8. The request is for a minimum variance.
9. Due to the architectural constraints, the proposed location is the only possible site for the addition.
10. The granting of the variance would not change the character of the Zoning District.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:

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A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. In the area west of the addition, four (4) evergreen trees shall be planted. These trees shall have a planted height of at least six (6) feet.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 141, October 22, 1991, (Tape 1), Scheduled case of:

9:30 A.M. FIRST BAPTIST CHURCH OF MERRIFIELD, SPA 87-P-073-1, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to amend SP 87-P-073 for church and related facilities and child care center to allow additional parking and continued use of trailer and waiver of dustless surface requirement on approx. 36,169 s.f. located at 8122 Ransell Rd., zoned R-3, HC, Providence District, Tax Map 49-4((1))36; 49-4((3))8, 8A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Gibson replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval to extend the term on the trailer for an additional five years, to extend the waiver of the dustless surface requirement for an additional five years, and to modify the previously imposed development conditions to allow the reduction of the maximum seating capacity of the church from 200 to 180. Mr. Riegle noted that since the original approval of the use in 1988, the minimum parking requirement for child care centers has been amended; thus, the minimum parking requirement for the child care center on the subject site has been increased by an additional five spaces. He explained that the modification to the development conditions would allow the church to meet all minimum parking requirements without the construction of additional spaces. Mr. Riegle stated that the site and all surrounding properties are planned for and developed with commercial uses. In conclusion, he stated that there have been no changes in the land use circumstances which would warrant additional screening, buffering, or other mitigation measures and staff recommended approval.

In response to Mrs. Harris. question regarding the applicant's request for a waiver of the transitional screening and barrier requirements along the eastern lot line, Mr. Riegle stated that because the zoning for the adjoining property was for commercial use, staff believed that the waiver was justified. He noted if the adjoining property is ever developed for residential use, a caveat was included in the development conditions that would require a

barrier to be constructed along that lot line. Mr. Riegle stated that the adjoining property is used as a plant nursery and there is no existing residential development in the area.

The applicant's agent, Allen Gibson, 10200 Marietta Court, Fairfax, Virginia, addressed the BZA. He stated that the child care center currently has an enrollment of thirty children with a staff of five. Mr. Gibson said that the church which has been in existence since the early 1800's has a rich history of providing services to the community and asked the BZA to grant the request.

In response to Mr. Hammack's question regarding the applicant's acceptance of the proposed development conditions, Mr. Gibson stated that the applicant had agreed to all the conditions.

Mr. Kelley made a motion to grant SPA 87-P-073-1 subject to the development conditions contained in the staff report dated October 15, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-P-073-1 by FIRST BAPTIST CHURCH OF MERRIFIELD, under Sections 3-303 and 8-915 of the Zoning Ordinance to amend SP 87-P-073 for church and related facilities and child care center to allow additional parking and continued use of trailer and waiver of dustless surface requirement, on property located at 8122 Ransell Road, Tax Map Reference 49-4((1))36; 49-4((3))8, 8A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3, HC.
3. The area of the lot is 36,169 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-305, 8-903, and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat prepared by LBA, Limited, dated April, 1987, approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The maximum number of seats in the main worship area shall be 180 with a corresponding minimum of 45 parking spaces.

5. The maximum number of children in the child care center shall be sixty (60). A minimum of 11 parking spaces shall be required for this use.

6. The hours of operation of child care center shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday.

7. The maximum number of children on the play area shall not exceed thirty-four (34) at any one time.

8. The use of the trailer shall be limited to five (5) years from the final approval date of this special permit amendment application.

9. The transitional screening and barrier requirements shall be waived until such time that Lots 37 and 9 develop residentially. Should Lots 37 and 9 develop with single family detached dwellings a solid wood fence shall be erected along the eastern lot line.

10. All access to the child care center shall be from Porter Road.

11. As portions of the existing church and trailer are located with 60 to 200 feet from the centerline of Gallows Road, each shall comply with the guidelines for the acoustical treatment of commercial structures located within the highway noise impact zone with levels between 70 and 75 dBA Ldn, as determined feasible by DEM. Further, as portions of the existing church and trailer are located within 200 to 620 feet from the centerline of Gallows Road, each shall comply with the guidelines for acoustical treatment of commercial structures located within the highway noise impact zone with levels between 65 and 70 dBA Ldn, as determined feasible by DEM.

    That portion of the existing building to be used for child care purposes shall meet the 45 dBA Ldn interior noise standard as the proposed child care facility is considered to be noise sensitive.

    The following criteria apply to the existing building:

    Exterior walls shall have a laboratory sound transmission class (STC) of at least 45.

    Doors and windows shall have a laboratory sound transmission class (STC) of at least 37. If "windows" function as walls, then they should have the STC specified for exterior walls.

    Adequate measures to seal and caulk between surfaces shall be provided.

    The outdoor recreation area shall meet the 65 dBA Ldn outdoor noise standard based on the following criteria:

    In order to achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures, such as architecturally solid fencing, shall be provided for those outdoor recreation areas which are unshielded by topography or built structures. The method employed must be of sufficient height to adequately shield the impacted area from the source of the noise.

12. The gravel surfaces shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but may not be limited to the following:

    Speed limits shall be limited to ten (10) mph.

    During dry periods, application of water shall be made in order to control dust.

    Runoff shall be channelled away from and around driveway and parking areas.

    The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

    Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

This approval contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals, because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991. This date shall be deemed to be the final approval date of this special permit.

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9:45 A.M. ARYNESS J. WICKENS, VC 91-Y-084, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of a portion of a lot into 2 lots, with both lots having lot widths of 6.0 ft. (200 ft. min. lot width required by Sect. 3-E06) on approx. 4.68 acres located at 2210 Hunter Mill Rd., zoned R-E, Sully District (formerly Centreville), Tax Map 27-4((1))pt. 31.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Douglas J. Mackall, III, with the law firm of Mackall, Mackall, Walker, and Gibb, 4031 Chain Bridge Road, Fairfax, Virginia, stated that the applicant had died. He explained that he was the co-executor of the estate and assured the BZA that the beneficiaries were aware of the variabce application's public hearing.

Bernadette Bettard, Staff Coordinator, presented the staff report.
She stated that the applicant was requesting a variance to allow the subdivision of a portion (4.68 acres) of a 37.1 acre lot into two lots, with both lots having lot widths of 6 feet. She said that Section 3-E03 of the Zoning Ordinance requires a minimum lot width of 200 feet in the R-E District; thus, the applicant was requesting a variance of 194 feet for each lot. Ms. Bettard noted that the property is part of a larger subdivision of the entire Lot 31 and would constitute a revision to an existing approved preliminary plat of Lot 31. She noted that the proposal would change the location of the proposed cul-de-sac from 150 feet from the western lot line as shown on the approved preliminary to 340 feet from the western lot line shown on the variance plat. Ms. Bettard stated that it was staff's belief that the application did not met Variance Standards 6, 8, and 9.

The applicant's attorney, Nancy E. Gibbs, with the law firm of Mackall, Mackall, Walker, and Gibb, 4031 Chain Bridge Road, Fairfax, Virginia, addressed the BZA. She stated that the applicant had attempted to develop the property with a rural type atmosphere. Ms. Gibbs said that because the neighbors had been allowed to use the property for recreational purposes, they had been consulted in the planning of the subdivision. She explained that in order to accommodate the neighbors' desires, the applicant had modified the subdivision plans. Ms. Gibbs stated that Mr. Fields, the owner of Lot 4, had requested that the cul-de-sac be relocated so that car headlights would not shine onto his property. She expressed her belief that by relocating the cul-de-sac and allowing pipestem driveways, many mature trees on the property would be preserved, the impact on Lot 4 would be reduced, the homes would be located in a more aesthetic way, and it would be less expensive.

Ms. Gibbs noted that there would be no increase in the number of lots or in the density and would be environmentally superior to the original subdivision plan. She further noted that the rural atmosphere of the area would preclude the setting of a precedent for pipestem driveways. Ms. Gibbs stated that the request had the support of the neighbors as well as the Homeowners Association and asked the BZA to approve the variance.

In response to questions from the BZA regarding the impact on Lot 4, Ms. Gibbs stated that the lot line on Lot 4 was approximately 150 feet from the cul-de-sac. She noted that Mr. Fields was present to address the BZA.

Chairman DiGiulian called for speakers in support of the request and the following citizens came forward.

Stephen Fields, 2217 Halcyon Lane, Vienna, Virginia, addressed the BZA. He expressed his concern with the original subdivision plan which would have located the cul-de-sac close to his property. He stated that due to the topography of the property, the adjoining land is approximately 20 feet higher than his property. Mr. Fields expressed his belief that the original plan would have a detrimental impact on his property value, would allow the loss of approximately forty specimen trees, would create a nuisance, and asked the BZA to approve the revised subdivision plan.

Mr. Mackall expressed his belief that the application before the BZA reflected the cooperation between the community, the developer, and the applicant. He stated that the subdivision would be an asset to the community and asked the BZA to approve the request.

There being no further speakers to the request, Chairman closed the public hearing.

Mr. Hammack made a motion to deny VC 91-Y-084 for the reasons reflected in the Resolution.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that while the applicant's development plans would be environmentally sound, the applicant can develop the property without a variance. He noted the applicant had not demonstrated that a hardship exists or that he does not have reasonable use of the property.

Chairman DiGiulian stated that he could not support the motion. He said that the topography of the land, along with the unusual condition on the adjacent property demonstrated the need for the variance.

Mr. Kelley stated that although he agreed that there would be a hardship on the adjacent lot, he did not believe that a hardship existed on the subject property.

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Chairman DiGiulian noted that a topographic problem existed on the subject property and expressed his belief that a variance would allow for a better placement of the structures on the lots.

Mr. Hammack stated that the cul-de-sac would be located approximately 150 feet from the adjacent property line. He noted that although the adjoining property consisted of 5 acres, the owner had removed trees and had constructed his house and tennis court on the property line. Mr. Hammack expressed his concern that if the variance were granted, the tennis court lights would shine onto the neighbors property. He also noted that while Mr. Field expressed concern regarding the removal of trees on the adjoining property, he had himself removed many trees in order to construct the tennis court. Mr. Hammack stated that he could not agree that a severe topographic condition existed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-084 by ARYNESS J. WICKENS, under Section 18-401 of the Zoning Ordinance to allow subdivision of a portion of a lot into 2 lots, with both lots having lots widths of 6.0 feet, on property located at 2210 Hunter Mill Road, Tax Map Reference 27-4((1))pt. 31, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 4.68 acres.
4. Although the applicant has indicated that trees would be saved and noted the topography of the lot, there is not sufficient evidence that these conditions would constitute a hardship.
5. The applicant has not proven that the strict application of the Zoning Ordinance would produce an undue hardship or would effectively prohibit or unreasonably restrict all reasonable use of the land.
6. The plan is good but the pipestems would be too long.
7. A cul-de-sac could be installed by-right.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

Page 146, October 22, 1991, (Tapes 1 and 2), ARYNESS J. WICKENS, VC 91-Y-084, continued from Page 145)

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AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mrs. Harris seconded the motion which carried by a vote of 4-2 with Mrs. Harris, Mr. Hammack, Mr. Pammel, and Mr. Ribble voting aye; Chairman DiGiulian and Mr. Kelley voting nay. Mrs. Thonen was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991.

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Page 146, October 22, 1991, (Tapes 2 and 3), Scheduled case of:

9:55 A.M. HUNTER MILL SWIM AND RACQUET CLUB, SPA 82-C-014-1, appl. under Sects. 3-103 and 8-915 of the Zoning Ordinance to amend SP 82-C-014 to permit addition of "bubble" enclosure, expand hours of operation, allow swimming meets, and waiver of the dustless surface requirement on approx. 2.99 acres located at 1825 Hunter Mill Rd., zoned R-1, Centreville District, Tax Map 27-2((1))30A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Kull replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She also presented a revised plat, revised development conditions, and a statement of justification from the applicant. She stated that the applicant was requesting an amendment to an existing special permit for a community recreation facility. She noted that this amendment would modify previously imposed conditions by allowing the construction of an addition (bubble enclosure) of the pool, expand hours of operation from 5:00 a.m. until 10:00 p.m. year-round, and allow the waiver of a dustless surface for a temporary road and a temporary parking lot. Ms. Bettard said that the addition (bubble enclosure) will cover the deck of the main pool to a height of approximately 20 feet, with a smaller tunnel leading from the pool area to the bathhouse.

Ms. Bettard explained that an amendment to the applicant's statement of justification indicated that the request included use of the facility by the Solotar Olympic swimmers who would use the pool on Monday through Friday, from 5:00 a.m. until 7:00 a.m., and from 3:00 p.m. until 6:00 p.m. She noted that approximately thirty swimmers with a maximum of two coaches would use the pool at one time. Ms. Bettard stated that no swim meets for the Solotar swimmers would be held at the facility.

Ms. Bettard stated that the applicant requested a waiver of the required transitional screening along and north, south, and east of the building. She also said that the applicant had requested the parking lot landscaping and the stormwater management system specifications be deferred until such time as the abutting residential subdivision was built and the permanent parking lot and future tennis court was completed. She said that staff recommends approval with the implementation of the revised proposed development conditions.

The President of the Hunter Mill Swim and Racquet Club, Joseph L. Kull, 10182 Cedar Pond Drive, Vienna, Virginia, addressed the BZA and expressed his gratitude for the out-of-turn hearing. He stated that the swim club has been in operation since 1982 and has an enrollment of 240 families. Mr. Kull said that the present swim season is from Memorial Day until Labor Day and explained that the installation of a bubble would allow the pool to operate year round. He stated that the Solotar Swim Team provided competitive swimming, have won Olympic Gold Medals, hold world national records, and have prepared high school and college all Americans. He expressed his belief that the granting of the special permit would not only provide a year round recreational facility for the Hunter Mill Swim Club Members, but would provide the needed facility for the Solotar Swim Team.

Mr. Kelley asked if arrangements had been finalized regarding the leasing of the facility by the Solotar Swim Team. Mr. Kull explained that both clubs are non-profit organizations and an arrangement suitable for both uses would be agreed upon. He stated that the Solotar Swim Club would pay for the installation of the bubble and the Hunter Mill Swim Club would then be able to enjoy the pool year round.

Mr. Kull expressed his concern with the development condition regarding the hours of operation. He explained that the Solotar Swim Club members practice in the early morning hours and in the late afternoon hours. He asked that the hours of operation be from 5:00 a.m. to 9:00 p.m. Mr. Kull noted that the pool would be closed during school hours and noted that Solotar Swim Club would use the facility from 5:00 a.m. to 7:00 a.m. and from 3:00 p.m. to 9:00 p.m.

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In response to Mrs. Harris' question regarding the Hunter Mill Swim Club's use of the facility, Mr. Kull stated that an arrangement would be made so that when the Solotar Swim Club was not practicing, then the Hunter Mill Swim Club could use the pool.

In response to questions from the BZA regarding the bubble, Mr. Kull stated that during the summer months the bubble would be removed and the Solotar Swim Club would not use the facility. He explained that while space was limited in the winter months, many facilities were available during the summer months. He stated that the Hunter Mill Swim Club would manage the facility during the entire year. Mr. Kull said that the classes would consist of 15 to 30 swimmers with a total enrollment of approximately 150 to 200 swimmers who live within a few miles of the facility. He further explained that there would be approximately six classes per day.

Mr. Kull asked that Development Conditions 11, 12, and 13, be temporarily waived. He explained that the Hunter Mill Swim Club had plans to radically alter their facility in the near future and asked that these conditions be implemented at that time. He further requested that Condition 16, which requires a left-hand turn lane, be deleted. He used the viewgraph to depict that according to the future development plans for the area, the present entrance to the pool would be eliminated and the access would be from a cul-de-sac in the proposed housing development. He also noted that the future plans were to reconfigure Hunter Mill Road so that it would join Sunrise Valley Drive. Mr. Kull explained that traffic projections were based on 30 swimmers being transported to the facility and stated that car pooling was extensively used and many of the classes would consist of 15 swimmers.

Mrs. Harris expressed concern with the applicant's future development plans. She noted that when a special permit is granted, any changes to the site plans must be approved by the BZA. Mr. Kull stated that he would adhere to the County procedures when any changes were made.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Lawrence R. Skrzycki, 2029 Beacon Place, Reston, Virginia; Sarah H. Durkin, 1949 Barton Hill Road, Reston Virginia; Victor J. Melesk, 1507 Turtle Rock Lane, Reston Virginia, Jan Edwards, 11480 Sunset Hills Road, Reston, Virginia, Neuschler, 903 River Ridge Drive, Great Falls, Virginia; Carolyn Druker, 1949, Barton Hill Road, Reston, Virginia; addressed the BZA. They stated that the Solotar Swim Club program has been beneficial to the youth in the area by building character and physical strength, teaching discipline, and demonstrating expedient values. They noted that the program has helped students to obtain college scholarship, become All Americans, and to become winners in international competition and the Olympic games.

Mr. Pammel expressed his admiration for the Solotar Swim Club program. He noted that the BZA must address the issues which involve the general public and must implement the standards necessary to protect the adjoining property owners. He said that he had concerns regarding the request for a waiver of the screening requirement. Mr. Pammel stated that Conditions 11 and 12 requiring screening should be implemented as stated in the development conditions. He further stated that Condition 16 which requires a left-hand-turn lane was imperative because of the dangerous traffic conditions on Hunter Mill Road.

Mr. Pammel made a motion to grant SPA 82-C-014-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the amended staff report dated October 22, 1991 with the modifications as reflected in the Resolutions.

Mrs. Harris seconded the motion. She stated that she believed that Condition 16 should be deleted. She explained that although the use of the facility would be expanded for a 12 month period, there would not be an increase of the intensity of the use. Mrs. Harris said that although she believed that the hazardous traffic conditions should have been addressed at the time of the original special permit public hearing, it would be unfair to impose an additional condition on the use.

Mr. Pammel expressed his concern with the dangerous traffic conditions and stated that he too believed that the original special permit had been deficient in not requiring a left-hand-turn lane. He noted that the Solotar members would be using the facility during periods of darkness which would present additional safety problems.

Mr. Kelley stated that while he would agree to a 5 year term on the use, the applicant must understand that before any changes are made to the property or the use they must return to the BZA for approval.

After a brief discussion it was the BZA's decision that when the bubble was in place, the Solotar Swim Club's hours of operation for the pool would be from 5:00 a.m. to 9 p.m., five days a week; and the Hunter Mill Swim Club's hours of operation for the pool would be from 8:00 a.m. to 9:00 p.m. on Saturdays and Sundays.

Mr. Hammack expressed his belief that the two uses presented problems and the condition for specific uses had not been addressed. Mr. Pammel stated that while he agreed that more specific conditions distinguishing the two uses should be imposed, he believed that the special permit should be granted.

Chairman DiGiulian call for a vote. The motion failed by a vote of 3-3 with Mr. Pammel, Mr. Ribble and Mr. Kelley voting aye; Chairman DiGiulian, Mrs. Harris and Mr. Hammack voting nay.

Mrs. Harris made a motion to grant SP 82-C-014-1 for the reasons reflected in the Resolution and subject to the revised development conditions dated October 22, 1991 with the modifications as contained in the Resolutions.

Chairman DiGiulian called for discussion.

After a brief discussion, it was the consensus of the BZA that the pool hours on the weekend would be from 8:00 a.m. to 9:00 p.m.

Mr. Hammack stated that the could not support the application. He explained that the special permit was a large expansion of the rezoning application, RZ 78-C-014, which allowed for a pool to serve residents which reside on the lots shown on the generalized development plan. Mr. Hammack expressed his belief that by discounting the By-Laws which only allow members of the Hunter Mill Swim Club to use the pool that this action would create problems in the future.

Mr. Pammel stated that since the subdivision referred to in the rezoning application had never been developed, the Hunter Mill Swim Club could not comply with the generalized development plan.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-C-014-1 by HUNTER MILL SWIM AND RACQUET CLUB, under Sections 3-103 and 8-915 of the Zoning Ordinance to amend SP 82-C-014 to permit addition of "bubble" enclosure, expand hours of operation, allow swimming meets, and waiver of the dustless surface requirement, on property located at 1825 Hunter Mill Road, Tax Map Reference 27-2((1))30A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.99 acres.
4. The application is for an expanded length and not necessarily an expanded use of the property in depth.
5. The testimony indicated that extensive car pooling would be used.
6. The young people, as well as their parents, should be commended for their dedication and discipline.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-403, 8-903, and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Taylor Garvin Associates, Inc., dated July 1, 1991) approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

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4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Taylor Garvin Associates, Inc., dated July 1, 1991, and these development conditions.

5. The club membership shall be limited to 300 families, until such time as the parking lot shown on the Special Permit Plat located near the eastern boundary of the site is constructed, the membership may then be increased to 400. When the bubble is in place, the use of the facility by the Solotar swim team members shall be limited to the hours of 5:00 a.m to 9:00 p.m., Monday through Friday and 8:00 a.m. to 9:00 p.m. on weekends. The Solotar Swim Club and the Hunter Mill Swim and Racquet Club cannot use the facility simultaneously. The Hunter Mill Swim and Racquet Club shall be the sole user during the summer months when the bubble has been removed. No more than thirty swim team members shall use the pool at any one time. There shall be no swim meets associated with the Solotar swim club.

6. Thirty-four (34) parking spaces shall be provided. All parking shall be on site.

7. All tennis court lights shall be reduced to twenty two (22) feet and directed and shielded in a manner that prevents glare on adjacent properties.

8. The regular hours of operation for the swimming pool shall be 8:00 a.m. until 9:00 p.m. all year long and 7:00 a.m. until 10:00 p.m. for the tennis courts. Swim meets may be allowed for the Hunter Mill Swim and Racquet Club. After-hour parties and activities shall be governed by the following:

   Limited to six (6) per season.

   Limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.

   Shall not extend beyond 12:00 midnight.

   The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

   Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

9. During discharge of swimming pool waters the following operation procedures shall be implemented:

   Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

   If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.

10. If a public address system is used, its use shall be limited to special parties and emergencies and its volume shall be modulated to comply with the requirements of the Noise Ordinance.

11. Transitional Screening 1 shall be required on all lot lines, except where the 10 ft. stormwater easement encroaches into the twenty-five foot area. The existing vegetation may be used to satisfy this requirement provided it is supplemented to fulfill the requirement as determined by the Urban Forestor. The supplemental evergreen plantings along the southern lot line shall be retained and supplemented to fulfill the screening requirement.

12. The Barrier requirement shall be waived, provided the required transitional screening is provided in conjunction with this approval. If the screening is not provided, a 6 ft. high wooden fence shall be provided along the eastern and southern lot lines in the area south of the existing 10 foot stormwater drainage easement.

13. Water quality impacts shall be mitigated by the provision of an infiltration trench or a vegetative filter strip Best Management Practice (BMP). The BMP shall be designed as suggested in the Metropolitan Washington Council of Governments publication entitled Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMP's or as determined by DEM. The location of the BMP shall be determined by DEM.

14. The waiver of the dustless surface shall be approved for a term of five (5) years from the date of this special permit.

15. The gravel surfaces shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but may not be limited to the following:

    Speed limits shall be limited to ten (10) mph.

    During dry periods, application of water shall be made in order to control dust.

    Runoff shall be channelled away from and around driveway and parking areas.

    The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

    Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

16. There shall be a five (5) year term on the Special Permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mr. Hammack voting nay. Mrs. Thonen was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 12:05 p.m. and reconvened at 12:25 p.m.
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Page 150, October 22, 1991, (Tape 3), Scheduled case of:

10:05 A.M. SOUTH RUN BAPTIST CHURCH, SPA 87-S-078-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 87-S-078 for church and related facilities to allow trailer additions and reduction in parking spaces on approx. 10.59 acres located at 8712 Selgar Drive, zoned R-1, Springfield District, Tax Map 89-3((3))2, 3.

Chairman DiGiulian noted that the notices were not in order.

Lori Greenlief, Staff Coordinator, stated that although the applicant had sent the required notification letters, there were some omission and since they had not returned the certified receipt within the allotted time these errors could not be rectified. She noted that the applicant had requested the public hearing be deferred until February.

Mrs. Harris made a motion to defer SPA 87-S-078-1 until February 4, 1992, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 150, October 22, 1991, (Tape 3), Scheduled case of:

10:25 A.M. TRUSTEES FOR ST. JOHN'S EPISCOPAL CHURCH, SPA 85-S-053-1, appl. under Sects. 3-103 and 8-915 of the Zoning Ordinance to amend SP 85-S-053 for church and related facilities to allow addition, increase in parking and seating capacity, trailer, and waiver of dustless surface on approx. 3.30 acres located at 5649 Mt. Gilead Rd., zoned R-1, WS, HC, HD, Sully District (formerly Springfield), Tax Map 54-4((1))24A, 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Via replied that it was.

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Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated the 3.2978-acre church property is zoned R-1 and is currently developed with a 4,500 square foot church with 110 seats, a parish hall, a temporary classroom trailer, and 29 parking spaces. He noted that the property and the existing chapel is one of the landmarks of the Centreville Historic District, and is surrounded by properties to the north, east, and south zoned R-1 which are planned for residential uses at 2-3 dwelling units per acre, and to the north by land planed for 5-8 dwelling units per acre. He noted that the 6.92-acre property to the west was zoned to the PDC District with a mixture of low-rise office and retail uses and is scheduled before the Planning Commission on November 6, 1991, for a Proffered Condition Amendment and a Final Development Plan Amendment. He noted that in February 1991, the applicant had received approval from the Fairfax County Architectural Review Board (ARB) for the addition.

Mr. Jaskiewicz stated that the applicant was seeking approval of a special permit amendment to allow construction of a building addition approximately 12,000 square foot in size which would contain a fellowship hall, a 450-seat sanctuary, classrooms, and other related facilities. He noted that the applicant was also requesting the continued temporary use of a classroom trailer, additional parking, and a waiver of the dustless surface requirement. Mr. Jaskiewicz said that the applicant was requesting modifications and/or waivers to the required transitional screening requirements along the northern, eastern, and southern lot lines, a waiver of the requirement regulating parking in historic districts, and waivers of stormwater management requirements.

Mr. Jaskiewicz stated that it was staff's belief that the application does not meet the purpose and intent of the Zoning District, would not be in harmony with the Comprehensive Plan, and would be detrimental to the integrity of the Centreville Historic District; therefore, staff recommended denial.

Mr. Hammack asked whether the commercial district would be located within the historic district. Mr. Jaskiewicz used the viewgraph to depict the location of the recently approved Rocky Gorge development which is planned for office and retail uses.

In response to Mr. Pammel's question as to whether the land unit in which the church is located has been recommended for a mixed use of retail, commercial, and residential uses, Mr. Jaskiewicz confirmed that it had been approved with a .25 Floor Area Ratio (FAR). Mr. Pammel inquired as to what the FAR for the church would be and Mr. Jaskiewicz stated that if the request was granted the church would have a .067 FAR.

The applicant's attorney, Patrick M. Via, with the law firm of Hazel and Thomas, 9324 West Street, Third Floor, Manassas, Virginia, addressed the BZA. He stated that he disagreed with staff's conclusion that the use would be too intense because it would not be compatible with the surrounding area and the applicant had requested several waivers and modifications and stated that in February 1991, the application had been approved by ARB. He explained that the Board of Supervisors has determined that the ARB has the expertise to protect the integrity of the historical districts and noted that the West Fairfax Land Use Committee has also determined that the application would be compatible with the surrounding area. Mr. Via also stated that the applicant had met with the neighbors and had received support for the addition.

Mr. Via said that, at the time of site plan submission, the applicant will request a waiver of stormwater management and Best Management Practices Facilities (BMPF). He explained that the applicant submitted the waiver request because it would be more efficient and economical to place it in an off-site regional pond. Mr. Via stated that the Trinity Regional Pond was available but the detail engineering to determine if there would be sufficient capacity has not been done. He explained that if this alternative is not approved by DEM, the subject property can support stormwater management and BMPF. Mr. Via stated that although the split rail fence around the property does not satisfy the Zoning Ordinance requirement for barriers, the applicant believed that the property serves as a centerpiece for the community and should remain open. In addressing the request for the screening requirements along the northwestern lot line, Mr. Via stated that there are many graves along the property line which should not be disturbed. He noted that the applicant requested a modification of 13 feet for the 25 foot screening requirement along the southeastern lot line because the property would abut the proposed LeLand connector road. He further noted that the Rocky Gorge development was granted a similar type waiver and that a memorandum from Linda Stanley, Director of the Planning Division, supporting the modification was included in the staff report. In addressing the requested modification of 13 feet for the 25 foot screening requirement along the northeastern lot line, he stated that the adjoining neighbor, Mr. Hansbarger had submitted written support for the modification. Mr. Via said that the R-1 character of the area would soon disappear because the majority of the surrounding properties have been rezoned for two to three dwelling units per acre. He said that after many meetings with the Virginia Department of Transportion (VDOT) and the Fairfax County Office of Transportation (OT) an agreement was made as to the road design. He noted that OT and VDOT had assured the applicant that the road design would be sufficient to accommodate the church and any new development within the community.

In summary, Mr. Via stated that, due to the recent development in the area, the rural character no longer exists and the church should not be penalized because of its historical nature and asked the BZA to approve the request. He said that while the applicant could not

support the proposed development conditions, the applicant had agreed to revised development conditions submitted to the BZA.

Chairman DiGiulian called for speakers in support of the request and the following citizens came forward.

Paul Conroy, Senior Warden, 5210 Braywood Drive, Centreville, Virginia, addressed the BZA. He stated that the church was a significant feature of the Centreville Historic District and the congregation has been a part of the community since 1844. He noted that the current chapel was built in 1867 on the foundation of its predecessor which was burned during the Civil War. He stated said that since the 1950's, the growth of the church has been steady and in order to better serve the community the parish hall was constructed. Mr. Conroy stated that because of the still greater demands on the church's facilities, an expansion committee was formed to study future development. He explained that the Episcopal Bishop has encouraged expansion because St. John's Episcopal Church is the only remaining traditional Episcopal Church in Western Fairfax County. Mr. Conroy emphasized the church's historical importance, the church's traditional Episcopal values, the church's contribution to the community, and the financial considerations. He asked the BZA to grant the request.

Lewis Leigh, Jr., 5634 Mt. Gilead Road, Centreville, Virginia, addressed the BZA. He stated that although he was not a member of the church, he supported the request. Mr. Leigh explained that his property abuts the church's property and he had been consulted about the expansion. He said that development has changed the rural character of the area and the church too must expand in order to continue serving the members of the community. Mr. Leigh expressed his belief that the split rail fence should be preserved, a few evergreens should be planted, and the historic character of the open church should be retained.

Mrs. Harris stated that one of the functions of transitional screening was to screen headlights and the dust and asked Mr. Leigh if these matters were of concern to him. Mr. Leigh stated that he believed that the aesthetic considerations were more important than the minor irritations generated by the headlights or the dust.

There being no further speakers to the request, Chairman DiGiulian called for comments from Mr. Via.

Mr. Via presented modified development conditions to the BZA. He noted that in Condition 2, the original landscape plan which depicted two entrances to the property was never revised to show one entrance. He stated that for clarity purposes the conditions should reflect that the landscaping must be in general conformance with the landscape plan. He noted that in Condition 6, the transitional screening requirements were are contrary to staff recommendations. He noted that in Condition 7, the transportation plan modification was basically verbiage. He explained that although both staff and OT believe that the modified conditions are too wordy, the applicant believes that they are concise and detailed.

Mr. Kelley referred to Condition 9, and asked why the applicant had modified the 26 foot right-of-way dedication to 24 feet. Mr. Via explained that both OT and VDOT had changed the requirement because the 26 right-of-way would have encroached onto the grave site.

In referring to Condition 11, Mr. Via noted that the driveway on Warton Lane is only wide enough for one-way traffic and stated that the applicant would like to have the flexibility to reverse the flow of traffic when applicable. In response to questions from Mr. Kelley regarding Condition 11, Mr. Via explained although the driveway would be designated for one way traffic, the applicant would like the option to designate the flow of traffic at the time of the project's completion.

In referring to Condition 12, Mr. Via noted that the applicant had requested that this condition be deleted. He stated that the proposed pedestrian path along the driveway would encroach upon the grave sites and expressed his belief that there is sufficient room along the gravel road for pedestrian traffic.

Mr. Via noted that Condition 14, referred to the Best Management Practices (BMPs) and stated that the BZA hearing was not the appropriate time to address site plan issues.

In referring to Condition 16, Mr. Via noted that for clarity purposes the word "maximum" should be added to the condition. He explained that the church should have the option to move the trailer before the five year term expired.

In response to Chairman DiGiulian's question regarding the church's acceptance of the modified development conditions, Mr. Via assured the BZA that the church had agreed to the conditions.

Mrs. Harris referred to Condition 2, and asked why there was an incongruity between the site plan map and the landscaping map, Mr. Via explained that on the original submission it depicted three entrances and there are presently two entrances.

Mr. Pammel referred to Condition 8, and stated that he believed there was a conflict concerning the agreed to proffers and the proposal presented by the applicant. He explained that the Rocky Gorge Community had proffered and was responsible for one-half of the road

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construction. He expressed his belief that the modified condition submitted by the applicant was not clear and would leave a question as to who was responsible for the road. He stated that the condition submitted by staff had specified the applicant's and the Rocky Gorge Community's responsibilities with regard to the road. Mr. Via stated that while the Rocky Gorge Community had agreed to the modification of Condition 8, their development plans were not certain. Mr. Pammel explained that while the church may have an agreement with the Rocky Gorge Community, the BZA has no authority to enforce such an agreement. Mr. Via agreed with Mr. Pammel and stated that the church would be willing to compromise on the issue and rewrite the condition to the BZA's satisfaction.

Mrs. Harris stated that she understood the church was planning another expansion and asked what type of additions were planned for Phase III of the project. Mr. Via explained that it was planned for a parish hall.

Robert DeVito, Senior Warden, 14391 Flourcastle Court, Centreville, Virginia, addressed the BZA. He stated that he was a member of the building committee and explained that Phase III would consist of a sanctuary to accommodate 400 people. He noted that the application before the BZA was Phase II of the expansion, which would include a temporary worship area. Mrs. Harris stated that the church presently has 110 seat and asked what the total seating would be when Phase III was completed. Mr. DeVito stated that the existing chapel would have 110 seats and the parish hall would have 450 seats. He explained that the sanctuary would only be used during Sunday services and the parish hall would be used for special activities. He noted that it would presently be used as worship area.

Mr. Via explained that because of financial considerations, Phase III was very questionable. He noted that before any future expansion was activated, the applicant would have to have the approval of the BZA.

In response to Mr. Pammel's question as to whether the Hansbarger property was included in the Comprehensive Plan for a mixed use area with a .25 FAR, Ms. Greenlief stated that the property is planned for 2 to 3 dwellings per acre. She stated that the church property was planned for mixed use with a maximum .25 FAR for retail and commercial uses. She confirmed that the property located to the southeast of the subject property was also planned for mixed use. Mr. Pammel noted that there was a provision within the Zoning Ordinance that allowed for a waiver of transitional screening requirement when adjacent properties are planned for more intense uses. Ms. Greenlief confirmed that the abutting Parcel 31 was zoned commercial.

Mr. Kelley made a motion to grant SPA 85-S-053-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 15, 1991 with the incorporation of some modified conditions presented by the applicant as reflected in the Resolution.

Chairman DiGiulian called for discussion.

In response to Mr. Hammack's question regarding Condition 11, Mr. Kelley confirmed that the church should be given the flexibility to allow the one-way traffic to flow in the direction designated by the church officials.

Mrs. Harris stated she would support the motion. She expressed regret that the beautiful old church must expand, but noted that the proposed expansion would be architecturally aesthetic and beneficial to the community. She said that when the surrounding properties were designated for commercial or retail office use, the character of the area changed.

Mr. Pammel stated that he would support the motion. He noted that the Centreville community has grown extensively over the past few years and in order to better serve the community, the church must expand.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 85-S-053-1 by TRUSTEES FOR ST. JOHN'S EPISCOPAL CHURCH, under Sections 3-103 and 8-915 of the Zoning Ordinance to amend SP 85-S-053 for church and related facilities to allow addition, increase in parking and seating capacity, trailer, and waiver of dustless surface, on property located at 5649 Mt. Gilead Road, Tax Map Reference 54-4((1))24A, 25, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1, WS, HC, and HD.
3. The area of the lot is 3.30 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 7-206 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat prepared by Bengston, DeBell, Elkin & Titus, Ltd. and dated August 19, 1991 (Sheets 1 & 2) and February 14, 1991 (Sheet 3) and approved with this application, as qualified by these development conditions. Also attached to this application is the Proposed Road Design dated September 11, 1991, which was approved by the Fairfax Office of Transportation (OT) and the Virginia Department of Transportation (VDOT). The Landscape Plan dated February 14, 1991 is the original submission and does not reflect the land use revisions made during the review process. Thus, the landscaping shall be in general conformance with the landscaping plan dated February 14, 1991.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Amendment plat and these development conditions.

5. The maximum seating capacity shall be 450 seats, with a maximum of 117 parking spaces. All parking shall be on site and in the parking areas designated on the Special Permit plat.

6. No transitional Screening/Barrier shall be required along the southwest lot line (Mt. Gilead) because adjacent property and property immediately across Mt. Gilead have been rezoned PDC and are planned for a mixed use development.

   No transitional Screening/Barrier shall be required along the northwest lot line (Wharton Lane) because there are no building or parking additions in this area, and because any additional screening would encroach upon existing marked graves.

   Twelve (12) feet of Transitional Screening shall be provided along the northeast lot line and the southeast lot line. The twelve (12) foot transitional screening shall be heavily planted and will meet the planting requirements of Article 13-302.3A(1) as shown on the landscape concept plan. The barrier requirement shall be modified so as to allow the continuation of the zigzag split rail fence in lieu of Barrier D, E, or F. The existing vegetation may be used to partially satisfy this requirement if the vegetation is maintained and/or supplemented to meet the twelve (12) foot screening to the satisfaction of the County Urban Forester.

7. Right-of-way dedication to 26 feet from existing centerline along the Mount Gilead Road frontage shall be provided and conveyed to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Construction of frontage improvements consisting of a 19 foot half section of pavement and curb and gutter shall be provided with face of curb and gutter set at 7 feet from property line (19 feet from existing centerline) or as determined by VDOT/DEM at the time of site plan review.

8. Right-of-way dedication of 26 feet from property line shall be provided for a public street currently know as Mt. Gilead Extended and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Construction of one-half section of Mt. Gilead Road Extended from existing Mt. Gilead Road to Leland Road shall be provided. Modification of the intersection of Mt. Gilead and Mt. Gilead Extended shall be provided using a reverse curve centerline between Mt. Gilead and Mt. Gilead Extended, or as determined by VDOT/DEM at the time of site plan review.

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9. No additional right-of-way dedication beyond 24 feet from existing centerline of Wharton Lane shall be provided. Construction of frontage improvements consisting of an 18 foot half section of pavement and curb and gutter shall be provided with face of curb and gutter set at 8 feet from the property line (16 feet from existing centerline) or as determined by VDOT/DEM at the time of site plan review. Using this design, the existing centerline could be offset by two (2) feet for an ultimate road section of thirty-six (36) feet.

10. An ancillary easement shall be provided to twelve (12) feet behind the right-of-way established for the extension of Leland Road along the subject property's southern lot line, and shall convey to the Board of Supervisors on demand or at such time as the Virginia Department of Transportation (VDOT) grants final approval of the road's improvement plans.

11. The driveway connecting Wharton Lane with the eastern parking area shall be marked with signage indicating one-way traffic.

12. Any proposed new lighting of the parking areas shall be in accordance with the following:

    The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

    The lights shall focus directly onto the subject property.

    Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

13. Best Management Practices (BMPs) shall be provided in accordance with the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance and the Public Facilities Manual.

14. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The term of the waiver of the dustless surface shall be in accordance with Sect. 8-915 of the Zoning Ordinance.

    Speed limits shall be kept low, generally 10 mph or less.

    The areas shall be constructed with clean stone with as little fines material as possible.

    The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

    Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
    Runoff shall be channeled away from and around driveway and parking areas.

    Periodic inspections shall be performed to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

    Entrances shall be paved to a point twenty-five (25) feet into the site to inhibit the transfer of gravel off-site.

15. The existing temporary trailer shall remain in its present location, as shown on the Special Permit plat, and shall be approved for a maximum period of five (5) years from the final approval date of SPA 85-S-053-1, and shall only be used for Sunday School purposes.

16. Measures regarding archaeological investigations shall be performed in conformance with Note Number 16 on Sheet 2 of the Special Permit Amendment plat, dated August 19, 1991, as determined by the County Archaeologist.

17. The floor area ratio for development on the property shall not exceed 0.067.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of

this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 156, October 22, 1991, (Tapes 3 and 4), Scheduled case of:

11:00 A.M. MICHAEL H. GOLDBERG, M.D., SP 91-D-034, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow tennis court lights to remain 7.5 ft. from rear lot line and 18.0 ft. from side lot line (20.3 min. rear yard and 20 ft. min. side yard required by Sects. 3-107 and 10-104) and allow accessory structure (tennis court fence) to remain 9.7 ft. from rear lot line and 12.8 ft. from side lot line (10 ft. min. rear yard and 20 ft. min. side yard required by Sects. 3-107 and 10-104) on approx. 43,370 s.f. located at 7310 Linganore Ct., zoned R-1, Dranesville District, Tax Map 21-3((23))8. (DEFERRED FROM 10/8/91 TO ALLOW BZA TO DO SITE VISIT)

Mr. Pammel stated that although the public hearing had been held on October 8, 1991, action had been deferred to allow the Board of Zoning Appeals (BZA) time to do a site visit and to clarify some outstanding issues.

Chairman DiGiulian called the applicant's agent to the podium.

The applicant's attorney, Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th floor, Arlington, Virginia, addressed the BZA. He stated that a good faith effort had been made by the applicant when he had contacted the appropriate County official in 1986 to ascertain the correct guidelines under which to construct a tennis court. He further stated that Dr. Goldberg had again shown good faith and had followed the same procedure when he installed the light poles in 1990.

Mr. Martin noted that various County officials were present to confirm the communication between the County and the applicant. He stated since the previous public hearing, he had met with the interested neighbors and had received their approval for a landscaping plan which should alleviate their concerns with the use. Again he stated that the error was done in good faith and the applicant had followed the advice of various County agencies. He noted that the Zoning Ordinance has a provision that allows errors to be corrected.

Carol Dickey, Staff Coordinator, addressed the BZA. She noted that the appropriate County staff was present to answer any questions the BZA may have.

Chairman DiGiulian noted that the applicant had stated that he had contacted Melinda Artman, Zoning Administration Division, and had proceeded with the project within the guidelines provided by her.

Mrs. Harris asked whether the applicant had been advised that since the light posts were not structures, they could be placed at the location specified by the applicant. Melinda Artman confirmed that she had given the applicant erroneous information when she advised the applicant regarding the location of the light posts.

In response to Mr. Hammack's question as to whether the applicant had informed her of the specific location the light post, Ms. Artman stated that although she could not recall the detailed conversation, she remembered that he had called to verify that the previous information received from the County had been correct. She stated that she had consulted with the Department of Environmental Management (DEM) to insure that the Uniform Stated Building Code (BOCA) had been met. Ms. Artman noted that she had incorrectly assumed that since BOCA did not consider the light post to be a structure, then perhaps they would not be bound by the Zoning Ordinance. She explained that when the applicant had asked for written confirmation, she had contacted Jane W. Gwinn, Zoning Administrator, and had been advised that Fairfax County Ordinance considers light posts to be structures. She further explained that after the determination had been made, a letter indicating this determination had been sent to the applicant by Ms. Gwinn.

In response to Mr. Hammack's question as to whether the light posts had been installed prior to the applicant's conversation with her, Ms. Artman confirmed that they were. Ms. Artman explained that Dr. Goldberg had previously contacted various officials in DEM to ensure that he was following the correct procedures.

Ms. Harris noted that when Claude Kennedy, Supervising Field Inspector, Zoning Enforcement Division, and Tammy Brown, Senior Field Inspector, Zoning Enforcement Division, had conducted their inspection, they had deemed that no violation had occurred. Ms. Gwinn stated that

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although Zoning Enforcement had been aware that she was making a determination as to whether the light posts were structures, the team had been instructed to investigate whether or not the tennis court lights complied with the laws related to glare.

Ms. Gwinn stated that the County is aware of the problems faced by the citizens who find it very difficult to obtain the correct information regarding the regulations imposed by the County. She noted that when the applicant contacted DEM, he had been advised from a building code prospective only and the Zoning Ordinance requirements had not been addressed. Ms. Gwinn said that she has contacted DEM regarding these types of situations, but it has continued to present problems.

In response to Mr. Pammel's question as to whether the Zoning Enforcement inspection had been conducted after dark, Ms. Gwinn said that she believed it was but deferred confirmation to Mr. Kennedy. Mr. Kennedy assured the BZA that the inspection had been conducted after dark.

In response to Mrs. Harris' question, Mr. Kennedy stated that he merely addressed the glare issue and did not make a determination with regard to the setback requirements.

In response to Mr. Hammack's question, William T. Freyvogel, 890 Linganore Drive, McLean, Virginia, stated that he had reviewed the proposed landscaping plan presented by the applicant and believed that the plantings would eliminate the visual and noise problems connected with the use. He expressed his support for the request and said that he believed the applicant had made a good faith effort to satisfy the neighbors' concerns. Mr. Freyvogel stated that for the most part, the tennis matches finish by 10:00 p.m. and the neighbors believed the application before the BZA would be the most beneficial to the area. He explained that although the tennis court could be relocated to satisfy the zoning Ordinance requirement, the neighbors believed that the present site is preferable.

Chairman DiGiulian called for rebuttal.

Mr. Martin addressed the BZA and requested that the proposed landscape plan dated October 22, 1991 be included as part of Conditions 3 and 4. He explained that the applicant and the neighbors had agreed to the modification of these conditions.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SP 91-D-034 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 1, 1991 with the modifications as reflected in the Resolution. He expressed his appreciation to staff for their honesty in admitting that the applicant had mistakenly been given misleading information. Mr. Pammel stated that while visiting the site, he had observed that the lights were shielded, were well designed, were painted with a flat black paint, and were compatible with the area. He expressed his belief that with the present landscaping and the additional landscaping proposed by the applicant, the tennis court would be in harmony with the community.

Mrs. Harris seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he would like to modify Conditions 3 and 4 to read as follows:

Condition 3: "Evergreen vegetative screening materials shall be installed as shown on the landscape plan dated October 22, 1991, prior to November 30, 1991, weather permitting, along the east lot line between the tennis court and the east lot line in order to provide year round screening and to minimize the impacts of lights and noise emanating from the tennis court, subject to the review and approval of the Urban Forester. These plantings shall be a minimum of eight (8.0) to ten (10.0) ft. in height."

4. Condition 4: "Evergreen vegetative screening materials shall be installed as shown on the landscape plan dated October 22, 1991, prior to November 30, 1991, weather permitting, along the west side of the tennis court between the court and Lot 7, in addition to the existing vegetation in order to provide year round screening and to minimize the impacts of lights and noise emanating from the tennis court, subject to the review and approval of the Urban Forester. These plantings shall be a minimum of six (6.0) to ten (10.0) ft. in height."

Mr. Pammel incorporated Mr. Hammack's modifications into the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-034 by MICHAEL H. GOLDBERG, M.D., under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in

building location to allow tennis court lights to remain 7.5 feet from rear lot line and 18.0 feet from side lot line, and allow accessory structure (tennis court fence) to remain 9.7 feet from rear lot line and 12.8 feet from side lot line, on property located at 7310 Linganore Court, Tax Map Reference 21-3((23))8, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 22, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

AND, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and the specified tennis court, fence, and lights as shown on the plat (prepared by Paciulli, Simmons and Associates, LTD., dated April 2, 1991) submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. Evergreen vegetative screening materials shall be installed as shown on the landscape plan dated October 22, 1991, prior to November 30, 1991, weather permitting, along the east lot line between the tennis court and the east lot line in order to provide year round screening and to minimize the impacts of lights and noise emanating from the tennis court, subject to the review and approval of the Urban Forester. These plantings shall be a minimum of eight (8.0) to ten (10.0) ft. in height.

4. Evergreen vegetative screening materials shall be installed as shown on the landscape plan dated October 22, 1991, prior to November 30, 1991, weather permitting, along the west side of the tennis court between the court and Lot 7, in addition to the existing vegetation in order to provide year round screening and to minimize the impacts of lights and noise emanating from the tennis court, subject to the review and approval of the Urban Forester. These plantings shall be a minimum of six (6.0) to ten (10.0) ft. in height.

5. Approval of an administrative reduction to the minimum required rear yard shall be obtained from the Zoning Administrator for that portion of the tennis court fence located less than ten (10.0) feet from the rear lot line or this special permit shall be null and void.

6. Approval of an administrative reduction to the minimum required side yard shall be obtained from the Zoning Administrator for that tennis court light located less than twenty (20.0) feet from the side lot line or this special permit shall be null and void.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 30, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 159, October 22, 1991, (Tape 4), Scheduled case of:

11:00 A.M. VACOM, INC. APPEAL, A 91-Y-012, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the portion of the appellant's property which adjoins property owned by the Commonwealth of Virginia is a front yard on approx. 2.78 acres, located on Braddock Road, Sully District (formerly Springfield), zoned C-8, WSPOD, HD, HC, SC, Tax Map 54-4((1))45, 46, 46B.

Chairman DiGiulian noted that a letter requesting withdrawal had been presented to the Board of Zoning Appeals (BZA).

Mr. Pammel made a motion to withdraw Vacon, Inc. Appeal, A 91-Y-012. Mrs. Harris seconded the motion which carried by a vote 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

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Page 159, October 22, 1991, (Tape 4), Action Item:

Approval of Resolutions from October 15, 1991 Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack, and Mr. Ribble not present for the vote.

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Page 159, October 22, 1991, (Tape 4), Action Item:

Request for Additional Time
Barcroft Bible Church, SP 88-A-107
9401 Little River Turnpike
Tax Map Reference 58-3((1))2

Mrs. Harris made a motion to grant the additional time. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack, and Mr. Ribble not present for the vote. The new expiration date will be April 5, 1992.

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Page 159, October 22, 1991, (Tape 4), Action Item:

Approval of Revised Plat
Stephen Keller and Kathy Regan, VC 91-D-027
Public Hearing Date, June 25, 1991

Mrs. Harris stated that the applicant had complied with the development conditions. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Hammack, and Mr. Ribble not present for the vote.

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Page 160, October 22, 1991, (Tape 4), Action Item:

Date and Time for Appeal
Joseph Mitchell

Lori Greenlief, Staff Coordinator, addressed the Board and stated that the Deputy Zoning Administrator had submitted a memorandum which indicated that the appeal was not complete and timely filed.

Chairman DiGiulian ruled to defer action on the acceptance of the appeal until the October 29, 1991 public hearing.

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Page 160, October 22, 1991, (Tape 4), Action Item:

Acceptance of the Proposed Meeting Dates for 1992

Chairman DiGiulian ruled to defer action on this item until the October 29, 1992 public hearing.

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As there was no other business to come before the Board, the meeting was adjourned at 2:02 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 14 1992 APPROVED: January 21, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 29, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:35 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 161, October 29, 1991, (Tape 1), Scheduled case of:

9:00 A.M. GOODRIDGE DRIVE ASSOCIATES LIMITED PARTNERSHIP APPEAL, A 91-P-011, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that a request for additional time to commence construction of a third office building must be approved in order to ensure that Special exception, SE 89-D-042, remains valid, on approx. 8.32 acres, located at 1710, 1709, and 1705 Goodridge Drive, zoned C-4, Providence District (formerly Dranesville), Tax Map 29-3((15))4A, 4B, 4C. (INTENT TO DEFER ISSUED 10/15/91)

Mrs. Thonen made a motion to defer the appeal to November 26, 1991, at 11:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 161, October 29, 1991, (Tape 1), Scheduled case of:

9:15 A.M. THE SALVATION ARMY, SPA 78-A-269-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 78-A-269 for church and related facilities to allow building addition, on approx. 4.5369 acres located at 4915 Ox Rd., zoned R-1, Braddock District (formerly Annandale), Tax Map 68-1((1))11. CONCURRENT WITH SE 91-A-014)

Chairman DiGiulian noted that the notices were not in order. Mrs. Thonen made a motion to defer the application to December 3, 1991, at 10:40 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 161, October 29, 1991, (Tape 1), Scheduled case of:

9:30 A.M. W. ROBERT FREYVOGEL, VC 91-D-089, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 9.12 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 17,398 s.f. located at 1430 Ironwood Dr., zoned R-2, Dranesville District, Tax Map 31-2((10))6B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Freyvogel replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report by stating that the subject property and the surrounding lots are zoned R-2 and are developed with single family detached dwellings. She stated that the request for a variance resulted from the applicant's amended proposal to construct a sunroom addition 9.12 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet, thus the applicant was requesting a variance of 5.88 feet from the minimum side yard requirement. Ms. Dickey stated that staff received the applicant's request to amend the variance application from 9.86 to 9.12 ft. from the side lot line, due to an surveying error, subsequent to preparation of the staff report and prior to beginning notice procedures. She stated that staff had enclosed the applicant's letter, revised variance plat, and revised Proposed Development Conditions with copies of the staff report which were delivered to the BZA last week.

Ms. Dickey stated that staff's research in the files of the Office of Zoning Administration revealed that the dwelling on adjacent Lot 5B to the south is located approximately 15.1 feet from the shared lot line.

She explained that on October 28, 1991, the Board of Supervisors amended the Zoning Ordinance to allow an applicant 30 months to begin construction on variance applications rather than 18 months and noted the amendment to the Proposed Development Conditions.

The applicant, Robert Freyvogel, 1430 Ironwood Drive, McLean, Virginia, stated that the purpose for his comments were to convey to the BZA the reasons for constructing a sunroom and justify the request for the variance. (Mr. Freyvogel submitted photographs with identifying comments to the BZA and a markup of the plat of the property.) He stated that when they built their house they considered constructing the sunroom off the dining room as an extension of the basic house but financial limitations at that time prevented it. Mr. Freyvogel stated that he did have the builder offset the patio of the house wall to permit the construction at a later date using the patio as the floor of the room; however, their efforts to have the front lot line moved away from the house were futile. He stated that when the builder began the construction of the house next door it was noted that patio was to be located next to their property and they asked that the patio be relocated to afford privacy to both families. Mr. Freyvogel stated that as a concession, the builder built a low

wall at his end of the neighbor's patio and some time ago the neighbor's patio was converted to a screened porch. To improve privacy between patios, Mr. Freyvogel stated that he planted two dogwoods on the lot line to screen activity and to minimize sound which was effective until some of the lower branches died due to lack of light which restricted growth. Mr. Freyvogel stated that he has consistently cut out the upper branches of the dogwood to allow light to filter through, but the neighbors' large oak tree shades the trees and prevents bushy lower growth. He stated that the effectiveness of the dogwoods to provide privacy has been almost eliminated and there is a constant barrage of debris falling from the trees. Mr. Freyvogel stated that when he and his wife were younger they were able to accept the unpleasantries but now that they are older they have a harder time coping with the bombardment and the cleanup. He stated that the sunroom will be 21 x 17 over the existing patio and a new patio between that room and the back of the house. (He showed the BZA a graphic layout of the proposed sunroom and described it in detail.) Mr. Freyvogel stated that the sunroom addition will provide them with a room that they can use year round, provide an informal upper level without having to use stairs to and from the kitchen, provide privacy and screening for the new patio, and will improve the ultimate sellability of the property. He stated that lot is pie shaped and the house was built at an angle converging toward the lot line at an angle of approximately 25 degrees making the corner of the house only 15.94 feet from the lot line. Mr. Freyvogel stated that he had considered alternate designs but there is no reasonable way to achieve an acceptable shaped and sized room without a variance. He stated that there are no objections from the neighbors, the property was acquired in good faith, the property has an unusual shape, the house is sited at an angle on the lot which precludes construction without a variance, the request will not impact the Zoning Ordinance, the strict application of the Ordinance would create a hardship that would prevent construction of a room that would benefit him and his neighbor, and other properties in the area do not have the peculiar shape created by the curved road pattern and therefore would not experience similar hardship. Mr. Freyvogel stated that he believed that the request met the required standards and asked the BZA to grant the request.

In response to a question from Mr. Hammack, Mr. Freyvogel replied that the house on Lot 5B is approximately 15 feet from the shared lot line.

Ms. Dickey stated that the house is approximately 15.1 feet from the shared lot line.

Chairman DiGiulian called for speakers in support of the request.

William T. Freyvogel, 890 Linganore Drive, McLean, Virginia, stated that the applicants were his parents. He stated that he had appeared before the BZA three times within the last month and that he had been impressed with the BZA's ability to come to a result that is fair to all parties concerned and if the same standard was applied to this request he was sure that the request would be granted. Mr. Freyvogel stated that his parents built the house in 1966 at a point in time when the entire area was wooded and their house was one of the first houses to be constructed. He stated that his parents have a beautiful house that they have maintained very well over the years and they have made every effort to blend in with the neighboring properties as much as possible. Mr. Freyvogel stated that the pie shape of the lot is the limiting condition which made the variance necessary in this particular case, noting that if the house could have been sited further towards the front the variance would not be necessary. He stated that the way the builder carved up the lot there was no way to move the house farther forward or backward without encroaching on the lot lines at that point and time. Mr. Freyvogel stated that his parents enjoy sitting out on the patio but they cannot do this because of where the neighbor built the screened porch and the debris from the oak tree. In closing, he stated that the neighbors support the applicant's request because it will add to their privacy and to the overall value of the properties in the neighborhood and the addition will only be visible to two neighbors and both support the request.

In response to questions from Mrs. Harris, Mr. Freyvogel replied that he did not believe that the neighbors' had needed a variance since they were located 15.1 feet from the shared lot line. He stated that his parents were involved in the design of the house.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack for the reasons noted in the Resolution and subject to the revised development conditions dated October 29, 1991 contained in the supplemental staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-089 by W. ROBERT FREYVOGEL, under Section 18-401 of the Zoning Ordinance to allow addition 9.12 feet from side lot line, on property located at 1430 Ironwood Drive, Tax Map Reference 31-2((10))6B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 17,398 square feet.
4. The applicant has satisfied the nine required standards for a variance to be granted, inparticular the shape of the lot is unusual and imposed some rather unusual constraints on development.
5. The pie shaped triangle to the rear of the lot is a real constraining factor.
6. Only a small portion of the sunroom requires a variance.
7. According to the applicant's testimony, the sunroom could not be constructed anywhere else on the lot.
8. The applicant has satisfied the hardship requirement.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific sunroom addition shown on the plat (prepared by MAC Engineering Company, dated July 24, 1991 as revised through October 9, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The sunroom addition shall be architecturally compatible with the existing dwelling.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Mr. Pammel was absent from the meeting.

Page 164, October 29, 1991, (Tape 1), W. ROBERT FREYVOGEL, VC 91-D-089, continued from Page 103)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 164, October 29, 1991, (Tape 1), Scheduled case of:

9:45 A.M. JOSEPH A. LAHOUD, SP 91-B-043, appl. under Sects. 8-907 and 8-915 of the Zoning Ordinance to allow home professional office and waiver of dustless surface requirement on approx. 22,500 s.f. located at 4415 Glenn Rose St., zoned R-2 (developed cluster), Braddock District (formerly Annandale), Tax Map 69-1((3))2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lahoud replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report by stating that the property is zoned R-2 and is developed under the cluster provisions of the Zoning Ordinance with one single family dwelling; is surrounded on the north, south, and west by property zoned R-2 and developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings; and, the property is abutted on the east by properties zoned R-1 and developed with single family detached dwellings. She stated that staff's research of the Zoning Administration files revealed that the dwelling on Lot 3 to the north is located approximately 33.0 ft. from the shared side lot line and the dwelling on Lot 1 to the south is located approximately 21.7 ft. from the shared side lot line.

Ms. Dickey explained that the applicant was requesting approval of a special permit to continue operation of a home professional office in the existing dwelling on the subject property and approval to waive the dustless surface requirement for two proposed parking spaces. She stated that information provided in the applicant's statement of justification indicated that the proposed home professional office is a business that designs and assembles computer software into computer hardware that can be operated by handicapped persons through eye movements alone. The office is in operation on a daily basis from 9:00 a.m. to 5:00 p.m., Monday through Friday. The applicant states that the business is occupied by a maximum of four employees at one time, including the applicant and his wife who reside in the dwelling on the subject property. The applicant further stated that customers are contacted away from the subject property, no more than two visitors to the property are anticipated per week, and no more than two supply deliveries per month. She stated that there are four parking spaces proposed to serve this use, including two existing spaces for the residence and two proposed spaces for employees and visitors. There will be no new construction or exterior alterations, except for the two proposed parking spaces, are proposed in this application. Ms. Dickey stated that the proposed use would occupy approximately 534 square feet or 23.7 percent of the total dwelling which contains approximately 2,254 gross square feet. The proposed use would occupy the entire basement level with the exception of a bath and an unfinished utility area.

Ms. Dickey stated that the outstanding issue associated with the application was outlined on page 9 of the staff report. She stated that concerns are the specific Comprehensive Plan language stating that, among other standards, a non-residential use requiring a special use permit should be permitted only if the access to such use is oriented to an arterial roadway. Staff concluded that this was not a high intensity office use with daily client visits but a use which will have only two employees and will seldom have clients on-site. Therefore, due to the low intensity nature of the use, the two employees, few clients on-site and the proposed twelve month time limit for operation of the use, the proposed use is in harmony with the specific planning sector recommendations of the Comprehensive Plan regarding non-residential uses located within a residential area, and it also satisfied all of the Zoning Ordinance requirements for a Special Permit.

Staff noted one amendment to the Proposed Development Conditions changing 24 months to "30 months to begin the special permit use", per the Board of Supervisors' action on October 28, 1991.

The applicant, Joseph Lahoud, 4415 Glenn Rose Street, Fairfax, Virginia, Mr. Lahoud stated that the staff report was very accurate and agreed with the development conditions. He stated that he believed that the one year time period was reasonable and added that it had always been his intent to eventually relocate to a commercial office space at a point when he was financially able to do so. Mr. Lahoud estimated that the relocation would take approximately one year for him to be financially able to move the office and laboratory to a commercial space and to begin operations. He stated that although the product is selling it has not yet reached the break even point but that he believed the business had passed the threshold of having a future. Mr. Lahoud stated that the combination of the one year time limitation and the zero impact on the neighborhood was the basis for the request. He stated that because of the size of his family he had been concerned with the parking situation from the beginning and believed that what the staff was requesting in the development conditions with regard to parking was reasonable. In closing, Mr. Lahoud stated that he had personally contacted each neighbor in addition to mailing a certified letter to them as stipulated by the Zoning Ordinance. He called the BZA's attention to a petition that he had submitted that had been signed by all ten neighbors in support of the request.

Page 165, October 29, 1991, (Tape 1), JOSEPH A. LAHOUD, SP 91-B-043, continued from Page 164)

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Mr. Hammack asked the applicant to describe the nature of the business to the BZA. Mr. Lahoud described the product as a personal computer based product which has a video camera mounted below the monitor which monitors the eye motions of the user. The product can be used by severely disabled persons who have no use of their hands and who frequently cannot speak but are totally able to operate a computer which would allow them to control their environment to a large extent, to turn lights and appliances on and off, and to use the telephone. Mr. Lahoud stated that his company, LCD Technologies, developed all the software that allowed this to be done. He stated the work that was originally performed in the basement was the development work and there was no contact work with the outside world. Mr. Lahoud stated that approximately a year and a half ago he began to introduce the product to the marketplace and since that time he has sold twenty-five devices which range in price from $21,000 to $26,000. He stated that when an order is received, the parts are ordered, the product is assembled, the software is installed, and the product is then delivered to the customer. Mr. Lahoud stated that all the marketing and selling of the product is done almost completely outside and it is very rarely for a customer to come to his house.

In response to a question from Mrs. Harris, Mr. Lahoud replied that there is no handicap access and that is one of the reasons that he does not have customers to come to the house.

Chairman DiGiulian called for speakers either in support or in opposition, and hearing no reply closed the public hearing.

Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated October 22, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-B-043 by JOSEPH A. LAHOUD, under Sections 8-907 and 8-915 of the Zoning Ordinance to allow home professional office and waiver of dustless surface requirement, on property located at 4415 Glenn Rose Street, Tax Map Reference 69-1((3))2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 22,500 square feet.
4. This is one of the most interesting applications that the Board of Zoning Appeals has had in a long time. Home Professional Offices in residential neighborhoods have to be looked at carefully, but the impact on the neighborhood seems to be minimal and the request is for a short term. There would be a problem if the request was for an indefinite period of time or for a long term.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903, 8-907, and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application as the special permit area of 534 sq. ft. of the existing dwelling located at 4415 Glenn Rose Street, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Alexandria Surveys, INC., dated July 17, 1991) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

Page 166, October 29, 1991, (Tape 1), JOSEPH A. LAHOUD, SP 91-B-043, continued from Page 165)

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The home professional use shall be approved for a period not to exceed twelve (12) months. Extension of the use beyond twelve (12) months shall require approval by the Board of Zoning Appeals.

6. The maximum number of employees associated with this use shall be limited to four (4) on-site at any one time, including no more than two (2) employees not residing at the subject property.

7. The maximum number of visitors on-site at any one time shall not exceed two (2) per week. The maximum number of deliveries of supplies or equipment to the subject property shall not exceed two (2) per month.

8. Hours of operation shall be limited to 9:00 a.m. until 5:00 p.m., Monday through Friday.

9. No signs or other methods of identifying the home professional use shall be displayed on the subject property.

10. Evergreen hedges of at least four (4) feet in height shall be planted on the south and west sides of the gravel parking area in the front yard and between the two (2) existing trees on the north side of the driveway to screen the parking spaces from adjacent residential properties prior to December 15, 1991. Screening materials and planting locations shall be reviewed and approved by the Urban Forester.

11. The number of parking spaces provided shall be a total of four (4) spaces. All parking shall be on-site and shall be designed according to the Public Facilities Manual (PFM) requirements. The two additional spaces shall be located on the south side of the driveway in order to provide maneuvering room, so that vehicles will not back into the street when exiting the property.

12. Approval is granted for the gravel surface for two (2) additional parking spaces located south of the existing driveway. The waiver of the dustless surface shall be approved for a period of twelve (12) months to begin from the final approval date of this special permit. The gravel surface shall be maintained in accordance with the standard practices approved by the Department of Environmental Management (DEM). The gravel surface shall be removed and shall be replaced with grass seed or sod within sixty (60) days after the expiration of this Special Permit.

13. The applicant shall submit a revised plat showing the approved location of the two (2) additional parking spaces for signature by the Chairman upon approval by the Board of Zoning Appeals.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date of the Special Permit unless the activity authorized has been legally established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mrs. Thonen voting nay. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 166, October 29, 1991, (Tape 1), Scheduled case of:

9:55 A.M. BRUCE & GEORGETTE ZOTTER, VC 91-D-090, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.75 ft. from side lot line such that side yards total 11.45 feet (8 ft. min. side yard, 20 ft. total min. side yards required by Sect. 3-307) on approx. 7,131 s.f. located at 1605 Aerie La., zoned PDH-3, Dranesville District, Tax Map 30-4((47))13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Mason, agent for the applicant, replied that it was.

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Bernadette Bettard, Staff Coordinator, presented the staff report by stating that the applicants were proposing to construct an addition 5.75 feet from the minimum required side lot line making the total side yards 11.45 feet. She stated that in the PDH Districts the side yard requirements must conform to the bulk regulations of the conventional zoning district which most closely characteristics the subject development as specified in Part 1 of Article 6 of the Zoning Ordinance. Ms. Bettard stated in this instance the zoning district would be the R-3 District developed under cluster provisions of the Zoning Ordinance; therefore, the applicants were requesting a variance of 2.25 feet to the minimum side yard requirement and a variance of 8.85 feet to the total side yards requirement. In closing, Ms. Bettard stated that research in the files of the Zoning Administration Division revealed that the dwelling on Lot 12 is located approximately 0.8 feet from the shared lot lines and no variances have been granted in the subdivision. Staff noted the correction from 24 months to commence construction should be changed to "30 months."

Jay Mason, John Cable & Associates, 311 South Washington Street, Alexandria, Virginia, came forward to represent the applicant. He submitted sketches showing the house as it existed and how it would look with the proposed addition. He stated that the dwelling on the property to the south where the proposed greenhouse would have the most impact is within six inches of the lot line, and because of the cul-de-sac nature and the reverse pie shape, the subject property has a more exceptional nature than the other lots in the neighborhood. With the adjacent property virtually sitting on the lot line, Mr. Mason stated there is an extreme compromise of privacy and use rights of the subject property. He stated that most of the properties have a rectangular relationship until the corner of the lot where the subject property is located there are generally parallel lot lines.

Mr. Mason stated that the house was built four years and at that time the house to the south had not been constructed and when it was constructed it was right on the lot line and was moved back constituting a difficult relationship. He continued by reading from the statement of justification submitted with the application. Mr. Mason stated that the house on the adjacent property has a deck on the rear property allowing anyone sitting on the deck to look directly into the applicant's kitchen. He stated that the PDH-3 zoning currently in effect establishes the dwelling footprint and would not allow construction of the proposed greenhouse, which would provide a visual buffer or screen while allowing needed light to continue to enter the kitchen. Mr. Mason stated that the current condition that allows an unobstructed visual intrusion into the kitchen area of the subject property prohibits the full intended use of the subject property and consequently amounts to a confiscation of privacy. The construction of the house particularly the arrangement of the kitchen with double sliding glass doors and the adjacent privacy wall obviously was intended to allow the occupants the enjoyment of the entering light, the egressability, and view without people on adjacent property having a direct unobstructed view into the kitchen area. The kitchen is the focal point of the house and next to the bedroom and bath areas is the most deserving of protection. While the visual intrusion is neither constant nor intended, it is simply human nature to look around particularly for visitors at a deck party and curtain and blinds would not be acceptable as they would require constant opening and closing to allow egress. In addition to the privacy relationship, the proposed greenhouse would join the existing deck to the sliding glass doors over an existing concrete slab and would feel a disjointed space that exists now. The addition would be virtually hidden from other properties and only a small corner would be visible from the street.

In response to questions from Mrs. Harris, Mr. Mason replied that the greenhouse would provide a profusion area and would be used to house plants and orchids that the applicants grow.

The applicant, Bruce Zotter, 1605 Aerie Lane, McLean, Virginia, came forward and stated that he believed that the proposed greenhouse would have the same effect as a store window, which is to give people something to focus on in the window rather than looking beyond the glass. He stated that it was human nature for people sitting on the neighbors' deck to look into the kitchen area. Mr. Zotter stated that the area gets a lot of direct sun.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply closed the public hearing.

Mrs. Thonen made a motion to deny the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-090 by BRUCE AND GEORGETTE ZOTTER, under Section 18-401 of the Zoning Ordinance to allow addition 5.75 feet from side lot line such that side yards total 11.45 feet, on property located at 1605 Aerie Lane, Tax Map Reference 30-4((47))13, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

Page 168, October 29, 1991, (Tape 1), BRUCE & GEORGETTE ZOTTER, VC 91-D-090, continued from Page 167)

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 7,131 square feet.
4. At the time a property zoned PDH is developed they try to put as much on it as they can, with the "first go round" and on this property they did and to approve the applicant's request would compound the problem that is already there.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian and Mr. Hammack voting nay. Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 1991.

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Page 168, October 29, 1991, (Tape 1), Scheduled case of:

10:05 A.M. DONNA DIXON, VC 91-L-088, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 12.4 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 17,000 s.f. located at 6416 Inwood Dr., zoned R-1, Lee District, Tax Map 91-1((2))5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Dixon replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report by stating that the applicant was requesting approval to construct a garage addition 12.4 feet from the side lot line. He stated that in the R-1 District a minimum of 20 feet is required, thus the applicant was requesting a variance of 7.6 feet. In closing, Mr. Riegle stated that dwellings on Lots 4 and 6 are located approximately 16 feet from the shared lot line.

The applicant, Donna Dixon, 6416 Inwood Drive, Springfield, Virginia, stated that she would like to extend the carport to meet the screened porch and enclose the structure into a

garage. She stated that the other alternative would be to extend the concrete driveway to the center of the back yard which would require the removal of three large oak trees. Ms. Dixon stated that the neighbors were in agreement with the request.

In response to a question from Mr. Ribble, Ms. Dixon used the viewgraph to show the location of the oak trees.

Mrs. Harris stated that it looked like they were going to have to remove one oak tree in the front yard. Ms. Dixon stated that she would like to pour the concrete around the tree rather than remove the tree. Mrs. Harris asked how she would access the garage. Ms. Dixon explained that she would be installing one door, go through the door, and around.

Mrs. Thonen commented that the applicant would not be any closer to the shared lot line than the screened porch was now and she believed 19 feet was narrow for a two car garage. Ms. Dixon stated that it would equal approximately one and one-half cars.

Chairman DiGiulian called for speakers in support of the request.

Dale Pigg, 6412 Inwood Drive, Springfield, Virginia, came forward to support the applicant's request. He stated that he believed that what the applicant was proposing was the best solution, the addition would not be any closer to the shared lot line, and the addition would enhance the property.

Chairman DiGiulian called for speakers in opposition to the request and hearing no reply closed the public hearing.

Mr. Ribble made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated October 22, 1991.

Mr. Hammack stated that he would support the motion but that he would like to see the applicant save the tree in the front yard if possible.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-088 by DONNA DIXON, under Section 18-401 of the Zoning Ordinance to allow addition 12.4 feet from side lot line, on property located at 6416 Inwood Drive, Tax Map Reference 91-1((2))5, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 17,000 square feet.
4. The proposed structure will be no closer to the lot line than the existing structures.
5. There is an exceptional situation that there are large oak trees in the rear yard that would have to be removed in order to put a garage there.
6. The lot is narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The materials used in the construction of the garage will be similar to those on the existing house.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 170, October 29, 1991, (Tape 1), Scheduled case of:

10:15 A.M. THE KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83-P-057-1, appl. under Sect. 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 for church and related facilities to allow building addition, accessory structure, additional parking, modification to screening condition, and increase in land area from 3.51 to 6.26 acres located at 8526 Amanda Pl., zoned R-1, R-4, Providence District, Tax Map 49-1((1))37,38,38A. (CONCURRENT WITH PCA 87-P-005)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lee Fifer, attorney for the applicant, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report by stating that the subject site is presently developed with a vacant house and several accessory structures. In regard to surrounding uses the land to the north is zoned R-1 and is developed as the Thoreau School; land to the west is zoned C-1 and is developed as the Cedar Park Shopping Center; abutting property to the east is zoned R-1 and is developed as the Korean Central Presbyterian Church which was approved as a special permit use in 1983; and, property to the south across Amanda Place is presently zoned R-1 and is either vacant or is developed with single family detached dwellings.

He stated that the application was a request for approval of a special permit amendment to allow the Korean Central Presbyterian Church to add land area and construct a church addition consisting of 18,603 square feet and 29 parking spaces, a request to modify the barrier requirement along the northern lot line, and waive the requirement along the southern and eastern lot line.

Mr. Riegle stated that the staff report also made reference to a proffered condition amendment application which was tracking concurrently with the special permit amendment application. The proffered condition amendment application was a necessary prerequisite to

the application as the rezoning of Lot 37 to the R-4 District was approved with a GDP and proffers which reflected residential development. On October 28, 1991, the BOS approved the concurrent PCA application which served to amend the GDP and the proffers which govern Lot 37 to reflect the development which was on the viewgraph. He called the BZA's attention to the executed proffers and verbatim transcript of the Planning commission hearing before them.

Mr. Riegle stated that in terms of staff's evaluation of the request since the site is abutted by commercial or institutional development on three sides; staff's land use concerns center on the need to mitigate the impact on the residentially planned and zoned land which lies directly across from the site on Amanda Place.

With respect to screening and buffering, Mr. Riegle stated that Transitional Screening 1 and Barrier D, E, or F are required by Article 13 along the southern lot line. Barrier H (6 foot trees planted 50 feet on center) was required along the northern lot line. He stated that the plat showed a screening yard ranging in depth from 25 to 35 feet on the southern lot line and approximately 30 evergreen trees, which in staff's opinion complied with and was in fact, slightly more than the minimum Zoning Ordinance requirements.

Mr. Riegle stated that the GDP also provided street tree plantings and a hedge along the site's frontage to Cedar Lane. While transitional screening is not required, staff viewed the landscaping as important to preserving a visual appearance which is in line with the Plan's recommendation for residential development on the subject site.

Staff supported the request to waive the barrier requirement, along the frontage to Amanda Place as it was staff's belief that on a side of the site which fronts land planned and zoned for residential development, a structural barrier running the length of the site could be detrimental to maintaining the residential character of the area.

Concerning some of the technical issues and their resolution, Mr. Riegle stated that stormwater management would be accomplished with a dry detention pond located just to the east of the structure and parking area. He stated that the applicant had committed to design this pond to BMP standards.

In closing, Mr. Riegle stated it was staff's belief that the screening and buffering commitments shown on the GDP and reflected in the proffers can mitigate the impacts of the proposed development to a level which is in harmony with the land use recommendations contained in the Comprehensive Plan. Accordingly, with the implementation of proffers consistent with those contained in Appendix 1 staff recommended approval of SPA 87-P-005.

Carson Lee Fifer, Jr., attorney with McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, came forward and emphasized that the applicant was not requesting an expansion of the seating capacity and the intensity of the use would not result from the request. He stated that approval of the request would allow the church to better serve the existing congregation particularly the children. Mr. Fifer explained that the church planned to add class rooms, a kitchen, a chapel, and a multi-purpose gym space; the Floor Area Ratio (FAR) will be a combined .19; the existing large trees fronting on Cedar Lane and Amanda Place will be preserved; and two BMP's ponds will be added making the site cleaner. He agreed with the development conditions and added that the church has instituted a program along with the neighbors on Amanda Place to remove parking from the street. Mr. Fifer stated that he believed that the applicant had met all the requirements for a special permit, that the request was in harmony with the Comprehensive Plan, that the use would not be detrimental to the community, and the seating capacity would not be increased thereby not increasing the traffic.

In response to a question from Mr. Kelley, Mr. Fifer replied that the church had no immediate plans for requesting approval of a child care center.

Mr. Hammack asked if the applicant had an agreement with the Thoreau School that had been approved by the County Attorney and Mr. Fifer replied in the affirmative. Mr. Hammack asked how much parking would be overflow and Mr. Fifer stated that it would vary.

Mr. Fifer stated that the applicant was adding 29 parking spaces over what was required by the Ordinance. He added that the school parking lot is quite large and would be able to accommodate the busiest of holiday traffic.

Mrs. Harris asked that a copy of the parking agreement be entered into the record. Mr. Fifer agreed.

Mr. Kelley asked if he had understood that the applicant could have provided all parking on site but it would not have been as aesthetically desirable. Mr. Fifer stated that was correct.

Mrs. Thonen pointed out that if the applicant was considering adding a child care center in the future that all parking would have to be on site. Mr. Fifer stated that was a good point and the applicant would keep that in mind.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply he closed the public hearing.

Page 172, October 29, 1991, (Tape 1), THE KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83-P-057-1, continued from Page 171)

Mr. Kelley made a motion to grant the request subject to the development conditions dated September 25, 1991, noting a change allowing the applicant "30 months" rather than 24 months to establish the activity.

Mrs. Harris and Mr. Hammack asked that development condition be modified to read: ". . . Overflow parking may be provided at the Thoreau Intermediate School so long as the applicant maintains a valid agreement with the appropriate County agency. A copy of the parking agreement between the school and the applicant will be made a part of the file. There shall be no parking on Amanda Place."

Mr. Kelley agreed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 83-P-057-1 by THE KOREAN CENTRAL PRESBYTERIAN CHURCH, under Section 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 for church and related facilities to allow building addition, accessory structure, additional parking, modification to screening condition, and increase in land area from 3.51 to 6.26 acres, on property located at 8526 Amanda Place, Tax Map Reference 49-1((1))37, 38, 38A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1, R-4.
3. The area of the lot is 3.51 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Kerns Group, revised through August 2, 1991) approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Kerns Group, revised through August 2, 1991 and these development conditions.

5. The maximum number of seats in the main area of worship shall be 500; a corresponding minimum of 125 parking spaces shall be provided. Overflow parking may be provided at the Thoreau Intermediate School so long as the applicant maintains a valid agreement with the appropriate County agency. A copy of the parking agreement between the school and the applicant will be made a part of the file. There shall be no parking on Amanda Place.

6. Screening buffering along the lot lines shall be provided at the width and density shown on the special permit plat and shall be deemed to fulfill all requirements for transitional screening as may be acceptable to the Urban Forestry Branch, DEM. All landscaping depicted in the parking area and around the building foundation shall be provided and shall be designed to soften the visual impacts of the building and the parking areas.

7. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval. This plan shall preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site. Emphasis shall be placed on preserving the trees located in the northeast corner of Lot 37 and the trees located in the southeast corner of Lot 38, and the existing vegetation which lines the northern and eastern boundary of Lot 38. If during the process of site plan review, it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to located utility lines trails etc., then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on the site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to (Part 4 of Section 12-0403.7) of the Public Facilities Manual (PFM).

8. The Barrier requirement shall be waived.

9. The two (2) structural detention ponds depicted on the approved special permit plat shall be designed and engineered to fulfill requirements for Best Management Practices (BMP's) for Lots 37, 38, and 38A to the satisfaction of the Director, DEM.

10. Along Lots 38 and 38A, right-of-way to 26 feet from the centerline of Amanda Place shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary construction easements shall be provided to facilitate these improvements.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 1991. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:55 a.m. and reconvened at 11:05 a.m.

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Page 173, October 29, 1991, (Tape 1), Scheduled case of:

10:25 A.M. RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-4, appl. under Sect. 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to allow reconfiguration of parking, reconstruction and expansion of club house, locker room, cart maintenance building, and addition of tennis pro shop on approx. 151.321 acres located at 9901 Beach Mill Rd., zoned R-E, Dranesville District, Tax Map 8-1((1))22,23,41; 8-3((1))4.

Chairman DiGiulian stated that the notices were not in order in the application. Mrs. Thonen made a motion to defer SPA 82-D-101-4 to November 26, 1991, at 10:35 a.m. Mrs. Harris and Mr. Ribble seconded the motion which passed by a vote of 6-0 with Mr. Pammel absent from the meeting.

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Page 173, October 29, 1991, (Tape 1-2), Scheduled case of:

10:35 A.M. GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-1, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to amend SP 73-L-152 for church and related facilities to allow child care center, waiver of dustless surface requirement, and addition of land area on approx. 4.3555 acres located at 7434 Bath St., zoned R-3, Lee District, Tax Map 80-3((2))(54)9 and 80-3((1))1D.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Leonard, agent for the applicant, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report by stating that the subject property is surrounded on the north, east, and south by single family detached dwellings and the land to the west contains Brookfield Park. She stated that the applicant was requesting approval of an amendment to a special permit to allow an expansion of an existing child care facility within an existing church, a waiver of the dustless surface requirement to allow the existing gravel parking area to remain, and the addition of land area. Ms. Kelsey stated that there is no new construction being requested and the only exterior addition to the church will be the additional play area, which will be located to the west of the existing building. She stated there are 118 parking spaces, 18 of which are gravel, and the addition of the land was proposed to correct an error made in the 1973 approval when Lot 10 was inadvertently left off the Resolution. The existing child care center has been in operation since 1956 and was brought under special permit in 1962, with the approval of a child care center with the maximum daily enrollment of 75 children. There are currently only 49 children in attendance but the applicant was proposing to expand the daily enrollment to 99, an addition of 24 children, in order to have a before and after school child care program.

In closing, Ms. Kelsey stated that staff believed that the applicant had satisfied the standards of the Zoning Ordinance for this use and the recommendations of the Comprehensive Plan, thus staff recommended approval of the request in accordance with the development conditions contained in the staff report. She noted that the 24 months should be changed to "30 months."

Elizabeth Leonard, 8208 Langbrook Road, Springfield, Virginia, stated that she was the Chairperson of the committee charged by the church to establish the center. She stated that two years ago the committee was challenged by the church to formulate a vision for '90's with one of the goals being to meet the challenges in this decade and to see where the church could reach out into the community to serve those in needed. Ms. Leonard stated that interviews were conducted with the County and school officials, law enforcement agencies, community leaders, and many others. During those interviews, she stated that the committee heard over and over again about the pressing need for day care, concern about latch key children, and the desire to assist working parents in their search for quality care for their children. Ms. Leonard stated that the church authorized a task force to study these child care needs and their recommendations were to look into the feasibility of a program for school age children at the church. She stated that when the committee met for the first time in September 1990 a survey was prepared for families in the area and the response showed a need for before and after school care and care for kindergarten children. Following the survey, Ms. Leonard stated that the church contacted the Office for Children and the agency has been instrumental in helping the church put the program together. She stated that it was suggested that the church's program be modeled after the existing SACC program run by the Office for Children in many County elementary schools. Ms. Leonard stated that Crestwood School, the one closest to the church, does not have the program and St. Bernadette's Elementary School has also expressed encouragement for the program.

Ms. Leonard stated that the church currently has a week day pre-school child care program that has been in existence since 1956 and the special permit allows for up to 75 children and approximately 50 children are enrolled in 2-day, 3-day, and 5-day sessions from approximately 9:00 a.m. to 12 noon. She stated that she hoped to provide a program that will compliment the existing care now being offered by expanding the program to 99 children, with the ages of the children from kindergarten through sixth grade. Ms. Leonard explained that there will be three sessions: 1) before school from 7:00 a.m. to approximately 8:30 a.m. serving 10 to 15 children; 2) after kindergarten from 11:45 a.m. to 3:15 p.m. serving approximately 10 to 15 children; and 3) after school from 3:15 p.m. to 6:30 p.m. serving approximately 35 children. She stated the maximum daily enrollment for both programs will not exceed 99, but the numbers between the two programs may vary from year to year depending on enrollment.

Ms. Leonard stated that no new construction, additions, nor renovations were proposed and the center will occupy a wing of the church separate from where the pre-school child care children meet. There will be a separate entrance with an easy ingress/egress to the site for pickup and delivery of the children and the parking lot used by the parents and staff will also be separate from the one used by the pre-school. Ms. Leonard stated that the church plans to purchase a van to be used by the center, the children will be dropped off by their parents on an staggered basis before school with an impact of no more than 10 to 15 cars, the students will then be taken to school in a church van with no more than one trip planned, after kindergarten the children will be transported to the center by the Fairfax County school bus, the parochial school children may have to be brought to the center by the church van but no more than one trip was anticipated. She stated that children in grades 1 through 6 attending the after school program will be picked up at the school by the church van and brought to the center with a maximum of three trips and the parents will pick up the children on a staggered basis after work between the hours of 5:00 p.m. and 6:30 p.m. with an impact of not more than 40 cars. Ms. Leonard stated that the center will be encouraging car pooling and have communicated to the immediate neighbors the church's intent to get input from the neighbors when a parking policy for the center is developed. She stated that the center will be applying for a State license to operate the center and the only requirement they believe that will be required will be the erection of a 3 foot chain link fence to enclose the play area at the rear of the church. Ms. Leonard stated that the center will need a play ground

appropriate for school age children who cannot share the existing play ground that accommodates the younger children. Since the center will be dealing with a maximum daily enrollment of 99 children, Ms. Leonard stated that it will be necessary to meet the parking requirements of 19 parking spaces; therefore, the church requested that the sanctuary seating based on parking be changed to 396 in order to meet the requirement since the center did not wish to apply for a shared parking agreement at this time. Ms. Leonard stated that during conversations with residents who live close to the church she stated that she had sensed some concern with traffic and parking. She stated that over the years the church has attempted to live in harmony with the neighbors and the church does realize that it is a unique situation with the church being located in the middle of a subdivision of single family homes and have tried to be sensitive to the issues that would impact the neighbors. Ms. Leonard stated that many neighbors are aware of the church's history of service to the community and have expressed gratitude that the church is attempting to fill the void when the local government cannot provide a needed service. She asked the BZA to grant the application.

Mr. Ribble asked if the speaker had seen the letters in opposition to the request. Ms. Leonard stated that she had seen three of the letters and since that time she had met with fifteen of the surrounding neighbors and discussed the request with them.

Ms. Leonard stated that the church is used for many community activities as well as church activities and the church is aware that there has been instances in the past of insensitivity. She stated that during the meeting the church asked the neighbors for input and the church would discuss the traffic policy with the neighbors when it was being developed.

Mr. Ribble asked if the church had talked to the three neighbors who had written the letters and Ms. Leonard replied in the affirmative. Ms. Leonard said that the neighbors agreed that there was a need for dialogue but that she did not believe there would ever be a perfect solution. She stated that the church believed there was a need to be sensitive to the neighbors and the church would try to seek the neighbors input in the future.

Mrs. Harris stated that she believed that the time for dialogue was before the public hearing. Ms. Leonard said that a notice had been put in the Springfield Civic Association newsletter a year ago indicating the church's intent to operate a child care center and the church did not receive any negative input. She stated that when the certified letters were mailed to the neighbors she received only four telephone calls and none were in opposition. Mrs. Harris asked if the neighbors knew the specifics of the request and Ms. Leonard said that the church had not met with the neighbors before hand.

Mr. Hammack asked the speaker to describe the various community activities held at the church and how often the meet at the church. Ms. Leonard stated there is a scouting group, Alcoholic Anonymous, a diet group, the Springfield Garden Club, the civic association, and aerobics. She stated that she did not know how many people attended each activity.

Mrs. Thonen stated that she would like to know how many people attended those activities and that she was hesitant to hear a special permit request when the applicant has not yet discussed the request with the neighbors. She expressed concern with the neighbors' comments that people going to the church are parking on the streets. Ms. Leonard stated that the people coming to the child care center would use the existing parking lots and the existing pre-school encourages parking on site. Mrs. Thonen asked why there were complaints in the file about parking on the street. Ms. Leonard stated that she had not seen any complaint.

Mrs. Harris read a portion from one neighbor's letter which stated, "There isn't a day that goes by that parking is not a problem in front of our property. Human nature says park as close as possible to the front door of a business or official building or church." Ms. Leonard stated that particular neighbor has four drivers in the family and their driveway is very steep and they depend on street parking. Mrs. Thonen stated that the neighbors can park on the street but for uses under a special permit, all parking had to be on site.

Mrs. Harris stated that she believed the neighbors who had written the letters in opposition were those who would the most affected by the request. She expressed concern that the applicant was asking to double the number of children and said that the problems should be resolved prior to increasing the enrollment since the request would exacerbate the problems. Mrs. Leonard stated that each child has to be brought into the center and has to be picked up inside the center; therefore, the center is aware there has to be a parking policy. Mrs. Harris stated that she would feel more comfortable if the church's parking policy was written down and before the BZA, since the conditions the BZA imposed on the special permit would have to be followed "by the letter."

In response to a question from Mr. Hammack as to why the applicant was requesting to expand the use to 99 children when they presently had approval for 75, Ms. Leonard replied that because of the school age child care program the center would not be viable with an increase of only 25 children. She stated that the Office for Children has told the church that to be viable they would need to increase the enrollment by 35 to 45 children.

Mrs. Thonen asked what conditions were imposed on the applicant when the request was approved in 1962. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that there were no conditions imposed in 1962.

Chairman DiGiulian called for speakers in support of the request.

L. D. Elwell, 6716 Holford Lane, Springfield, Virginia, came forward and stated that he had been a member of the church for 25 years and that he believed that the application had addressed the issues dealing with parking and the environment. Mr. Elwell stated that the church is aware of the neighbors' concerns with respect to the street parking and during the meeting held on October 28, 1991, with the neighbors the church received comments both in support and in opposition to the request. He stated that the church needed to develop a parking policy to encourage both members and guests to utilize the parking lots rather than parking on the street. Mr. Elwell stated it was not just a Sunday morning issue, but more so in the evenings long after the child care program would be over. He asked the BZA to grant the request.

Chairman DiGiulian called for speakers in opposition to the request.

Ina Sadler, 7435 Bath Street, Springfield, Virginia, stated that she owned the property directly across from the front door of the church, which she rented out, and that she was speaking on behalf of herself, her tenant, and the other fifteen people who had attended the meeting on October 28th. Ms. Sadler stated that she had distributed copies of the staff report to the neighbors at the meeting and had also voiced her opposition to any increase in traffic or noise. She stated that since the meeting on October 28th was the first time the church had met with the citizens, it was the consensus of the citizens that the case should either be denied or deferred. Ms. Sadler stated that very often the neighbors could not park in front of their houses because the people attending an activity at the church are parked on the street. She also expressed concern with people turning into her driveway rather than going around the block. In closing, Ms. Sadler read some comments that were brought out at the meeting with the church where the citizens had voiced concerns with increased traffic, increased noise, and air pollution from the increased number of vehicles.

In rebuttal, Ms. Leonard stated that the church is aware of instances of insensitivity and that she would have no problem with a short deferral.

Mr. Kelley stated that he believed that the church had been turned into a community center and that he would like to know exactly what activities are held at the church and how often they meet. He stated that he had no problem with any of the activities but that he believed that maybe the church had gone too far to be located in a residential activity. Ms. Leonard stated that the applicant was trying to meet a need that the County cannot provide.

Mr. Hammack stated that he would like to know how many people attend each of the activities and Ms. Leonard agreed.

Mrs. Thonen asked the applicant to submit a transportation policy which would encourage carpooling.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to defer to a date and time suggested by staff and to allow each side five minutes for additional testimony. She stated that there are problems that have been identified by the neighbors and the church and there is information that the BZA would need to make an appropriate decision.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested November 7, 1991, at 11:20 a.m. The BZA did not feel that this would be sufficient time for the applicant to submit the information. Ms. Kelsey then suggested December 3, 1991, at 10:50 a.m.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Pammel absent from the meeting.

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Page 176, October 29, 1991, (Tape 2), Scheduled case of:

11:00 A.M. SHERWOOD EURE (BLUE CHANNEL SEAFOOD) APPEAL, A 91-V-013, appl. under 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that occupancy of property located at 8383 Richmond Highway without site plan approval and issuance of a Non-Residential Use Permit is in violation of Sects. 17-102 and 18-701 of the Zoning Ordinance on approx. 246,479 s.f., zoned C-2, C-8, HC, Mt. Vernon District, Tax Map 101-3((1))25.

11:00 A.M. SHERWOOD EURE (BLUE CHANNEL SEAFOOD) APPEAL, A 91-L-014, appl. under 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that occupancy of property located at 7210 Richmond Highway without site plan approval and issuance of a Non-Residential Use Permit is in violation of Sects. 17-102 and 18-701 of the Zoning Ordinance on approx. 13,159 s.f., zoned C-8, HC, Lee District, Tax Map 92-4((1))79B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Eure replied that it was.

William E. Shoup, Deputy Zoning Administrator, stated that there were two appeals involving the same issue before the BZA, one dealing with property located at 8383 Richmond Highway, and one dealing with property located at 7210 Richmond Highway. He stated that the appellant is appealing the Zoning Administrator's determination that occupancy of those properties without site plan approval and the issuance of a Non-Residential Use Permit (NON-RUP) was a violation of Sects. 17-102 and 18-701 of the Zoning Ordinance. Mr. Shoup explained that the appellant operates a retail sales of seafood from camper like trailers on the C-8 portion of the properties. He stated that as retail sales the use could be permitted in a C-8 district; however, the Zoning Ordinance requires that a site plan or site plan waiver be approved and a NON-RUP be obtained for the uses. Mr. Shoup stated that the appellant did not have an approved site plan or site plan waiver nor did the appellant have a NON-RUP for either location; therefore, it was staff's position that the appellant was in violation of the Zoning Ordinance.

Mr. Shoup noted that the appellant had commenced operations at both locations under a previous administrative practice that allowed temporary commercial retail sales to be conducted in those commercial districts that allow retail sales only upon issuance of a temporary NON-RUP for a maximum period of 21 days, which was an administrative practice that had been in effect for a number of years. He stated that because there is no authority in the Zoning Ordinance to allow such temporary commercial ventures absent site plan or site plan waiver approval on commercial property, the practice was discontinued on April 30, 1991 after the appellant obtained the first 21 day NON-RUP. Since that time, Mr. Shoup said that all such uses are required to get site plan or site plan waiver approval and a NON-RUP. He stated that the appellant had applied for site plan waiver for the locations; however, the Department of Environmental (DEM) denied the request and the appellant has appealed the denial and the appeal was currently pending before the Board of Supervisors.

Mr. Shoup added that regardless of the outcome of that appeal the issue of whether or not the site plan or site plan waiver and the NON-RUP are required needed to be addressed by the BZA. He stated there is a question as to the timeliness of the filing of the appeal before the Board of Supervisors and that issue will be addressed within the next month or so by the Board of Supervisors.

Mrs. Thonen asked how long the appellant had been operating, because she knew the business had been established for quite some time. Mr. Shoup stated that the appellant had operated all summer and at least one year before that. Mrs. Thonen stated that she believed that it had been operating at least five years.

The appellant, Sherwood Eure, 3253 Cannon Gate Road, Fairfax, Virginia, stated that he and his partner, Albert Wideman, started a crab business after they left the car industry in order to provide for their families and provide employment to the people in the community. He stated that last year he had been under the impression all that was required was a peddler's license and he was told by staff that he needed a site plan waiver and he agreed. Mr. Eure stated that he went to Melinda Artman's office and applied for a 21 day NON-RUP in order to raise the capital to file the site plan waiver, which cost $1,600. He stated that before he commenced operation he went to Supervisors Alexander and Hyland and gave them a letter stating that they hoped that their applying for a site plan waiver and conducting business at the subject sites would not harm any other vendor who would come to Route 1 since there were two temporary uses at the same site. Mr. Eure stated that Supervisor Alexander's office told him there would be no problem and Supervisor Hyland's office gave him no consideration. He stated that Rose Lambert, Administrative Aide to Supervisor Hyland, told him that Supervisor Hyland did not like temporary use permits. Mr. Eure explained to her the only reason he was obtaining a temporary use permit was in order to allow him to build an established restaurant later. He continued his business and met with Supervisor Hyland and was told by Supervisor Hyland that he did not like temporary uses but he would get back to him and the next person he saw was a newspaper reporter asking why he was there. Mr. Eure said the business people from the community who approached Supervisor Hyland on Mr. Eure's behalf were told not to get involved.

Mr. Eure stated that it had been noted on the 21 day permit that the appellant would apply for the site plan waiver, which he did. He stated he took the paper work and the filing fee of $1,600 to DEM and talked to Yong Paek who told him if he moved across the street and got out of Mount Vernon, he would have no problems. Mr. Eure stated that he decided not to move, he had served 20 years in the military, he served two terms in Viet Nam, he lives in America, and if the process worked for someone else who opened a crab stand and had two site plan waivers approved and operated a business on Route 1 for five years it should work for him.

In response to questions from Mrs. Thonen, Mr. Eure replied that he had been operating for three years. He stated that Mary Lou Farrell was the person who had previously operated a crab stand at the location.

Chairman DiGiulian explained to the appellant that the denial of the site plan waiver was an issue before the Board of Supervisors and the only issue before the BZA was whether or not a NON-RUP was required. He asked the appellant to address that issue. Mr. Eure stated that he knew he needed a NON-RUP and he paid for one but that he had to go through the process in order for the BZA to understand his position and pointed out his trailers are no longer on the sites.

Mr. Eure stated that DEM had never identified what he needed to do in order to correct the plan as set forth in the Zoning Ordinance. Chairman DiGiulian asked if he was addressing the

site plan waiver request and the appellant stated that was correct. Chairman DiGiulian again explained that denial of the site plan waiver was not the subject of the public hearing and stated that it was his understanding that the appellant did not agree that he needed site plan approval and a NON-RUP to operate at the locations. Mr. Eure stated that was incorrect and he agreed that he needed site plan approval. Chairman DiGiulian asked if he agreed that he needed a NON-RUP and the appellant replied that he did. The appellant stated that if the plan said that on April 30, 1991, there were would be no 21 day permits issued unless a site plan waiver was approved then he had a problem with people operating pumpkin stands, Christmas tree stands, or any other temporary sales stand.

Mrs. Thonen stated that she believed that the appellant had been treated fairly since he had been operating for three years on a temporary permit. She stated there is a lot of work going on to upgrade and redevelop the Route 1 Corridor. Mrs. Thonen added that if the appellant had come in and stayed two weeks or 21 days and got out that would be another issue, but he wanted a site plan waiver and stay for two years. Mr. Eure stated that all he was asking was that his site plan waiver be looked at fairly and if there was a reason not to approve it, then let him know. Chairman DiGiulian assured the appellant that he understood his concern but that the BZA was not the proper place to ask the question.

The appellant's partner, Albert Wideman, 19305 Clubhouse, Montgomery Village, Maryland, came forward and stated that he and Mr. Eure did not believe that their site plan had been viewed in the same manner as others had been in the past. He stated that DEM has refused to issue the site plan waiver but at the same time he believed it had been "swept under the rug" since no one has told them why it was refused. Mr. Wideman asked the BZA to issue a stay of action without making a ruling since they did not believe they had been treated fairly.

Chairman DiGiulian told Mr. Wideman that the BZA could not address the denial of the site plan waiver, only the issues that were being appealed and the he believed that the BZA would make a decision. He asked Mr. Wideman to address the appeals. Mr. Wideman stated that the issue had mutated into a situation implying that the appellant was trying to operate without site plan approval and trying to circumvent the system, which was not true.

Mrs. Thonen pointed out that Anthony H. Griffin, Deputy County Executive, Planning and Development, had reviewed the appellant's request for a site plan waiver and he had ruled in favor of the Zoning Administrator. Mr. Wideman stated that he was not aware of any ruling.

Mr. Shoup stated that action had not been processed to the Board of Supervisors for action as of yet. Mr. Wideman pointed out the appeal was filed several months ago. Mrs. Thonen stated that the Board of Supervisors does not a specific timeframe to act on appeals, whereas the BZA is mandated by law that appeals must be heard within a certain timeframe. Mr. Wideman stated that he would be willing to concede that they could not operate their business without a site plan waiver and would like that entered into the record. He stated that this is their livelihood. Mrs. Thonen assured the speaker that they were not being singled out but all temporary permits for any time over 21 days in the Route 1 Corridor are being denied. Mr. Wideman stated it had been their understanding that as long as their appeals were pending that they would be allowed to operate.

Mr. Eure came back to the podium. Mr. Hammack told him he was sympathetic to his frustration in trying to get some satisfaction out of the County and pointed out that the BZA was dealing with a Notice of Violation. He said that during his testimony Mr. Eure had more or less conceded that the Zoning Administrator was correct in her ruling and that he had not taken issue with the appeal. Mr. Eure said that he had read the staff reports but believed that the disapprovals have been framed to the point that it carries the reader "down a corridor with no doors."

In response to a question from Mr. Kelley, Mr. Eure replied that he did not believe the appeal was frivolous. He explained that when he was issued the Notice of Violation it was his understanding that he should appeal to the BZA and the questions would be answered. Mr. Eure stated that the entire staff report addresses the site plan waiver and only in the last paragraph of the staff report does it address the retail sale establishment.

Mrs. Harris stated that it appeared that there were two different issues, one that the BZA could deal with, and one that the Board of Supervisors must deal with. She explained that the issue before the BZA was much narrower as it dealt only with whether or not the appellant needed a NON-RUP and a site plan or site plan waiver. Mr. Eure again pointed out that the entire staff report addressed the site plan waiver. Mrs. Harris stated that the staff report was merely outlining the background of the case. Mr. Eure stated that he had never said that a NON-RUP or site plan or site plan waiver was not required and read what he had written on the appeal application.

Mrs. Thonen pointed out the letters in opposition received by the BZA. Mr. Eure submitted a petition with 500 signatures supporting the appeal into the record.

Chairman DiGiulian polled the audience to determine if there was anyone else present who wished to speak to the appeal.

Harald Mangold, 209 Montclair Drive, Alexandria, Virginia, came forward to speak in support the Zoning Administrator's position. He stated that he is the manager of the Meadow Woods Apartments, the community directly behind one of the subject sites. Mr. Mangold stated that

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many improvements have been made to the Route 1 Corridor and appellant's business does not fit in and that he believed the business being located near the apartments deters people from renting the apartments.

Chairman DiGiulian asked if staff had any additional comments and Mr. Shoup replied that he did not.

Mr. Hammack asked if there was any requirement that a site plan must be acted upon within a certain period of time. He pointed out that the appellant had filed a site plan on April 22, 1991, and the appellant testified that he had not been contacted by DEM. Mr. Shoup called Mr. Hammack's attention to Attachment 6 of the staff report.

Mr. Hammack asked if the appellant had to be notified when a site plan waiver is rejected explaining the deficiencies. Mr. Shoup asked a representative from DEM to respond to the question. John Winfield, Deputy Director/Plan Review, DEM, explained that in July 1991 a provision was adopted which required the reasons for denial be cited on a site plan or a subdivision plan. Mrs. Harris called Mr. Hammack's attention to Attachment 10.

In rebuttal, Mr. Eure stated that Ms. Farrell applied for a site plan in 1984, it was denied and the reasons for the denial was stated on the document she submitted. He stated that when she applied the following year the reasons were again noted on the document she submitted. Mr. Eure asked why his site plan was not treated in the same manner.

Mrs. Harris pointed out the document mailed to the appellant dated May 7, 1991, noting the reasons for the denial. Mr. Eure stated that the reasons listed were for a site plan.

Mr. Eure stated that many of the people who live in the Meadow Woods Apartment Complex shop at his stand and there is a hotel adjacent to the site and those people also shop at his stand.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mrs. Thonen stated that the issue before the BZA was whether or not the appellant needed a NON-RUP and site plan or site plan waiver to operate his establishment. She stated that she did not believe that the appellant had been treated any differently than anyone else and that he has operated three years without the proper permits. Mrs. Thonen made a motion to uphold the Zoning Administrator in A 91-V-013. Mr. Hammack seconded the motion.

Mr. Kelley stated that he would support the motion although he believed the appellant had made a very good point in that his appeal has not been heard by the proper forum, but the BZA has no control over when the Board of Supervisors schedules a case. Chairman DiGiulian agreed. The motion passed by a vote of 6-0 with Mr. Pammel absent from the meeting.

Mrs. Thonen then made a motion to uphold the Zoning Administrator's determination in A 91-L-014 for the same reasons. Mrs. Harris seconded the motion which passed by a vote of 6-0 with Mr. Pammel absent from the meeting.

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The BZA recessed at 12:25 p.m. and reconvened at 12:37 p.m.

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Page 179, October 29, 1991, (Tapes 2-3), Scheduled case of:

11:20 A.M. L.V. PROPERTIES, L.P., SP 91-V-019, appl. under Sect. 3-103 of the Zoning Ordinance to allow outdoor recreational use (baseball batting cage, golf driving range and putting green) on approx. 19.86 acres located at 9316 and 9320 Ox Rd., zoned R-1, Mt. Vernon District, Tax Map 106-4((1))50,51. (DEFERRED FROM 9/17/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Thillmann, agent for the applicant, replied that it was.

Bernadette Bettard, Staff Coordinator, stated that on September 17, 1991, the applicant requested that the BZA defer the public hearing on this case so that he could try to resolve some of the outstanding issues and to allow the citizens time to review the staff report and the proposed plan. She stated that since that time a revised plat had been submitted, which:

relocates the entrance toward the center of the site's frontage to accommodate the left and right turn lanes requested by the Office of Transportation.

reflects a 6 foot high, solid wood fence along the northern and southern lot lines to the limits of clearing and grading on the western portion of the site.

changes the areas originally noted as "Extended EQC to Be Preserved" to that of "Augmented EQC;" and the areas originally shown as "Primary Septic Field" to "Secondary Septic Field" to that of "Primary Septic Field."

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reflects a minimum of fifty (50) feet of screening on the north and south of the open tees.

Ms. Bettard stated that revisions to the Proposed Development Conditions Numbers 2, 8, and 10 have been made to reflect these changes. Staff suggested that a further revision to Development Condition Number 8 be made to reflect the change to the amount of screening provided north and south of the tees by adding, "as reflected on the revised plat" to the first sentence of the Condition. Staff also suggested that the second sentence of Condition Number 8 be deleted. No change has been recommended to Condition Number 16, since the Addendum to the Transportation Analysis indicates that the turning lanes shown on the revised plat are substandard and would require the approval of VDOT at the time of site plan review.

In spite of the changes to the subject proposal, Ms. Bettard stated that staff continued to believe that the nature and extent of the proposed commercial recreational activities on such a narrow lot in a low density residential area, was not in conformance with the Comprehensive Plan and the applicable standards of the Zoning Ordinance; thus, staff continued to recommend denial of SP 91-Y-019.

John Thillmann, 2403 Red Maple Lane, Reston, Virginia, stated that he had been a land use planner for 20 years, had served on the Fairfax County Planning Commission for 7 years, and believed that the applicant could meet each and every issue raised by the staff with the exception of four minor ones. He stated that the subject property is located on the west side of Ox Road; consists of 19.86 acres; the District of Columbia Penal Institution is located within 700 feet of the subject property on the south; the property immediately to the west is controlled by the Vulcan Quarry; and, to the north is a vacant field and to the east is Route 123 and a vacant residence.

Mr. Thillmann stated that the application was for a golf driving range with 44 tees, baseball hitting range with seven stations, and a putting green as an accessory use. He stated that although staff viewed the use as three separate uses, the applicant believed that very few patrons would make single purpose trips to use only one of the recreational facilities. Mr. Thillmann stated that all environmental issues have been satisfied and the applicant has gone way beyond what could even be remotely requested by staff for open space preservation and Environmental Quality Corridor (EQC) expansion since 97 percent of the property will be open space, the EQC policy has been greatly expanded as well as the Chesapeake Bay Ordinance, the RPA's and RMA's.

With regard to transportation, Mr. Thillmann stated that staff believed the service road requirement to be an outstanding issue; however, staff acknowledged the service road would be deferred if interparcel access through the parking lots were provided. He added that areas preserved for future interparcel access on both the north and south have been put on the special permit plat; therefore, the applicant has satisfied the requirement. Mr. Thillmann stated that the applicant was notified after the printing of the staff report that a public access easement was also required and the applicant agreed to do so. He stated that one of the reasons the applicant requested a deferral had to do with the entrance to the site off Route 123 and a left turn lane requirement, which initially was not a concern of transportation staff. Mr. Thillmann stated the applicant acknowledged the concern and agreed to work with VDOT to accommodate the request and the entrance access has been designed to reflect that change.

Mr. Thillmann then addressed land use by stating there is currently a non-residential use that impacts the site and affects the future character of the area. He stated that the Lorton Prison is within 250 to 700 feet along the entire southern boundary of the subject property and a Comprehensive Plan amendment was approved which permits the expansion of the Vulcan Quarry on Lot 4B or 22 which is contiguous to the subject property's western lot line and both have major affects on the area. Mr. Thillmann asked the BZA to review the applicant's request and view the Comprehensive Plan in context to other proposals in the County and stated that he believed there is no difference in the planning and zoning proposed by the applicant than the other uses throughout the County. Mr. Thillmann showed the BZA a display comparing the Northern Virginia Golf Center, Burke Lake, Colchester, and Woody's Golf Driving Range to the applicant's proposed use. He called the BZA's attention to the lack of screening of the various uses from the road, the unshielded lights, the lack of a fence between the buffer and the green, and the lack of landscaping.

Mr. Thillmann noted the features of the proposed use by stating that there would be 150 feet from the road to the parking lot, 231 feet from the road to the first use, 50 feet of screening for 600 feet along the lot lines on either side and thereafter 35 feet of remaining hardwoods that exist on the site, shielded lights, tremendously upgraded landscaping, extra and upgraded screening, 97 percent open space with the last one-third of the site totally undisturbed, the use would fill a community need, and the applicant agreed to architectural design of a colonial nature. He called the BZA's attention to a letter in support contained in the file from Mrs. Fry.

In response to a question from Mr. Kelley with respect to the uses he referenced in his testimony, Mr. Thillmann replied that he would estimate that all the sites are larger than the subject property.

Mrs. Harris asked the speaker to address how the proposed use would impact the development in the area and added that the prison and the quarry have changed the character of the area. Mr. Thillmann asked Mrs. Harris if she would buy a five acre lot in the area of the subject

property and Mrs. Harris replied that she would not. She stated there are a lot of residential lots shown on the plat that were not divided before the quarry or prison were put in. Mr. Thillmann stated that he had discussed the request with the neighbors and most supported the request. Mrs. Harris asked what steps would be taken to prevent the request from changing the character of the area. Mr. Thillmann stated there has been a dirth of investment in the Lorton area and that he did not believe that the proposal would have a negative effect on the neighborhood. He added that he did not believe that any of the other golf driving ranges have had a negative impact on the land use plan.

Mr. Thillmann stated that when he first came to Fairfax County in 1972 he was hired to get rid of the zoning backlog and appeared in court once a week as an expert witness on behalf of the County. He stated that this kind of use, in his opinion as a professional planner, will not have a negative impact on the Plan and that he believed the Plan in the Lorton area needed work and this type of use would help "spur" some community change. Mrs. Harris asked if the change would generate something that is not already stated in the Comprehensive Plan. Mr. Thillmann stated that he had headed the effort up to do the Countywide Plan in 1975 and the committee did not spend enough time on the Lorton area and around Dulles Airport to really get at what should be done.

Mr. Thillmann then addressed the development conditions. He stated that the applicant agreed to a maximum of four employees at any one time; the applicant believes that the condition requiring the reduction of parking spaces from 73 to 63 to allow for more interior landscaping is not necessary, but did agree to the new language; the applicant agreed to the solid 6 foot fence along the property line; and, the applicant agreed to the expansion of the screening north and south of the batting cages.

Mr. Thillmann stated that the applicant did not agree with the removal of the putting green. He added that the adjacent neighbor was at the previous public hearing and had stated that he wanted the putting green next to his lot and the applicant wants the putting green. Mr. Thillmann stated that he saw absolutely no value in 50 feet of grass as opposed to 50 feet of putting green; he stated that the open space is grass that has to be cut with no benefit. With respect to the hours of operation, Mr. Thillmann stated that the applicant would like the hours to be 8:00 a.m. to 11:00 p.m. but will agree to staff's recommendation of 10:00 p.m. Mr. Thillmann addressed Development Condition Number 13 by stating that he believed the condition to be too subjective but the applicant will work with staff and the neighbors to mitigate the impact. He stated that the proposed golf driving range will be the only one in Northern Virginia to have shields on the lights and the applicant will be using a different type of lights which will have a much softer light. Mr. Thillmann stated that he believed that the application met all environmental issues. He stated that he feels strongly about protecting the environment and the Governor has appointed him to the Chesapeake Bay Commission. He stated that the applicant has agreed to staff's recommendations with respect to transportation.

In summary, Mr. Thillmann stated that the applicant agreed to all the development conditions with the exception of the elimination of the putting green, the limitation on the hours of operation, and the issue of the lights. He asked that the review period be extended from three to five years. Mr. Thillmann stated that the applicant will go way beyond any other facility of this type in Northern Virginia and he believed the use is acceptable under any measure, the community supports the request, and asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition.

Ann B. Malcolm, 3927 Barcroft Mews Court, Falls Church, Virginia, stated that her comments would be both in support and in opposition. She stated that her family owns the property immediately to the south of the subject property and has owned the property for 75 years. Ms. Malcolm stated that much of the development in the Lorton area was done by her grandfather, who was a veterinarian at the reformatory, and that many of the houses were built in the mid '30's by her great uncle, who was the contractor. She stated that three of the houses built are located on Lots 49, 48, and 52A and she recorded a subdivision last spring for the five acre lots. Ms. Malcolm stated that she has been working with Vulcan Quarry and has taken seismograph tests since the family had rejected vehemently to the expansion of the quarry. The most recent test taken on Lot 52D on the stream was higher than those compared to the business her parents ran adjacent to Interstate 95 when it was six lanes wide than it was at the quarry. She stated that the noise from the quarry is phenomenal and the noise is generated from the rock crusher rather than the explosions. Ms. Malcolm stated that part of the difficulty with the noise was intensified about two years when Virginia Power required an easement to supply additional electricity to the incinerator plant and the line was opened up across the quarry that runs parallel to the river and now acts as a channel for the noise.

She stated that she was concerned with errant golf balls and to her knowledge most people hit either to the left or to the right and since she has residential property immediately to the left of the subject property and will have a road opened up for the lots she was concerned with safety. (She used the viewgraph to point out the location of her family's properties and to show the area that would be impacted by errant golf balls.) Ms. Malcolm stated that she did not have studies available showing how far or how high people can hit a golf ball. She stated that she did know that she did intend to open up the hardwoods for the road and was not certain that a 50 foot wide buffer would be sufficient.

Ms. Malcolm stated she believed that the Lorton area had suffered greatly and pointed out that her grandmother had paid for sewer permits for Lots 49, 48, and 52A prior to when she died in 1970 and they were still waiting for the sewer. She said that some development is better than none provided there is sufficient screening and provided the neighbors have an opportunity to periodically review the use. With respect to earlier questions raised by Mrs. Harris, Ms. Malcolm stated that she did not know at this point whether the use would be a benefit or a nuisance to the community.

In response to questions from Mrs. Thonen, Ms. Malcolm replied the area had not been opened up for sewer. She stated that she had received correspondence from Supervisor Hyland which stated he had asked County staff to provide him with a status report. Ms. Malcolm stated that during her latest conversations with County staff she had been told that staff was waiting for funding for design and subsequent funding for construction. Mrs. Thonen stated it was her understanding that the Master Plan called for the opening of the Lorton area for sewage. Ms. Malcolm said she believed that was the Route 1 Lorton, not Route 123. Mr. Kelley said that was correct.

Mrs. Harris asked the speaker if she was saying the quarry had more impact than the commercial property. Ms. Malcolm said that at this time the quarry has a terrible impact on her family's properties, but she was concerned with the commercial use and would reserve judgment until the impact could be determined.

Mr. Hammack asked Ms. Malcolm if she would rather have five acre lots or the driving range next to her property and she said that she would prefer to have one acre lots with sewer.

William W. Wright, 1721 N. Huntington Street, Arlington, Virginia, owner of a parcel of land to the north of the subject property on Pennywell Drive, came forward. He stated he was happy with the news about the closing of the trash incinerator and the possible closing of the reformatory and then he heard about the possibility of a golf driving range. Mr. Wright stated that there was no doubt that he will also have a problem with golf balls being hit onto his property but he would leave the final say to the BZA.

Mrs. Harris asked the speaker if he believed the request would have an adverse impact on the development of his property in the future. Mr. Wright replied definitely.

Marjorie B. Mooney, 4212 Sleepy Hollow Road, Annandale, Virginia, owner of property located at 9315 Ox Road and 9321 Ox Road, stated that her son lives at 9321 Ox Road in a residential neighborhood and she believed that the proposed use would adversely impact her properties.

In rebuttal, Mr. Thillmann stated that he had talked with the County Attorney's Office just prior to the public hearing and was again told there would be no sewer on the side of the road the proposed use would be located. He pointed out that the applicant will be leaving a 35 foot screen consisting of trees that are over 40 feet high with some as high as 50 feet on both sides of the property all the way down the property line up to 600 feet from the road. Mr. Thillmann pointed out that the applicant will undergo a review period and if there was a problem there are ways to solve them. He called the BZA's attention to the letter from the homeowners association in support of the request.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution. Mrs. Thonen stated that she would support the motion and her reasons were also incorporated into the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-V-019 by L. V. PROPERTIES, L.P., under Section 3-103 of the Zoning Ordinance to allow outdoor recreational use (baseball batting cage, golf driving range and putting green), on property located at 9316 and 9320 Ox Road, Tax Map Reference 106-4((1))50, 51, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 29, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land
2. The present zoning is R-1.
3. The area of the lot is 19.86 acres.

Page 183, October 29, 1991, (Tapes 2-3), L.V. PROPERTIES, L.P., SP 91-V-019, continued from Page 182)

4. The area is changing because of the prison and the quarry being there but after listening to the testimony the area appears to be very fragile and the area has not had as much dedication and research as it needs to.
5. A commercial venture there would definitely tilt it one way or the other.
6. The lot is very narrow and is wedged in between two residential areas, one that is going to be further developed residential, and one that possibly will be in the future.
7. The use would change the character of the area and not for the better.
8. Perhaps the Comprehensive Plan is not accurate in the area, but the Comprehensive Plan should be changed through public hearings and through the general course that all the different areas have had to go through in order to change it or to modify it if a landowner thinks that it should be.
9. After looking at the area and looking at the impact of the use on the residential area, there is room for the applicant to consolidate and the Board cannot impose any more impact on Lorton than what is already there.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-603, 8-604, 8-607 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mrs. Thonen seconded the motion which carried by a vote of 4-1-1 with Mr. Kelley voting nay and Mr. Hammack abstaining. Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 6, 1991.

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Page 183, October 29, 1991, (Tape 3), Action Item:

Approval of Resolutions

Lori Greenlief, Staff Coordinator, called the BZA's attention to two Resolutions which staff needed clarifications, the first being Development Condition Number 8 of St. John's Episcopal Church.

Mrs. Harris stated that it was her understanding that the church needed to construct only half of the road but if for some reason Little Rocky Gorge did not fulfill their obligation to construct the other half than the church would have to complete the other half so there would be a complete road. Mr. Kelley stated it had been his understanding that it was up to the church and Little Rocky Gorge to come to an understanding. It was the consensus of the BZA that the condition was correct as written.

Mrs. Greenlief asked for a clarification of Development Condition Number 5 for Hunter Mill Swim and Racquet Club. Mrs. Harris stated it had been her intent that the hours of operation on the weekends for the pool would be the approved hours. She asked that the Resolution be modified to reflect the hours on Saturday and Sunday be what they had normally been.

Mrs. Thonen made a motion to approve the Resolutions with the aforementioned modification. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 183, October 29, 1991, (Tape 3), Action Item:

Approval of July 30, 1991, August 6, 1991, and September 17, 1991, Minutes

Mrs. Thonen made a motion to approve the minutes as submitted. Mrs. Harris seconded the motion which passed by a a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 183, October 29, 1991, (Tape 3), Action Item:

Request for Date and Time
Lee's Gas Supply Appeal

Mrs. Thonen stated there was a question as to whether or not the appeal had been timely filed but she would rather schedule the appeal and then make a determination at the time of the public hearing. She made a motion to schedule the appeal for December 10, 1991, at 11:00 a.m. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 184, October 29, 1991, (Tape 3), ACTION ITEM:

Request for Date and Time
Joseph Mitchell Appeal

Mrs. Thonen stated that it appeared the appellant had not filed the appeal within the allotted timeframe. Mr. Kelley stated he believed that the situation was similar to Lee's Gas Supply Appeal. Mrs. Thonen disagreed.

Chairman DiGiulian asked William Shoup, Deputy Zoning Administrator, if he had any additional information to present to the BZA. Mr. Shoup stated staff's position was set forth in the memorandum from the Zoning Administrator and that staff believed that the appeal was not timely filed.

Mr. Kelley told Mrs. Thonen he did not necessarily disagree with her but that he would like to hear from the appellant before making a decision. He suggested that action be deferred for two weeks to allow the appellant to appear before the BZA. Mrs. Thonen stated that the appeal should be scheduled for a specific date and time. Chairman DiGiulian agreed. Mr. Shoup pointed out that there was also an issue as to whether or not the appeal was complete.

Chairman DiGiulian asked if the BZA wanted to schedule the appeal as an after agenda item for its next meeting. The BZA discussed the possibility to schedule the appeal and hear arguments at that time with regard to the timeliness and completeness.

Mr. Kelley pointed out if the BZA proceeded in that manner, it required a lot of work on staff's part that may not be necessary. Chairman DiGiulian stated there was going to be a lot of work on staff's part anyway in order to convince the BZA that the application was not properly filed. Mr. Shoup stated he believed that the application was pretty clear cut and that it was not complete nor timely filed and there was a lot of staff work still to be done in preparing the staff report. He suggested that perhaps the BZA could defer decision on accepting the appeal and ask the appellant to come in and address the timeliness issue, since the appellant did have another course of action. Mr. Kelley agreed that the appellant could file a special permit application to resolve the issue.

Mr. Kelley made a motion to defer action until November 12, 1991, as an after agenda item. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 184, October 29, 1991, (Tape 3), Action Item:

Acceptance of Proposed Meeting Dates for 1992

Mr. Ribble moved to accept the schedule as submitted. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 184, October 29, 1991, (Tape 3), Action Item:

Request for Approval of Revised Plats
Roger A. Markley, VC 91-L-075, Granted September 24, 1991

Lori Greenlief, Staff Coordinator, explained that the applicant's original plat showed the proposed carport 4 feet from the lot line, the BZA approved 6 feet.

Mrs. Thonen moved approval of the revised plat. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 184, October 29, 1991, (Tape 3), Action Item:

Out of Turn Hearing Request
William A. Cross, VC 91-M-108

Lori Greenlief, Staff Coordinator, stated that the appellant was currently scheduled for December 3, 1991.

Mrs. Thonen made a motion to deny the applicant's request. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 184, October 29, 1991, (Tape 3), Action Item:

Out of Turn Hearing Request
Long Branch Swim & Racquet Club

Page 185, October 29, 1991, (Tape 3), OUT OF TURN HEARING REQUEST, LONG BRANCH SWIM & RACQUET CLUB, continued from Page)

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Lori Greenlief, Staff Coordinator, explained that this was an unusual case where evidently an application had been filed and had been in the office apparently waiting for revised plats. She added that the request was minor since it was for only a change in entrance.

Mrs. Harris made a motion to grant the applicant's request. Mrs. Thonan seconded the motion which passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

Ms. Greenlief suggested January 7, 1992.

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Page 185, October 29, 1991, (Tape 3), Action Item:

Letter from the BZA to Board of Supervisors
Dealing with Accessory Dwelling Units

Mrs. Thonen made a motion that the BZA adopt the resolution prepared by staff on behalf of the BZA to be forwarded to the Board of Supervisors. Mrs. Harris seconded the motion and told staff that the memorandum was very nicely done. The motion passed by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 185, October 29, 1991, (Tape 3), Action Item:

Lee's Gas Supply Appeal

William Shoup, Deputy Zoning Administrator, called the BZA's attention to a letter from the appellant's attorney, Robert Flinn, regarding notification to the surrounding property owners in addition to a list he had attached to the latter. Mr. Shoup stated that he wanted to note for the record that it was the appellant's responsibility to mail certified notices to the surrounding property owners.

Chairman DiGiulian stated the appellant could notify anyone he wished to but it was not the county's responsibility to mail the notices.

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Page 185, October 29, 1991, (Tape 3), Information Item:

Future Action of Acceptance of Appeals

Mrs. Harris asked in the future when there was a question regarding the timeliness or completeness of an appeal that staff notify the appellant or appellant's agent of the date and time that the appeal will be considered by the BZA.

Chairman DiGiulian agreed as long as there was a stipulation that each side be given five minutes to argue their case. The BZA agreed.

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As there was no other business to come before the Board, the meeting was adjourned at 1:37 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 7, 1992

APPROVED: January 14, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 7, 1991. The following Board Members were present: Vice Chairman Paul Hammack; Martha Harris; Mary Thonen; Robert Kelley; and John Ribble. Chairman John DiGiulian and James Pammal were absent from the meeting.

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Vice Chairman Hammack called the meeting to order at 9:25 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Hammack called for the first scheduled case.

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Page 187, November 7, 1991, (Tape 1), Scheduled case of:

9:20 A.M. MARY I. LLEWELLYN & FREDERICK D. BEAN, VC 91-D-092, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6 dwellings 85.0 ft. from Dulles Airport Access Road (200 ft. min. distance from principal arterial highway required by Sect. 2-414) on approx. 2.753 acres located at 1650 & 1700 Great Falls St., zoned R-3, Dranesville District, Tax Map 30-3((1))14.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Baker replied that it was.

Meaghan Shevlin, Staff Coordinator, presented the staff report, stating that the subject property is combined to form a 2.75 acre site located on the northeastern side of the Dulles Toll Road; is zoned R-3; is planned for residential use at a density of 2 to 3 dwelling units per acre; and surrounding properties are also zoned R-3 and are developed with single family detached dwellings. She said that the berm erected in conjunction with the original construction of the Dulles Toll Road lines the site at the southeastern lot line. Ms. Shevlin said that the applicants were proposing to subdivide the property, by right, into six new building lots, and were requesting approval of a variance to construct the six structures at a distance of 85 feet from the right-of-way of the Dulles Toll Road. Section 2-414 of the Zoning Ordinance requires a minimum distance of 200 ft. between a single family detached dwelling and the right-of-way of certain principal arterials; accordingly, the applicants were requesting a variance of 115 feet to the minimum distance requirement for each of the six proposed dwellings. Ms. Shevlin pointed out to the BZA that they had been provided with revised Proposed Development Conditions and that, should the BZA approve the application, the revised Proposed Development Conditions did incorporate the recommendations provided to staff by the Environmental Branch. She noted that the requirements of the Conditions reflected the current recommendations contained in the Comprehensive Plan and also incorporated the new thirty month time frame to establish the use.

Mrs. Harris asked if the revised Proposed Development Conditions were different from those dated October 29, 1991, and Ms. Shevlin said that they were. Ms. Shevlin confirmed that the revised Conditions were dated November 6, 1991.

Vice Chairman Hammack asked if the BZA members had any questions for staff and Mr. Ribble said that Ms. Shevlin had given a very thorough report.

Mark W. Baker, of Paciulli, Simmons & Associates, Ltd., 1821 Michael Faraday Drive, Reston, Virginia, came to the podium to represent the applicant, stating that the property for the application was purchased prior to the construction of the Dulles Toll Road. He said that, when the Zoning Ordinance was established, the regulation governing the 200 foot minimum distance requirement could not have addressed every situation and exhibit fairness. Mr. Baker said that the subject property was surrounded by properties zoned R-E, except for those on one side which were zoned R-4. He said that the applicant was requesting permission to subdivide under R-3 requirements, which would be compatible with the Comprehensive Plan. Mr. Baker said that the reduction to 85 feet was also comparable to the adjacent properties, which had a setback of between 60 and 80 feet. He said that the applicant was aware of the noise issues which accompany the property, and that some initial studies had been conducted by the Federal Highway Administration and Virginia Department of Transportation (VDOT), indicating that the noise contours which were projected for 1998 would be 62 dBA at the closest portion of the property; and the next contour line back, right along the Dulles Toll Road, would be 67 dBA. Further, the applicant had requested that VDOT conduct its own study, which they did, finding that nothing exceeded 67 dBA along the property lines. He said this information could be found in the staff report. The actual markings in the report show between 54 and 60 dBA, and he assumed that "not greater than 67" was probably pulled from the preliminary analysis. Mr. Baker showed the BZA some drawings, demonstrating the proximity of the dwellings to the Dulles Toll Road, and including the berm and a wooden fence, stating that there was sufficient noise attentuation between the road, the fence, and the most upper roof line of a proposed dwelling.

Mr. Baker pointed out that the Dulles Toll Road is HOV during rush hours, with no trucks allowed at the section under discussion. He said he believed that the anticipated noise would not significantly impact any future residents of the property. Mr. Baker said that the applicant agreed with the Proposed Development Conditions and requested that the BZA grant approval of the application.

Mrs. Harris said she noticed that the setbacks from Great Falls Street were 55, 52, and 56 feet. She asked Mr. Baker if there was any reason why the houses were pushed back beyond the minimum requirement of 40 feet, thereby increasing the variance required at the back of the property. Mr. Baker said that they were initially trying to provide an envelope, or box, to provide flexibility in the house type which would ultimately be used. He said that the

current applicants will probably not be the ultimate builders of each of the individual houses and, for that reason, they were attempting to allow some flexibility. They had been told when the application had been submitted, that they needed to put a box on the plat, and that they needed to dimension the box. Mrs. Harris said that bothered her because an attempt should be made to require the least amount of variance and projections should show an actual footprint of the future dwelling. Mr. Kelley said that he believed revised Condition 1 addressed that subject.

Mrs. Thonen said to Mrs. Harris that, in this economic atmosphere and with what is happening in the building market, she believed it to be almost impossible for any developer to tie someone down to what they proposed to develop.

Mrs. Harris said that she believed the applicant had a good case for some type of variance or the lots would preclude accommodating dwellings, but she believed the applicant should make an attempt to require the minimum variance possible.

Vice Chairman Hammack asked Mr. Baker what the setbacks were for the other houses in the area. Mr. Baker said that most houses are along the minimum required distance, at about 40 to 45 feet.

Vice Chairman Hammack asked if there were any speakers in support of the application and, hearing no response, asked if there were any speakers in opposition to the application, to which he also received no response.

Vice Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant VC 91-D-092 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions dated November 6, 1991. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

Mrs. Harris asked Mrs. Thonen if she was convinced that the houses could not be moved up somewhat. Mrs. Thonen said it was possible, when the builder began construction, that he would move them up himself. She said that she did not like to tie the hands of the builders, when she knew what the state of the construction industry was now, and how many were reticent about starting to build. Because of that, Mrs. Thonen said that she would prefer not to further encumber the builders. She said that she could accommodate Mrs. Harris by adding a condition stating that it was preferred that the builders move the houses back as far as possible, but Mrs. Harris referred to the Condition stating that the building footprints may be altered, providing that the 85 foot distance is maintained, and said that she guessed that gave the builders the leeway they might want.

Mr. Kelley said that he believed the Conditions covered any eventuality and still allowed the builders some flexibility.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-092 by MARY I. LLEWELLYN & FREDERICK D. BEAN, under Section 18-401 of the Zoning Ordinance to allow 6 dwellings 85.0 ft. from Dulles Airport Access Road, on property located at 1650 and 1700 Great Falls St., Tax Map Reference 30-3((1))14, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 2.753 acres.
4. The property was purchased in good faith before the Government claimed a portion of it for the Dulles Toll Road.
5. The locations of the proposed dwellings appear on the map to be in line with the surrounding dwellings.
6. The applicants require this variance through no fault of their own.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

2. That the subject property has at least one of the following charactaristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective data of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of six dwellings at a location 85.0 feet from the right-of-way line of the Dulles Toll Road as shown on the plat included with this application and is not transferable to other land. The building footprints of the six dwellings may be altered provided the 85 foot distance from the right-of-way line of the Dulles Toll Road is maintained and all other applicable minimum yard requirements are met.

2. A Building Permit shall be obtained prior to any construction.

3. Prior to the issuance of building permits for the six (6) dwellings, it shall be demonstrated to the satisfaction of DEM that outdoor noise levels do not exceed 65 dBA.

4. Prior to the issuance of building permits for the six (6) dwellings, it shall be demonstrated to the satisfaction of DEM that maximum interior noise levels do not exceed 45 dBA Ldn. If necessary to comply with the requirements of this condition each of the six (6) single family detached dwellings shall have the following acoustical attributes:

   Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

   Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade they shall have the same laboratory STC rating as walls

   Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 190, November 7, 1991, (Tape 1), Scheduled case of:

9:30 A.M. JEAN B. REYNOLDS, SP 91-L-055, appl. under Sects. 8-918 and 8-914 of the Zoning Ordinance to allow accessory dwelling unit and reduction to minimum yard requirements based on error in building location to allow dwelling to remain 5.47 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 9,543 s.f. located at 6314 Pioneer Dr., zoned R-4, HC, Lee District, Tax Map 80-4((5))(6)8. (OTH GRANTED 9/17/91)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Reynolds replied that it was.

Meaghan Shevlin, Staff Coordinator, presented the staff report, describing the subject property as captioned above. She stated that the property is generally north of Franconia Road and east of Shirley Highway; is zoned R-4, Highway Corridor; is planned for residential use at a density of three to four dwelling units per acre; surrounding properties to the east, north, and south are also zoned R-4, and are developed with single family detached dwellings. Ms. Shevlin said that the property to the west is zoned C-7 and is developed with commercial uses. She said that the applicant was requesting approval to construct an accessory dwelling unit, 372 square feet in size, located entirely within the footprint of the existing dwelling. In addition, the applicant was also requesting approval of a special permit to permit reduction of the minimum side yard requirement, based on an error in building location, to allow the existing dwelling to remain 5.47 feet from the side lot line. She said that a 10 foot minimum side yard is required by the Zoning Ordinance; accordingly, the applicant was requesting a modification of 4.53 to the minimum side yard. Ms. Shevlin said that the error existed when the applicant purchased the house, and was discovered when the request to establish the accessory dwelling unit was filed. She said that the applicant had indicated that she plans to use the accessory dwelling unit as rental property. Ms. Shevlin said that, based on analysis contained in pages 2 through 4 of the staff report, staff had concluded that, with the implementation of the Proposed Development Conditions, the applicant's request met all of the requirements of the Zoning Ordinance. Ms. Shevlin said that copies of the revised Proposed Development Conditions dated November 6, 1991, and received by the BZA, incorporated the new thirty month time frame to establish the use.

Vice Chairman Hammack asked the BZA if they had any questions of staff and there was no response.

Jean B. Reynolds, 6314 Pioneer Drive, Springfield, Virginia, came to the podium to present her statement of justification, stating that the house was large for two people, and that they needed the additional income. She said that she had just that morning noticed the statement in the staff report saying that the primary dwelling would be occupied only by people over 55 years of age. She said she and her spouse are 63 and 66 years of age. Ms. Reynolds said that their plan was that, if one or the other one of them was left alone at some point, they would move into the smaller unit and rent out the larger space to a grand-daughter or someone who would help to take care of them. She requested that the statement be changed to read that the 55 year requirement be for either the dwelling or the accessory dwelling unit. She said she would address the parking space and presented photos to the BZA. Ms. Reynolds said that enlarging the parking area was not compatible with the neighborhood; it would also cause them to lose two large cedar trees, and add quite a financial burden. Ms. Reynolds said that she was still working full time and they have two cars but, at their ages, they would soon need only one car. She said that she did not know whether the renter would have a car or not, but she would like not to have to be required to provide for it.

Mrs. Thonen advised Ms. Reynolds that there was a big problem in that because, as the owner of the home, she was allowed to park in the street; but, with a special permit, all parking must be on site. Mrs. Thonen advised that it did not matter what the BZA believed, whether or not they agreed with Ms. Reynolds, or whether others are using the street for parking, the BZA could not approve a special permit if the parking was not on site.

Vice Chairman Hammack said that it appeared as though the applicant wished to convert a former carport addition or enclosure. Ms. Reynolds confirmed that, when she had purchased the property, the carport had been enclosed and was being used as a fourth bedroom with an outside door. She said that the carport and one bedroom would be reconfigured inside, with a bathroom and kitchen added to complete the apartment.

Vice Chairman Hammack asked the applicant if she realized that, if the application were to be granted, it would be effective only for a specific term and would need to be renewed periodically. She said she had not known that, but she was willing to look at that requirement. Vice Chairman Hammack advised the applicant that, if the dwelling ever ceased

9:30 A.M. JEAN B. REYNOLDS, SP 91-L-055to be used as an accessory dwelling, the additions made would have to be ramoved before the house could be sold; that the house could not be sold as a two-family dwelling. Some discussion ensued during which Ms. Reynolds was advised that the kitchen would be the addition that would have to be removed and she said that would create no problem. She said that there would be nothing but a locked door between the two units, so that conversion would be very easy.

Mrs. Thonen asked if there would be a connection between the primary dwelling and the accessory dwelling, as she had the impression that there would only be an entrance to the accessory dwelling unit from the outside. The applicant said that was correct. She said there was an door, but that the door would be kept locked.

Mrs. Thonen explained to the applicant that the access should not be locked because the care giver should have access to the person being cared for.

Mrs. Harris asked the applicant if she had read the Proposed Development Conditions and Vice Chairman Hammack asked if she agreed with them. She said that she had read them that morning and agreed with everything except the additional parking space; but, if necessary, they would wait until they could do that.

Mrs. Thonen suggested that the BZA defer this application until the applicant could revise the plat to show where the on-site additional parking space would be located.

Mrs. Harris agreed with Mrs. Thonen and said that she could not approve the proposed plan without seeing a plat showing the additional parking space.

The applicant said that she understood what she had to do and said that she concurred.

Vice Chairman Hammack asked if there were any speakers in support of the application and, hearing no response, asked if there were any speakers in opposition, to which he also received no response.

Mrs. Harris made a motion to defer continuing the hearing until December 3, 1991, at 9:20 a.m., to review the revised plat and take additional testimony, if necessary, so that the BZA might adequately evaluate the application.

Mr. Ribble seconded the motion.

Vice Chairman Hammack asked if anyone wished to discuss the case further.

Mr. Kelley said that he was opposed to the motion and would be opposed to the application. He said that the BZA waited for plats to get approved all the time. He said that, with changes in the Development Conditions, new plats could be required, on which the Chairman could sign off when they were presented. Vice Chairman Hammack said that, in this particular instance, a parking space was required to be shown somewhere on the property, and one of the problems was that there was not much space to put the parking space, given the position of the existing driveway.

Mrs. Harris said that the reason why she made the motion to defer was that she wanted to see where the applicant proposed to locate the parking space before she considered the application. She said that she considered this to be a very important element.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that she was responding to Mr. Kelley's concern, stating that the practice of the BZA had been to approve an application in accordance with a plat which would be approved sometime in the future. She said that, recently, the BZA had asked an applicant to come in with a revised plat showing what the BZA thought was going to look a certain way; but, when the plat actually came back to the BZA, the revised plat looked completely different from what was expected. She said that the public hearing had been closed and there was no way to go back to try to correct the problem. Ms. Kelsey said that she had discussed the problem with Chairman DiGiulian and had hoped to have the opportunity to discuss it with the rest of the BZA members, in an effort to remedy the situation. She said that this was one way to avoid the problem, by deferring the case until the revised plat could be brought to the BZA. Mr. Kelley said that he concurred with the reasoning outlined by Ms. Kelsey.

Vice Chairman Hammack called for a vote on the motion to defer until December 3, 1991 at 9:20 a.m., which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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9:45 A.M. CHARLES T. & MARJORIE J. EDWARDS, VC 91-P-096, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 20.0 ft. from front lot line of corner lot (30 ft. min. front yard required by Sect. 3-407) on approx. 9,034 s.f. located at 7134 Shreve Rd., zoned R-4, Providence District, Tax Map 40-3((11))6.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Edwards replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, describing the property as captioned above and stating that the property is located in Gordon's Second Subdivision in Falls Church, on the northwest corner of Shreve Road and Gordons Road; the applicants' proposed dwelling would access and face Gordons Road; adjacent Lot 7, southwest of the subject property, is also vacant and is owned by the applicants; the lot across Shreve Road and those northwest, along Gordons Road, are similarly zoned and are developed with single family detached dwellings; the lots directly across Gordons Road from the subject site are zoned R-12, and are developed with single family attached dwellings.

Mr. Jaskiewicz said that the applicants were requesting a variance to the minimum front yard requirement to allow construction of a single family detached dwelling 20.0 feet from the front lot line. He said that, since the Zoning Ordinance requires a minimum front yard of 30 feet in the R-4 District, the request is for a variance of 10 feet to the minimum front yard requirement.

Mr. Jaskiewicz noted that, in the Proposed Development Conditions, the time frame to establish the use should be changed to thirty months.

Mrs. Harris said that, from the pictures and from knowing the area, it appeared to her that some of the lots had been consolidated. She asked Mr. Jaskiewicz if he could point out any of the lots along Shreve Road that had been consolidated in order for two lots to accommodate one house. Mr. Jaskiewicz said that the only variance activity of which he was aware was on the corner, and Lot 14 appeared to have been consolidated with Lot 13, from the aerial photograph.

Mrs. Thonen referred to a letter which the BZA was in possession of, which said that the way the houses are set back from the west side of Shreve Road, it appears that there might be plans for widening the road in the future. Mrs. Thonen asked Mr. Jaskiewicz what he knew about it. He said that he was not aware of any such plan.

Mr. Ribble asked if there was already a trail on the other side of the road, as suggested in the letter. Mr. Jaskiewicz said he was not aware of it. Mrs. Thonen noted that the letter said that land had been taken for a bike path.

Vice Chairman Hammack asked Mr. Jaskiewicz if he knew what the general setback was on the Gordons Road side. Mr. Jaskiewicz said he believed, from the pictures, that it was in excess of what the applicants have proposed in their plans.

The applicants' son, Charles T. Edwards, said that he had checked the twenty-five year road plan at the Centerpointe Building and had found nothing to indicate that any widening was planned on Shreve Road. He said that some property was taken from the opposite side of the street for a sidewalk, and the sidewalk had been installed earlier this year. Mr. Edwards said that Shreve Road is a busy street, which is why they have the proposed house set back 50 feet from the Shreve Road side, instead of the minimum 30 feet required. He said that Gordon's Second Subdivision, which was created in 1939, contains a large variety of houses, big and small, but almost entirely built from the 30 s through the 80's, with most of the development having taken place in the 40's and 50's. Mr. Edwards said that there are a great many homes in the development which exceed the 30 feet minimum requirement. He said that, if they were allowed only a 20 foot width for the house, he believed that the property and any house built would be virtually unsaleable, and it was for that reason that he was before the BZA.

Mr. Ribble asked Mr. Edwards when the property had been purchased and he said that his parents had purchased the property in 1973.

Mrs. Harris said that it significantly concerned her that the applicants also owned the adjacent lot and she saw two For Sale signs on the photographs. She asked if they were trying to sell both lots. Mr. Edwards said that they were. Mrs. Harris said that it appeared to her that, granting a variance at this time would be setting a precedent for a granting a variance on the second lot. She said that, considering his statement that they could not build a house that is 20 feet wide, they could come back and say that, if they obtained a variance on the first lot, they should be able to get a variance for Lot 7, rather than consolidating both lots and building a house which does not require a variance. Mr. Edwards said that Lot 7 is an inside lot and the reason they have a problem with Lot 6 is that it is a corner lot. Mr. Edwards said that the corner lot on the corner of Shreve Road and Hickory Street has a 28 foot wide house on it. He said that the other houses, which are split-foyers, adjacent to their property, are also well in excess of 20 feet in the minimum dimension. Mr. Ribble asked when those houses had been built. Mr. Edwards said that they had been built in the late 70's or early 80's.

Mrs. Thonen asked Mr. Edwards if he knew when Gordon's Second Subdivision was built. He said it was created as a subdivision in 1939, but was developed over the course of several decades, on a one-by-one basis. Mrs. Thonen asked if Mr. Edwards knew when the houses across from the subject's house were built, saying that they were zoned R-12. Mr. Edwards said that they were townhouses.

Vice Chairman Hammack asked Mr. Edwards if his parents were present and he said that they were. Vice Chairman Hammack noted that Mr. Charles Edwards was not on the affidavit, which was necessary for him to make the presentation.

Vice Chairman Hammack asked if there were any speakers in support of the application and, hearing no response, asked if there were any speakers in opposition to the application. The following people came forward: Dr. Irving Mauer, 7121 Gordons Road, Falls Church, Virginia; Harold Decot, President of the Falls Road Civic Association, 7302 Venice Street, Falls Church, Virginia; John B. Strothers, 5715 N. 7th Street, Arlington, Virginia; and Gary Burin, 7127 Gordons Road, Falls Church, Virginia.

Dr. Mauer said he was an adjacent neighbor and that he and several other neighbors had written a letter dated October 13, 1991, in opposition to the application, supported by photographs. He said that the residents and owners on Gordons Road objected strongly to the variance being granted for the reasons summarized in their letter. He said that, since the official address of the subject property is on Shreve Road, they saw no reason why the proposed dwelling should not front Shreve Road. Dr. Mauer said that, since Lot 7 has been sectored off from Lot 6, it had only a 10 feet back yard and 25 feet was required by the Ordinance. Dr. Mauer said they objected on the basis of diminished property values, as well as the fact that the remainder of the houses on Gordons Road have historically been set back 45 feet, and that the proposed plans of the applicants would disturb the pattern of the existing houses on Gordons Road. Dr. Mauer distributed to the BZA copies of a letter which he had written and said that he did not see why the applicants' address should be on one street, while the proposed dwelling fronted another street. Dr. Mauer's objections to the application were summed up with the solution that the applicant combine both Lots, 6 and 7, for the purpose of erecting one dwelling which would face Shreve Road.

Vice Chairman Hammack asked how far the houses were set back on Gordons Road. Dr. Mauer said that they were set back 45 feet up to Chestnut Street.

Mrs. Harris said that Dr. Mauer had pointed out that the back yard would be only 10 feet and asked why the BZA did not have a variance on that dimension. Ms. Kelsey pointed out that, according to the Zoning Ordinance, the yard which Mrs. Harris called a back yard was really a side yard. She said that the rear yard is the lot line which is most opposite the shortest street line, and that would be Shreve Road in this case.

Mr. Decot, President of the Falls Road Civic Association came to the podium and stated that the neighborhood was concerned about the physical and aesthetic qualities of the community being preserved under the provisions of the Zoning Ordinance. Mr. Decot also spoke of a proposal in the Comprehensive Plan to widen Shreve Road, which had been previously mentioned.

Mr. Strothers said that he owned the house directly across the street from the applicant's property. He presented xeroxed copies of a map showing setbacks of houses along that side of the street. Mr. Strothers spoke of the setback on Shreve Road and Vice Chairman Hammack explained to Mr. Strothers that the applicant would front Gordons Road. More discussion ensued regarding whether the applicant's property was on Shreve Road or Gordons Road and Vice Chairman Hammack read from the staff report that the lot may be numbered on Shreve Road, but the 50 foot setback is on Gordons Road.

Gary Burin said he opposed the application for the same reasons as the previous speakers and said that he wished to emphasize the uniform setbacks of the current houses along Gordons Road.

Mr. Edwards came to the podium for rebuttal and said that it had always been his understanding that the subject lot had two front yards and that it was never the applicants' intent to get closer than 50 feet to Shreve Road, stating that both Shreve Road and Gordons Road bordered front yards. He said that, when he spoke with VDOT, it was his understanding that there were no plans to widen Shreve Road on the side of the applicants' property. Mr. Edwards said that, even if they built a 20 foot house on the lot, the setback as it is presently required by zoning, would cause the house to stick out in front of the other houses on Gordons Road; however, he did say that some of the houses have decks, so they are not really set back 45 feet.

Because Mr. Charles Edwards, III, the applicants' son was not listed on the affidavit, Vice Chairman Hammack asked the two applicants to step forward and signify that they wished to have their son represent them, and they did so. Mr. Charles T. Edwards, gave his address as 7342 Pinecastle Road, Falls Church, Virginia.

Vice Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to deny VC 91-P-096 for the reasons outlined in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-096 by CHARLES T. & MARJORIE J. EDWARDS, under Section 18-401 of the Zoning Ordinance to allow dwelling 20.0 ft. from front lot line of corner lot, on property located at 7134 Shreve Rd., Tax Map Reference 40-3((11))6, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 9,034 square feet.
4. The proposed plan would not be in harmony with the existing neighborhood and would create an unusual situation, whereby the Ordinance would call a certain lot line a side lot line, when it would appear to be a rear lot line.
5. The applicant could possibly vacate and resubdivide the two lots so that the dividing line would go in the other direction and probably would meet all of the minimum yard requirements.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting..

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1991.

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Page 194, November 7, 1991, (Tape 1 & 2), Scheduled case of:

9:55 A.M. JEFFREY C. BARNES, VC 91-Y-095, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.9 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 13,160 s.f. located at 15496 Eagle Tavern La., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 53-3((4))(3)26.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Barnes replied that it was.

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Mike Jaskiewicz, Staff Coordinator, presented the staff report, describing the application as captioned above. He said that the property is located in the Wellman Estates Subdivision in Centerville; is developed with a two-story, single family detached dwelling with an integral two-car garage; and lots to the north of the property are platted by are currently vacant. Mr. Jaskiewicz said that the application was requesting permission to build a one-story addition 10.9 feet from the side lot line, to be used as a sunroom. He said that, since the Zoning Ordinance requires a minimum side yard of 20 feet in the R-C District, the request was for a variance of 9.1 feet to the minimum side yard requirement.

Mr. Jaskiewicz pointed out that the change from twenty-four to thirty months in the time period to establish the use also would apply in this case.

Vice Chairman Hammack asked if the BZA members had any questions of staff and there was no response, and he asked Mr. Barnes to return to the podium.

The applicant, Jeffrey C. Barnes, 15496 Eagle Tavern Lane, Centreville, Virginia, presented the statement of justification, stating that there was no other location to place the proposed addition, in relationship to the family room and the garage. He said that, at the time of construction, the addition had been an option for prospective purchasers and, if they had been able to pick up the option at that time, they would not have found it necessary to seek a variance. Mrs. Thonen explored an alternate location for the addition and asked Mr. Barnes if he could line the addition up with the bay window. He said he could not do that and that his builder was present to answer that question.

Mrs. Harris said that she also had a question for the builder regarding the roof line.

Peter C. Neill, 12136 Darnley Road, Woodbridge, Virginia, the applicant's builder, came to the podium, stating that the pictures submitted by the applicant were pictures of the actual addition, as it appears on a Fairfield Homes Modal at Cascades. He said that the actual house type shown in the pictures is a different house type than the Barnes' house, in that it does have the second floor over the garage. He went on to explain that the addition would tie in by running back into the roof of the applicant's garage. Mr. Neill said it would not work in any other location because of the second story on the other parts of the house which would require major structural changes; i.e., knocking out the kitchen to make it come off the back of the house in an area that would meet the zoning requirements. Mr. Neill said that the zoning in the area had been grandfathered and the builders were permitted to construct closer than the R-C zoning; but, once the Residential Use Permit was issued, the homeowners could not build as close to the lot line as the location of the existing structures which had been purchased from the builder.

Mr. Neill presented the plans for the proposed addition to the BZA for their review, explaining the logic of his plans and how they tied into the existing structure.

Mr. Kelley asked the applicant when he had purchased the house and he said he had purchased it in December of 1989. Mr. Kelley asked if Mr. Barnes had been told at the time of purchase that he had the option of purchasing the addition at that time but that, if he chose to add it later, he would be required to obtain a variance. Mr. Barnes said that at no time had he been told that he would need a variance if he decided to make the addition at a later date. Mr. Barnes said that the first time he knew that a variance was required was when he applied for a Building Permit.

Vice Chairman Hammack asked if there were any speakers in support of, or in opposition to, the application and received no response, except for Mr. Barnes offering a letter of support from a neighbor.

Mrs. Thonen asked staff when the privilege to build within 10 feet of the side lot line had expired. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that, if the subdivision plans were approved prior to rezoning to the R-C District, the developer would have been allowed to continue building the development in accordance with whatever was approved on the subdivision plan. She said that, once he had built the houses, the Residential Use Permit had been issued, and the subdivision had been closed out, it would have been required that the homeowners come in for a variance if they wished to build closer than 20 feet from the side lot line.

Mrs. Harris asked staff how many other variances had been recorded in the subject area. Mr. Kelley said that a more appropriate question might be how many purchasers had taken advantage of the optional addition. Mr. Barnes quoted from a publication, stating that there had been decks and additions which did not meet the R-C category which had been built by homeowners and approved by the Department of Environmental Management (DEM) after the Residential Use Permit had been issued. He continued reading, stating that the County has, in some cases, overlooked the construction and, somehow the Permit was granted and construction was completed. Mr. Barnes said that, for that reason, there may not be any variances recorded. Mr. Kelley asked Mr. Barnes what he was quoting from, and Mr. Barnes identified the publication as a newsletter put forth by a Virginia Run association and said they specifically mentioned zoning updates in the publication. Mr. Ribble asked Mr. Barnes, in view of what had just been uncovered, why he had bothered to come before the BZA. Mr. Barnes said that it was because he is a law-abiding citizen and he wanted to do things correctly.

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Ms. Kelsey asked if staff could take a look at the publication which Mr. Barnes had and, in response to the question about the number of variances in the subject area, she said there was only a partial record in the file of a portion of the subdivision, and there was no indication of any other variances having been approved.

Vice Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to grant VC 91-Y-095 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 29, 1991, with the change from twenty-four months to thirty months as the time frame allowed for the applicant to establish the use. Mr. Kelley addition a third condition, stating that the addition shall be constructed of material and design similar to that of the existing dwelling.

Ms. Kelsey said that staff had a copy of the publication which Mr. Barnes had referenced and would look into the allegations of homeowners not obtaining necessary variances and would report back to the BZA.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-095 by JEFFREY C. BARNES, under Section 18-401 of the Zoning Ordinance to allow addition 10.9 ft. from side lot line, on property located at 15496 Eagle Tavern La., Tax Map Reference 53-3((4))(3)26, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 13,160 square feet.
4. The applicant could have had a similar addition if he had purchased it, as an option, when he moved into the house.
5. Many of the applicant's neighbors have similar type additions which were in place when they purchased their dwellings.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Greenhorne & O'Mara, Inc. and stamped and sealed by Robert L. Boykin, Jr., Certified Land Surveyor, dated December 12, 1989, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The addition shall be constructed of material and design similar to that of the existing dwelling.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 197, November 7, 1991, (Tape 2), Scheduled case of:

10:05 A.M. THOMAS S. MYERCHIN, SP 91-P-044, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow deck to remain 3.3 ft. from side lot line (10 ft. side yard required by Sect. 3-807) on approx. 6,526 s.f. located at 12002 Settle Ct., zoned PDH-8, Providence District, Tax Map 46-1((24))191.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mrs. Myerchin replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, describing the application as captioned above and stating that the PDH minimum yard requirements must conform to the bulk regulations of the conventional zoning district which most closely characterizes the subject development, in this instance the R-8 District. He said that, since the Zoning Ordinance requires a minimum side yard of 8 feet, the applicant was requesting a modification of 4.7 feet to the minimum side yard requirement. He said staff noted that special permit SP 90-P-044 for an error in building location, for a similar deck on adjacent Lot 192, was approved by the BZA on September 20, 1990.

Vice Chairman Hammack asked if the BZA had any questions of staff and received no response.

The applicant's wife, Barbara A. Myerchin, 12002 Settle Court, Fairfax, Virginia, came to the podium to present the statement of justification, stating that, when she and her husband had purchased the house, the deck was already attached to the home, they had the occupancy permit from Fairfax County, and they assumed that they were in compliance with all regulations. When their neighbors recognized that a problem existed, they went forward and obtained a special permit. She said that prompted her and her husband to also seek a special permit.

Mrs. Harris asked Mrs. Myerchin if the circular gallery was part of the deck when the they purchased the house and she replied that it was.

Vice Chairman Hammack asked Mrs. Myerchin from whom they had purchased the house and she said L. J. Hooker, the builder. Mrs. Harris asked Mrs. Myerchin if the builder had informed her that the deck encroached into the back yard and she said he had not.

Mr. Kelley said that, if staff could go into the neighborhood and determine whether there were more similar situations in the neighborhood, it was possible that they could all be rectified at the same time, by an administrative decision, rather than having property owners spending money to come before the BZA.

Vice Chairman Hammack said he believed that the builder should be before the BZA. He asked staff if, when the construction was final, County inspectors checked the conformance of the setbacks. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that it was her understanding that an inspector reviewed the building for conformance with the plat included with the Building Permit. She said that, if the plat included with the Building Permit had been approved in error, the building would not be in conformance, even though the inspector compared it with the approved plat. Vice Chairman Hammack asked Ms. Kelsey if her staff compared the special permit plat with the plat which had been approved with the Building Permit. Ms. Kelsey said that they did. Ms. Kelsey asked for a few moments to check this out.

Mr. Kelley again said that he did not believe that property owners should be required to come before the BZA and pay a substantial fee for something that should be correctable administratively. He said that the County should be responsible for making the builder rectify the error. A discussion ensued during which the BZA members agreed with this concept.

Vice Chairman Hammack asked if there were any speakers in support of, or opposed to, the application. He received no response and closed the public hearing.

Mrs. Harris made a motion to grant SP 91-P-044 for the reasons outlined in the Resolution, subject to the Proposed development Conditions contained in the staff report dated October 29, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-P-044 by THOMAS S. MYERCHIN, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow deck to remain 3.3 ft. from side lot line, on property located at 12002 Settle Ct., Tax Map Reference 46-1((24))191, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

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2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED, with the following development conditions:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the plat dated April 18, 1991, (revised) and approved with this application, as qualified by these development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 199, November 7, 1991, (Tape 2), Scheduled case of:

10:20 A.M. BEN E. NINDEL, VC 91-P-091, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 13.1 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 21,790 s.f. located at 3829 Prince William Dr., zoned R-1, Providence District, Tax Map 58-4((10))11.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Payne replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property was located north of the Little River Turnpike and east of Pickett Road. She said that the subject property and the surrounding lots in the Westchester Subdivision are zoned R-1 and are developed with single family detached dwellings; lots to the north and east, in the Mantua Hills and Brian Acres Subdivisions are zoned R-2 and are developed with single family detached dwellings. Ms. Dickey said that the request for a variance resulted from the applicant's proposal to enclose a carport to 13.1 feet from the side lot line. She said that a minimum side yard of 20 feet is required by the Zoning Ordinance; accordingly, the applicant was requesting a variance of 6.9 feet to the minimum side yard requirement. Regarding surrounding uses, Ms. Dickey said that researching the files of the Office of Zoning Administration revealed that, in 1975, a building permit was issued to construct a carport 15 feet from the side lot line. She noted that the certified plat submitted with the application showed that the carport was actually constructed 13.1 feet from the side lot line. She said that research also indicated that the dwelling on adjacent Lot 10, to the south, is located approximately 32 feet from the shared side lot line. Ms. Dickey noted one change to the Proposed Development Conditions to change the twenty-four months to thirty months to establish the use.

Douglas L. Payne, Sr., 3829 Prince William Drive, Fairfax, Virginia, represented the applicant and presented the statement of justification. He stated that the application had acquired the property in 1981, in good faith. He said that, at that time, the carport was already there, having been constructed in 1975. Mr. Payne said that the applicant wanted to enclose the carport now to add additional living space, because of the growth of the family. He said that they had explored many alternatives, but none were feasible. Mr. Payne said that all materials used for the addition would match those used on the dwelling, and would be in harmony with the neighborhood. He said that they had received verbal approval from all neighbors affected by the addition; the two most directly affected, on either side of the applicant, had given written consent, which had previously been submitted to the BZA. Mr. Payne said they had also received consent from the Westchester Mantua Civic Association.

Mrs. Harris asked why the applicant could not build off the north side of the house. Mr. Payne said that there is a family room downstairs on the north side, with a laundry room, and putting an addition there would not be compatible with the setup of the house; they would have to redistribute the bedrooms to make a hallway into the addition, breaking up the family room, and also conflicting with the minimum side yard requirements to the north.

Vice Chairman Hammack asked Mr. Payne to describe the topography of the property. Mr. Payne said that the dwelling was the last in the subdivision called Westchester; the Mantua subdivision is to the north, and the area is on a south to north grade. He said that the house is split-level in design, with the living room, dining room, and kitchen on a level

grade; as the house spreads to the north, the ground slopes down and the lower level, containing the laundry room and family room, is partially underground.

Vice Chairman Hammack said that he lives in the area of the subject property and noticed that Mr. Payne had several vehicles and a boat. He asked what Mr. Payne intended to do with the vehicles and the boat when he enclosed the carport. Mr. Payne said that he had a gravel area in the driveway large enough to accommodate three vehicles, and that the boat would be put all the way back into the gravel portion of the driveway. He said that the neighbor to the south had given him permission to park in their driveway, as they have room for three cars and own only one car. He said he had used their driveway from time to time.

In answer to a question from Vice Chairman Hammack, Mr. Payne said he is renting the subject property, which is owned by his father-in-law.

Mrs. Harris asked Mr. Payne, because of the cars and the boat, if he had considered putting extra screening between the gravel area of the driveway and the neighbor's property. Mr. Payne said there is currently a row of hemlocks in that area. Mrs. Harris said that the hemlocks could not provide screening at a lower level and Mr. Payne said that the neighbor's house is on an elevated level and the side of his house could not be seen by his neighbor because of that. Mr. Payne said that, at one point, the hemlocks had become so dense, they had been trimmed at their neighbor's request.

Vice Chairman Hammack asked if there were any speakers in support of, or opposed to the application, and received no response.

Mr. Ribble made a motion to grant VC 91-D-091 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 29, 1991, amended to change the time frame for establishing the use changed from twenty-four months to thirty months.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-091 by BEN E. NINDEL, under Section 18-401 of the Zoning Ordinance to addition 13.1 ft. from side lot line, on property located at 3829 Prince William Dr., Tax Map Reference 58-4((10))11, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,790 square feet.
4. An extraordinary situation exists in the location of the house on the lot.
5. The applicant simply wants to enclose an existing carport.
6. Exceptional topographical problems on the other side of the lot preclude using that area.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

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6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific room addition shown on the plat (prepared by Larry N. Scartz, certified land surveyor, dated July 30, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The room addition shall be architecturally compatible with the existing dwelling.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 201, November 7, 1991, (Tape 2), Scheduled case of:

10:30 A.M. B'NAI SHALOM TEMPLE TRUSTEES, SP 91-S-031, appl. under Sect. 3-C03 of the Zoning Ordinance to allow place of worship and related facilities on approx. 5.0 acres located at 7612 Old Ox Rd., zoned R-C, WS, Springfield District, Tax Map 96-2((1))29.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Strobel replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the subject property is located on the southwestern side of Old Ox Road, which is southwest of realigned Ox Road, which is Route 123, and is generally east of its intersection with Burke Lake Road and west of its intersection with Fairview Drive. She said that the undeveloped site is planned for residential use at .1 to .2 dwelling units per acre. Ms. Dickey said that, based on the location in the Water Supply Protection Overlay District, stormwater Best Management Practices (BMP's) are required, and the Plan states that open space is the most efficient type of BMP to employ. She said that the property is surrounded on the west, south, and east, by other lots zoned R-C and WSPOD, which are developed with other single family detached dwellings or are vacant; to the east and northeast are properties zoned R-1, which are developed with single family detached dwellings, including the Southrun Subdivision, located northeast of Ox Road; Lot 26, between Old Ox Road and Ox Road, is a vacant parcel zoned R-1 and is owned by the Board of Supervisors. Ms. Dickey said that the request was for a special permit to construct a one-story, 300 seat temple, with 79 parking spaces, a maximum building height of 35 feet, and no steeples or domes. She said that the temple would have a gross floor area of 17,500 square feet, which translates to a Floor Area Ratio (FAR) of .08; no private school of general education or child center is proposed in this application; temple services would be held on Friday evenings; during the school year, additional religious classes would be held on Saturday mornings and on Tuesday evenings. Ms. Dickey said that the applicant also was requesting a waiver of the barrier requirements on all four lot lines and modification of the transitional screening requirements on the northwestern lot

line and the easternmost one-third of the southeastern lot line, to allow screening shown on the special permit plat to satisfy those requirements: namely, a 15 foot landscaped screening yard along the northwestern lot line which lies within an access easement to other lots, and a utility easement, and a 25 foot wide naturally vegetated screening yard along the southeastern lot line. Ms. Dickey said that the applicant proposed porous pavement and a stormwater management detention pond to satisfy the stormwater and BMP requirements, and proposed a septic drain field to satisfy sanitary sewer requirements. She said that, as proposed, the requested special permit use presented negative impacts which are inconsistent with the purpose and intent of the R-C designation, and are not in harmony with the land use and environmental recommendations contained in the Comprehensive Plan. She said that unresolved issues included the intensity and incompatibility of the proposed non-residential use and a very low density residential area; the proposed construction of a development at 80% of the maximum FAR on a lot that could, by right, be developed with only one dwelling unit; inadequate protection of water quality in the Occoquan Basin; the extensive clearing and grading proposed, which would leave only 30% of the site as undisturbed open space, little tree save; lack of adequate screening from surrounding residential uses; unsafe roadway access and substandard roadway improvements to Ox Road and to Old Ox Road. Ms. Dickey said that, based on unresolved concerns regarding land use and environmental and transportation issues, it was staff's conclusion that the applicant did not meet the standards for special permit approval as specified in Section 8-006 of the Zoning Ordinance and, therefore, staff recommended denial of SP 91-S-031.

Ms. Dickey said that, if it was the intent of the BZA to approve SP 91-S-031, staff recommended that the approval be subject to the implementation of the Proposed Development Conditions contained in Appendix 1 of the staff report. She said it was noted that, even with the inclusion of the Proposed Development Conditions, staff could not support the application as proposed.

Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, represented the applicant and presented the statement of justification. Ms. Strobel stated that the applicant had purchased the subject property in 1988 with the hope of constructing a Jewish temple on the site. She said that the congregation presently meets in a Fairfax County Public School. Ms. Strobel said that the members lived within a five-mile radius of the proposed temple site. She said that the applicant's original proposal was for a synagogue to be constructed in two phases, resulting in a building of 21,780 gross square feet; but, in response to staff's concerns regarding the size of the proposed development, the applicant had removed the second phase of development and now proposed a building of 17,500 gross square feet, a reduction of almost 20%. She said that the proposed services would be held on Friday evenings and Saturday mornings, which are off-peak traffic hours; the applicant's proposal, therefore, would have minimum impact on the existing road network. Ms. Strobel said that the congregation members lived within close proximity to the proposed temple, which would reduce the amount of travel time the members spent on the roadways. She said that the applicant had carefully chosen an architect who was sensitive to the surrounding neighborhood and proposed a low wooden structure which would be in keeping with the residential character of the area. Ms. Strobel said that the proposed building would be set back from Old Ox Road approximately 375 feet, so as to be unobtrusive to travelers on Ox Road; 50% of the site would be retained as open space, which exceeds the minimum requirement; the proposed FAR is .08, which is lower than the permitted .1 FAR for non-residential uses in the R-C District. Ms. Strobel said that the applicant had been sensitive to the environmental concerns of the R-C District and had provided a tree preservation plan, as well as porous paving for the parking area; the applicant's parcel provides excellent access to major roadways; visitors to the site would not have to drive on neighborhood streets to reach the temple, nor would they have to park within a residential community or driveways. She said that the site has a number of constraints: namely, its dimensions; the parcel is long and narrow without much flexibility for the placement of the building. Ms. Strobel said that the applicant had taken a number of measures to address staff's concerns: the size of the building had been reduced; the proposed drain field was relocated so that a 25 foot buffer could be provided along the entire southern portion of the property; the existing gravel access easement into the site is proposed as a tree-lined asphalt road; the applicant has received approval from AT&T to landscape each side of the proposed drive aisle, which will be maintained by the applicant; and the applicant also provided a tree location survey to the environmental branch, which details tree save areas and individual specimen trees to be retained, including trees within the parking lot.

Ms. Strobel said that the development conditions imposed by staff caused some concern to the applicant: Condition 9 requires transitional screening along all lot lines; but, due to the existing access easement and the location of the entrance, the applicant was requesting a waiver of transitional screening in favor of that which is shown on the plat for the northern lot line. Condition 11 requires that the tree save islands be sized to encompass the entire tree drip line; whereas the applicant's proposal is designed to save the individual trees that are shown on the plat; the engineer feels very comfortable with that, and to increase the size of the islands would require some redesign of the parking; therefore, the applicant requests that this condition be deleted as it is unnecessary for tree preservation. Condition 17 requires dedication of right-of-way on Old Ox Road; the applicant does not disagree with this in concept; however, once the applicant provides the dedication, the resulting lot size would be less than five acres, which is required in the R-C District; so any dedication would preclude any amendment to the special permit, if approved. She said she had submitted a letter to Jane W. Gwinn, Zoning Administrator, requesting an interpretation,

but had not yet received a response. She would agree to Condition 17, with the following sentence: "This dedication is contingent upon approval of some mechanism that would prevent this lot from becoming a non-conforming use." Condition 18 provides two options for traffic improvements; the applicant would provide the improvements listed in option one, with the exception of the third bullet. Fairfax County Planning staff has requested the construction of a cul-de-sac at the northern intersection of Old Ox Road and Ox Road. The applicant's transportation consultant had taken a look at that, and the improvements which they are willing to provide will insure safe access for people to and from the site. Ms. Strobel discussed monetary issues having no bearing on the land use issues.

Ms. Strobel asked that Conditions 19 and 20 be deleted as unnecessary. She said that note 6 and 14 on the development plan were simply trying to allow the applicant to retain some flexibility at the time of final site engineering.

Ms. Strobel presented letters of support which she asked to have included in the file.

Mr. Ribble asked if the applicant had made any attempt to acquire adjacent vacant land. Ms. Strobel said that the applicant had tried to acquire a number of the surrounding parcels; specifically, vacant parcels 5 and 6. She said that there had been active negotiations to acquire both, but they did not result in signed contracts. Ms. Strobel added that the purchase price of Lot 6 was based on a commercial value and Lot 5, which touches the applicant's property at a point, would serve no purpose. She said that the applicant had discussions with Fairfax County staff about Lot 5, but it appeared that the lot would not serve to benefit the temple.

Mrs. Harris asked Ms. Strobel what the present size was of the temple congregation. Ms. Strobel said it had approximately 200 families.

Vice Chairman Hammack asked if there were any speakers in support of the application, and the following people came forward: Michael A. Haller, 9605 Tinsmith Lane, Burke, Virginia, a member of the temple and the Chairman of the Building Committee; and Barbara Lubar, 6307 Karmich Street, Fairfax Station, Virginia, President of Temple; There were other members present who did not speak, but did stand to show their support.

The speakers in support talked about the difficult search for an appropriate site and a suitable architect; the effort to preserve the trees and natural vegetation; making the facility appear to blend into the landscape; making changes after reading the staff report, including the reduction in the size of the facility and relocation of the drain field; and putting off their hearing date. They advised that the congregation consists of 200 families living within close proximity, which would cut down on travel and thereby cut down on traffic. They presently have 150 seats and propose having 300 seats.

Mrs. Harris said that, while the supporters spoke of the beauty of the parcel, 70% would be cleared for the intensity of the temple. Mr. Ribble said that, with the drainage field, the parking lot, and the temple itself, about 70% of the parcel would be covered.

A discussion ensued regarding the landscaping and tree preservation.

The following people came forward when Vice Chairman Hammack asked if there was anyone present who wished to speak in opposition to the application: James F. McCall, 7610 Old Ox Road, Fairfax Station, Virginia; Lawrence Rosen, 3621 Ridgeway Terrace, Falls Church, Virginia; and Fannie Whitley, 7610 Old Ox Road, Fairfax Station, Virginia.

The speakers said that they really were not opposed to the temple, but were concerned about activities in addition to the religious activities and services: The "other activities," committee meetings, and support group meetings; the fact that it appeared as though the facilities would be in use every day; environmental concerns, water level and water table; porosity of the material used for ground construction affecting the wells in the area; the proximity of the septic system; and the traffic patterns around the new temple.

Mrs. Harris asked Mr. McCall how he accessed his property and also how Mr. Rosen accessed his property. Mr. McCall said that he accessed his property from an easement along his property; but, the last time he heard anything about Mr. Rosen's property, it was considered to be landlocked. He also said that he had heard that there had been an old easement which afforded Mr. Rosen access to his lot, but he had also heard that the easement had been abandoned and deferred to other people in the room for an answer.

Vice Chairman Hammack asked Mr. McCall to point out the Baptist Church he had earlier said was in the neighborhood.

Dr. Lawrence Rosen, owner of Lot 5, said that he did not have ingress or egress to his property at this time. He said that he had offered to sell his property to the applicant. He referred to Ms. Strobel having said that the applicant had lost interest in his property because it came to a point, which he said that he believed was in error because the easement on Lot 3A still exists, and comes to the rearmost corner of Lot 29, allowing access from Lot 29, on the easement which still exists on Lot 3A, into Lot 5. Mr. Rosen said he believed that the purchase of his property by the applicant would alleviate many of the problems, such as the septic field. Alternatively, he requested that the BZA consider granting him a new easement across the back of the applicant's property, possibly through the proposed parking

lot, so that he would be able to make some use of his property. He said that he is landlocked at this time.

Mrs. Harris told Dr. Rosen said that, in his deed, he had to have had access to his property. Dr. Rosen said that the deed did reference the chain of title and the 15 foot outlet road; but there was a vacation of that which has not been reflected in the deed, nor on the County tax map, nor in the Tax Assessment Office. He did not know how it came about, but the vacation of a portion of the outlet road took place in 1980, at the rear of the applicant's property. Mrs. Harris asked when Lot 5 was subdivided and Dr. Rosen said 1973, when the easement out to Old Ox Road was deeded. Dr. Rosen said that the survey of Lot 5, when it was created, had an easement deeded simultaneously, from the rearmost corner of lot 5, all the way out to Old Ox Road.

Mrs. Whitley said that she would have no objection to the application if the septic system were to be put on Lot 5.

Ms. Strobel came to the podium for her rebuttal remarks. Addressing Mrs. Whitley's concerns, she said that the septic system is set back 130 feet from her existing well, whereas the minimum requirement is only 100 feet. Ms. Strobel said that the soil where a septic system is located must be conducive to "perk," and Dr. Rosen's lot does not have this capability; nor could it be located at the rear of the property. Ms. Strobel said that the location of the septic system met all the requirements of the Health Department of Fairfax County.

Ms. Strobel said that Lot 5 was purchased with the knowledge that it was a landlocked parcel, as stated in the Commissioner's report. She said that the purchase price reflected the fact that it was landlocked and that the applicant had discussions with Dr. Rosen. She said that she would like to request that the decision be deferred on the application for two reasons: She had not known that Mr. McCall had a concern regarding the water table and she said she would like the applicant's engineer to review the issue. She also said that the applicant would be willing to provide Dr. Rosen with an easement at the rear of the property, behind the AT&T easement, if the original easement no longer exists.

Ms. Whitley said that she had been told by the applicant that the septic tank had been set back further than required by the Ordinance; however, she felt that the impact of group use on the septic tank would make a difference. Vice Chairman Hammack asked staff if they knew whether group use made a difference in the required setback of a septic system and Ms. Kelsey said that the information would have to be obtained from the Health Department.

Vice Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to deny SP 91-S-031 for the reasons set forth in the Resolution.

Vice Chairman Hammack said he believed that staff's objections to granting the application were valid, as shown in the staff report. He said that he believed the development proposed was too intense for the site and he said he did not believe that all of the issues raised had been resolved.

Mrs. Harris said that she agreed with Mr. McCall that the traffic configuration on Old Ox Road would possibly be preferable as the little "U" as opposed to a to having a cul-de-sac.

Mrs. Thonen asked to have Mrs. Harris' recommendation incorporated into her motion.

At Ms. Strobel's request, Mrs. Thonen made a motion to waive the twelve-month waiting period on rehearing, which passed unanimously.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-031 by B'NAI SHALOM TEMPLE TRUSTEES, under Section 3-C03 of the Zoning Ordinance to allow place of worship and related facilities, on property located at 7612 Old Ox Rd., Tax Map Reference 96-2((1))29, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 5.0 acres.

4. It is very important to protect the environment in the area of the subject property.
5. The lot is much too narrow.
6. The use is too intense.
7. The proposed clearing of the trees may impact the ground water, which should not be risked.
8. The long, narrow configuration of the lot and the size of the required parking area will not allow for the preservation of significant forest cover and rural open space areas that recharge ground water and help protect the quality of water in this public water supply watershed.
9. Careful attention must be given to the water situation in the Dogue Creek area, and it is recommended in the Comprehensive Plan that any special permit or special exception in these areas should be reviewed very carefully and studied by the engineers, because of the environmental concerns.
10. The site is located in the Residential Conservation zoned area of the Water Supply Protection Overlay District and is subject to the WSPOD stormwater management requirements which mandate a fifty percent reduction in the total phosphorus concentration contained in post-development stormwater runoff. In the R-C zoned area of the County, this reduction was intended to be achieved by a combination of low density residential development, minimum five to ten acre lots, and the provision of sufficient acreage of perpetually undisturbed natural open space areas. The proposed parking lot may cause loss of control, and controlling urban runoff in this area is a problem.
11. The problem of access to Lot 5 should be resolved.
12. The traffic configuration on Old Ox Road is possibly preferable to a cul-de-sac and should be reviewed by the Virginia Department of Transportation and the applicant to see if the off-site improvement would have a favorable impact upon the traffic flow.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

Mrs. Thonen made a motion to waive the twelve-month waiting period for rehearing. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1991.

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Page 206, November 7, 1991, (Tape 2), Scheduled case of:

10:45 A.M. GEORGE P. & JOANNE K. NANOS AND MARGARET K. NANOS, VC 91-V-104, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (bay window) 25.1 ft. from front lot line (27 ft. min. front yard required by Sects. 3-307 and 2-412) on approx. 17,822 s.f. located at 7211 Park Terrace Dr., zoned R-3, Mt. Vernon District, Tax Map 93-4((8))30. (OTH GRANTED 9/17/91)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Nanos replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, stating that the subject property is located in the east side of Terrace Drive, near its intersection with Regent Drive, in the Villamay Subdivision; is adjacent to the George Washington Memorial Parkway to the east and next to the Potomac River. She said that the surrounding lots, both to the north, south and across the street, are developed in similar type single family residential dwellings. Ms. Kelsey said that the applicants were requesting a variance to allow a bay window to be added to the front of their existing dwelling. Ms. Kelsey said that this could not be administratively approved because the Zoning Ordinance requires a 30 foot minimum front yard and the bay window would be located 25.1 feet from the front lot line, which is a variance of 5.9 feet. She said that a bay window is normally allowed to extend 3 feet into any required yard, but noted that the existing house is 25.1 feet away, instead of the 30 required feet. Ms. Kelsey said that, in 1958, the BZA granted a variance to Lots 26 through 45, to allow all of those houses to be 25 feet from the front lot line and, because of that, there could be no further additions or extensions to the houses without putting them into the required front yard. Mr. Ribble asked if the reason was the marine clay and Ms. Kelsey said that, because this had been Ms. Bettard's case, she did not know the answer; however, she did know that the area does contain marine clay.

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Mrs. Harris introduced a discussion about the previous approval for the existing house to be located 25.1 feet from the front lot line and, because the bay window would be 25.1 feet from the front line , the BZA believed that the applicant did not need a variance for the bay window. The Board asked Ms. Nanos if she would be willing to wait another week for a decision, so that more information could be gathered, and she said that the builder was anxious to continue working. Ms. Kelsey said that she was quite sure that the variance would be required because of the nature of the approval previously granted. (Note: Meeting of 11/14/91 reflects no variance was required.)

Mrs. Thonen asked if the applicant would rather have the request granted, or defer the decision for another week and possibly receive a refund of her $100 fee. The applicant reluctantly agreed.

Vice Chairman Hammack asked if there were any speakers in favor of, or opposed to the application, and received no response.

Mrs. Harris made a motion to defer VC 91-V-104 to November 12, 1991 at 9:10 a.m., so that Ms. Kelsey could look into the details of the variance granted in 1958. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 206, November 7, 1991, (Tape 3 & 4), Scheduled case of:

11:00 A.M. THERESA BROWN VEVERKA, TRUSTEE FOR CLARENCE C. BROWN APPEAL A 91-V-015, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that subject property contains 3 separate dwelling units in violation of Sect. 2-501 on approx. 16,100 s.f., located at 6409 Thirteenth Street, zoned R-3, Mt. Vernon District, Tax Map 83-4((2))(28)502.

William E. Shoup, Deputy Zoning Administrator, described the appeal as captioned above. Mr. Shoup advised the Board of Zoning Appeals (BZA) that, just prior to the introduction of the appeal, the appellant's attorney had presented staff with new material for review. For that reason, Mr. Shoup requested a deferral of the case, in order that he might have time to respond to the issues raised by the appellant.

John F. Cahill, with the law firm of Hazel & Thomas, P.C., 3110 Fairview Park Drive #1400, Falls Church, Virginia, came to the podium to represent the appellant and asked the BZA to note that, originally, the appellant had filed the appeal on her own behalf, but that he was now representing her. He stated that they were prepared to proceed with the case.

Mrs. Harris said that she had not read the new material and did not feel prepared to hear the appeal. Mr. Cahill apologized to the Board for the lateness of his submission, but said that the staff report had only been available a week previous to the hearing and, considering the research required by him prior to the preparation of his response, he could not have had it ready any sooner. Mrs. Harris stated that, regardless, the BZA could not do the case justice without proper preparation.

Mr. Cahill said that the mitigating circumstances causing him to encourage the BZA to hear the case as scheduled, were that Mrs. Veverka, who is 68 years old, was present and was finding the experience difficult. Mr. Cahill advised the BZA that he would not be opposed to a brief continuance to allow the BZA to review the brief.

The Board began to consider a deferral to the following Tuesday and Mr. Shoup asked them to defer beyond the next Tuesday. Mrs. Harris remembered a similar situation, which also prompted a response from staff, further continuing the case; she asked to be assured this would not again be the case.

Mrs. Thonen pointed out that the appellant was not being adversely affected by the BZA's deferral.

As the BZA discussed an appropriate date for the deferral, Mr. Cahill advised that he was on notice from the 4th Circuit of Appeals, and that he had an appeal which might be scheduled during the period of time being discussed by the BZA for a deferral date.

After much discussion about a deferral and attempting to find an appropriate date, the BZA agreed to take a short recess to review the material and then proceed to hear the case as scheduled.

Mr. Cahill expressed concern over having only four members present and the fact that one of the members might be prejudiced by his actions. He was reminded that the BZA had already agreed to move forward on this case.

The Board recessed at 12.35 and reconvened at 12:50.

Mr. Shoup said that the Zoning Administrator's opinion was set forth in the staff report, which became a part of the record. He said that the appeal was made of a Notice of Violation

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stating that there are three dwelling units located on the subject property; whereas, Section 2-501 of the Zoning Ordinance provides that there be no more than one dwelling unit on the lot, with certain exceptions; however, none of those exceptions apply in this instance. He said that, based upon site inspections, there is clear evidence that there are three dwellings located on the property: two of them are located within what may be termed the main dwelling structure; the third unit is located in a detached structure which initially appeared to be constructed as a garage and now is used entirely for residential purposes. Mr. Shoup said he believed that all three of the facilities satisfy the Zoning Ordinance definition of a dwelling unit, and the appellant did not even dispute that there are three dwelling units on the property; so the issue was the nonconformance. Mr. Shoup said that, as noted in the staff report, the main dwelling structure was constructed sometime in 1941 as a single dwelling unit; it is not clear when the original garage structure was constructed, but it appeared that it may have been constructed sometime in the 1940's. He said that, under the original Zoning Ordinance that went into effect in March of 1941, when this property was zoned Urban Residence District, a single family detached dwelling was a permitted use, which was defined in the Ordinance at that time as a dwelling constructed to accommodate only one family and containing only one housekeeping unit. He said that garages and accessory structures were also permitted as accessory uses, but there were no provisions to allow for a detached second dwelling on the property. Because of that, Mr. Shoup said it was the position of the Zoning Administrator's Office that the zoning in effect at the time allowed only one dwelling unit upon the subject lot. Mr. Shoup said that, in order for all three units to be nonconforming, all three units would need to have been established prior to the first Zoning Ordinance in March of 1941, and there is no evidence to suggest that had occurred. He said that there were provisions in the Ordinance in effect that, between August 5, 1946 and September 1, 1959, a two-family unit could have been established in a dwelling, subject to BZA approval of a special exception and certain design criteria. He said that research indicated that there was no such approval obtained for the property.

Regarding the issue of the determination in December of 1975 by a Zoning Inspector that the three units were nonconforming, Mr. Shoup said that the position of his office was that the determination was based upon a statement that the dwelling units had been in existence since "the mid-40's to 1956." He said that it had never been established in 1975, when reviewed, that the units satisfied the criteria to be nonconforming. Mr. Shoup said that it was the position of his office that there is no basis to deem that the units had been nonconforming in 1975. He said it appeared that the applicant did not research the situation at the time and did not address the issue properly. Mr. Shoup said that, while there is no question that the units have been on the property for a significant amount of time, that fact alone does not constitute a basis for nonconformity; and, since the units were never legally established, it is now the position of his office that the units are not nonconforming and are, therefore, in violation of Section 2-501 of the Zoning Ordinance.

Mrs. Harris referred to Attachment 5, stating that she understood Mr. Shoup's statement that proper and thorough research was not conducted; however, she said she questioned the supposition that someone could buy and sell a property based upon a Zoning Administrator's decision and, subsequently, have that decision challenged. She noted that no appeal was filed by the Board of Supervisors or by any other person at the time that decision was rendered. She asked if the decision did not become final by virtue of the fact that no appeal was filed. Mr. Shoup said that he did not believe so; that in the Commonwealth of Virginia, the law provides that the Zoning Administrator is not bound by any requirement to appeal a decision. Mr. Shoup said that Jan Brody, Assistant County Attorney, was present to respond to any legal type questions.

Mrs. Harris gave an example of the BZA approving a variance and no one appealing the variance within a certain length of time. She wanted to know, when that person was ready to sell the house, did the purchaser have to apply for a variance. She was advised that they did not. Mrs. Harris asked: if no one had appealed the decision of the BZA on a variance and the house had been 2 feet closer to the lot line for the last 50 years, if a determination had been made that a variance was given, did it become final? Ms. Brody said that, if the variance was granted in accordance with the Zoning Ordinance and there was no determination later that it had been granted in error, it would be binding. Mrs. Harris asked, if the determination were appealed within a thirty day period, who could find that it was not in accordance with the Zoning Ordinance. Ms. Brody cited a case in Newport News, Virginia, wherein a Building Permit was issued for a shopping center which involved a canopy, and it was later determined, after considerable money had been expended for building and development, that the permits had been issued in error. She said that the canopy in question was in the setback and, therefore, illegal under the Zoning Ordinance, after a ruling by the administrative officials who had been charged with the interpretation of the Ordinance. She said that the Court had said that administrative agencies are limited only to those powers which are conferred upon them and, therefore, they must construe the law as it is written. She said that the Court went on to say that a law which had been erroneously construed could not be changed. She said that the Court found that, if the canopy was in the setback, the issuance of the permit was void, and that it had no force and effect because it had been given contrary to the Ordinance; the County was not estopped by the way that the permit was issued. She said that the Supreme Court had come down very clearly on error committed in such cases.

Mrs. Harris said that the aforementioned example involved construction and she was talking about a determination. She said it was her determination that the County was stating that

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adequate investigation had not been done in 1975, when the determination was handed down. She said she was trying to find out, since no one had appealed it, whether all determinations which the Zoning Administrator makes are subject to the same appeal option no matter how many years might have elapsed. Ms. Brody said that State Code Section 15.1-496.1 provides for an appeal within thirty days of the Zoning Administrator's decision, if there is a belief that the decision is wrong; however, if the determination was made in error and contrary to the Ordinance, the determination is void as an issue and requires no appeal.

Vice Chairman Hammack asked Mr. Shoup if the records indicated whether a review had been made and whether there was any indication of whether the determination was in error or not. Mr. Shoup said that they did not know what the original decision was based on. Vice Chairman Hammack said that he believed the Supreme Court would have had second thoughts about the Newport News canopy case if the Zoning Administrator attempted to change the determination seventeen years later. Vice Chairman Hammack asked what the basis was for the statements saying that the determination had been in error, other than the existing current interpretation of the then-existing statute. Mr. Shoup said the justification was the fact that his office had gone back to the records and found that it was clear what it would take to make the subject units nonconforming. He said that, in the review of the Zoning Ordinance, it was found that having three units on the subject lot would only have been allowed previous to 1941. He said that there is nothing in the records to indicate that had occurred. Mr. Shoup said that there were provisions for two units to be allowed on the lot with BZA approval; but the BZA minutes had been reviewed and no indication had been found that any such approval had been obtained for the subject property. He said that the determination in 1975 was based on a letter from a nearby or adjoining property owner, who only said that the apartments had been created in the mid-40's to 1956. He said that did not satisfy the criteria required to determine nonconforming use. Mr. Shoup said that the homework was not done on this case and there was no basis in 1975 to deem the units nonconforming. He said it was the position of his office that the administrative act was contrary to law.

Mrs. Harris asked if they would have qualified for nonconforming use if the units had been in existence before 1941 and grandfathered, and he replied in the affirmative. Mrs. Harris said that there was no proof that they had or had not existed in 1941; but Mr. Shoup said that the assessment records indicated that, in 1941, a single dwelling unit had been added to the rolls for that lot. Mrs. Harris questioned the validity of the assessment records because they did not show that the three dwelling had been in existence in 1975. Mr. Shoup referred back to the letter used in 1975 which said that, in the mid-40's to 1956, the apartment units were created, and stated that did not satisfy the nonconforming criteria. Mrs. Harris continued the discussion with Mr. Shoup along these lines.

Mrs. Thonen asked Mr. Shoup if, when Zoning Inspectors went out to represent the County Zoning Administrator, and they made decisions on the existence of violations or any other matters, was the Zoning Administrator responsible for the actions? Mr. Shoup said that they served as agents of the Zoning Administrator. Mrs. Thonen asked if, when the Zoning Inspector signed a statement stating the subject units were nonconforming, was he serving as a representative of the Zoning Administrator? Mr. Shoup said that he was.

Vice Chairman Hammack asked if it was not hypothetically possible to argue that, if one of the neighbors who complained of the violation thought that the letter written by the Zoning Administrator affirming the legality was in error, and they had wanted to appeal within thirty-five days after the date of the letter, that staff would have said that the appeal could not have been accepted by staff. Vice Chairman Hammack said that timeliness was a common condition being brought to staff and BZA for a determination. Mr. Shoup responded to Vice Chairman Hammack's remarks by stating that the Ordinance specifically provides what the appeal requirements are. He said that the County cannot be estopped from correcting an action and, what they had done in this instance was to make an effort to act in accordance with the requirements. Vice Chairman Hammack asked if the notice of violation in this instance had been based upon a complaint and Mr. Shoup replied that it had.

Mrs. Thonen asked if there was one unit or two units in the garage. Mr. Shoup said that there are living arrangements in both the upper and lower levels of the garage, with a spiral staircase which allows access between the two levels. He said that it may be that, at one time, it had been used as two separate units; however, based on recent inspections, it appears that the spiral staircase had been left open and it is used as one unit. In answer to a question from Mrs. Thonen, Mr. Shoup said that there are not two kitchens in the garage.

Mr. Ribble referred Mr. Shoup to the Fanshel case, which Mr. Shoup had cited in his report, and quoted from a resolution made by Gerald W. Hyland, Supervisor, Mt. Vernon District, Fairfax County Board of Supervisors, "...Second, that we would request the Zoning Administrator not to prosecute a violation of the Ordinance which would result from a decision in this case a connection with this appellant. In other words, to withhold taking any action against this appellant until such time as the Board of Supervisors has at least been contacted and also the Board takes some action or inaction in connection with the request by the Zoning Administrator to address the problem of this property and others similarly situated...." Mr. Ribble asked Mr. Shoup if there had been any action or inaction. Mr. Shoup said that it had been sent to the Board of Supervisors and he believed that there had been a proposed amendment attempting to address some of the situations; but

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that amendment had been deferred indefinitely by the Board and had never been resurrected. Mr. Ribble asked Mr. Shoup why the subject violation was being pursued, in light of the aforementioned information. Mr. Shoup said it was because the issue had been brought before the Board and that the Board believed that no action was required back in the mid-80's.

Vice Chairman Hammack called Mr. Cahill to the podium. Mr. Cahill said that, since the BZA had obviously availed itself of the opportunity to read the material which he had submitted, he would save time by asking that the material be made a part of the record; he said he wished to make several points touched upon by the BZA; he presented photographs of the property to the BZA and asked the BZA to note that the property was attractive; he directed the BZA's attention to the separate entrances to the duplexes located on either side of the house, stating that he believed them to be unobstrusive and that a person driving by the property would conclude that the house was a single family dwelling; he said that the property was located on 16,000 square feet in one of the older sections of the County. Mr. Cahill said that, when the applicant first came to him, she said that anyone who looked at the property would know that it had been originally built for the stated purpose. He said that a professional architect, Mr. Keyes, had been asked to examine the structure. Mr. Cahill said that, after examining the structure, including the kitchens, bathrooms, and other improvements and entrances to the house, Mr. Keyes concluded that all of the features were part of the original construction, which the County had conceded dated back to 1941. Mr. Cahill said that the argument of estoppel was a different case. He said that estoppel typically applies to a situation where the decision of the Zoning Administrator is beyond his/her authority, or is so erroneous as to be void. Mr. Cahill said that the County is not arguing that the official who had made the decision in 1975 was acting beyond his/her authority and that it had been conceded that the Zoning Administrator does have the authority to interpret, enforce, and apply the Zoning Ordinance. He said that the question revolved around a situation where, fifteen or sixteen years later, the conclusion is questioned. Mr. Cahill said that the BZA and the County staff was contending that, in 1975, the County staff was not as competent as it is today; that they made decisions which were not consistent with the Zoning Ordinance or their responsibility to correctly administer the Zoning Ordinance. Mr. Cahill said he did not believe the contention to be true and that staff had always diligently pursued its duties. He said that there was nothing in the record to indicate that they had not done so in this case. He said that Mrs. Veverka's affidavit demonstrated that she had relied upon the decision of the Zoning Administrator when she had acquired the property; the property had been acquired for investment purposes; and he believed that the reasoning of Judge Bach in his decision in Rucker stated the case.

Mrs. Harris asked Mr. Cahill when the appellant had filed her appeal and Mr. Cahill said that the notice of violation was dated July 24, 1991, and staff said that the appeal had been filed on August 16, 1991, which was within the thirty-day requirement.

Mrs. Harris said she believed that there was some clouding of the issue relating to whether the house contained two units when it was initially constructed; but the garage clearly does not appear to have been built before 1941. She said it seemed that an attempt was being made to lump all of the units into the same time frame of construction. Mrs. Harris said she questioned the date of construction of the duplexes and believed that no one had shown that they predated March of 1941; but the garage had not been substantiated in that way. She asked Mr. Cahill if he had an additional defense for the garage's time frame of construction. Mr. Cahill said that, assuming that issue is reached, he believed he did have basis for that defense, which was twofold: In 1975, when the issue had been presented to the zoning staff, they concluded that the duplex and the garage were in existence prior to 1941; he said that there was no evidence to the contrary and he suggested that the testimony and the review by Mr. Keyes indicated that the structures had been developed at approximately the same time. Mr. Cahill said that there was no indication in the affidavit of Mrs. Pusey that the garage and the residence were not constructed simultaneously or contemporaneously. He said that a review of the structures did not indicate that one predated or anticeded the other. Mr. Cahill said that, although staff said the Zoning Ordinance in 1941 required that each individual unit be constructed on a lot, he did not believe that was what the Zoning Ordinance said. Mr. Cahill said that, in 1941, the Zoning Ordinance provided that each residential unit be constructed on a minimum of 5,000 square feet; it did not require a specific lot but used the terms building site or lot. He said that the property consisted of 16,000 square feet with three residential units and, in 1941, the Subdivision Ordinance and Zoning Ordinance were not as closely tied together as they are at present. Mr. Cahill said that there was a presumption of correctness made by the 1975 decision and that staff had introduced no evidence to rebut that presumption.

Mrs. Harris referred to Mrs. Pusey's letter which stated that the structures were constructed between the 1940's and 1956, and said that no one would believe that the construction of the house and garage took 16 years. Mrs. Harris interpreted that to mean that the transition from a single family dwelling unit to the present arrangement occurred over that period of time. Mrs. Harris said that she was prepared to believe that the Zoning Administrator did make an error concerning the garage, but not concerning the house. Mr. Cahill said that he would be less than candid with the BZA if he did not inform them that there was a witness which the zoning staff had found in 1975; but, when he attempted to locate the witness, he was informed that she had passed away. Mr. Cahill referred to the rule of finality and his belief that it applied in this instance.

Mrs. Harris said that, in her estimation, there were two different problems associated with this case: (1) the house, and (2) the garage. She asked if they could be acted upon separately by the BZA. Mrs. Harris said she believed that there was enough evidence to indicate that the garage unit was constructed or changed after 1941, and that she was wondering whether the Zoning Administrator had lumped them together in 1975 and decided that, if there was evidence regarding the house in 1941, the decision would be made that the sum of the structures would be nonconforming. Mr. Shoup said that he did not believe that there had been a legal basis for the decision and that the burden of proof for nonconformity was with the property owner and not with the County. He said that no property owner in his memory had ever submitted any proof that more than one dwelling unit could be a legal nonconforming use on any property. Mrs. Harris said that the property owner across the street said that, in the mid-1940's, the property was developed into apartments and has been used in that manner since then. Mr. Shoup said that only indicated that they had been there a long time, but that a long time does not establish nonconformance. Mrs. Harris said that she believed that they existed before 1941 and Mr. Shoup said that the units were said to have been established in the mid-1940's, after 1941, to 1956.

Mrs. Cahill advised that Mrs. Veverka told him that she could provide some background which he previously did not have, based on her understanding of the fact that the previous owner of the property had a particular physical condition.

Theresa Brown Veverka, Trustee for Clarence C. Brown's Estate, came to the podium and said that Charles W. Sword was well-known and a reputable builder who had built many homes in the New Alexandria area. She said that he had built a home for himself and his family on 13th Street, directly behind what is now Belleview Shopping Center. She said that he had built a duplex and lived on the ground floor, with his daughter and her husband living in the upper suite; they had separate entrances. She said that Mr. Sword became severely crippled with rheumatoid arthritis, and could no longer drive, so he got permission to build a two-story garage in the back of the property, with chauffeur's quarters above the garage, a kitchen, a bathroom, a small living room and a bedroom. The unit was used by his chauffeur. Mrs. Veverka said that Mr. Sword had three lots at that time. Mrs. Veverka said that, subsequently, Mr. Sword retired and moved to Florida, and the only neighbor she could locate who had lived in the area consistently since 1940 was Mrs. Pusey, across the street, who had written a letter to the effect that the property was built as a duplex around 1940. Mrs. Veverka said that none of her neighbors had ever complained about the property. She said that the person who filed the recent complaint was an ex-tenant who had been evicted by Mrs. Veverka over a year ago. Mrs. Veverka said that the property had been rundown when she purchased it, she had spent a great deal of money fixing it up, and has hired someone to maintain the property immaculately, which met with the approval of her neighbors.

Mrs. Harris asked Mrs. Veverka if it was her understanding that the garage was built at the same time as the house. Mrs. Veverka said that she believed the garage had been built immediately after the house, within a year after the owner moved into the new house.

Mrs. Harris referred to a Mr. Carrell who was said to have been the owner of the property between 1941 and 1950, became too ill to drive and, subsequently, built the garage with an apartment above for a permanent chauffeur. Mrs. Harris asked Mrs. Veverka to identify Mr. Carrell. Mrs. Veverka said that she believed Carrell was Mr. Sword's first name. Mrs. Harris said that the document she was reading from identified the person as Mr. John Carrell. Mrs. Veverka said that she did not have the chain of title, that she had owned the property for the past sixteen years and had lived there herself, as well as various members of her family. Mrs. Harris asked Mrs. Veverka from whom she had purchased the property. Mrs. Veverka said that she had purchased the property from a woman by the name of Phyllis Malloy, who had left the area. Mrs. Veverka said that, although Mr. Sword had three lots to begin with, he later deeded the end lot to his married daughter and built a house for her on that lot before he left for Florida. Mrs. Veverka said that, because Mr. Sword had three lots, he was within his rights to build three dwelling units. Mrs. Veverka said that the only error may have been when he deeded the lot to his daughter and built the house for her, but that the County had permitted him to do so.

Vice Chairman Hammack asked if there were any more questions and, receiving no response, he closed the public hearing.

Mr. Shoup asked for an opportunity to rebut and Vice Chairman Hammack reopened the public hearing.

Mr. Shoup referenced Mr. Cahill's comment that staff did not go beyond its authority in making the 1975 determination. Mr. Shoup said that the Zoning Administrator did not have the authority to make a decision contrary to the Ordinance, and that was the basis of staff's position. Mr. Shoup said that the 1975 letter never said that the units existed prior to 1941, only that the determination was based upon Mrs. Pusey's letter. Mr. Shoup said that staff did not enjoy taking their present position so long after the determination, but they felt that they had an obligation to correct the error made in 1975. Mr. Shoup expressed regret for having to correct the error at such a late date, but staff's position was that no evidence had been presented to indicate that the dwelling units are legal nonconforming uses. Mr. Shoup asked Ms. Brody to respond to some of the legal issues raised by the appellant.

Ms. Brody said that the main issue of concern to the BZA should be the issue of finality, with the appeal period of thirty days. She said that the Supreme Court does not treat the appeal of the appellant and the appeal of the Zoning Administrator the same. She said that the County is given the special benefit of not being subject to estoppel by the acts of its agents or employees. She said that if a County agent interprets something in error, it is not binding on the County. She said there has never been an exception, regardless of how long a period of time had elapsed, in this case it was sixteen years. Ms. Brody cited a case which had been appealed, wherein a Non-Residential Use Permit had been issued by the Zoning Administrator. She said that, several years later, it was found to be in error; wherein Judge Plummer of the Circuit Court said he was sorry and it was too bad the determination could not be relied upon; but, if it was issued in error, an agent of the County could not be allowed to change the law, and that would be in effect what would happen. She said this had been appealed to the Supreme Court and the Supreme Court denied the petition.

Mrs. Harris said that the case of a Non-Residential Use Permit was more clear cut, whereas it appeared that neither side could prove that the units were or were not constructed prior to 1941, and that the issue remained clouded. Mrs. Harris said that the assumption was that Mr. Ash had based his decision solely on Mrs. Pusey's letter; whereas, she said it was entirely possible that he had spoken with seven or eight neighbors who might have corroborated the statements that the house was built before 1941, that they had lived nearby since then, and that it had always been that way.

Vice Chairman Hammack said that this case went beyond the determination of the Zoning Administrator: this person was issued a notice of violation; a process was initiated against the owners of the property; an investigation was conducted and the matter was dropped. Vice Chairman Hammack said that the process was not followed through, but a letter was sent out by the Zoning Administrator's agent. Vice Chairman Hammack asked if anyone really believed that the Supreme Court wished to have the Zoning Administrator come back and review zoning violations that occurred in 1941. Vice Chairman Hammack said that his question was whether anyone believed that the fact that this involved a notice of violation changed anything having been said; if so, why and, if not, why.

Vice Chairman Hammack said that if the property was in violation in 1975, the County should have acted accordingly; whereas the County chose not to act and wrote a letter to the appellant. Ms. Brody said that by so doing, the error had been compounded.

Vice Chairman Hammack asked if the actions and determination made in 1975 meant anything, stating that significant acts had occurred. He then asked if the current notice of violation meant anything and if a determination could be relied upon, or could it be changed at some future date.

Mr. Ribble referred to Mr. Ash's letter and said that he believed there was an assumption that Mr. Ash had based his letter on Mrs. Pusey's letter or affidavit. He said that he did not believe it said that. He said he believed that Mrs. Pusey confirmed Mr. Ash's findings that it was a nonconforming use.

Mrs. Thonen said she had to go back to when someone had said that the garage had been built after 1950. Mrs. Harris said that she was not convinced that the garage had been built at the same time as the house or that it had been converted to a dwelling unit at the same time as the house. Mrs. Thonen said she believed that the garage had been built at whatever time the owner became handicapped and required the services of a chauffeur, sometime after the house had been built.

Ms. Brody reminded the BZA that it is the person claiming the nonconformity who bears the burden of proving unequivocally that those uses did exist.

Mrs. Harris said she believed that the house had been built in 1941, according to the records; there was an engineer (architect) who had examined the house and said that the structure originally had been built as two dwelling units; and those two pieces of information indicated to her that the house had been built in 1941 as a duplex. Ms. Brody said that the question still remained regarding whether it was constructed in 1941 prior to the enactment of the Zoning Ordinance, and was it in existence and in use prior to the Zoning Ordinance.

Mrs. Harris asked Mr. Cahill if he had anything in his records indicating when someone first moved into the house. Mr. Cahill said that he did not believe that anyone had such information, but staff agreed that the construction took place in 1941.

Mr. Cahill said he found it difficult to believe that it was his responsibility to demonstrate the nonconformity when he was in possession of a letter from Fairfax County dated December 4, 1975, stating that, "...the property contains three (3) dwelling units, two (2) apartments in the dwelling and one (1) apartment in existing garage..." He said that the letter further stated that the property may be used and rented as is and comes under the nonconforming section of the Fairfax County Zoning Code. Mrs. Harris said that the contention was that the zoning agent made a mistake. Mr. Cahill said that his argument to that was that he was being asked to go back fifty years in history and relitigate a case that had already been litigated and the case law that addressed this question says that he is

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entitled to presume that the Zoning Inspector did investigate the facts and properly consider the evidence and, before he wrote the letter, complied with the standards and requirements for nonconforming status.

Discussion ensued regarding the possibility of locating Mr. Ash and Mr. Cahill said that he had attempted to contact Mr. Covington, Mr. Ash's supervisor, and had found that he had passed away.

Vice Chairman Hammack asked staff if there were any building permits or any other documents showing when the house and/or the garage were constructed. Mr. Shoup said there are no building permits, but there are assessment records; however, they do not predate 1941.

Mr. Cahill said that the absence of building permits could indicate that the construction had been done before they were required, which would have been before the advent of the Zoning Ordinance. Mr. Shoup said that was not necessarily so and very few building permits from 1941 were in existence. Vice Chairman Hammack asked why the conclusion offered by Mr. Cahill could not reasonably be drawn and said that an absence of something could be indicative to a situation.

Vice Chairman Hammack asked the BZA members if they would prefer to act on the information offered thus far and to continue to consider the information and defer a decision. Mrs. Thonen said that she did not believe anything more would be revealed if the decision were deferred. Mrs. Harris said she believed that the Zoning Administrator had possibly made a mistake in the determination about the garage, but it would be wrong to assume that a mistake had been made about the entire situation. Mrs. Harris went back to Mrs. Pusey's letter and reviewed previously discussed information. Mrs. Thonen said that she believed the letter stating the use was nonconforming was an illegal action because she questioned how one could make something nonconforming if it had never been legalized to begin with.

Vice Chairman Hammack asked if the BZA members were ready for the public hearing to be closed and, hearing no objection, closed the public hearing.

Mrs. Harris made a motion to support-in-part the Zoning Administrator's decision in A 91-V-015. She said she believed this to be a very unusual case; she believed that it had been argued well on both sides; she believed that as much of the information as was pertinent in this case had been brought before the BZA; she believed that the appellant had proven that the house had been built as a duplex in 1941; she believed, according to the affidavit from 1975, that the structure had been used as a duplex since that time and that it should be afforded the same status that it has had since 1941 as a two-dwelling house. Mrs. Harris said that, in the case of the garage unit, according to the information brought before the BZA, it was constructed sometime after the date when the house was constructed in 1941 and, in order for it to have been a legal nonconforming use, it would have been necessary to have applied for and received a special permit from the BZA, and there had been no special permit issued. Mrs. Harris said that the garage did not enjoy the same status as the house; she said that she, therefore, believed that the Zoning Administrator, as of that date, was correct in that the garage apartment was not a valid dwelling unit, but she disagreed regarding the house and believed that it was a valid dwelling unit.

Vice Chairman Hammack said that he would second the motion for purposes of discussion.

Mrs. Thonen said that the she did not know how something could be deemed a nonconforming use when it had not been legal to begin with. She said that, if a permit had been granted and it had been used all this time, perhaps the use could be considered nonconforming. Mrs. Thonen said that she believed that the appellant should come before the BZA to request a special permit for an accessory dwelling unit, but there would be a problem with the garage because she believed it had been built after 1950, when the owner became handicapped.

Mr. Ribble said that he was not sure when the garage had been built, but it appeared to him to have been tacit approval as a nonconforming use for almost fifty years, and he did not believe that, every time a new Zoning Administrator came into office with a different interpretation, the BZA should keep changing the status.

Vice Chairman Hammack said that he tended to believe that the evidence supported the conclusion that the house, as Mrs. Harris had stated, was built as a duplex and has been in existence since 1941 as a valid nonconforming use. He said there was no evidence to the contrary, there is no building permit, everyone knows that the first Ordinance was adopted about that time, the person probably began construction prior to the Ordinance, or even after the Ordinance, but it was not enforced. He said he believed that the main residence is a valid nonconforming use; but he had some reservations about the garage because, although it may have been built at the same time, it may have been converted when the owner became more arthritic and required the services of a chauffeur, which would appear to have occurred after the construction of the original house. He said that he was not entirely convinced that the garage was nonconforming at the time prior to the Ordinance. Vice Chairman Hammack said that it troubled him that there was a letter from a Zoning Inspector saying that all the units were nonconforming. He asked, if the County took action in 1975, what would prevent any Zoning Administrator from going back and giving a reinterpretation that there was no authority to act, even though it was a valid decision. He said that was the only way that the County could attack this issue.

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Mr. Ribble referred to a similar case which was directed to go before the Board of Supervisors for action or inaction and nothing resulted. He said that he believed that was an opportunity to amend the Ordinance or determine that the action had been incorrect.

Mr. Ribble said he believed that Mrs. Harris's motion was fair, but he would like to see it go further; however, he said that he would support it.

Mrs. Thonen asked what could be done with the property in violation and asked whether it should be taken down or boarded up.

Mr. Ribble brought up the possibility of deferral. Mrs. Harris said she believed that adequate information had been provided.

Mrs. Harris called for the question. Vice Chairman Hammack asked if there was any further discussion.

Mrs. Harris requested a five-minute recess to review the material and Vice Chairman Hammack so ordered.

The Board reconvened at 2:05 p.m.

Vice Chairman Hammack said that he would change his position because he did not believe that he could make a judgement that the Zoning Administrator in 1975 acted in error with respect to a portion of his investigation and not in error with the other portion. He said that a letter existed stating that an investigation had been made, it mentions all three units, and could not support the motion made by Mrs. Harris, even though he had indicated previously that he would, because he had reservations about when the garage had been converted into a dwelling unit. He said, however, that he had the Zoning Administrator's letter saying that there had been a thorough investigation and he would support the appellant and vote against the motion.

Mr. Ribble suggested that Mrs. Harris might want to amend her motion.

Vice Chairman Hammack said that, to do what he initially said he would do, would be to say that the Zoning Administrator was wrong with respect to some things and right with respect to other things; he believed that was completely inconsistent with the argument being made by either party; and, if he was wrong, he was wrong, period. He said that, if the Zoning Administrator did not have authority to act in one instance, he did not have authority to act in all instances under consideration. He said that he did not believe that the burden of proof was on the appellant after receiving the determination in writing from the Zoning Administrator stating that it was a nonconforming use. Vice Chairman Hammack said he believed that the burden of proof shifted to the County at that point.

Mrs. Thonen made a motion to overturn the Zoning Administrator's determination in A 91-V-015. She said she believed that it was difficult to prove that the use was nonconforming, but it was just as difficult to prove that it was not. She said that the fact that there was a letter advising the appellant that the use was nonconforming in 1975, and the fact that the neighbors said that the construction and expansion took place in the 1940's, she found it difficult to try to figure out what had happened fifty years ago and whether it occurred before 1941. She said that the Zoning Inspector was a legal agent of the Zoning Administrator and she would assume that he had talked with someone about this and received an answer that, since the situation has been going on for twenty years, it was a nonconforming use.

Mr. Ribble seconded the motion.

Mrs. Harris asked, if the BZA supported Mrs. Thonen's motion, would it prevent the property from being in jeopardy of having the same thing happen five years later? Vice Chairman Hammack said it would, unless the County appeals the BZA action. Mrs. Thonen said that the action of the BZA was legal and the County could not change it unless they brought it back before the BZA and the action taken at this time would make the use nonconforming. Mrs. Harris said she just wanted to be sure that the appellant would be taken out of jeopardy. Vice Chairman Hammack advised Mrs. Harris that the BZA was reversing the determination of the present Zoning Administrator, which effectively upholds the determination of the previous Zoning Administrator.

The motion carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

The final approval date of the decision is November 15, 1991.

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Page 213, November 7, 1991, (Tape 4), Action Item:

Approval of Resolutions from October 29, 1991

Mrs. Thonen made a motion to approve the resolutions as submitted by the Clerk. Mrs. Harris

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seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Approval of Minutes from September 24, 1991

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Request for Date and Time
Request for Out-of-turn Hearing
Northern Virginia Electric Cooperative Appeal

Mrs. Thonen made a motion to schedule the appeal for January 14, 1992 at 11:00 a.m. Ms. Kelsey advised the BZA that the appellant had requested an out-of-turn hearing because of the expansion of a substation. Mr. Shoup said that the appellant had a site plan waiver request before the Department of Environmental Management (DEM), which could be processed before the middle of December. Vice Chairman Hammack asked why the appellant might have trouble with their site plan and asked if they did not design the site plan properly. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that there was a heavy scheduling problem on the December calendar. Mr. Shoup said that the appellant was requesting December 10 or December 17 as a hearing date. Ms. Kelsey reviewed the December calendar with the Board.

Mrs. Thonen made a motion to deny the out-of-turn hearing request. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

Mrs. Harris seconded Mrs. Thonen's original motion to schedule the appeal for January 14, 1992 at 11:00 a.m. The motion carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Request for Date and Time
Allen J. Fagan Appeal

Mr. Ribble made a motion to schedule the appeal for January 7, 1992 at 11:00 a.m. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Approval of Resolutions

In line with a memo from Jane C. Kelsey, Chief, Special Permit and Variance Branch, Vice Chairman Hammack said he believed that the BZA should not approve resolutions until corrected plats had been received by the BZA. Mrs. Harris asked if the BZA could continue to request the applicants to submit new plats, and not render a decision until the plats had been received, designating a thirty-day limit for submission. Ms. Kelsey suggested to the BZA that, in the future, if the BZA wished to make a decision at the time of the hearing, it could designate the final decision date as the date that the revised plats were presented to the BZA and approved by it. In such a case, the BZA agreed to adopt the following wording as policy:

> Revised plats shall be submitted within thirty (30) days or this variance/special permit is null and void. This decision will not be final until the revised plats are submitted and approved by the Board of Zoning Appeals (BZA).

Vice Chairman Hammack suggested that the above wording be incorporated at the end of the Proposed Development Conditions in cases of this type. He said that, in a case where the BZA believed that the applicant might require more time for revised plat submission, the wording could reflect that change.

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Page 216, November 7, 1991, (Tape 4), ACTION ITEM:

Request for Out-of-turn Hearing
The Church of Northern Virginia, Whole World Fellowship
and Edlin School
SPA 78-C-055-1

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the school would continue to operate in a small church off Ox Road. She said they also wanted to use the site on Vale Road for their computer school. She said that they have leased the facility and are meeting there now, they are in violation. Ms. Kelsey said that she had advised the attorney for the applicant that staff would not recommend an out-of-turn hearing because of the heavy caseload scheduled for December. Mrs. Thonen asked if the applicant could still operate if the out-of-turn hearing were denied. Ms. Kelsey said that she did not know all the facts.

Mr. Ribble made a motion that the request be denied. Mrs. Thonen seconded the motion, which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 215, November 7, 1991, (Tape 4), Action Item:

Request for Out-of-turn Hearing
Isabelita V. Filamor
VC 91-B-122

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that this was a situation where the State had taken some land next to the applicant's house, causing noise to impact the property. She said that the justification for the fence was the adverse noise impact.

Mr. Harris made a motion that the request be denied. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 215, November 7, 1991, (Tape 4), Information Item:

Request for Interpretation
Montessori School of Alexandria

Jane C. Kelsey, Chief, Special Permit and Variance Branch (BZA), said that she was calling this to the attention of the Board of Zoning Appeals because it had recently denied the applicant a special permit amendment because the applicant had not complied with previously imposed conditions. The applicant was now requesting an interpretation, asking if they could change the location of their play area. Ms. Kelsey said that she was uncomfortable with recommending to the Zoning Administrator that she allow that, by interpretation, because the BZA had just denied the use. Ms. Kelsey referred the BZA to the plat which the applicant had submitted. The BZA took this request under advisement.

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As there was no other business to come before the Board, the meeting was adjourned at 2:30 p.m.

Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

Paul Hammack, Vice Chairman
Board of Zoning Appeals

SUBMITTED: February 4, 1992 APPROVED: February 11, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 12, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 217, November 12, 1991, (Tape 1), Scheduled case of:

9:00 A.M. KIRBY K. & CATHERINE B. GATES, VC 91-P-100, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 3.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 10,712 s.f. located at 2414 Rockbridge St., zoned R-3, Providence District, Tax Map 39-3((16))174.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Gates replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Mike Jaskiewicz, Staff Coordinator, who was not present at the meeting. She stated that the applicants were requesting a variance to the minimum side yard requirement to permit construction of a one-story addition (2-car carport with integral storage) 3 feet from the side lot line. Ms. Kelsey stated that the house location plat indicated that the dwelling on Lot 5 is located 14.9 feet at the closest point to the side lot line.

The applicant, Kirby K. Gates, 2414 Rockbridge Street, Vienna, Virginia, addressed the BZA. He stated that he was the original owner and had purchased the house approximately 27 years ago. Mr. Gates stated that the shape of the lot, as well as the placement of the house on the lot, precluded the construction of an addition without a variance. He expressed his belief that the strict application of the Zoning Ordinance would produce an undue hardship by denying his family adequate parking and storage space. Mr. Gates explained that because of ill health, he and his wife cannot use the existing storage area. He noted that eight neighbors had submitted letters of support for the request. In summary, Mr. Gates stated that the character of the zoning district would not change, there would be no detrimental impact to the area, and the approval of the request would be in harmony with the spirit and intent of the Zoning Ordinance.

In response to Mr. Hammack's question as to whether the storage shed could be placed elsewhere on the property and the size of the addition reduced, Mr. Gates stated that he believed that for aesthetic reason, the addition as proposed was the best possible plan.

Mrs. Thonen noted that the applicants' roof line would extend from the carport to the house. She explained that the roof would protect the applicant during inclement weather.

In response to Mr. Pammel's question as to whether the standards differed when a carport was enclosed, Ms. Kelsey stated that an open carport can extend 5 feet into any required side yard.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 91-P-100 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 7, 1991.

Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he could not support the motion because the applicant could construct a smaller carport by-right. He expressed his belief that the carport would be for the applicants' convenience.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-100 by KIRBY K. AND CATHERINE B. GATES, under Section 18-401 of the Zoning Ordinance to allow addition 3.0 feet from side lot line, on property located at 2414 Rockbridge Street, Tax Map Reference 39-3((16))174, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1991; and

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WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,712 square feet.
4. The lot has an unusual characteristic in that there are converging lot lines on the north side of the property.
6. The situation on the applicants' property is not general in that other lots in the area are rectangular.
7. Due to the placement of the applicants' house and the house on the adjoining property, the integrity of the 24.0 feet between the two houses will be maintained.
8. The intended spirit of the Zoning Ordinance will not be changed in any way.
9. The granting of the variance will not have a detrimental impact on the neighboring properties.
10. There is no other location on the property that the carport could be constructed without a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance.

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific carport shown on the plat prepared by Michael W. Eckhoff, R.A., and dated August 2, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mr. Hammack voting nay. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 219, November 12, 1991, (Tape 1), SCHEDULED CASE OF:

9:10 A.M. LYNN KAHLER BERG, VC 91-V-077, appl. under Sects. 18-401 and 2-505 of the Zoning Ordinance to allow 6.2 ft. high fence to remain in front yard of corner lot and allow addition 1.8 ft. from front lot line of corner lot (4 ft. max. fence height allowed and 30 ft. min. front yard required by Sects. 10-104 and 3-307) on approx. 14,575 s.f. located at 6401 Sixteenth St., zoned R-3, Mt. Vernon District, Tax Map 83-4((2))(8)13,14,15,16.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals. She stated that although the applicant would prefer an indefinite deferral, she had agreed to a sixty day deferral.

Mrs. Thonen made a motion to defer VC 91-V-077 to January 14, 1992, at 9:15 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 219, November 12, 1991, (Tape 1), Scheduled case of:

9:10 A.M. GEORGE P. & JOANNE K. NANOS AND MARGARET K. NANOS, VC 91-V-104, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (bay window) 25.1 ft. from front lot line (27 ft. min. front yard required by Sects. 3-307 and 2-412) on approx. 17,822 s.f. located at 7211 Park Terrace Dr., zoned R-3, Mt. Vernon District, Tax Map 93-4((8))30. (OTH GRANTED 9/17/91) (DEFERRED FROM 11/7/91 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian noted that this case had been deferred from the November 7, 1991 public hearing for additional information.

Mr. Hammack stated that staff had been directed to investigate the application and to determine if a variance was required.

Jane Kelsey, Chief, Special Permit and Variance Branch addressed the Board of Zoning Appeals (BZA). She stated that the memorandum before the BZA from William E. Shoup, Deputy Zoning Administrator, indicated that a variance was not required. She noted that the Fairfax County Building Permit Department had been advised of the situation and would issue the permit. Ms. Kelsey noted that the applicants' fee would be administratively refunded.

Mr. Hammack made a motion to allow the withdrawal of VC 91-V-104. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Mrs. Nanos stated she believed that not only the fee should be returned but that she should be reimbursed for all the expenses incurred during this process.

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Page 219, November 12, 1991, (Tape 1), Scheduled case of:

9:20 A.M. THOMAS G. DUNCAN, VC 91-Y-097, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 11.8 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 10,805 s.f. located at 12402 Alexander Cornell Dr., zoned R-3 (developed cluster), Sully District (formerly Centreville), Tax Map 45-2((6))225.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Duncan replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow an addition to be located 11.8 feet from the rear lot line. She noted that the addition would consist of a screened porch of approximately 240 square feet. Ms. Bettard said the applicant also proposed to construct a 4 foot high deck which would be located 6.4 feet from the rear lot line. She stated that Section 3-307 of the Zoning Ordinance requires a minimum rear yard of 25 feet in the R-3 District under the cluster provisions of the Ordinance; therefore, the applicants were requesting a variance of 13.2 feet from the minimum required rear yard for the addition. Ms. Bettard further noted that a variance was not required for the deck since it would be less than 4 feet in height. In summary, she noted that research in the Zoning Administration Division files indicated that a variance had been approved on Lot 224 and a variance had been denied on Lot 279.

The applicant, Thomas G. Duncan, 12402 Alexander Cornell Drive, Fairfax, Virginia, addressed the BZA. He stated that the property which he purchased in 1982 is exceptionally shallow. Mr. Duncan expressed his belief that the application met all nine standards required for the granting of a variance. He said that he had conferred with the neighbors who had expressed their support for the request.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack asked why the length of the proposed porch would be 16 feet from the main structure instead of parallel to it. Mr. Duncan explained that because the area directly behind his property is common ground, the proposed location for the porch would have the least impact on the adjoining neighbors.

In response to Mr. Hammack's question as to where the porch is sited on Lot 224, Ms. Battard presented the BZA with a house location plat but explained that she would have to research the matter. Mr. Duncan also answered and stated that the neighbors' porches are constructed to the rear of their property for privacy as well as for aesthetic considerations.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-Y-097 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 7, 1991.

Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she could not support the motion. She expressed her belief that the lot is too small for the addition and no hardship existed.

Mrs. Harris stated that she too could not support the motion. She said that the plans for the addition could be reconfigured to require a lesser variance.

Mr. Kelley noted that several similar type variances had been granted in the subject area. Mrs. Thonen stated that several had also been denied and that no hardship exists on the applicants' lot. Mrs. Harris noted that only variances 15 feet from the rear lot line had been granted.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-097 by THOMAS G. DUNCAN, under Section 18-401 of the Zoning Ordinance to allow addition 11.8 feet from rear lot line, on property located at 12402 Alexander Cornell Drive, Tax Map Reference 45-2((6))225, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 10,805 square feet.
4. The applicant has presented proof that the necessary standards for the granting of a variance have been met.
5. The shallowness of the lot precludes the construction of an addition on the lot without a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or

unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the addition to the specific dwelling shown on the plat (dated June 7, 1991) prepared by Kenneth W. White and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which **FAILED** by a vote of 3-3 with Chairman DiGiulian, Mr. Kelley, and Mr. Pammel voting aye; Mrs. Harris, Mrs. Thonen, and Mr. Hammack voting nay. Mr. Ribble was absent from the meeting.

Mr. Kelley made a motion to waive the twelve month waiting requirement for the filing of a new application. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1991.

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Page 221, November 12, 1991, (Tape 1), Scheduled case of:

9:30 A.M. PATRICIA ELIZABETH & WARREN RAYMOND JONES, JR., VC 91-D-094, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 30.0 ft. from front lot line (35 ft. min. front yard required by Sect. 3-207) on approx. 22,335 s.f. located at 1953 Rockingham St., zoned R-2, Dranesville District, Tax Map 41-1((13))(8)18,19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Jones replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicants were proposing an addition to be located 30 feet from the front lot line. Ms. Bettard noted that Section 3-307 of the Zoning Ordinance requires a minimum front yard of 35 feet; therefore, the applicants were requesting a variance of 5 feet to the minimum front yard requirement.

Ms. Bettard stated that research of the files in the Zoning Administration Division indicated that several dwelling in the subdivision are located closer than the 35 foot minimum front yard requirement. She explained that while variances had not been received for these structures, Franklin Park subdivision currently consists of substandard lots which were subdivided prior to the adoption of the current Zoning Ordinance in 1978. She noted that variances had been both granted and denied in the immediate area. In summary, Ms. Bettard stated that the Franklin park Homeowners Association had submitted a letter of support to the BZA.

Mr. Kelley asked how many houses in the Franklin Park Subdivision had been built prior to 1978. Ms. Bettard stated that although she had an aerial photograph of the subdivision, she could not provide the in-depth information requested by Mr. Kelley without further research.

Mr. Jones stated the subdivision consisted of houses built in the 1800's, in the 1940's, and in the 1950's. He noted that the property had been subdivided into 50 foot by 200 foot

lots. Mr. Jones said that the list submitted to the BZA consisted of houses constructed prior to the Zoning Ordinance and did not meet the 35 foot setback requirements.

In response to Mrs. Harris' question regarding the large graded area depicted on the plat, Mr. Jones stated that the 15 by 22 foot area was proposed for an entry atrium.

Mr. Hammack asked whether a garage was included in the proposed addition. Mr. Jones stated the addition would consist of a garage, two bedrooms, two bathroom, an entry, an entry closet, and the atrium. He explained that existing parking area would become part of the driveway.

In response to Chairman DiGiulian's question as to whether the footprint of the proposed addition was larger than the footprint of the existing dwelling, Mr. Jones confirmed that it was. He explained that when the house was purchased in 1990, he realized that an addition would be necessary to accommodate his family. He stated that the heavily wooded lot and the neighborhood were so desirable that he believed the benefits would be worth the inconvenience. Mr. Jones stated a great deal of planning had gone into the project to insure that the addition would enhance the area, would be aesthetically pleasing, and would blend in with the contemporary style of the existing structure.

In response to questions from the BZA, Mr. Jones stated that the size of the bedroom, the retaining wall, and the family's needs were taken into consideration when the addition was planned. He explained that although by changing the site of the addition it could be constructed by-right, the variance would allow for the preservation of the existing trees on the property.

Mr. Jones advised the BZA that staff had recommended approval. Chairman DiGiulian explained to Mr. Jones that staff does not make a recommendation, either for or against the approval, of a variance. He noted that in the statement of justification the applicant stated that at least four existing houses on Rockingham Street were closer to the front lot line than the proposed addition.

In response to a question from Mrs. Thonen as to when the house was built, Mr. Jones said that the house was constructed in 1984.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 91-D-094 for the reasons reflected in the Resolution. He expressed his belief that with better planning, the addition could be constructed without a variance. Mr. Hammack also stated that the request was too great.

Mrs. Harris seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammal stated that while he supported the motion, he had great concern regarding the preservation of the existing trees.

Mrs. Thonen stated that she would support the motion because the house had been built under the new Zoning Ordinance. She expressed her belief that the proposed addition could be scaled down so that it would be in harmony with the existing structure and with the neighborhood.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-094 by PATRICIA ELIZABETH AND WARREN RAYMOND JONES, JR., under Section 18-401 of the Zoning Ordinance to allow addition 30.0 feet from front lot line, on property located at 1953 Rockingham Street, Tax Map Reference 41-1((13))(8)18, 19, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 22,335 square feet.
4. The amount of the variance sought by the applicant is too large.
5. The BZA cannot support a variance for a 33.0 foot wide garage.
6. With better planning, the addition could be built by-right.

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This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1991.

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Page 223, November 12, 1991, (Tape 1), Scheduled case of:

9:40 A.M. BENJAMIN L. & EVANGELINE V. LAZATIN, VC 91-P-098, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.9 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 9,957 s.f. located at 8509 Bethany Ct., zoned R-3 (developed cluster), Providence District, Tax Map 39-1((21))5A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lazatin replied that it was.

Barnadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to allow an addition to be located 21.9 feet from the rear lot line. Ms. Bettard noted that the 160 square foot addition would consist of an unheated sunroom and would be constructed by enclosing an existing second-story deck with glass and screen. She stated Section 3-307 of the Zoning Ordinance requires a minimum rear yard of 25 feet in the R-3 District developed under the cluster provisions of the Ordinance; therefore, the applicants were requesting a variance of 3.1 feet.

In response to Mr. Hammack's question as to whether the addition would be constructed on the existing second story deck, Ms. Bettard stated that it would be.

The applicant, Benjamin L. Lazatin, 8509 Bethany Court, Vienna, Virginia, addressed the BZA. He stated that he would like to enclose the existing open deck.

In response to questions from the BZA, Mr. Lazatin stated that he had purchased the property in 1985. He explained that he wished to enclose the deck so that his family could use the sunroom all year round. He noted that the addition would not extend any farther into the rear yard than the existing deck.

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Mrs. Thonen expressed her belief that the shape of the lot and the sewer easement present a hardship. She noted that the request was for a minimum variance and the existing deck would merely be enclosed.

Mrs. Harris asked staff how far the structures on Lots 21 and 22 were from the lot line. Ms. Bettard stated that the dwelling on Lot 21 was 23.79 feet and the dwelling on Lot 22 was 17 feet from the shared lot line.

The applicant's agent, John Wrigley, contractor with the firm of Reamco, Inc. 6826 Hill Park Drive, Lorton, Virginia, addressed the BZA. He stated that the applicants would like to enclose the deck in order to accommodate their growing family.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 91-P-098 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 7, 1991.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she supported the motion because an extraordinary condition exists, the lot has an exceptional shape, there is a sewer easement to the rear of the property, and the request is for a minimum variance.

Mrs. Harris stated that she too supported the motion. She noted that because the adjoining properties have a lesser rear yard setback, the request would not set a precedent and would be harmonious to the area.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-098 by BENJAMIN L. AND EVANGELINE V. LAZATIN, under Section 18-401 of the Zoning Ordinance to allow addition 21.9 feet from rear lot line, on property located at 8509 Bethany Court, Tax Map Reference 39-1((21)5A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 9,957 square feet.
4. The applicant has met the necessary standards for the granting of a variance.
5. The lot has exceptional shape.
6. The granting of the variance will not set a precedent in the neighborhood.
7. The photographs and testimony substantiate that the back of the property has extensive screening.
8. The request is for a minimum variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

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6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the specific addition to the dwelling shown on the plat (dated June 7, 1991) prepared by Kenneth W. White and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 225, November 12, 1991, (Tape 1), Scheduled case of:

9:50 A.M. PETER W. & STACY M. HODES, SP 91-Y-049, appl. under Sect. 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for certain R-C lots to allow addition 13.3 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 11,029 s.f. located at 15324 Blueridge View Dr., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 53-3((3))24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Hodes replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval of a special permit for a reduction in the minimum yard requirements in the R-C District to allow an existing carport to be enclosed at a location 13.3 feet from the side lot line. He noted that Sect. 3-C07 of the Zoning Ordinance requires a minimum side yard of 20 feet; therefore, the applicants were requesting a modification of 6.7 feet to the minimum side yard requirement. Mr. Riegle said that staff recommended approval of the request. He explained it was staff's belief that the request complied with the applicable standards in regard to when the property was rezoned in the R-C District and the fact that the proposed construction would have met all the requirements of the previous R-2 (cluster) Zoning District. Furthermore, staff believed that the proposed construction was compatible with the surrounding neighborhoods and noted that all the other dwellings in the subdivision were constructed under the provisions of the R-2 (cluster) Zoning District and have side yard setbacks very similar to that proposed in the application before the BZA.

The applicant, Peter W. Hodes, 15324 Blueridge View Drive, Centreville, Virginia, addressed the BZA. He stated that there are six of the same model house in the subdivision and five of them were built with carports. He further stated that three of the five carports have been enclosed. Mr. Hodes expressed his belief that these enclosures have enhanced the aesthetic value of the houses. He said that the added space would also relieve the family's storage problems as it would be used to store such items as bicycles.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

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Mr. Hammack made a motion to grant SP 91-Y-049 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 7, 1991.

Mrs. Thonen seconded the motion. She noted that had the carport been enclosed prior to the rezoning it could have been done by-right.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-049 by PETER W. AND STACY M. HODES, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for certain R-C lots to allow addition 13.3 feet from side lot line, on property located at 15324 Blueridge View Drive, Tax Map Reference 53-3((3))24, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 12, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C and WSPOD.
3. The area of the lot is 11,029 square feet.
4. That the property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. That such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-913 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approved for the location of the specific addition shown on the plat submitted with this application and is not transferable to other land.

2. A building permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the approval date* of the special permit unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 20, 1991. This date shall be deemed to be the final approval date of this special permit.

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Approval of Resolutions from November 7, 1991 Hearing

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Hammack

Page 227, November 12, 1991, (Tape 1), ACTION ITEM:

Approval of Resolutions from November 7, 1991 Hearing

seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 227, November 12, 1991, (Tape 1), Action Item:

Request for Date and Time
Joseph Mitchell Appeal

Chairman DiGiulian noted that Mr. Kelley had requested that the appellant be present to testify to the request. He stated that the appellant would like to appear at the next scheduled public hearing.

Mrs. Thonen made a motion to defer decision until November 19, 1991. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 227, November 12, 1991, (Tape 1), Action Item:

Approval of Minutes from September 10, 1991 Hearing

Mr. Pammel made a motion to approve the Minutes as submitted by the Clerk. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Mr. Pammel complimented staff on the thoroughness of the minutes. He stated that he had read the Foreman Appeal very extensively and found it to be well written.

Jane Kelsey, Chief, Special Permit and Variance Branch, thanked Mr. Pammel.

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Page 227, November 12, 1991, (Tape 1), Scheduled case of:

Request for Date and Time
Electronic Data Systems Corporation Appeal

Mr. Pammel made a motion that the appellant be present to testify concerning the request. He stated that the appellant could not be present at this hearing but would like testify at the next public hearing.

Mrs. Thonen made a motion to defer decision until January 21, 1992, at 8:00 p.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 227, November 12, 1991, (Tape 1), Scheduled case of:

Request for Date and Time
St. Mark's Catholic Church Appeal

Mrs. Thonen made a motion to schedule the appeal on January 14, 1992, at 11:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 227, November 12, 1991, (Tape 1), Scheduled case of:

Approval of Revised Survey Plat
Joseph A. Lahoud, SP 91-V-043

Mrs. Harris made a motion to approve the revised plat in accordance with the special permit approved by the Board of Zoning Appeals on October 29, 1991. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 227, November 12, 1991, (Tape 1), Scheduled case of:

Request for Intent to Defer
Carlos A. Reyes, SPA 83-L-096-1 and VC 91-L-102

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant had additional structures that were in error and he is also operating a home child care facility; therefore, he would need additional variances or special permits. Ms. Kelsey explained that the applicant was requesting the Board of Zoning Appeals issue an intent to defer so that the application could be revised.

Page 228, November 12, 1991, (Tape 1), REQUEST FOR INTENT TO DEFER, CARLOS A. REYES, SPA 83-L-096-1 AND VC 91-L-102, continued from Page 227)

Mrs. Thonen made a motion to grant an intent to defer. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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The Board of Zoning Appeals recessed at 10:20 a.m. and reconvened at 10:55 a.m.

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Page 228, November 12, 1991, (Tape 2), Scheduled case of:

10:05 A.M. ARLAN E. & RITA FINFROCK, SP 91-B-045, appl. under Sect. 8-917 of the Zoning Ordinance to allow 3 dogs (12,500 s.f. min. lot required by Sect. 2-512) on approx. 10,500 s.f. located at 8436 Thames St., zoned R-3, Braddock District (formerly Annandale), Tax Map 70-3((4))114.

Mrs. Harris made a motion to defer SP 91-B-045 until January 28, 1992. She explained that due to the death of the applicant, Arlan E. Finfrock, his daughter had requested a deferral. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 228, November 12, 1991, (Tape 2), Scheduled case of:

10:15 A.M. KIRK M. & MINH-NGA AGON, SP 91-P-048, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 1.665 acres located at 10662 Oakton Ridge Ct., zoned R-1 (developed cluster), Providence District, Tax Map 37-3((17))72. (OTH GRANTED 9/10/91)

Chairman DiGiulian noted that a request for withdrawal of the Special Permit had been received by the Board of Zoning Appeals (BZA).

Mrs. Harris moved to defer decision on the withdrawal until November 19, 1991. She explained that additional information would be needed before the BZA could act on the withdrawal. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting. Mr. Pammel expressed his concern regarding the cost involved in processing an application only to have the applicant withdraw the application.

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Page 228, November 12, 1991, (Tape 2), Scheduled case of:

10:35 A.M. ROBERT A. & MARGARET A. SCHUTT, SP 91-L-046, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 11,756 s.f. located at 6512 Bowie Dr., zoned R-3, Lee District, Tax Map 80-4((7))(L)452.

Chairman DiGiulian noted that a request for withdrawal of the Special Permit had been received by the Board of Zoning Appeals (BZA).

Mrs. Harris moved to defer decision on the withdrawal until November 19, 1991. She explained that additional information would be needed before the BZA could act on the withdrawal. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting. Mr. Pammel expressed his concern regarding the cost involved in processing an application only to have the applicant withdraw the application.

Mrs. Harris stated that the many inconsistencies between the applicants' previous statement and the current statement have raised many questions. She noted that the applicants had first submitted a statement of justification for an accessory dwelling unit within the house. After realizing that an administrative approval could be granted, the applicant submitted a second statement requesting administrative approval implying that a second kitchen, which would in no way would constitute an accessory dwelling unit, would be installed.

After a brief discussion, it was the BZA's decision to request staff to provide a copy of the regulation and to present a written report regarding the changes in the procedure regarding accessory dwelling units. The BZA also requested that William Shoup, Deputy Zoning Administrator, be present at the next public hearing to discuss the regulation which entitled the Zoning Administrator to grant administrative approval for an accessory dwelling unit.

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10:50 A.M. AMERIBANC SAVINGS BANK, FSB, SP 91-Y-059, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 15.3 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-107) on approx. 35,719 s.f. located at 2952 Treadwell La., zoned R-1 (developed cluster) Sully District (formerly Centreville), Tax Map 35-2((2))15. (OTH GRANTED 10/8/91)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Avis replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a reduction to the minimum yard requirements based on an error in building location to allow an addition to remain 15.3 feet from the rear lot line. Ms. Bettard said that the addition consists of a roofed and screened deck, 21 feet in height. She noted that an open deck, which meets the Zoning Ordinance requirement, is located on the north and south sides of the subject addition. She stated that Section 3-107 required a minimum rear yard of 25 feet in the R-1 Zoning District developed under the cluster provisions of the Zoning Ordinance, therefore, a modification of 9.7 feet from the minimum rear yard requirement was requested for the addition. Ms. Bettard noted that mature deciduous trees screen the area between the addition and the adjoining property.

The applicant's agent, Pamela L. Avis, 7630 Little River Turnpike, Annandale, Virginia, addressed the BZA. She stated that the applicant purchased the property without the knowledge that any problems existed until a letter informed Ameribanc that the screened porch area of the deck was in violation. Ms. Avis noted that the settlement attorney had only checked the covenant and not the Fairfax County setback requirements. She expressed her belief that the addition enhanced the property and was aesthetically pleasing.

Ms. Avis stated that there is a contract on the property and the prospective owner wishes to retain the screened porch. She noted that while the porch added to the living area, it would not increase the occupancy. Ms. Avis stated that although the area was well screened with deciduous trees, the applicant would be willing to adopt any requirements mandated by the BZA.

Mrs. Harris asked if the large evergreen tree hedge along the back lot line would provide the necessary screening. Ms. Avis stated while the evergreens do provide sufficient screening between the two properties, they were not on the applicant's land. She noted that during the time of the year when the addition would have the peak usage, the deciduous trees, as well as the evergreen trees would provide extensive screening.

There being no speakers in support to the request, Chairman DiGiulian called for speakers in opposition.

Kathy Douchez, 2956 Treadwell Lane, Herndon, Virginia, addressed the BZA and presented a letter of opposition from another neighbor. She stated that she was in opposition to the request because of the noise factor. Ms. Douchez explained that while the evergreen trees provide screening, they could not be considered a permanent barrier because they were along the driveway and were in jeopardy of being damaged by automobiles. Ms. Douchez stated that the former owner, Mr. Davis, had constructed the existing deck and screened porch. She expressed her belief that when the construction took place the owner had realized that it would be in violation. She stated that when she had reported the violation, the Fairfax County officials had taken no action. Ms. Douchez expressed her belief that when the violation was pointed out to Mr. Davis, he had intimidated the County officials by threatening a lawsuit, therefore, he was allowed to construct the addition in violation of the Zoning Ordinance. She further alleged that when she approached Mr. Davis regarding the violation, he had threatened her so she had ceased to pursue the matter.

Ms. Douchez explained to the BZA that although the addition was aesthetically pleasing, the noise was a problem. She noted that the addition may lower the property value of her home because it would be used as a living area and would have the potential noise from a radio or television. Ms. Douchez expressed her belief that the Zoning Ordinance should be enforced.

In response to Mr. Hammack's question regarding the distance between her house and the lot line, Ms. Douchez stated that the front of her house was approximately 13 feet from the lot line.

Mrs. Harris asked what the distance was between the screened porch and her house. Ms. Douchez stated that from the first point of her house it was approximately 50 feet.

There being no further speakers in opposition, Chairman DiGiulian called for rebuttal.

Ms. Avis expressed her belief that any activity conducted in the backyard would create a noise factor. She stated that the screened porch would not present any greater noise factor than that which would be allowed on the deck.

Mrs. Thonen stated that the BZA must rule on the noise and glare standards. She asked if the property could be screened to mitigate the impact of the noise and glare on the neighbors. Ms. Avis expressed her belief that the screened porch helped to contain the noise impact and said that the while the trees presented sufficient screening, the applicant would be willing to install a noise barrier in the form of a fence.

Chairman DiGiulian expressed concern regarding the County's lack of action on the matter. He stated that according to letters received from the neighbors, many complaints had been filed with the appropriate County officials during the last six years.

Mr. Kelley noted that Ms. Douchez had testified that she did not pursue the matter because of Mr. Davis' threats. He expressed his belief that Ms. Douchez should have gone forward with her complaint and noted that when a person has been threatened they can ask for police protection.

Mr. Pammel expressed concern regarding the building permit and the County's record keeping system. Ms. Douchez stated that although Mr. Davis had received a building permit, she believed that the County had erroneously issued it. She explained that Mr. Davis had invested a great deal of money on the project and when the County discovered the error he threatened to sue if forced to abide by the Zoning Ordinance.

In response to Mrs. Thonen's question regarding whether anyone had informed Ameribanc of the violation before they purchased the property, Ms. Avis stated the applicant had no knowledge of the problem until the Notice of Violation was received.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to defer the request to give staff time to determine whether a building permit was issued. She also requested that the applicant conduct an investigation to determine if noise mitigating measures could be installed. Mrs. Harris stated that additional testimony by the applicant and the neighbors would be permitted.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a date of December 3, 1991, at 10:50 a.m.

Chairman DiGiulian called for discussion.

Mr. Kelley stated he would support the motion but expressed his belief that although noise mitigation measures should be taken, the addition should be permitted to remain. He stated that when Ms. Douchez allowed herself to be intimidated by Mr. Davis she had condoned the use.

Mrs. Thonen stated that she would support the motion in order to permit the applicant to provide measures that would mitigate the noise and glare problems.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Mr. Hammack expressed his concern regarding the County Regulations that permit administrative approval for accessory dwelling units. He requested that staff provide a copy of the administrative regulations. Mr. Hammack explained that he believed the administrative approval was adopted contrary to the law that requires the Board of Zoning Appeals (BZA) to grant approval of accessory dwelling units. He further requested that staff research the matter and provide information regarding the date of adoption, the advertisement procedure, and the public input.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She noted that Mr. Hammack had informally requested information regarding a subdivision issue and asked that he make a motion to that effect.

After a brief discussion it was the consensus of the BZA not to pursue the matter.

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As there was no other business to come before the BZA, the meeting was adjourned at 11:31 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 14, 1992

APPROVED: January 24, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 19, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

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Chairman DiGiulian called the meeting to order at 8:10 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 231, November 19, 1991, (Tape 1), Scheduled case of:

8:00 P.M. HARVEY G. AND JATON L. WEST APPEAL, A 91-Y-016, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that appellant's multi-use court may not cover more than 30% of the minimum required rear yard absent approval of a variance by the Board of Zoning Appeals on approx. 11,007 s.f., located at 11313 Nancyann Way, zoned R-3, WS, Sully District (formerly Springfield), Tax Map 56-2((8))18.

William E. Shoup, Deputy Zoning Administrator, presented the staff report. He stated that on July 30, 1991, the Board of Zoning Appeals (BZA) denied a variance request by the appellants to allow the multi-use court to remain. Mr. Shoup stated at issue was a determination made by the Zoning Administrator which was brought out during the variance public hearing at which time the BZA expressed concern that the provisions of Paragraph 3 of Section 10-103 of the Zoning Ordinance were applicable. He stated it was staff's position that the court did constitute a use as it was clearly designed to accommodate basketball, tennis, and perhaps other recreational activities. Based on the definition of use set forth in the Zoning Ordinance, Mr. Shoup stated that it was staff's position that it was a use and was a permitted accessory use; therefore, it was subject to Paragraph 3 of Section 10-103 which limits the amount of area in the minimum required rear yard in single family detached lots that could be covered by accessory uses. He stated that the court occupies approximately 73 percent of the minimum required rear yard, well in excess of the 30 percent limitation; therefore, it was staff's position that the appellant was in violation of the Zoning Ordinance provisions.

Ken Sanders, 3905 Railroad Avenue, Suite 200N, Fairfax, Virginia, attorney for the appellants, came forward and stated that he would address what he believed were regulations run "amuck." He asked the BZA to keep in mind that in Fairfax County the Ordinance provides that any homeowner with any activity he or she conducts in their back yard must be conducted in only 30 percent of the required rear yard. Mr. Sanders stated that the Zoning Administrator's ruling says that use is defined as any activity that a homeowner can do on a tract of land. He did not represent the appellants during the variance process but it appeared to be a "comedy of errors" as the appellants had contacted various agencies in the County and were given either incorrect information or were not given proper guidance. Based upon the information they did obtain, the appellants proceeded to construct a very expensive facility which they are now under orders from the County to destroy which would cost more than it cost to build the original facility. Mr. Sanders stated in looking at the minutes an issue was raised by Mr. Pammel about whether or not someone could concrete their back yard in Fairfax County. The Zoning Administrator stated that a concrete deck is a patio, which is a deck by definition under the County Ordinance, and that is restricted to the 30 percent coverage. Mr. Sanders stated that a deck is specifically defined as something attached to the house; therefore, if a homeowner chose to do so they could concrete their back yard from border to border, if the concrete was not attached to the house. He read from Section 10-103 of the Zoning Ordinance which addresses "accessory uses" and cited the various uses that fall within the category and stated that the uses are limited and shall not cover more than 30 percent of the required rear yard. Mr. Sanders pointed out that the Ordinance is designed to achieve a purpose but cannot be rationally interpreted to do that and there does not appear to be any documentation to explain why the 30 percent coverage was used. The appellants have a 25 foot rear yard requirement and the house is more than that from the rear lot line; therefore, the argument that the Ordinance's purpose is to provide some undisturbed open space on homeowners property then why not 30 percent of whatever yard exists from the rear of the house to the lot line. Mr. Sanders stated the appellants have much more than 70 percent of the area from the back of the house to the rear lot line open and undisturbed, but the court lies partly within the 25 foot setback. The appellants could move the court towards their house, leaving it exactly where it is as far as the side lot lines are concerned. The same court would be there with no purpose achieved for the neighbors because it would be in the identical location, which was irrational. He stated the appellants could remove the striping and the nat and at that point there would be no violation and their children could play on the concrete in the same manner as other children. Mr. Sanders stated that the BZA was being asked to support the Zoning Administrator in saying the Ordinance and the use of the term "cover a lot" includes any activity that homeowners make of their back yard in the County. He stated that he did not believe there was any rational nexus between the regulation and the public health, safety, and welfare, which was the basis of the appellant's appeal.

Mr. Kelley asked Mr. Sanders how he would have handled the case had he been the attorney from the time the appellants had been served with the Notice of Violation. Mr. Sanders said that the alternatives would have been to attack the Notice of Violation and get directly to the heart of the Ordinance. Mr. Kelley asked if he would have filed a variance application. Mr. Sanders said that possibly he would not have filed a variance but then there would have been the "exhaustion of remedies" problem.

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Chairman DiGiulian called for anyone who wished to address the appeal.

Kathy Miller, 11309 Nancy Ann Way, Fairfax, Virginia, stated that she lived next door to the appellants, that she had spoken in opposition to the request during the variance public hearing, and that she was still in opposition to the request. Ms. Miller stated that she could not understand how the multi-use court could not be considered a use since it is used as a sports court.

Mr. Hammack asked if a play area for children and animals in a back yard are considered under the use are they restricted to 30 percent of the back yard. Mr. Shoup stated that somewhere reason has to prevail and if a homeowner has a 25 foot minimum rear yard requirement, within that yard, if nothing is done in there to change it and you just have children playing or animals running loose, then staff would be hard pressed to enforce the provision. In the case of the appellant's use, Mr. Shoup stated that there was a definite use, a concrete court that has been constructed, and that it was clearly a use as defined in the Ordinance.

Mr. Hammack called staff's attention to Attachment 10, which places great emphasis on the word "use", and it states "the multi-use court is designed and intended to accommodate activities on the applicant's property. The court therefore constitutes a use and given the specific wording in paragraph 3 there is no authority to preclude the application of this provision to the court", which seemed to cover any use on the property. He stated that the Zoning Administrator then distinguishes the use of decks because that is covered by a different Ordinance. He said he was trying to determine how far to apply the interpretation. In response to a question from Mr. Hammack about restrictions on play equipment, Mr. Shoup stated that structures would come under the provision but children playing in the yard would not.

Mrs. Harris said that she could draw a distinction between a transitory use and one that is a stationery use. Mr. Hammack stated there is nothing in the Ordinance that draws a distinction between transitory and stationery uses and it is rather a broad definition. Mr. Sanders stated that play equipment is also limited to 30 percent.

In response to a questions from Mr. Pammel, Mr. Shoup replied that he did not believe that a homeowner could concrete their entire rear yard. He added that he did not know what the intent was behind the provision but that he assumed that the writers of the Ordinance were trying to be sensitive to the adjoining neighbors.

Mr. Hammack asked why there are no similar limitations on the front and side yards. Mr. Shoup said that he had discussed that issue with the Zoning Administrator and he assumed the rear yard was more sacred. Mr. Kelley said front yards have a street. Mr. Hammack said that in many cases houses are lined up and just as much noise can be generated by car doors slamming.

Mrs. Harris asked if basketball and tennis courts are restricted by the same provision; and, if it was a tennis court the appellants would still be before the BZA. Mr. Shoup said that was correct.

During rebuttal, Mr. Sanders stated that tennis courts can be located 2 feet from the lot line because there are no set backs on the use and the court does not violate a setback only the 30 percent coverage. He stated that he did not understand the rational behind the provision.

Mrs. Harris stated that it was the BZA's responsibility to enforce the Ordinance, not to go back into the logic of the Board of Supervisors who adopted the Ordinance. Mr. Sanders stated that he believed that the BZA could agree or disagree with the Zoning Administrator. Mrs. Harris asked if he agreed that the sports court did extend into the rear yard more than 30 percent. Mr. Sanders said that was correct.

Mr. Kelley asked if the 30 percent coverage was taken into account when someone applies for a permit for a swimming pool. Mr. Shoup said staff does not take measurements but when reviewing the plat they do look at the figures and do ask for additional information if they had questions.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Hammack stated he believed the appellants' attorney would be surprised if he did not make a motion upholding the Zoning Administrator, although he did believe that Mr. Sanders had raised some interesting points. He stated the BZA had applied the statute off and on in similar cases and that he could not explain the rationale or the reasoning. Mr. Hammack stated that he did not think the Zoning Administrator had erred in her interpretation; therefore he would make a motion that the BZA uphold the Zoning Administrator in her determination with respect to A 91-Y-016.

Mrs. Harris seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1991. This date shall be deemed to be the final approval date of this appeal.

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8:10 A.M. KIRK M. & MINH-NGA AGON, SP 91-P-048, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 1.665 acres located at 10662 Oakton(developed cluster), Providence District, Tax Map 37-3((17))72. (OTH GRANTED 9/10/91) (DEFERRED FROM 11/12/91 FOR DEPUTY ZONING ADMINISTRATOR TO ANSWER QUESTIONS AND BRING DOCUMENTATION)

William E. Shoup, Deputy Zoning Administrator, stated that it was his understanding that the BZA was concerned with the new procedure that staff had initiated dealing with a second kitchen in a house which had the effect of negating the need for a special permit for several accessory dwelling units. He stated that he was not prepared to make a presentation but merely to respond to questions from the BZA.

Chairman DiGiulian stated that some of the BZA members believed that the Zoning Ordinance specifically required that the BZA grant accessory dwelling units.

Mr. Hammack stated that last week SP 91-P-048 and SP 91-L-046 came before the BZA and they were told by staff that the applications were being administratively withdrawn due to a new policy. He called the BZA's attention to the form that the Zoning Administrator was now requiring the citizens to fill out. Mr. Hammack stated that he did not believe that an application can be administratively withdrawn once it has been filed and is before the BZA.

Mrs. Harris added that Standard 8-918 states very clearly, as established by the Fairfax County Board of Supervisors' policy on accessory dwelling units, Appendix 5, "The BZA may approve a special permit for the establishment of an accessory dwelling unit." Also, under Appendix 8, Mrs. Harris stated that, "The BZA shall determine that the proposed accessory dwelling unit together with any other accessory dwelling units within the area will not constitute sufficient change to modify or disrupt the predominant character of a neighborhood." She stated that she believed the BZA has the controlling power to establish accessory dwelling units.

Mr. Shoup said that there was no question about that and the action staff took was in no way intended to take away the authority of the BZA. He explained staff established recently "second kitchen certification" whereby people who wish to establish a second kitchen in their dwelling will certify that it is going to be used for private use by family members for their convenience. The problem really resolved around the definition of a "dwelling unit", which says that there is a dwelling unit when all the components for cooking, eating, sleeping, living, and sanitation are present. By way of history, Mr. Shoup stated that years ago it was staff's policy to issue a "second kitchen letter" because it always seemed to be the kitchen that caused the problem. He stated that a homeowner could have a bedroom in a basement with a bathroom along with a recreation room and if a homeowner wanted to add a kitchen which satisfied the Zoning Ordinance definition of "dwelling unit"; thus, a second dwelling unit was established. When these were created, staff would issue a "second kitchen" letter similar to the certification that was before the BZA. Mr. Shoup stated that staff believed that the certification would make it easier for homeowners to add these facilities for their own personal use without running into problems with the dwelling unit definition. He stated there were some abuses to that and back in late 1985 or 1986 the practice was discontinued and what evolved were problems when homeowners came in requesting permission to put a wet bar in that might have an apartment size stove with it, it would constitute a dwelling unit. Staff now finds that many dwellings being built today already have many of those components in the basement minus the kitchen and it was becoming difficult for staff to have citizens coming in with a very legitimate intent to deny the requests. Mr. Shoup cited one case where homeowners had a sitting area in their master bedroom with a bath room and they had a small kitchenette and staff had to say it was not allowed. He stated that staff had been wrestling with the issue for quite some time and finally made a decision that an administrative change had to be made since staff did not believe that the policy was reasonable. The policy is only to be employed when homeowners represent to staff that it will be used for their own personal use. He stated that the effect of that though resulted in some people who would otherwise have to get an accessory dwelling unit special permit now being permitted by right. Staff was saying it was all right to create the second kitchen in conjunction with the other components as long the homeowners represented that it would be for their personal use. Mr. Shoup stated that it was not staff's intent to undo the BZA's authority and that he believed that the reason the BZA had been seeing more accessory dwelling units for family members was because of staff's hard line approach at the zoning permits counter.

Mr. Kelley asked if staff had changed the regulations and reverted to an old regulation. Mr. Shoup stated it was not a change in regulation, but a change in the administration of the regulation. Mr. Kelley asked if staff had to promulgate a new regulation. Mr. Shoup stated that it had to do with the way staff was interpreting the provision and staff believed they had been mistaken and changed the way they were interpreting. Mr. Kelley asked how staff would handle the enforcement issue. Mr. Shoup explained that staff would be using the new administrative practice more carefully and he believed that staff had been penalizing the ninety-eight people who had legitimate intent over concern about the two who may abuse it and turn it into an apartment. Mr. Kelley stated that he believed that the change was a direct result of the BZA's having denied a couple of the accessory dwelling units. Mr. Shoup assured him it was not and stated that the change in administrative practice was totally unrelated to what the BZA was doing with regard to accessory dwelling units. He stated that staff had not considered accessory dwelling units when making their decision; it was only in response to what was being done at the permit counter in having to say "no" to homeowners every day who only wanted to renovate or finish off their basement.

Mrs. Harris stated that referring to the two applications with signed statements that was before the BZA and comparing those with the signed statements wherein the same applicants have stated in the second kitchen letter they wanted only to put in a kitchen. She stated that both statements cannot be right and one applicant had stated that he still wants an accessory dwelling unit for his mother, but he can now do it by right. Mrs. Harris agreed that homeowners should not have to obtain a special permit for an accessory dwelling unit to put in a secondary kitchen, but she was bothered by one applicant's statement that he would still have an accessory dwelling unit by right. She stated that he could not have an accessory dwelling unit by right and that she wanted to know who told him that he could. Mr. Shoup stated that it was a "gray area". Mrs. Harris stated that she believed the applicant's statement was pretty black and white. Mr. Kelley stated it sounded like the applicant may have been given those words by someone who was not knowledgeable about accessory dwelling units. Mrs. Harris stated that in case number SP 91-L-046 the applicant in their statement of justification goes into exactly how large the accessory dwelling unit will be and then the same applicant signs the certification saying that he will only be putting in an extra kitchen which will be in a huge addition on the rear of the house. Mr. Shoup stated homeowners can come in and put an addition on their house, have every single component in there, and just because they add a kitchen for family member usage, staff was saying it became something different and they had to go through the other regulations to do it. Mrs. Harris stated that it appeared the applicant filed the application because he wanted something different. Mr. Shoup stated at that time under staff's hard line approach that was the homeowner's only way to establish what he wanted to do. Mrs. Harris pointed out that the applicant wanted someone else to live there. Mr. Shoup said the application had specified a family member and Mrs. Harris said it did not. He said that he had reviewed the applications with staff and the ones staff would consider would be those that dealt with family members. Mrs. Harris stated even a family member is an accessory dwelling unit. Mr. Shoup stated that the hard line approach is another dwelling unit but again this was an effort for staff to try and be more flexible for family members who represented that it would be used for family members, personal use and convenience. Mr. Kelley said it was represented one way one day and another way another day and he had read the staff report from cover to cover and could find no reference to family members only.

Mr. Hammack said that the staff report stated the accessory dwelling unit would be occupied by family members but the letter written by the architect stated one dwelling unit shall be occupied by family members and the other dwelling shall be occupied by any person 55 years of age or older. He stated that it appeared staff did not read the application very carefully and gave Mr. Shoup bad advice. Mr. Shoup said that perhaps it involved verbal communication and called the BZA's attention to page 4 of the staff report.

Mrs. Harris pointed out that there would be no control over a homeowner selling their property and the new owner renting out the unit. Mr. Shoup stated that would become an enforcement issue. Mrs. Harris stated that the new policy was like "driving a Mack truck through residential single family dwelling units" and Mr. Shoup replied that he did not see it that way and agreed there would be some homeowners who would abuse the new policy. He stated that every day homeowners come to the building permit department requesting approval to put a wet bar in their basement and are told they cannot do that. The homeowners delete it from their plans, obtain a building permit, finish off their basement, and probably include the wet bar anyway. Mr. Shoup stated it was not staff's intent to take any authority away from the BZA. Mrs. Harris stated that she was still not convinced that staff had the right to administratively withdraw the applications and that she would like to hear the applications.

Mr. Hammack stated he believed the certificate presented to the homeowners for their signature should be changed to include rental properties, it should be notarized, and it should be recorded among the land records. Mr. Shoup stated that staff had discussed the recording issue and since the use was allowed by right they believed that it would be an unnecessary burden. Mr. Hammack stated that he could foresee problems with this type of use being granted by right. Mr. Kelley stated that he did not believe that the BZA would not be hearing any accessory dwelling unit applications any longer. Mr. Ribble stated that he agreed with Mr. Hammack's comments.

Chairman DiGiulian stated he believed the County has routinely for years approved building permits for new houses with wet bars in the recreational room. He stated that he believed there is a difference between a wet bar and a kitchen. Mr. Shoup stated there is nothing that precludes the second kitchen.

Mr. Hammack stated he believed that the statute should be amended to be more specific as to what is a single family detached residence and what is permitted. He stated that he did not fault staff for trying to be more flexible in their approach but asked if doing this administratively was the way to go. Mr. Shoup stated that in the long run he did not think so and the issue is on the work program which has 269 items to be reviewed.

Mr. Pammel stated that he was concerned about a representation at the previous public hearing that the filing fee would be refunded since both applications have been publicly advertised and both applications have been staffed which involves a considerable expenditure that is not even close to being covered by the fee. He stated that he could not support "at this late stage of the game" administrative withdrawal in addition to reimbursing the applicant the amount of the filing fee. Mr. Hammack pointed out the applicants rely on staff to tell them what to do. Chairman DiGiulian noted that the policies and procedures changed after the

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application was staffed and that he agreed with Mr. Pammel's comments. Mr. Kelley stated that he did not believe that was decision to be made by the BZA.

Mr. Hammack asked if the Schutt application also qualified under a duplex ordinance since it was in a separate building over the garage. Mr. Shoup stated that the garage was attached to the house on the second floor and pointed out that there has to be internal access for second kitchen certification. Mr. Hammack asked why and Mr. Shoup explained that staff would be allowing the use as part of the dwelling unit and if there is no internal access there would be two separate units. Mr. Hammack stated that the BZA had denied a special permit where the applicant was requesting approval for an accessory dwelling unit but there would no internal circulation and asked if staff considered the second floor of a garage attached by an area way to be within the structure. Mr. Shoup replied that he did because the addition becomes part of the structure.

Mrs. Harris asked what would happen if the BZA did not allow the withdrawal of the applications and to proceed with the public hearings. Mr. Shoup stated that the applicants have already signed the certifications and have probably obtained building permits. Mr. Kelley stated that he had no desire to hear the cases since it appeared staff was going to grant the use anyway. He stated that he had planned to try to bring out in testimony, particularly in the Schutt case, that the applicants were going to establish an accessory dwelling unit and pay for it and the garage by renting it. Mr. Kelley stated he did not know how staff was going to protect against that kind of thing in the future when staff was encouraging homeowners to sign the certifications.

Chairman DiGiulian stated that once it becomes an enforcement issue, unless there is a complaint filed by a neighbor, nothing will be done about it. Mr. Kelley stated that he believed that it was going to change the character of the neighborhood and staff is going to have a problem on their hands that they cannot see. Mr. Shoup asked what would happen if, in the Schutt application, the applicant eliminated the kitchen, put on the addition, and the same arrangement was going to occur but they would share the kitchen facilities. He stated that the structure would be the same, the same living arrangement, the same individuals involved, with the only difference being whether or not there is a second kitchen. Chairman DiGiulian pointed out that the second kitchen certainly makes it easier to rent. Mr. Shoup agreed but asked if staff should penalize the majority of the homeowners out of that fear. Mrs. Harris stated that according to the applicant's affidavit the unit was going to be rented to anyone over 55. Mr. Shoup stated that had not been his understanding. Mrs. Harris stated it was amazing how homeowners changed so fast when they realized they can get something administratively done as opposed to going through a public hearing. Mr. Shoup stated he believed the representation that the unit would be used by family members was confirmed prior to the change in policy. Mrs. Harris stated that she would predict that there would be a significant drop in applications requesting accessory dwelling units.

Mr. Hammack stated that he would like to continue the cases for a week and ask the applicants to appear before the BZA and request withdrawal of the applications. He stated that he was not willing to accept the letters nor was he willing to accept the Zoning Administrator's explanation but that he would not like to take any action that would be prejudicial to the applicants. Mr. Pammel stated that he would move to make a motion to that effect. Mr. Hammack seconded the motion.

Chairman DiGiulian restated the motion. A discussion took place among the BZA members regarding staff's actions and how it would impact the applicants. Mrs. Harris called for the question. The motion failed by a vote of 2-4 with Mr. Hammack and Mr. Pammel voting aye; Chairman DiGiulian, Mrs. Harris, Mr. Kelley and Mr. Ribble voting nay. Mrs. Thonen was absent from the meeting.

Mrs. Harris made a motion to allow the administrative withdrawal of the application under great protest. Mr. Kelley asked that the maker of the motion add "as requested by staff." Mr. Ribble seconded the motion. Mrs. Harris stated that she believed the issue had been handled badly and that she had significant questions that she hoped could be addressed in the future. Mr. Hammack stated that he would oppose the motion because he would like to hear what the applicants had been told by staff and put how it was handled on the record. He stated that he believed this was opening up the door to allow staff to administratively withdraw anything they want eventually. Mrs. Harris stated that she understood but that she did not want put the applicant in the middle and that she believed that it was a legal issue. Mr. Hammack stated he believed that needed to be shown on the record and he agreed that the applicants were innocent but it should be on the record if the BZA ever wanted to make an issue of it otherwise the BZA should "just fold up their tent and accept administrative withdrawals of the cases, and any other accessory dwelling unit that comes in and maybe variances and special permits." Mr. Ribble stated that he believed that staff had gotten the message.

Chairman DiGiulian called for the vote and the motion carried by a vote of 4-2 with Chairman DiGiulian, Mrs. Harris, Mr. Kelley, and Mr. Ribble voting aye; Mr. Hammack and Mr. Pammel voting nay. Mrs. Thonen was absent from the meeting.

Mr. Kelley stated that it appeared that accessory dwelling units will also be allowed in townhouses. Mr. Shoup stated second kitchens would be allowed but not accessory dwelling units. Mr. Kelley pointed out that the parking requirements would not have to be met and Mr. Shoup replied that was correct.

There was no further discussion and the BZA proceeded with the next scheduled case.

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8:20 A.M. ROBERT A. & MARGARET A. SCHUTT, SP 91-L-046, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 11,756 s.f. located at 6512 Bowie Dr., zoned R-3, Lee District, Tax Map 80-4((7))(L)452. (DEF. FROM 11/12/91 FOR DEPUTY ZONING ADMINISTRATOR TO ANSWER QUESTIONS AND BRING DOCUMENTATION)

Mrs. Harris made a motion to allow the administrative withdrawal of SP 91-L-046 as recommended by staff. Mr. Hammack seconded the motion. The motion carried by a vote of 4-2 with Chairman DiGiulian, Mrs. Harris, Mr. Kelley, and Mr. Ribble voting aye; Mr. Hammack and Pammel voted nay. Mrs. Thonen was absent from the meeting.

Mrs. Harris asked that a verbatim of the BZA's discussion with William Shoup, Deputy Zoning Administrator, regarding accessory dwelling units be forwarded to the Board of Supervisors. She stated that she was concerned about how the new policy came about and that she would like to have the Board of Supervisors input regarding the new policy. The motion failed for the lack of a second.

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The BZA recessed at 9:30 p.m. and reconvened at 9:40 p.m.

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8:30 P.M. ODALYS CARBONELL, SP 91-Y-047, appl. under Sect. 3-103 of the Zoning Ordinance to allow home child care facility and waiver of dustless surface on approx. 1.885 acres located at 13316 Braddock Rd., zoned R-1, WS, Sully District (formerly Springfield), Tax Map 66-1((3))57,58.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Carbonell replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report by stating the applicant was requesting special permit approval of a Home Child Care Facility and a waiver of the dustless surface requirement. He stated that the facility would have a maximum daily enrollment of 18 children, with a maximum of 9 children at any one time. The facility would operate on weekdays from 6:00 a.m. to 6:00 p.m., with 2 employees, excluding the applicant, within the hours of operation and 1 employee at any one time.

Mr. Jaskiewicz stated that staff believed that the application met the standards for Special Permit Uses found in the Zoning Ordinance, was in harmony with the Comprehensive Plan, and was in harmony with the purpose and intent of the R-1 Zoning District, provided the Proposed Development Conditions found in Appendix 1, addressing the following, were implemented. Specifically, to accommodate the maximum daily enrollment there are inadequate parking spaces shown on the plat and decreasing the maximum daily enrollment would alleviate staff's concern. The conditions reflected a decrease in the maximum daily enrollment to 12 children and maintaining the 4 parking spaces; widening the driveway and relocating it across from Braddock Park; obtaining Health Department approvals; and, implementing Highway Noise measures.

Mr. Hammack asked if the applicant could meet the parking requirement if 9 children can be on site at any given time. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the parking requirement was calculated based on .19 per child that would be enrolled in the facility. Mr. Hammack said that staff was saying that the applicant could not meet parking for 18 children but could meet the parking requirement for 9 children in the morning and 9 in the afternoon. Ms. Kelsey explained that the Zoning Ordinance talks about maximum daily enrollment and not how many children will be on site at any one time. She stated that when discussing how many children will be on site at any one time the applicant may be able to meet the parking requirement for 9 children at one time but the Zoning Ordinance addresses maximum daily enrollment in order to address the overlap parking. Mr. Hammack asked why parking was not calculated on the maximum daily enrollment plus staff and Ms. Kelsey stated that she could not respond since she was not involved in the drafting of the Ordinance.

In response to another question from Mr. Hammack about the calculation of the number of trips per day, Ms. Kelsey stated that the Office of Transportation uses a computation of five trips per child. She explained that staff calculates one trip in and out for the parent to drop off the child, one trip in and out in the afternoon to pick up the child, and one additional trip to figure in any additional trips by employees, caterers, and visitors.

Mrs. Harris questioned why Development Condition Number 7 required the applicant to construct a turn lane and pointed out that the County did not construct a turn lane when Braddock Park was planned. The BZA members pointed out that staff was not requesting any construction only restriping of the parking area. Mrs. Harris noted there was no turn lane presently for the park. Ms. Kelsey stated that she could not speak as to why a turn lane was not provided for the park.

Mrs. Harris expressed concern with the safety of anyone leaving the subject property since they would be going directly into the glare from the floodlights projecting off the ball field at Braddock Park. She said that she would discuss the issue with the applicant.

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Odalys Carbonell, 13316 Braddock Road, Clifton, Virginia, came forward. She addressed Mrs. Harris' question by explaining that the house sets very far away from Braddock Road and the lights have no impact on the occupants of the house. Ms. Carbonell stated that she had experienced no problem from the lights when leaving the site.

Mrs. Harris stated that she was sympathetic to the applicant and that if she lived on the property she would be unhappy with the situation.

Ms. Carbonell disagreed with staff on the number of trips generated per day. She stated that she presently has 12 children enrolled in her home day care center and 5 trips are generated per day. Ms. Carbonell stated that she had no problem with adding two more parking spaces.

Mr. Hammack asked if the parking spaces could be added by restriping the parking lot and Ms. Carbonell replied that she could. Mr. Hammack asked staff if the applicant could meet the parking requirement for 18 students would staff had objections to the BZA granting the 18 students. Ms. Kelsey stated that staff would need to see where the parking spaces would be located since they would not like the spaces located to the front of the lot and staff would not want the parking spaces to impact the turn around area.

Chairman DiGiulian asked for a clarification as to what staff meant by a "turn around area." Ms. Kelsey explained that it would be a space for the parents to turn around on the site rather than backing out onto Braddock Road.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

A discussion took place among the BZA members since it had adopted a new policy whereby an applicant had to submit revised plats before the BZA granted the request. Mr. Hammack asked the applicant if she would like to defer action for one week to allow her time to submit a revised plat showing the additional parking spaces. He stated that he had no problem with 18 children if the applicant could meet the parking requirement. Ms. Carbonell stated that she would accept the 12 students since she has already moved onto the property.

Mr. Hammack made a motion to grant the request subject to the development conditions contained in the staff report dated November 12, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-047 by ODALYS CARBONELL, under Section 3-103 of the Zoning Ordinance to allow home child care facility and waiver of dustless surface, on property located at 13316 Braddock Road, Tax Map Reference 66-1((3))57, 58, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1, WSPOD.
3. The area of the lot is 1.885 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-305, and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval of a Home Child Care Facility is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat dated October 23, 1991 (revised), approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The maximum number of children on site at any one time shall not exceed nine (9) children; the maximum daily enrollment shall not exceed twelve (12) children during the hours of 6:00 a.m. to 6:00 p.m., weekdays.

5. Four (4) parking spaces, as shown on the plat, shall be provided on site given the corresponding maximum daily enrollment of twelve (12) children.

6. The entrance driveway shall conform to Virginia Department of Transportation's (VDOT's) standards for private entrances. This entrance shall be relocated to align with the entrance to Braddock Park as provided in VDOT's preliminary design for improving Braddock Road, project no. 0620-029-117, C504, C505 at such time as VDOT's project is implemented. In addition, right-of-way dedication and all ancillary and construction easements necessary for VDOT project no. 0620-029-117, as determined by the Department of Environmental Management (DEM), shall be provided and conveyed to the Board of Supervisors in fee simple on demand by VDOT/DEM.

7. In the interim time period, prior to the implementation of VDOT project no. 0620-029-117 referenced above, if the existing pavement is determined to be adequate, existing Braddock Road shall be restriped so as to provide a left turn storage lane into the subject property, as determined by VDOT/DEM.

8. A 4-foot high board-on-board wood fence along the edge of and between the parking spaces and the western lot line shall be provided so as to minimize the adverse impacts of the gravel parking area on the adjoining residential property.

9. A 6-foot high board-on-board wood fence surrounding the play area shall be installed in lieu of the fence shown on the special permit plat so as to minimize the impacts of the children's play activities on the surrounding residential properties.

10. In order to achieve a maximum interior noise level of 45 dBA Ldn for the existing dwelling, the following attenuation measures shall be provided:

    A. Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20 percent of any facade they shall have the same laboratory STC rating as walls.

    B. Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

11. No more than two (2) employees shall be on the premises during the hours of operation with no more than one (1) employee at a time.

12. Approval from the County Department of Health Services shall be obtained prior to the issuance of the Non-Residential Use Permit.

13. The gravel surface of the driveway and parking area shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The term of the waiver of the dustless surface shall be in accordance with Sect. 8-915 of the Zoning Ordinance.

    Speed limits shall be kept low, generally 10 mph or less.

    The areas shall be constructed with clean stone with as little fines material as possible.

    The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

    Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

    Runoff shall be channeled away from and around driveway and parking areas.

    Periodic inspections shall be performed to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

    The entrance shall be paved to a point twenty-five (25) feet into the site to inhibit the transfer of gravel off-site.

14. This special permit for a home child care use shall be approved for a period of three (3) years from the final approval date of this Special Permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

An inspection of this site shall be performed by the Zoning Enforcement Division prior to the issuance of a Non-Residential Use Permit, to determine compliance with the conditions of the Special Permit and periodically thereafter.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrance of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 239, November 19, 1991, (Tape 1), Scheduled case of:

8:35 P.M. APOSTOLIC CHURCH OF WASHINGTON, INC., SP 91-Y-036, appl. under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities on approx. 11.871 acres located at 11800 Braddock Rd., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 67-2((1))1. (DEF. FROM 10/8/91 TO ALLOW APPLICANT TO MEET WITH CITIZENS AND STAFF)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Mittereder replied that it was.

Bernadette Bettard, Staff Coordinator, stated that on October 8, 1991, the Board of Zoning Appeals (BZA) deferred the public hearing on the above-referenced application to allow the applicant time to meet with staff and the citizens. The BZA also asked that the portion of the property where the ingress/egress easement is located be added to the application if it was determined that it was necessary. The BZA requested that the County Attorney issue an opinion as to whether or not the portion of the property over which the easement is located, Lot 34, must be part of the special permit application property. The BZA requested that the application be amended and readvertised if it was determined necessary.

Since the hearing, Ms. Bettard stated the applicant had amended the subject application and submitted a revised affidavit, which:

> incorporates the area of the ingress/egress easement (part of 67-1((1))34). This revision revised the area being considered for special permit from 11.871 acres to 12.10 acres.
>
> changed the name of the applicant to Washington Apostolic Church and included the names of recently appointed church trustees.

Ms. Bettard stated that a letter of revision and the revised affidavit were forwarded to the BZA.

With respect to the development conditions, Ms. Bettard stated that the applicant has also suggested that revisions be made to Development Condition Number 7, which would require the provision of a 6 foot wooden fence, 650 ft. long, along the east property line, supplemental screening, consisting of a row of 12 ft. evergreen trees. The applicant is also suggested that Development Condition Number 13 be revised to require the submission of a geotechnical study at the time of site plan approval. She stated that the County Attorney had suggested some minor changes to the language of Development Condition Number 16. All of the changes were reflected in the Revised Development Conditions passed out by Ron Derrickson.

In closing, Ms. Bettard stated that the changes do not affect staff's original recommendation. Staff continued to find that the subject application met the applicable Zoning Ordinance standards for the use and was in conformance with the Comprehensive Plan. Therefore, staff recommended that SP 91-Y-036 be approved subject to the Proposed Development Conditions contained in Appendix 1 of the staff report. Ms. Bettard stated that Connie Crawford, with the Environmental Planning Division, Office of Comprehensive Planning, was present to respond to environmental questions.

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The church's agent, Mark D. Mitteréder, 4300 Evergreen Lane #306, Annandale, Virginia, came forward. He addressed the design of the proposed church by stating that the applicant had tried to be very sensitive to the site by locating the building back from Braddock Road in order to leave trees and green space between the proposed building and the road, by locating the parking lot to the back side of the property on the downslope, by maintaining as many of the existing trees as possible and providing more transitional screening than required, by providing additional parking in order to eliminate any possibility of overflow parking, and by providing more Environmental Quality Corridor (EQC) than that required. Mr. Mitteréder stated that the applicant had tried to design a good project given the site constraints and the church would be a typical church with bible study rooms, meetings rooms, fellowship, and a 600 seat sanctuary. He stated that the applicant has tried to provide room for the church to grow but presently there are 400 members.

Mr. Hammack asked if the applicant agreed with the development conditions. Mr. Mitteréder replied "yes" with the exception of the condition regarding the additional screening which he had written but believed was unclear. He said that the condition stated that the applicant would provide an additional row of evergreen trees 12 feet on center along the cleared area at the north property line. Mr. Mitteréder stated the wording seemed to indicate the area of the VEPCO power line easement and what he had meant to say was the additional screening would be provided along the area of the clearing to the north of the parking lot. (He used the viewgraph to indicate the area that he had intended.)

Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

David Vann, 4929 Novak Lane, Fairfax, Virginia, distributed handouts to the BZA and spoke on behalf of the Novak Woods Community. He stated the community's major concern was the applicant's failure to consider the excessive amount of light and noise produced by the request. Mr. Vann stated that the Comprehensive Plan requires that non-residential uses be located where the impact on the existing conditions is minimal. He stated that the proposed site plan would reduce significantly the quality of life in the community since locating the parking lot in the rear slope of the land would cause the vehicle lights to shine into the rear of the neighbors' houses. (Mr. Vann used the viewgraph to show the circulation pattern vehicles would use entering the site from Braddock Road and the location of the houses that would be impacted.) He said the quiet, peaceful atmosphere of a neighborhood comprised of low density single family houses would be traded for an urban view of a parking lot with continual vehicles moving in and out. Mr. Vann said that no amount of screening would compensate for the fact that the community would continually be looking at cars as they drive over the crest and down the hill night after night shining their lights onto the houses. He stated that the applicant's proposal requires the removal of most of the trees from the site especially on the sloping part of the lot towards the rear creating potential for a great deal of noise not currently experienced from Braddock Road. The applicant's proposal leaves very few trees, even with the addition of landscaping, which would take many years to develop and which cannot replace the existing forest. Even with the applicant replacing the trees at the bottom of the slope would do nothing to prevent the lights from projecting onto the neighbor's property as there would only be deciduous trees left on the rear of the lot. Although there is no mention of lighting the parking lots in the staff report, Mr. Vann stated that the applicant has informally stated an intent to do so. He said that should the parking lot be located in the north part of the site the community would request that only low, shielded landscaping lighting be used.

Mr. Vann stated it was significant that the soil science report recommended location of the septic field drain field on the north facing side slope behind the church and the selection of that location would eliminate the problem with the lights shining onto the adjacent lots. He pointed out that the architect originally proposed locating the septic field on the south side of the site but without explanation in the staff report the septic field has been relocated to the north. Mr. Vann stated that lights and noise impacts are the neighbors' main concerns but they also believe that the church is too large and are concerned with future expansion. He noted that the proposed church in addition to two other churches located in the same vicinity will create a church corridor in a quiet residential area zoned for low density. The type of activity to be conducted in the church has not been assessed for undesirable and noise impact on the community and Mr. Vann asked that acoustical measures be taken to ensure that the services will not be heard by the community.

He stated that the size of the EQC was questionable and pointed out that the study were conducted during a dry summer and the size of the wetlands appeared to be far larger than indicated. Mr. Vann stated that the staff report suggested that the septic field and the stormwater management pond are located in an area where wooded wetlands exists but have not been relocated. He stated that it was not clear as to who made the determination concerning the limit of the EQC and recommended that a minimum distance be specified in line with the pending Chesapeake Bay Ordinance as a distance of preservation on each side of the stream. Mr. Vann asked staff to show the EQC line on the viewgraph.

Connie Crawford, with the Environmental Planning Division, pointed out the location of the EQC. Chairman DiGiulian said that was not what was shown on the plat. Ms. Crawford agreed and explained that the plat showed the minimum stream valley EQC line but the applicant has committed to preserve additional land area and that was covered in the conditions.

Mr. Vann said he believed that it should be more clearly on the site plan to eliminate any confusion in the future. He recommended that a complete soil analysis be conducted by County staff geared especially toward the potential effect on the Occoquan Watershed, that measures be taken to protect the neighbors from airborne asbestos and not solely construction workers, and ensure that a determination be made that the sanitary sewer system can accommodate the use. Mr. Vann stated that the sewer system issue had been discussed with the architect and he mentioned that a self-contained sewer system was a viable option, which has not been approved by the County.

In closing, Mr. Vann stated that rigorous review required by the Comprehensive Plan demands such matters be brought out for public comment and staff analysis prior to permit approval. He stated that he believed that it was far more than simply supporting an opportunity for good people to worship, which all the neighbors support, but what is required is a thorough review. (Mr. Vann submitted photographs for the BZA's review.) (A copy of Mr. Vann's presentation is contained in the file.)

Donald Shulman, 13710 Lyncroft Drive, Chantilly, Virginia, represented the Chantilly Coalition for Planned Growth, and read a prepared statement into the record in opposition to the request. He stated that the Coalition would ask that the use conform to the Occoquan Basin Study and ensure that the use will not impact the area where it will be located. Mr. Shulman stated that the Coalition believes the staff report has minimized the impact with respect to density, traffic flow, and public safety. (A copy is contained in the file.)

Julian T. Bolton, 14479 Golden Oak Road, Centreville, Virginia, President of the Northern Virginia Chapter, Izaak Walton League of America, read a prepared statement into the record in opposition to the request. The League's major concerns dealt with the placement of the BMP pond, soil studies, additional transitional screening, an accurate depiction of the EQC on the plat, and the intensity which will be generated by the proposed use. (A copy of the prepared statement is contained in the file.)

In rebuttal, Mr. Mittereder used the viewgraph to show the location of Mr. Vann's property and said that only a small corner of Mr. Vann's property touched the subject property. He stated there are 350 feet of trees that are 60 to 100 feet high from the edge of the proposed parking lot to the corner of the existing tree line and next to Mr. Vann's property there is another row of trees as well as a very wide VEPCO easement that acts as a barrier. Mr. Mittereder said that he believed 350 feet of undisturbed vegetation will provide a buffer even during the winter time even if most of the leaves fell. He disagreed that the neighbors will be impacted by the vehicle lights since the lights will be filtered through the 350 feet of trees and the total distance between the crest of the hill and Mr. Vann's house is approximately 1,000 feet, maybe closer to 1,200 to 1,500 feet. Mr. Mittereder stated that additional areas have been added to the parking lot which are wide and well landscaped between each terrace of parking.

With respect to the parking lot lighting, Mr. Mittereder said that the locations were not shown on the plat but the lights will be no more than 12 feet in height and will be a downward focusing non-glare type and shielded if necessary. He stated that specific locations have not been shown on the plat because it would premature but the applicant would not be willing to go to a 4 foot landscape light because it would not provide the level of psychology security that people want when walking to their car at night.

Mr. Mittereder stated that the septic system would be placed in an area where the suitability studies said was favorable. He added that the development conditions clearly states if the applicant cannot get the Health Department approval the special permit becomes null and void.

He said that the applicant has been up front about requesting 600 seats although it needs only 400 seats at the time. The applicant asked for the additional seats to allow for growth.

Regarding the wetlands, Mr. Mittereder said that the applicant hired an outside consultant engineer to prepare a study with regard to wetlands on the site and it was determined there were none. Although there were no wetlands on the site, the County asked the applicant to dedicate additional land for EQC and the applicant agreed. The applicant has also agreed to submit a geotechnical report.

Mr. Mittereder said that the applicant has agreed to provide additional screening but because he did not believe that a barrier would be beneficial, he asked that it be waived.

In response to questions from Mrs. Harris, Mr. Mittereder replied that if the applicant cannot meet Health Department regulations then the applicant might consider a self-contained sewer system. He said the system would circulate back through the church plumbing system and the sewage affluent that would be seeping back into the soil would be of a much higher quality. Mr. Mittereder said that he could not answer as to when Braddock Road would be widened.

Mrs. Harris expressed concern with people entering and exiting the site and pointed out the speed that people drive on Braddock Road. Mr. Mittereder said that the applicant had studied the sight distance and the VDOT standard stipulates a vehicle traveling 40 mph needs 400 feet of sight distance, at 30 mph a vehicle needs 300 feet. He explained that right before the turn there is a 25 mph sign and right after First Street there is a 25 mph sign but the

problem is people do not travel 25 mph and there have been accidents and there are going to continue to be accidents. Mr. Mittereder stated that the application meets the sight distance for a 40 mph road even though it is a 25 mph and at the entrance to the proposed site there is more than 400 feet of sight distance in both directions. Mrs. Harris said that she had driven Braddock Road at 25 mph and someone driving a vehicle has 2 and 1/2 seconds after cresting the hill before they see the First Street sign. She stated that she believed the applicant had mitigated a lot of the other problems on the site but she did believe it was a dangerous situation.

Mr. Mittereder said that he had indicated at the last public hearing that by the approval of the application the applicant would effectively be dedicating an area where there is a significant amount of square feet that could be dedicated to the public right of way to allow VDOT to fix the curve before the major road improvements go in. Mrs. Harris said the applicant dedicating the land is one thing and VDOT doing anything is another. Mr. Mittereder said at least it would be a step in the right direction.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant the applicant's request for the reasons noted in the resolution and subject to the development conditions contained in the addendum dated November 19, 1991, with the following changes:

"7. . . . Supplemental screening, consisting of a row of large and medium evergreen trees, approximately 12 ft. off center shall be provided in the cleared area adjacent to the north area of the parking lot.

13. . . . as determined by DEM, to minimize this risk on and off site."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-036 by WASHINGTON APOSTOLIC CHURCH, INC., under Section 3-C03 of the Zoning Ordinance to allow church and related facilities, on property located at 11800 Braddock Road, Tax Map Reference 67-2((1))1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WSPOD.
3. The area of the lot is 12.10 acres.
4. In other applications where the applicants were proposing to construct a church in an area that is already developed residential, the citizens opposed the application based on the congestion which would be generated from the church and argued that the property should be developed residential. In this instance, the applicant is proposing to construct a church in a largely undeveloped area of the County where the development is rather sparse and the applicant is building the church in anticipation that at some point in the future there will be a need for the facility as the area continues to grow. With respect to the application itself, the strongest point was made by staff on page 3 of the staff report wherein staff took the criteria set forth in the recently adopted Comprehensive Plan and evaluated the application based on the criteria and found the application to be in harmony with particular emphasis on the fact that the applicants are asking for a Floor Area Ratio (FAR) of approximately one-half that is permitted. The permitted FAR is 0.15 and the applicant is asking for 0.05, one-third of the maximum that is permitted.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

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2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Archvest) and landscape plan dated as revised on September 3, 1991 and stamped received September 16, 1991 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Plat by Archvest, dated September 3, 1991, and stamped received September 16, 1991.

5. The maximum number of seats in the main area of worship shall be 600 with a corresponding minimum of 150 parking spaces. The maximum number of parking spaces on site shall be one hundred seventy-four as shown on the Special Permit Plat. All parking for the church shall be on site.

6. The limits of clearing and grading shall be as shown on the landscape plan submitted with this application and drawn by Archvest and dated September 3, 1991 and stamped received on September 16, 1991.

7. Transitional Screening shall be provided as shown on the attached landscaping plan dated revised on September 3, 1991 and stamped received on September 16, 1991. The existing vegetation shall be used to satisfy the requirement provided it is supplemented to meet Transitional Screening 2 as determined by the Urban Forester. The barrier shall be waived, except along the cleared area along the eastern lot line. A 6 foot board on board fence, approximately 650 feet long, shall be provided between the proposed evergreen trees and the existing vegetation. Supplemental screening, consisting of a row of large and medium evergreen trees, approximately 12 ft. off center shall be provided in the cleared area adjacent to the north area of the parking lot.

8. The area immediately southward and parallel with the limits of the stream valley EQC depicted on the Landscape and Tree Preservation Plan as "existing wooded area to remain undisturbed" shall be identified as "Additional Area to be Preserved as EQC" on any site plan submitted subsequent to this approval. Other limits of clearing and grading shown as proposed transitional screening and tree preservation areas should also be identified on the plat.

9. The Environmental Quality Corridor (EQC) shall be denoted as that area shown on the special permit plat. There shall be no clearing of any vegetation in this area except for dead or dying trees or shrubs and no grading. There shall be no structures located in the EQC area. The limits of clearing and grading shall be as shown on the Special Permit Plat dated September 3 and stamped received on September 16, 1991.

10. Any proposed lighting of the parking area shall be in accordance with the following:

    The combined height of the light standards and fixtures shall not exceed twelve feet.

    The lights shall be focused directly onto the subject property.

    Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

11. Best Management Practices (BMP's) shall be provided to the satisfaction of the Director, Department of Environmental Management.

12. Right-of-way shall be provided in front of the church as shown on the submitted Special Permit Plat. This right-of-way shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate the road improvements as determined by DEM.

13. A geotechnical study, prepared by a geotechnical engineer experienced in soil and foundation engineering, shall be submitted as determined by the Department of Environmental Review at the time of site plan review. The applicant shall determine, in conjunction with the County Soil Science Office and DEM, whether asbestos bearing soils are evident on the property. If a potential health risk exists, as determined by DEM, the applicant shall: (1) ensure that all construction personnel are alerted to this potential health risk and (2) provide the appropriate construction techniques, as determined by DEM, to minimize this risk on and off site. Such techniques may include, dust suppression measures during all blasting and drilling activities, covered transport of removed materials, and appropriate disposal of removed materials.

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14. The sign located at the site entrance shall not be lighted and shall conform to the provisions of Chapter 12.

15. Prior to site plan approval, the design and location of the septic field shall be approved by the Fairfax County Health Department. If Health Department approval is not obtained, the special permit shall be null and void.

16. The ingress/egress easement over Lot 34, which serves the Apostolic Church property, shall be recorded among the land records of Fairfax County and shall run to the benefit of Lot 34 and Fairfax County, in perpetuity, with title to the land encompassing Lot 34. This easement agreement shall be subject to the review and approval of the Fairfax County Attorney prior to the approval of the site plan.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Mrs. Thonen was absent from the meeting

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 244, November 19, 1991, (Tape 2), Information Item:

Approval of Resolutions from November 12, 1991, Public Hearing

Mr. Hammack made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 244, November 19, 1991, (Tape 2), Information Item:

Signing of Regan Plat approved on October 22, 1991

Chairman DiGiulian instructed staff to inform the applicant that the BZA would not accept the plat until the "two heavy black lines" were removed from the right side of the plat to conform with the BZA's approval.

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Page 244, November 19, 1991, (Tape 2), Information Item:

Request for Out of Turn Hearing
Robert S. Baer Appeal

Mr. Hammack asked staff if it would be possible to grant the appellant's request for an out of turn hearing. Jane Kelsey, Chief, Special Permit and Variance Branch, stated there were 2 appeals scheduled on January 7, 1992, and 3 appeals scheduled on January 14, 1992.

Chairman DiGiulian asked William Shoup, Deputy Zoning Administrator, if he had any additional information. Mr. Shoup explained that the appeal dealt with a proposed subdivision currently making its way through the review process in the Department of Environmental Management (DEM). He stated the issue was not discovered until the appellant had reached the bonding stage and it was brought to the Zoning Administrator's attention at that time.

In response to a question from Chairman DiGiulian, Ms. Kelsey noted there were a total of 7 cases scheduled for January 7, 1992.

Mr. Pammel asked about January 14 and January 21, 1992. Ms. Kelsey said there were a total of 13 cases on the 14th and the 21st is a night meeting with 3 cases. Mr. Pammel made a motion to schedule the appeal for January 21, 1992, at 8:15 p.m. The motion failed for the lack of a second.

Chairman DiGiulian asked when the appeal was originally scheduled for and Mr. Shoup replied January 28, 1992.

Mr. Hammack made a motion to deny the request. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 245, November 19, 1991, (Tape 2), INFORMATION ITEM:

Intent to Defer Grace Presbyterian Church, SPA 73-L-152-1

Mr. Hammack made a motion to issue an intent to defer SPA 73-L-152-1 at the applicant's request. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 245, November 19, 1991, (Tape 2), Information Item:

Request for Date and Time for Joseph Mitchell Appeal

William Shoup, Deputy Zoning Administrator, stated the appeal was before the BZA for consideration on the October 22, 1991, and staff had taken the position that the appeal was not timely filed. The BZA deferred action until such time as the appellant could be present and action was scheduled for November 12, 1991. The appellant then requested that action be deferred to a night meeting and the BZA granted the request and scheduled discussion on whether or not to accept the appeal for November 19, 1991. Mr. Shoup said that he had just talked to the appellant who indicated he had forgotten that the case had been scheduled for the night meeting. He asked that action be deferred until December 17, 1991.

Mr. Shoup stated that the appellant told him that the Zoning Inspector who issued the Notice of Violation had said that he would mail him an appeal application. The Inspector indicated to Mr. Shoup that he had told Mr. Mitchell that he would mail him a variance application which he did. Mr. Shoup pointed out that he had mailed the appellant a special permit application but the appellant has not filed the application. He stated that the appellant has indicated that he would be willing for the appeal to be heard outside the 90-days. Mr. Shoup stated that staff did not believe the appeal to be timely filed and pointed out that Mr. Mitchell is under a Notice of Violation.

Mr. Kelley made a motion not to schedule the appeal as the appeal was not timely filed, the appellant has other remedies available to him, and the BZA has given the appellant two opportunities to appear before the BZA to argue his case. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:04 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 14, 1992

APPROVED: January 21, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 26, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 244, November 26, 1991, (Tape 1), Scheduled cases of:

10:00 A.M. CARLOS A. REYES, VC 91-L-102, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 3.9 ft. from side lot line and to allow accessory structure to cover more than 30% of the area of the minimum required rear yard (15 ft. min. side yard required by Sect. 3-207 and min. required rear yard required by Sect. 10-103) on approx. 10,720 s.f. located at 3208 Spring Dr., zoned R-2, Lee District, Tax Map 92-2((19))78. (CONCURRENT WITH SPA 83-L-096-1.

10:00 A.M. CARLOS A. REYES, SPA 83-L-096-1, appl. under Sect. 8-914 of the Zoning Ordinance to amend SP 83-L-096 for reduction to minimum yard requirements based on error in building location to permit change in use from garage to family room, to allow multi-level decks and uncovered stairs to remain 0.0 ft. and 1.7 ft. from the side lot lines and 9.0 ft. from the rear lot line, to permit accessory structure to remain 3.5 ft. from the side lot line and to permit a home child care center (10 ft. min. side yard for deck and uncovered stairs, 5 ft. min. rear yard for deck and 15 ft. min. side yard for accessory structure required by Sects. 3-207 and 2-412) on approx. 10,720 s.f. located at 3208 Spring Dr., zoned R-2, Lee District, Tax Map 92-2((19))78. (CONCURRENT WITH VC 91-L-102)

Chairman DiGiulian reminded the Board of Zoning Appeals (BZA) that it had previously issued an Intent to Defer. Lori Greenlief, Staff Coordinator, advised that, since the application would need to be amended to add the child center, etc., staff was suggesting that the case be deferred to February 11, 1991 at 9:00 a.m.

Mr. Ribble made a motion to defer these cases to February 11, 1991 at 9:00 a.m. Mrs. Harris seconded the motion. Mr. Pammel said that he had read the staff report, even though he had known that the case would be deferred, and he had some concerns which he wanted to mention, in order that staff might address them when the cases are heard. He referred to page 3, paragraph 3, of the staff report, stating that County staff had visited the subject property, and expressed concern over the statement by staff that the applicant had completed construction of the terraced deck additions that cover all of the rear yard. He said, if that was the case, he believed there was also a violation, not noted by staff, of the thirty-percent coverage of the rear yard restriction. He asked staff to address this and, if it is an additional violation, it should be noted and the applicant should be apprised of the fact.

The motion carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 247, November 26, 1991, (Tape 1), Schedulad case of:

9:15 A.M. JOHN M. & EILEEN MOLINO, SP 91-S-052, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 10,000 s.f. located at 7810 Lobelia La., zoned PDH-3, Springfield District, Tax Map 89-2((14))(17)5.

Chairman DiGiulian advised that a letter requesting withdrawal of this application had been received, based upon the new Zoning Ordinance amendment.

Mr. Pammel said that he did not object to a motion accepting withdrawal of the application, but he did not believe that the fee should be refunded, since the process had been completed, including advertising, and the application had been staffed. Because of that, Mr. Pammel made a motion to accept withdrawal of SP 92-S-052, without refund of the fee.

Mrs. Harris seconded the motion.

Mr. Kelley said that he would vote against the motion because of the fee issue. He said he believed it was not within the jurisdiction of the BZA to determine issues involving fees.

Mrs. Harris asked Mr. Pammel if he could remove the fees issue from his motion and he agreed to do so.

The motion, as amended, carried by a vote of 6-0. Mr. Hammack was not present for the vote.

Mr. Kelley stated he did not believe that fees should be refunded in cases of this type and made a sense of the Board motion to that effect. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Request for Additional Time
Bethlehem Baptist Church, SPA 87-V-072-1

Mrs. Harris made a motion to grant this request, with a new expiration date of January 18, 1992. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Request for Additional Time
Jeffrey and Paula Kaiser, VC 89-M-029

Mrs. Harris made a motion to grant this request, with a new expiration date of May 1, 1992. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Request for Date and Time
Robert S. Baer Appeal

Mrs. Harris said that she had read the staff report on this appeal and that it was complete and timely filed. She made a motion to schedule the case for January 28, 1992 at 11:00 a.m. Mrs. Harris questioned whether anyone had suggested to the applicant that they should apply for a variance, concurrently, in the event that the Zoning Administrator's decision is uphald. Lori Greenlief, Staff Coordinator, stated that she would need to check on that. Mrs. Harris made a motion to schedule this appeal for January 28, 1992 at 11:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Approval of Minutes for October 15, 1991 Hearing

Mr. Pammal referred to page 15, last paragraph, quoting "no lot should every" and asked that "every" be corrected to "ever." Mr. Pammel made a motion to accept the minutes, as amended. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Request for Additional Time
Korean Evangelical Church, SP 89-P-023

Mrs. Harris made a motion to grant this request, with a new expiration date of November 24, 1992. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Additional Time Request
Floris United Methodist Church, SP 88-C-057

Mr. Pammel made a motion to acknowledge receipt of this request, to be acted upon at a later date. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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The Board recessed at 9:25 a.m. and reconvened at 9:45 a.m.

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9:30 A.M. JOSH & ELLEN OPPENHEIM, VC 91-B-103, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8.5 ft. from side lot line with side yards totaling 16.5 ft. (8 ft. min. side yard and 20 ft. min. total side yards required by Sect. 3-307) on approx. 8,625 s.f. located at 4923 King Solomon Dr., zoned R-3 (developed cluster), Braddock District (formerly Annandale), Tax Map 69-4((12)205.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Oppenheim replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the property was located generally north of Braddock Road, contains 8,625 square feet, is zoned R-3, is developed under the cluster provisions of the Zoning Ordinance with a single family detached dwelling, and the other properties in the subdivision are developed in a similar fashion. Mr. Riegle said that the application requested a variance to the total minimum side yard requirement, to enclose an existing carport at a location 8.5 feet from the side lot line. In the R-3 district, when developed under the cluster provisions of the Ordinance, a minimum side yard of 8 feet and total minimum side yards of 20 feet are required. He said that the proposed construction complies with the minimum side yard requirement; however, the total side yards proposed are 16.5 feet and, accordingly, a variance of 3.5 feet was being requested.

The applicant, Josh Oppenheim, 4923 King Solomon Drive, Annandale, Virginia, presented the statement of justification, stating that he had two small children, with no garage to store the toys and cars which they played with outside. He said he believed that it is unsightly to keep the toys outside, but bringing them inside was a great inconvenience. Mr. Oppenheim said that the vast majority of his neighbors had garages. He said that he had an existing carport and would only be enclosing it and not extending the area of the existing carport, except to the rear, which would not encroach upon the property line.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said that, because the variance requested was very minimal, the carport was already in place, and the purpose of the request was for security reasons, he believed the applicants had made their case. He made a motion to grant VC 91-B-103 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-B-103 by JOSH & ELLEN OPPENHEIM, under Section 18-401 of the Zoning Ordinance to allow addition 8.5 ft. from side lot line with side yards totaling 16.5 ft., on property located at 4923 King Solomon Dr., Tax Map Reference 69-4((12))205, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 8,625 square feet.
4. The variance is minimal and there is an existing carport.
5. The primary basis is for security reasons.
6. The lot is very narrow, with minimal acreage which is well under the standard lot size in the County for most residential districts.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Hammack were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 250, November 26, 1991, (Tape 1), Scheduled case of:

9:40 A.M. CAPITAL KIDS INC., ST. JAMES EPISCOPAL CHURCH, SPA 86-V-052-1, appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 86-V-052 for church and related facilities to allow school of general education and child care center on approx. 5.0029 acres located at 5614 Old Mill Rd., zoned R-2, Mt. Vernon District, Tax Map 110-1((1))4B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Marinello replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the property is located on the north side of Mount Vernon Highway and the south side of Old Mill Road, contains 5 acres of land, is presently zoned R-2, and developed with a Church which contains 204 seats and was brought under special permit in 1986. He said that the application requested permission to establish a child care center with a maximum daily enrollment of 40 students in the existing church building. There is no new construction proposed and, in staff's opinion, the existing structures are of a height, bulk, and mass, which are compatible with the surrounding residential development. There is a significant amount of quality vegetation on the site and, as there is no new construction; in staff's opinion there is nothing which jeopardizes the factors which make the current level of development compatible. Mr. Riegle said that, accordingly, as indicated in pages 5 through 8 of the staff report, with the implementation of the Proposed Development Conditions, it is staff's opinion that the use meets the applicable standards, is in harmony with the Comprehensive Plan and the R-2 zoning, and staff recommended approval.

Helen Marinello, 7724 Modisto Lane, Springfield, Virginia, stated that she had worked for the past five years for the County of Fairfax as a certified teacher with the SACC Program, which is school-aged child care. Ms. Marinello gave her qualifications, and said that the hours would be from 7:15 a.m. to 6:15 p.m., Monday through Friday, all year, except for federal holidays. Ms. Marinello said that her goal was to provide quality day care and to meet the pre-kindergarten needs of the children. She said she had met with Ms. Weisman, President of

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the Mount Vernon Civic Group, and had a letter of positive response from them; the Mount Vernon Gazette had run an article about her goals and aims; she had met with the Mount Vernon Terrace Civic Group and also received a positive letter of recommendation from Kathy Fields, the president of that group. Ms. Marinello said she had a petition signed by the members of St. James Episcopal Church and read it to the BZA. It was made a part of the record.

Mr. Ribble asked Ms. Marinello if she had read the letter from the Davises, across the street from the Church, who were concerned about assurance that the Conditions would be enforced. Ms. Marinello addressed the issue and offered assurance.

Mrs. Harris asked Ms. Marinello if she concurred with the Proposed Development Conditions and she replied that she did. Mrs. Harris questioned the fact that there would be two full-time staff employees and up to eight part-time employees, because this information was not indicated anywhere in the Conditions. Mr. Riegle said that the reason why the information was not contained in the Development Conditions was that the parking requirements in the Ordinance were arrived at by using a formula which is intended to account for employees, but that a condition would be added if the BZA so desired. Mr. Riegle advised that the church was tremendously overparked and staff felt that there was adequate parking under any circumstances; however, again, if the BZA felt that it was appropriate from a land use perspective, staff had no objection to such a condition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SPA 86-V-052-1 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 19, 1991.

Mrs. Harris asked if the maker of the motion would add to Condition 6 that there would be up to two full-time employees and up to eight part-time employees. Mrs. Thonen said she was reluctant to do that because she did not want to restrict any volunteers from participating.

Chairman DiGiulian asked Mrs. Thonen if she would be willing to add a sentence to the end of Condition 3 stating that the BZA has no objection to the approval of a site plan waiver and she agreed to do that.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application Amendment SPA 86-V-052-1 by CAPITAL KIDS INC., ST. JAMES EPISCOPAL CHURCH, under Section 3-203 of the Zoning Ordinance to amend SP 86-V-052 for church and related facilities to allow school of general education and child care center, on property located at 5614 Old Mill Rd., Tax Map Reference 110-1((1))4B, Mr. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land
2. The present zoning is R-2.
3. The area of the lot is 5.0029 acres.
4. The lot is very large and should be able to accommodate any traffic generated by the applicant's use without any significant impact.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with the application, as qualified by these development conditions.

3. This use is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this approval shall be in conformance with the approved Special Permit Plat prepared by Charles J. Huntley Associates Inc., dated June 7, 1979 and revised through August 25, 1986, and these conditions. The Board of Zoning Appeals has no objection to a site plan waiver.

4. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

5. The hours of operation for the child care center shall not exceed to 7:15 a.m. to 6:15 p.m., Monday through Friday.

6. The maximum daily enrollment of the child care center shall be 40 children. A minimum of eight (8) on-site parking spaces shall be provided for this use.

7 The seating capacity of the church shall be limited to 204, and a minimum of fifty-one (51) on-site parking spaces shall be provided for this use.

8. All existing vegetation on the site, including the row of evergreens along the western lot line, shall be retained and shall be supplemented with a row of evergreen trees planted 10 feet on center along the southern and western sides of the play area. All supplemental evergreen plantings shall have a planted height of at least four feet. The requirements of this development condition shall be deemed to satisfy the requirements for transitional screening along all lot lines as may be acceptable to the Urban Forestry Branch DEM.

9. The barrier requirements shall be waived.

10. The outdoor play area shall be approximately 2,500 square feet and shall be located as shown on the special permit plat. The number of children on the play area at any one time shall not exceed 25.

11. Right-of-way dedication to 45 feet from the existing centerline of Mount Vernon Memorial Highway shall be conveyed to the Board of Supervisors in fee simple on demand at such time as a road widening project requiring additional right-of-way is initiated by the Virginia Department of Transportation (VDOT). Ancillary construction easements shall be provided to facilitate these improvements.

12. To ensure safe ingress and egress to the site, the existing entrances shall be labeled with signs as one-way entrances.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 252, November 26, 1991, (Tape 1), Scheduled case of:

9:55 A.M. BELVA J. WARNER, VC 91-D-101, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 5.6 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 10,641 s.f. located at 6723 Weaver Ave., zoned R-3, Dranesville District, Tax Map 30-4((17))153A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mrs. Warner replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the property in located in the McLean Manor subdivision on the south side of Weaver Avenue, east of its intersection with Danforth Street; is zoned R-3 and developed with a single family dwelling;

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and is abutted on the north, south, east, and west by other lots zoned and developed similarly. She said that the applicants were requesting a variance for a garage addition to be located 5.6 feet from the side lot line and consisting of 128 square feet. Section 3-307 of the Zoning Ordinance requires a minimum side yard of 12 feet in the R-3 district and the applicants were requesting a variance of 6.4 feet. Ms. Bettard said that staff research in the Zoning Administration Office indicated that the dwelling on Lot 154 is located approximately 12.3 feet from the shared lot line.

The applicant, Belva J. Warner, 6724 Danforth Street, McLean, Virginia, presented the statement of justification, stating that they purchased the home two and one-half years ago, after it had been completely remodeled, and did not know of any water problem until the past summer, when there were two torrential rains, and the water came over the back deck beneath the house, into the downstairs living room, prompting an insurance claim of $4,000 to replace the carpet. She said that they consulted engineers about the problem and were told they would need to consider some type of drainage and building a garage would provide a diversion for the excess water.

Chairman DiGiulian asked if there was anyone to speak in support of the application. Max Heinz, 6720 Danforth Street, McLean, Virginia, who said he lived on the property next to the Warners, stated that he had found the Warners to be very good neighbors. He said that their plan would certainly improve the neighborhood, based upon the problems Mrs. Warner had described; he urged the BZA to approve the request.

Mrs. Harris asked Mrs. Warner if there was any way that the size of the garage could be reduced and she replied that she guessed they could, but had wanted to keep it in the two-car capacity because renters usually had two cars. Mrs. Harris said that, strictly from the drainage problem perspective, a 26 foot garage was a great deal larger than would be required to alleviate the drainage problem. Mrs. Warner said she believed a two-car garage was standard in the area. Chairman DiGiulian said that a 22 foot variance was what the BZA was accustomed to granting for a two-car garage.

Mr. Pammel said that the one thing which concerned him was that he would not like to solve the drainage problem on the applicant's lot by transferring the problem to an adjacent lot, probably Lot 154 in this case. He believed the water would have to be directed away from the area by grading or by directing it across the rear lot lines to some sort of an inlet.

Mr. Kelley said that he would like to see this decision deferred until a plan was drafted showing the width of the garage and how the drainage problem would be solved without subjecting the adjacent lot to the runoff. Mrs. Thonen wanted to make it clear that the BZA would not approve a two-car garage any larger than 22 feet. Mr. Kelley wanted to make certain that containment of the runoff would be addressed. Mrs. Harris said she believed that the peripheral questions had nothing to do with granting a variance. Mr. Pammel said that the impact resulting from the variance was the concern of the BZA.

Mrs. Harris made a motion to grant-in-part VC 91-D-101 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report, as amended by adding a third condition: The water drainage system will be constructed by the applicant in a manner which shall not adversely affect the contiguous property owners.

The applicant was directed by the BZA to submit revised plats within thirty days.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-101 by BELVA J. WARNER, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 5.6 ft. **(THE BOARD GRANTED 9.6 FT.)** from side lot line, on property located at 6723 Weaver Ave., Tax Map Reference 30-4((17))153A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,641 square feet.
4. The lot has exceptional topographic conditions resulting in a water drainage problem.
5. Strict application of the Ordinance would produce undue hardship.
6. The character of the zoning district will not be changed by the granting of the variance.

Page 254, November 26, 1991, (Tape 1), BELVA J. WARNER, VC 91-D-101, continued from Page 253)

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the specific garage addition to the dwelling shown on the plat (dated July 26, 1991) prepared by Kenneth W. White and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The water drainage system will be constructed by the applicant in a manner which shall not adversely affect the contiguous property owners.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and shall become final on January 21, 1992, the date the new plat was approved by the Board of Zoning Appeals. This date shall be deemed to be the final approval date of this variance.

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Page 254, November 26, 1991, (Tape 1), Scheduled case of:

10:05 A.M. COLUMBIA BAPTIST CHURCH, SPA 79-M-031-3, appl. under Sect. 3-403 of the Zoning Ordinance to amend SP 79-M-031 for church and related facilities to allow trailer on approx. 5.0 acres located at 6200 Indian Run Pkwy., zoned R-4, Lee District, Tax Map 81-1((1))9B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Gilman replied that it was.

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Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject site is located south of Edsall Road at the east end of Indian Run Parkway; is bordered on the north and northwest by a residential subdivision zoned R-4; is bordered on the east by the Jefferson Green Apartments, zoned R-12; and is bordered on the south by properties zoned I-I. She said that the applicant was requesting approval of an amendment to an existing special permit for a church and related facilities to allow the continued use of a temporary trailer without term. The trailer is located behind the church building and consists of 160 square feet, is used as temporary classroom space for 6-10 persons and one teacher on Sunday mornings from 9:30 a.m. until 11:00 a.m., no new construction is proposed on this site, and no changes to previous development conditions are requested. She said that the church will continue to have 100 seats, 30 parking spaces, and will operate as previously approved. Ms. Bettard said that the trailer had been approved for this site since 1976 and had been the subject of several amendments and administrative approvals by the Zoning Administrator, as detailed on page 2 of the staff report. She said that staff had reviewed the proposal according to the applicable standards for review of special permits and found that the proposed application is in harmony with the Comprehensive Plan and does not adversely impact the surrounding neighborhood. Staff also believes that the location and the continued use of the trailer in its present location does not present any detrimental effect on the surrounding area, provided that the applicant commits to preservation of existing vegetation, tree cover and skirting on the trailer, and maintains existing fencing. Ms. Bettard said staff believes that a term of five years should be placed on the use.

Brian P. Gilman, 7133 Tyler Avenue, Falls Church, Virginia, represented the applicant and said he did not have much to add to the written statement of justification which was included with the application. He said the applicant was familiar with the Proposed Development Conditions, which were consistent with those recommended in the past, they did not anticipate any growth in the near future, and the neighbors expressed no concern over the continued use of the trailer.

Mrs. Harris said that she was concerned about a temporary trailer being in place for 14 or 15 years, without any plans for its ultimate removal. She asked Mr. Gilman if there were any plans to enlarge the church to the extent that the trailer would be removed in the future. Mr. Gilman said that there were no such plans. He said that, in the fifteen years during which the Church has been in its present location, there has been no significant change in the size of the congregation, which currently consists of about thirty to fifty people, with the capacity for one hundred, theoretically. He said that the trailer has served very satisfactorily as a temporary classroom behind the building, because the layout of the building is not conducive to being broken down into smaller rooms; whereas, part of the Baptist tradition is to have smaller classrooms available for smaller fellowships on Sunday School morning, and the trailer continues to meet those needs. Further building would only be considered if there was a real potential for expansion of the number of members.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SPA 79-M-031-3 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions dated November 26, 1991, contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application Amendment SPA 79-M-031-3 by COLUMBIA BAPTIST CHURCH, under Section 3-403 of the Zoning Ordinance to amend SP 79-M-031 for church and related facilities to allow trailer, on property located at 6200 Indian Run Pkwy, Tax Map Reference 81-1((1))9B, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 5.0 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

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NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) (prepared by Dewberry & Davis) and dated August 28, 1991, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The maximum number of seats in the main sanctuary shall be 100.

5. Thirty (30) parking spaces shall be provided as depicted on the Special Permit Plat.

6. The trailer shall only be used as a Sunday school classroom or for other church related purposes.

7. No more than twenty-five (25) persons shall use the trailer at any one time.

8. The existing vegetation shall remain undisturbed, except for removal of dead and for dying trees as approved by the Urban Forestor. The tree line shown on the Special Permit Plat dated August 28, 1991 shall be the limits of clearing in order to protect the floodplain and EQC within that area. There shall be no clearing and grading within this area. Proposed grading for this facility shall be the minimum amount required as approved by the Office of Comprehensive Planning in coordination with the Department of Environmental Management. There shall be no clearing, grading or structures located within the EQC.

9. The property shall be made available for inspection by Fairfax County personnel during normal working hours.

10. The trailer shall meet all applicable requirements of the County and State including those related to tie-down and skirting.

11. The existing vegetation shall satisfy the Transitional Screening 1 requirement. The six foot board on board fence, shall be maintained in its current position, west of the play area, and interior to the existing vegetation. The barrier requirement shall be waived along all other lot lines.

12. A 20 foot public access easement shall be provided, as determined by the Fairfax County Park Authority, along the west side of the property along Indian Run. The easement shall comply with the Fairfax County Park's Plan and shall be subject to the review and approval of the Fairfax County Attorney prior to the issuance of a Non-Residential Use Permit.

13. The skirting on the temporary trailer shall be maintained. The trailer shall be approved for a period of five (5) years only from the date of final approval of this Special Permit.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, three (3) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1991. This date shall be deemed to be the final approval date of this special permit.

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10:20 A.M. FEDERAL DEPOSIT INSURANCE CORPORATION, SP 91-D-050, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 15.27 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 19,994 s.f. located at 6424 Georgetown Pike, zoned R-1, HD, Dranesville District, Tax Map 22-3((1))53.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Pick replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject site is located on the north side of Georgetown Pike, east of Turkey Run Road, is zoned R-1, developed with single family dwellings, and abutted on the north, west, and south by lots developed with single family vacant dwellings. She said that the Country Day School is located to the east of the subject site and the lot further to the east is developed with a church meeting hall. Ms. Bettard said that the applicant was requesting approval of reduction to the minimum yard requirements based on an error in building location, to allow a building to remain 15.27 feet from the side lot line. Section 3-107 requires a minimum side yard of 20 feet in the R-1 district; therefore, a modification of 4.73 feet from the minimum side yard requirement was being requested. Ms. Bettard said that staff had reviewed the application according to the applicable standards and found that, due to the height of the subject addition, and the topography of property between the dwelling and the western lot line, additional screening measures would not effectively mitigate the impact of the dwelling. Staff also noted that the applicant has provided existing landscape plantings between the dwelling and the western lot line; however, staff believed that the visual impact of the dwelling could be softened by providing a row of evergreens, 8 feet in height, between the dwelling and the western lot line. Even though the lot is currently vacant and the co-owner of the lot is the agent for this application, staff still believed that additional screening could help soften the visual impact, especially from Georgetown Pike, which is a scenic byway.

Mr. Pammel asked staff if the subject application had been referred to the History Commission and Architectural Review Board (ARB) for their review. Ms. Bettard said that the applicant had informed her that it had gone through some type of review and suggested that the applicant might expand on that point.

Leonard Pick, 5909 Calla Drive, McLean, Virginia, presented the statement of justification, stating that the consideration of where the ARB stood on this matter was of utmost importance. He said that the house was not built according to the plans which were previously approved by the ARB. The Madison Bank funded the developer who went into bankruptcy; when they repossessed the property, they found that the house had been built larger than approved and infringed on the property line on both sides. Mr. Pick said that they were able to solve the problem on the east side by obtaining an administrative variance, as the error was only a few inches; however, the error is much greater on the western side and the ARB was very adamant and vocal in proposing changes to the plans in all phases of the house, including the landscaping, in order to allow the Madison Bank to complete the construction of the house. At the time of foreclosure, the house was only half built. He said that the Madison Bank hired a contractor, who in turn hired an engineer who discovered the errors made by the original developer. Mr. Pick said that, while the recommendations made by staff were appreciated, they would conflict with the ARB restrictions. He said that the ARB likes the house the way it is, and they do not concern themselves with side yard requirements.

Mr. Pammel said that, when he saw that staff was recommending a planting barrier, he knew that was contrary to the requirements of the ARB. He said a situation existed wherein staff was recommending conditions in the use permit which were contrary to the ARB recommendations in Historic Districts. Mr. Pammel said he believed the conflicts should have been resolved before the case came before the BZA.

Mr. Hammack asked Mr. Pick if he had read the Proposed Development Conditions. He said that he had and that Condition 4 was the only one of any significance and the one which he believed Mr. Pammel was concerned with. Mr. Pick said that he had to have his landscaping plans approved by the ARB and could not deviate from the approved plan. Mr. Pick said that staff's recommendation of a visual buffer was contrary to the requirements outlined by the ARB.

Mr. Hammack asked Mr. Pick what he meant by his reference to a visual buffer, but not trees. Mr. Pick said he meant, possibly, large shrubs, but he was not sure; however, he was concerned over what the ARB would say about evergreen plantings of an 8 foot height which would effectively make a green wall. Mr. Pick said that, because the lots are small, the ARB favored a wide open look and less plantings, which would not simulate a wall or boundary line.

Cathy Donnell, PhD., 6424 Georgetown Pike, McLean, Virginia, came forward to speak in support of the application so that the situation could be resolved and clear the way for their purchase.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 91-D-050, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions dated November 26, 1991, as amended.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-050 by FEDERAL DEPOSIT INSURANCE CORPORATION, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 15.27 ft. from side lot line, on property located at 6424 Georgetown Pike, Tax Map Reference 22-3((1))53, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the specific dwelling shown on the plat (stamped received in the Office of Comprehensive Planning) on August 28, 1991) and certified by Peter Hotz and submitted with this application.

2. This Special Permit is granted only for the purpose(s), structure(s) and /or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A building permit shall be obtained and inspections approved for the addition within thirty days of the final approval date of this special permit. A plat showing the approved location and the dimensions of the dwelling in accordance with this special permit shall be submitted and attached to the building permit.

4. A visual buffer or a row of evergreen plantings shall be provided between the dwelling and the western lot line of the existing dwelling, as determined by the Architectural Review Board (ARB). The nature, type and specific location of the plantings shall be determined by the ARB.

This approval contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 4, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 259, November 26, 1991, (Tape 1), Action Item:

Request for Reconsideration
Apostolic Church, SP 91-Y-036

Mr. Pammel said that, as the maker of the motion that approved this application the previous week, he wanted to make a motion that the request by the adjoining property owners for reconsideration be approved, but limited to only the major concern about the possible glare from the parking area into their residential lots. Mr. Pammel said that the adjacent property owners' letter raised some issues which were not discussed at the public hearing, particularly the fact that there is a cleared area adjacent to the lots where there is a right-of-way easement for a public utility. He recommended that the applicant's engineer and staff look into the situation and that BZA defer a decision on this reconsideration for thirty days, until a report by staff can be submitted. Chairman DiGiulian recommended that the BZA defer a decision on whether or not to grant a reconsideration until the report by staff is submitted to the BZA. Mrs. Harris said that she did not want to second Mr. Pammel's motion, but would like to second Chairman DiGiulian's motion. She asked Mr. Pammel if his present stance deleted everything he had previously said. Mr. Pammel said that the only wished to defer the decision on whether or not to grant the reconsideration request until the BZA receives the report which it had requested, with emphasis on the lighting, since that was the emphasis in the letter from the adjacent property owners.

Mr. Pammel made a motion to defer decision on whether to grant a reconsideration until staff can submit a report to the BZA, with emphasis on the lighting issue. Lori Greenlief, Staff Coordinator, asked Mr. Pammel for clarification of what the BZA was requesting. Mr. Pammel said that he asked that all of the items in the letter be addressed by staff with emphasis added to the glare issue. Mr. Hammack said that he thought that staff had addressed all of the issues raised in the letter, which appeared to be a rehash of the letter previously submitted to the BZA. He said that the Proposed Development Conditions addressed the issues raised and that, if the applicant did not comply with the Conditions, the special permit would not be valid. The motion was not seconded.

Mrs. Thonen said that, according to all the discussion, all of the raised issues had been covered and she made a motion to deny the request for reconsideration. Mr. Ribble seconded the motion.

Mrs. Harris said that, regarding the statement in the letter suggesting that minds were made up before the meeting, she suggested that the citizens go back and look at the transcript, because there were many probing questions and intense consideration, and she did not believe that there was any sign of minds having been made up before the meeting. She said she believed that the BZA gave the case a very fair hearing.

The BZA members agreed that they never came to a meeting with their minds already made up.

Mr. Pammel said that the BZA made reference to the staff report, which had addressed all of the policies in the recently adopted Comprehensive Plan, which clearly indicated that this particular application met the Plan policies, as well as all of the criteria in the Zoning Ordinance.

The motion carried by a vote of 7-0 and the request for reconsideration was denied.

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Page 259, November 26, 1991, (Tape 1), Scheduled case of:

10:35 A.M. RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-4, appl. under Sect. 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to allow reconfiguration of parking, reconstruction and expansion of club house, locker room, cart maintenance building, and addition of tennis pro shop on approx. 151.321 acres located at 9901 Beach Mill Rd., zoned R-E, Dranesville District, Tax Map 8-1((1))22,23,41; 8-3((1))4. (DEFERRED FROM 10/29/91 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Bryan replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, stating that the property is located on the south side of Beach Mill Road and east of its intersection with Walker Road in Great Falls, surrounded primarily by large subdivision lots, zoned R-E, and developed with single family detached dwellings. He said that the applicant is the owner of Lots 4, 22, 23, and 41, which contain a total of 151.321 acres, zoned R-E, and are developed with a Country

Club and related facilities. The applicant was requesting approval of an amendment to an existing special permit as captioned above. He said that the new tennis pro shop will have seven parking spaces located on the site. The hours of operation will remain the same as on the previously approved special permit. Mr. Jaskiewicz said that staff's primary concern with this application lies with the determination that Clark Branch's 100 year flood plain, hydric soils and adjacent steep slopes, constitute an Environmental Quality Corridor (EQC). He said that, in order to mitigate adverse impacts of the proposed site changes on this EQC, staff had drafted several Proposed Development Conditions which address the outstanding issues, including the provision of Best Management Practices (BMPs), which is Condition 17; and limiting the clearing and grading outside of the 312 foot contour interval on the south side of the club house, which is Condition 9. Staff determined that the proposed vehicular turnaround area and its associated limits of clearing and grading adversely impact the EQC to warrant this condition. Mr. Jaskiewicz said that staff has determined that the application would meet all of the provisions of the Zoning Ordinance, would be in harmony with the Comprehensive Plan, and would be in harmony with the general purpose and intent of the R-E zoning district, provided that the Proposed Development Conditions contained in Appendix 1 are approved, with the following changes: Condition 17 - delete "...and the County's proposed Chesapeake Bay Preservation Ordinance BMP regulations...." Condition 23 - delete "...a six foot high chain link fence..." and make it read, "Transitional Screening 1, or its equivalent, and the existing fencing shall be maintained..."

Kennon W. Bryan, with the law firm of Tydings, Bryan Adams & Ritzert, P.C., 4117 Chain Bridge Road, Fairfax, Virginia, represented the applicant, stating that there were two major problems with staff's recommendations in the Conditions. He named Condition 11 and said that he had no problem with the last sentence, but the way they interpreted the Condition was that they were being asked to develop a tree save or tree replacement plan for the entire 151 acres of property, as opposed to the limits of clearing and grading that are shown on the plan. Mr. Bryan said that the Condition seriously inhibited the applicant's ability to change the design of the golf course in the future. He said that, thirty years ago, when the club was founded, the entire 151 acres was nothing but fields and pastures; today, it is heavily forested with pin oaks and white spruce, and one can barely see from fairway to fairway on parallel fairways today. Mr. Bryan said that the applicant has had a very intense tree planting policy in place for the past ten years and he believed that having to come back to the County every time they wanted to make a slight change in the design of a golf course hole would be unreasonably burdensome in terms of being conditioned to do so. Mr. Bryan said that they were using the same footprint and were only trying to upgrade and modernize the facilities.

Mrs. Thonen said that the way she understood the Condition, it referred to the area that would be graded and cleared. Mr. Bryan said that he had no problem with that part of the Condition, as long as it only referred to the limits of clearing and grading. He said he believed that there was language in the first sentence stating that a tree save/tree replacement plan shall be submitted for review and approval by the County Urban Forester, and that it might be misinterpreted at some future date.

Mr. Kelley asked Mr. Bryan, in Condition 11, fourth line, if it would be acceptable to him that the word "outside" were changed to "within," and he said that it would. Mrs. Harris said that she believed Mr. Bryan would also want to cross out "on the remainder of the site," and he said yes.

Mr. Bryan addressed Condition 9, stating that the 312 contour actually cuts off the corner of the building. He said it was the applicant's position that they were not within the EQC in any of their plans; they had the County's standards which their engineer had reviewed and discussed with County staff, and no reason could be found for the 312 contour. Mr. Bryan said that all of their construction would be 26 feet above floodplain, and that they were 200 foot from the floodplain line. He submitted photographs for the BZA to review. Mr. Bryan called attention to the number 3 green and the drainage coming off the parking lot. He said that, when it rains, the water comes down on the opposite side of the number 2 green from where they were contemplating any form of clearing, grading, or construction of any kind. He said the point he wanted to make was that the major flow of water and drainage did not come anywhere near the proposed loading dock and turnaround area. Mr. Bryan called attention to a photograph showing the back of the club area and said that if the entire building was moved back up the slope in an opposite direction, the opposite end of the current use of the property is the cart storage area; surrounded by the cart storage area are the tenth tee, the thirteenth tee and the putting green. He said that there is absolutely no room for the building to be pushed back twenty or thirty feet; the other reason why they cannot move the building back is economical.

Mrs. Harris asked Mr. Bryan how far back the applicant would need to move the building in order to satisfy the County's EQC requirement, and he said about sixty feet; but he would have the engineer explain what would be involved if the applicant was required to meet the 312 contour.

In answer to a question from Mrs. Harris, Lori Greenlief, Staff Coordinator said that staff's major concern was the area to the south, where the proposed service entrance is planned. Mr. Jaskiewicz said that the club house is now a one-story building; the applicant is proposing, with the loading area and part of the additional square footage, to create a basement level; to access the basement, they are proposing the loading facility shown on the plan because

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there is no below-grade entrance. Mr. Bryan acknowledge that they proposed to carve into the hillside to increase the footage available, which he said would be beyond the 312 foot contour to about the 306 foot contour.

Robert McDonald, Site Engineer with Gordon Associates, 1806 Robert Fulton Drive, Reston, Virginia, came forward to explain the proposed loading area. He said that the 312 foot contour presented problems: not only did it chop off one corner of the building, but they were unable to determine why the 312 foot contour was picked, as opposed to 314, 310, or some other number. Mr. McDonald said that if they did not go outside the 312 foot contour, they would have to back up to a higher elevation, perhaps 313 or 314. The basement floor elevation is at 307 feet. In order to get drainage, the proposed loading area was around 307, dropping down to 306 feet. Mr. McDonald submitted a sketch of the type of vehicle which would be delivering to the loading area. He said that there is a 8 foot retaining wall near the 312 foot contour, in order to get down there and not affect the grading outside the 312 feet. He said that, in addition to the obstacle of the retaining wall, it is obvious that the vehicle cannot complete its turn within the confines of the loading area. He said that a turn could be completed if the loading area were extended to the right, as shown on the drawing he submitted. The impact of that would not only require additional excavation, and an additional 8 to 10 foot retaining wall but, from the main dining room, the view would be of the tops of the delivery trucks. He said that, to get down to that area, it would be necessary to go from approximately a 7% slope to an 11% slope. He believed that might create a safety problem for delivery vehicles during slippery or inclement weather.

Mr. McDonald said that, looking at the County's criteria for an EQC, he believed that they were at least 140 feet away from the edge of any conceivable EQC on an intermittent stream, and approximately 300 to 365 feet away from the edge of the floodplain.

Mr. Hammack asked staff what significance the 312 foot contour had. Mr. Jaskiewicz said that he believed that staff identified the part of the EQC containing the hydric soils, and the slopes criteria; it was his understanding that the 312 number was part of the steep slopes calculations.

Mr. McDonald said that, if the concern was the EQC on what was being shown as a intermittent stream going northward and westward from the floodplain and, according to the criteria, it is considered to be 50 feet perpendicular to the stream, plus 4% or 4 feet for each percent of slope. Using a 15% slope, he said, would result in 60 feet, plus 50 feet, or 110 feet from the center line of the stream. He said that the proposed construction would be more than 250 feet from the stream. Concerning the hydric soils, he said that he would grant that in the floodplain, the 1A alluvial soil which is on the soil map is clearly a hydric soil. That soil extends along the intermittent stream, according to the County soil map. He said that the construction would be in the area marked 55C2: the 55 being a glenelg soil, not a hydric soil; the C indicating that the slope is between 7% and 14%. The clubhouse itself sits up on a 55B2, which is the same soil, but a 2% to 7% slope.

Mrs. Harris asked if there were no mitigating measures for runoff that could be put on the outside of the asphalt turnaround to retard or reverse the condition that staff was concerned about. Mr. McDonald said that the main runoff does not come anywhere near that part of the clubhouse. He said that the whole area was seeded and has very finely manicured grass which is fairly effective in slowing runoff.

Chairman DiGiulian asked if there would be runoff from the loading area and the turnaround area and Mr. McDonald said that there would. Mrs. Harris asked Mr. McDonald if something could be planted or infiltration installed if disturbing the area caused the runoff pattern to change, in order to mitigate the problem before it began. Mr. McDonald said an infiltration trench could be put in along the border; however, the County list considers that type of soil to be marginal in terms of providing effective runoff in trenches because it is not very porous and doesn't soak up as readily as some other soils. Mr. McDonald said their position was that there really is no measure needed. Chairman DiGiulian said he was concerned that the plat shows the existing building to be reconstructed and that is not the case and is misleading. He said that, as he understood it, the existing structures would be removed, there is no existing basement, the proposed elevation of the new building will make it necessary to cut into the bank; and, although Mr. McDonald said he did not believe there was a need for mitigating measures, he believed that there may be a genuine need. Mr. Bryan said that the existing building has a basement but no loading dock, but did acknowledged to Chairman DiGiulian that the new construction would make it necessary to cut into the bank.

Mr. Hammack asked staff if they had an opportunity to look at the map and outline provided and asked if they had any questions on Mr. McDonald's presentation. Ms. Greenlief said that she would feel more comfortable if the Environmental Planner had an opportunity to look at the new submissions because he had delineated the floodplain line and was concerned with the tributary associated with the floodplain, the hydric soils associated with the tributary, and the steep slopes associated with the hydric soils. Mr. Hammack asked if the Environmental Planner had worked off the plat showing the soils and Ms. Greenlief said that he had. Mr. Hammack said he would like to hear what the Environmental Planner had to say.

Mrs. Thonen said that, since there seemed to be a difference of opinion, she suggested deferring the case in order to get answers to the questions. Mr. Bryan said that the applicant had no problem with planting some shrubbery and putting in the irrigation buffer.

Mrs. Harris said she would like to defer a decision to try to determine if there were some mitigating measures which could be taken around the turning area which would satisfy the County concerns.

Mrs. Thonen said that she believed more information was needed about the soils. Chairman DiGiulian said he would like to know how the County came up with the 312 foot elevation.

Mr. Kelley said that he would like to know what Mr. Bryan's alternative language would be for condition 9. He believed the BZA should continue with the hearing to see if any other problems would arise, with the understanding that the decision would be deferred and the hearing would be left open. Mr. Kelley said he had some questions he would like to ask. He said he could not imagine that the clubhouse did not open until 11:00 a.m. as indicated in the conditions and that, if he went out to play golf, that he could not get breakfast until 11:00 a.m. Mr. Bryan said that it was open for people to go inside and they could get coffee, but no services were being rendered. Mr. Kelley said that the believed the conditions should be changed to reflect that. He asked if no one teed off before 7:30 a.m., because that was unlike most clubs. Mr. Bryan said that 7:30 a.m. was their first tee time.

Mr. Bryan said he would like to address one other overall issue regarding the wording in many of the new conditions being prefaced with, "prior to site plan approval," and said he would like the BZA to know that permission had been obtained from Supervisor Richards to contemporaneously file a site plan waiver with the filing of the application, which was in process. He said he was concerned that, when he got to the site plan waiver process, he would be told that there was language in the BZA resolution which said it was conditioned upon site plan approval. He said that he would like to have an understanding that site plan approval would include the site plan waiver in the conditions. Mr. Hammack said he did not believe that to be a problem.

Mr. Bryan said that he was willing to have Mr. McDonald meet with the Environmental staff and resolve any outstanding issues because, otherwise, they would be faced with a 312 foot situation and would have to throw away a couple of hundred thousand dollars worth of architectural plans.

Mrs. Harris requested that the applicant send the additional information to the BZA for their review at least a week in advance of the scheduled meeting date.

Speaking in support of the County Club, J. William Deddy, 11120 Bowen Avenue, Great Falls, Virginia, said he had been a member of the River Bend County Club since 1978, and had served as Chairman of the Maintenance and Grounds Committee. He said that they were seriously in need of a new clubhouse.

In answer to a question from Mr.Kelley, Mr. Bryan said that they had membership approval for the proposed construction. Mr. Kelley asked about the applicant's reference to phasing the project and Mr. Bryan said that they would like to do the entire project at one time; however, based on preliminary cost estimates and bids received to date, they would not be able to do that. He said they would be lucky to be able to do the clubhouse without having to go back for additional funding from the members. The reason they were trying to get the project started was that they believed they could get the best prices in the present economy. Mr. Kelley advised Mr. Bryan of the obligation to begin construction within the 2-1/2 year time frame. Mr. Bryan said they were expecting to begin construction by next September. He called the BZA's attention to the sketch showing the fire wall separating the clubhouse and locker rooms and said that the first phase of construction would be everything below that. If they are able to afford it, they will do the proposed locker rooms at the same time.

Mrs. Harris asked Mr. Bryan if they had talked with Eagon Hills Community Association and Great Falls Civic Association and he said they had not, but that most of Eagon Hills members are members of the Country Club. He said that Eagon Hills' open space area is in the floodplain and borders the County Club's fourteenth fairway.

There were no other speakers.

Mrs. Harris made a motion that the hearing of SPA 72-D-101-4 be kept open and decision deferred until December 17, 1991 at 9:00 p.m. for additional information about the soils, the environmental impact of the turnaround, and exactly where the County came up with 312 foot contour. Mr. Hammack seconded the motion.

Ms. Greenlief said that, if the applicant desired to change the hours of operation, in line with Mr. Kelley's remarks, the application would have to be readvertised. Chairman DiGiulian asked if the BZA could modify the hours of operation as a part of their motion, without advertising. Mr. Kelley reminded the BZA that it was only the food service which was not operating early in the morning. Chairman DiGiulian said he believed that the BZA could make a motion to change any part of the application, including the hours of operation.

Mr. Bryan said that the would like to point out that the conditions were not advertised. Ms. Greenlief said that readvertisment is necessary when conditions previously imposed are changed at the request of the applicant, and change of hours is one of those instances.

Page 263, November 26, 1991, (Tape 1), RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-4, continued from Page 262

Mr. Pammel asked to be permitted to make one minor modification to the motion, that the environmental staff from the County be present for the hearing on December 17, 1991. Mrs. Harris amended her motion to include Mr. Pammel's request. The motion carried by a vote of 7-0.

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Page 263, November 26, 1991, (Tape 1), Scheduled case of:

11:00 A.M. GOODRIDGE DRIVE ASSOCIATES LIMITED PARTNERSHIP APPEAL, A 91-P-011, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that a request for additional time to commence construction of a third office building must be approved in order to ensure that Special Exception, SE 89-D-042, remains valid, on approx. 8.32 acres, located at 1710, 1709, and 1705 Goodridge Drive, zoned C-4, SC, HC, Providence District (formerly Dranesville), Tax Map 29-3((15))4A, 4B, 4C. (DEFERRED FROM 10/29/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian advised that he had a letter requesting deferral of this appeal. Mrs. Thonen made a motion to defer A 91-P-011 to February 4, 1992 at 11:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 263, November 26, 1991, (Tape 1), Action Item:

Approval of Resolutions from November 19, 1991

Mr. Hammack made a motion to approve the resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 25, 1992

APPROVED: March 3, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, December 3, 1991. The following Board Members were present: Vice Chairman Paul Hammack; Martha Harris; Mary Thonen; Robert Kelley; James Pammel; and John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Hammack called for the first scheduled case.

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Page 265, December 3, 1991, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM A. CROSS, VC 91-M-108, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure to remain 9.8 ft. from side lot line and addition 10.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 20,000 s.f. located at 6313 Buffalo Ridge Rd., zoned R-3, Mason District, Tax Map 51-3((13))22, 23.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Cross replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the existing dwelling was originally constructed on a consolidated parcel which included Lot 21, existing Lot 22, and a portion of Lot 23. He explained that in 1978 Lot 21 was subdivided and sold and another dwelling was constructed on it. This subdivision situation resulted in the existing dwelling, which is 9.8 feet from the side lot line, being unable to meet the 12 foot minimum side yard requirement for the R-3 Zoning District.

Mr. Riegle stated that the applicant was requesting a 2.2 foot variance to allow the existing dwelling to remain at a location 9.8 feet from the side lot line. He further stated that the applicant was also requesting a 2 foot variance to allow a two story addition 10 feet from the side lot line. Mr. Riegle noted that the applicant had submitted architectural drawings of the proposed two story addition which was planned to be constructed above the existing house. In summary, Mr. Riegle noted that several letters of support, including one from the adjoining property owner, had been received.

The applicant, William A. Cross, 6313 Buffalo Ridge Road, Falls Church, Virginia, addressed the Board. He thanked Mr. Riegle and stated that the staff report had been accurate and concise. Mr. Cross stated that the original plat depicted that existing house had met the 1941 setback requirement. He explained that in the late 1970's, the adjoining lots were sold and the existing house was left 9.8 feet from the side lot line. Mr. Cross stated that the 375 square foot addition would not extend any closer to the side lot line than the existing structure and would be architecturally compatible with the neighborhood. In summary, he asked the Board to grant the request and also to waive the eight day wait period requirement.

There being no speakers to the request, Vice Chairman Hammack closed the public hearing.

Mr. Pammel made a motion to grant VC 91-M-108 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 26, 1991.

Mrs. Thonen seconded the motion.

Vice Chairman Hammack called for discussion.

Mrs. Thonen stated that the request was for a minimum variance and noted that many mistakes were made when the lots were subdivided.

Mrs. Harris stated that applicant was not requesting a footprint that would be larger than the existing structure.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-108 by WILLIAM A. CROSS, under Section 18-401 of the Zoning Ordinance to allow existing structure to remain 9.8 feet from side lot line and addition 10.0 feet from side lot line, on property located at 6313 Buffalo Ridge Road, Tax Map Reference 51-3((13))22, 23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1991; and

WHEREAS, the Board has made the following findings of fact:

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1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 20,000 square feet.
4. The application meets the necessary standards required for the granting of a variance.
5. The applicant was not aware of the error when the property was purchased and had no control over the situation.
6. The applicant is seeking a minimum variance.
7. The variance would allow for the much needed living space in the relatively small house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:

   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling and addition shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Kelley made a motion to waive the eight day waiting period for final approval. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 1991. This date shall be deemed to be the final approval date of this variance.

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9:10 A.M. HUGH T. KLIPP, VC 91-Y-105, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (deck) 7.0 ft. from side lot line and addition (roofed deck) 6.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 13,403 s.f. located at 15506 Meherrin Dr., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 53-3((4))(2)24.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Klipp replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow the construction of a rear deck that is 4 feet in height with steps 7 feet from the western side lot line. He further stated that the applicant was also requesting a variance for a side deck with steps 6 feet from the western side lot line. Mr. Jaskiewicz stated that the Zoning Ordinance permits open decks and steps 4 feet in height and less to extend 5 feet into a minimum required side yard, thus a variance of 8 feet and 9 feet respectively was requested.

Mr. Pammel asked if the lot and structure had complied with Zoning Ordinance requirements under which it was constructed, Mr. Jaskiewicz stated that it had.

The applicant, Hugh T. Klipp, 15506 Meherrin Drive, Centreville, Virginia addressed the Board. He stated that when he was transferred to the area, he and his wife had spent a week seeking acceptable housing in Virginia. He explained that because the Residential Use Permit (RUP) had not been issued, the property was zoned R-2 when he had inspected the house. Mr. Klipp said that once the RUP was issued, the zoning changed to R-C. He stated that he had not been informed that the zoning requirement would automatically change upon the transfer of ownership; therefore, he thought that he would be able to construct the deck by-right.

Mr. Klipp explicated that he needed the variance in order to be able to have access to the kitchen and mud room from the backyard. He noted that the builder, who has since declared bankruptcy, had not informed the buyers that the Ordinance would change and they would not be allowed to build decks and steps to the backyards. Mr. Klipp submitted pictures of the surrounding properties to depict that there would be no adverse impact on the neighbors. In summary, he asked the Board to grant the request.

In response to a question from Mrs. Harris as to why the steps that are on the northwestern corner of the structure are needed, Mr. Klipp stated that the one set of steps allow direct access to the kitchen and the other two sets of steps allow direct access to the family room. He expressed his willingness to remove one set of steps if the BZA so prescribed.

There being no speakers to the request, Vice Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to grant-in-part VC 91-Y-105 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 26, 1991, with the elimination of the steps on the northwestern corner of the structure as depicted on the plat.

Mr. Ribble seconded the motion.

Vice Chairman Hammack called for discussion.

Mr. Pammel expressed his belief that the granting of the variance was justified because the applicant's problem stemmed from the downzoning that had taken place when a large segment of the watershed was rezoned to 5 acres. He noted that the property had met the standards prior to the downzoning.

Mrs. Thonen stated she could not support the motion because it was granted-in-part and she believed that the application should have been granted as submitted by the applicant. She stated that the County's rezoning of the property had inflicted the hardship on the applicant. Mrs. Thonen noted that prior to the rezoning, the applicant could have built the deck by-right.

Vice Chairman called for the vote. The motion carried by a vote of 5-1 with Mrs. Thonen voting nay. Chairman DiGiulian was absent from the meeting.

After a brief discussion, it was the consensus of the BZA that due to the expenses involved, new plats would not be required. The BZA directed Mr. Klipp to revise the existing plat to depict that the steps on the northwest side of the property are deleted.

In response to a question from Vice Chairman Hammack regarding whether the revised plat would be acceptable, Mr. Riegle stated that although he believed the BZA's Resolution was explicit, he was not certain if the applicant would have problems when he applied for the Building Permit.

Mrs. Harris stated that the applicant should follow the instruction of the BZA and if any complication arose regarding issuance of a building permit, then the BZA could require a new plat.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-105 by HUGH T. KLIPP, under Section 18-401 of the Zoning Ordinance to allow addition (deck) 7.0 feet (THE BOARD GRANTED 11.0 FEET) from side lot line and addition (roofed deck) 6.0 feet from side lot line, on property located at 15506 Meherrin Drive, Tax Map Reference 53-3((4))(2)24, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,403 square feet.
4. The subject property has multiple characteristics. When the zoning district changes after the Residential Use Permit (RUP) is issued, many property owners are left with houses that must receive a variance in order to construct decks. The owners are then faced with safety problems because of doors that exit onto nothing.
5. The variance would not change the character of the neighborhood.
6. The variance would alleviate a demonstrative hardship.
7. The variance would be in harmony with the intended spirit and purpose of the Zoning Ordinance and would not be contrary to the public interest.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location of a deck attached to the rear of the dwelling with steps which extend into the side yard, a deck attached to the side of the dwelling with steps which extend into the same side yard as shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The steps on the northwestern corner of the rear deck as depicted on the plat shall be delated.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mrs. Thonen voting nay. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1991. This date shall be deemed to be the final approval date of this variance.

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Vice Chairman Hammack addressed the citizens present at the public hearing and asked that anyone who had illegally parked their car move it immediately. He noted that any car found to be in violation would be towed.

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Page 269, December 3, 1991, (Tape 1), Scheduled case of:

9:20 A.M. JEAN B. REYNOLDS, SP 91-L-055, appl. under Sects. 8-918 and 8-914 of the Zoning Ordinance to allow accessory dwelling unit and reduction to minimum yard requirements based on error in building location to allow dwelling to remain 5.47 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 9,543 s.f. located at 6314 Pioneer Dr., zoned R-4, HC, Lee District, Tax Map 80-4((5))(6)8. (OTH GRANTED 9/17/91) (DEFERRED FROM 11/7/91 FOR NEW PLAT SHOWING PARKING SPACE)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Reynolds replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report which had been prepared by Meaghan Shevlin, who has left the staff in order to attend school at the University of Virginia. He stated the case had been deferred from the November 7, 1991, public hearing to allow the applicant time to resolve the parking problems. Mr. Riegle noted that the applicant was requesting a special permit to allow the existing dwelling to remain 5.47 feet from the side lot line and to allow an accessory dwelling unit within the existing structure. He stated that in conjunction with the accessory dwelling unit, staff had proposed a development condition which would require the driveway to be widened to 17 feet in order to accommodate two cars parked side-by-side. Mr. Riegle said that in response to the BZA request, the applicant had submitted a drawing of the widened driveway. He stated that with the modification of the driveway as shown on the drawing, adequate parking would be available for both the residents of the principle and accessory dwelling and expressed staff's belief that the application met the applicable standards for approval. Mr. Riegle stated that new development conditions dated December 3, 1991, had been revised to describe the width of the driveway as 17 feet instead of 18 feet.

Jean B. Reynolds, 6314 Pioneer Drive, Springfield, Virginia, addressed the Board. She requested a waiver of the eight-day waiting period for the final approval of the special permit. She explained that the various contractors would like to complete their projects before the onset of inclement weather.

In response to a question from Mrs. Thonen as to why the structure had been built too close to the lot line, Mr. Riegle stated that research of the Zoning Administration's files did not reveal the reasons for the error. He stated that it was staff's belief that the enclosure of a carport had caused the violation. Mr. Riegle noted that the error had occurred before the applicant had purchased the property. He suggested that the BZA make two separate motions, one for the building in error and one for the accessory dwelling unit.

In response to Mr. Pammel's question as to whether Ms. Reynolds is the owner or the co-owner of the property, Mr. Riegle stated that the staff report had erroneous reflected Ms. Reynolds as the co-owner when in fact she is the sole owner of the property. Ms. Reynolds confirmed that she was the sole owner of the property.

There being no speakers to the request, Vice Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant SP 91-L-055 for the reasons reflected in the Resolution and subject to the revised development conditions dated December 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-055 by JEAN B. REYNOLDS, under Section 8-918 and 8-914 of the Zoning Ordinance to allow accessory dwelling unit and reduction to minimum yard requirements based on error in building location to allow dwelling to remain 5.47 feet from side lot line, on property located at 6314 Pioneer Drive, Tax Map Reference 80-4((5))(6)8, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4 and HC.
3. The area of the lot is 9,543 square feet.
4. The application meets the necessary standards for an accessory dwelling unit.
5. There are no parking problems associated with the application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the building and uses indicated on the house location plat submitted with this application by Charles B. Shreve & Associates, dated November 28, 1986, and received in this office on July 31, 1991. This condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. The accessory dwelling unit shall contain no more than one (1) bedrooms.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

6. This special permit shall be approved for a period of five (5) years from the final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.

7. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

8. The existing driveway shall be widened to a final width of 17 feet, as generally shown on the drawing submitted by the applicant dated November 21, 1991.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished. Under Sect. 8-918 of the Zoning Ordinance, the Clerk to the Board of Zoning Appeals shall cause to be recorded among the land records of Fairfax County a copy of this approval and development conditions. The resolution shall contain a description of the subject property and shall be indexed in the Grantor Index in the name of the property owners.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if

a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Pammel made a motion to waive the eight-day waiting period for final approval. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 1991. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Thonen made a motion to grant SP 91-L-055 for the reasons reflected in the Resolution and subject to the revised development condition contained in the staff report dated December 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-055 by JEAN B. REYNOLDS, under Section 8-918 and 8-914 of the Zoning Ordinance to allow accessory dwelling unit and reduction to minimum yard requirements based on error in building location to allow dwelling to remain 5.47 feet from side lot line, on property located at 6314 Pioneer Drive, Tax Map Reference 80-4((5))(6)8, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The application meets the necessary standards for the granting of a special permit.

G. There are no parking problems associated with the application.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the building and uses indicated on the house location plat submitted with this application by Charles B. Shreve & Associates, dated November 28, 1986, and received in this office on July 31, 1991. This condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. The accessory dwelling unit shall contain no more than one (1) bedrooms.

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

5. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

6. This special permit shall be approved for a period of five (5) years from the final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.

7. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

8. The existing driveway shall be widened to a final width of 17 feet, as generally shown on the drawing submitted by the applicant dated November 21, 1991.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Pammel made a motion to waive the eight-day waiting period for final approval. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 272, December 3, 1991, (Tape 1), Scheduled case of:

9:20 A.M. CHRISTOPHER W. & PATRICIA R. SHENEFELT, SP 91-C-054, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit on approx. 15,244 s.f. located at 2112 Frada Dr., zoned R-2, Centreville District, Tax Map 38-1((26))25.

Vice Chairman Hammack stated that the applicant had requested withdrawal of the application.

Mrs. Thonen made a motion to allow the withdrawal of SP 91-C-054. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

Vice Chairman Hammack called for speakers to the request and no one came forward.

Mr. Ribble noted that the applicants had requested a refund of the $50.00 filing fee. After a brief discussion, it was the consensus of the BZA that the applicants' request not be addressed.

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The BZA recessed at 10:00 a.m. and reconvened at 10:15 a.m.

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9:35 A.M. TOM V., JOAN J., KIMBERLY W., AND TOM V. III RICHARDSON, SP 91-Y-035, appl. under Sects. 3-C03 and 8-915 of the Zoning Ordinance to allow riding and boarding stables and waiver of dustless surface on approx. 40.00 acres located at 6001 Bull Run Post Office Rd., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 42-4((1))12. (DEFERRED FROM 10/22/91 - NOTICES NOT IN ORDER)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Richardson replied that it was.

Vice Chairman Hammack stated that although staff had mailed the staff report to the BZA members, some of the members had not received it.

Mrs. Harris stated that since she had not received the staff report prior to the public hearing, she would have to abstain from the vote if the case were to be heard at this meeting.

The applicant, Tom V. Richardson, 6001 Bull Run Post Office Road, Centreville, Virginia, addressed the Board. He stated that although he did not want to jeopardize his case, he would like the BZA to go forward with the public hearing.

Mr. Ribble explained that since he had not received the staff report through the mail, he too would have to abstain from the vote.

Vice Chairman called for speakers to the request and no one came forward.

Mrs. Harris made a motion to defer SP 91-Y-035 to December 20, 1991, at 11:30 a.m. to allow the BZA members time to review the staff report.

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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9:50 A.M. PATRICIA SHANNON, VC 91-V-107, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (deck) 1.0 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 13,122 s.f. located at 1917 Glen Dr., zoned R-4, Mt. Vernon District, Tax Map 83-3((14))(9)9B.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that one notification letter had been sent to the property address and not to the Royal Ordnance Corporation which is the owner on record at the Fairfax County Office of Finance. Ms. Kelsey further explained that the tenant of the property, Peter Williams, is also the President of the Board of Directors, Royal Ordinance Corporation. She stated that a letter authorizing Mr. Williams to receive the notification letter was before the Board.

In response to questions from the Board, Ms. Kelsey stated that the applicant is required to send the notification letters to the address on record at the Fairfax County Office of Real Estate Assessments.

The applicant's husband, Richard Shannon, 1917 Glen Drive, Alexandria, Virginia, addressed the Board. He explained that he and his wife had erroneously assumed that Mr. Williams was the owner of the property.

After a brief discussion, it was the consensus of the BZA that the notices were not in order. Vice Chairman Hammack ruled that the notices were not in order.

Mr. Pammel made a motion to defer VC 91-V-107 to January 7, 1992 at 9:15 a.m.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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10:00 A.M. STEVEN T. GOLDBERG & JANE M. HARVEY, VC 91-M-106, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed lot 1 having lot width of 6.0 ft. (80 ft. min. lot width required by Sect. 3-306) on approx. 1.39786 acres located at 3129 Sleepy Hollow Rd., zoned R-3, Mason District, Tax Map 51-3((1))17A.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Martin replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicants were requesting approval of a variance to the minimum lot width requirement in

order to subdivide the property into two lots, with proposed Lot 1 having a lot width of 6 feet on Sleepy Hollow Road. Ms. Bettard stated that the amendment to the Statement of Justification and a note on the Special Permit Plat indicated that the cottage/carriage house will be removed before the proposed dwelling on Lot 1 is constructed. She noted that Section 3-306 of the Zoning Ordinance requires a minimum lot width of 80 feet in the R-3 District, thus, the applicants were requesting a variance of 74 feet to the minimum lot width requirement for Lot 17A in the R-3 District. Ms. Bettard stated that it was staff's belief that no hardship exists and a pipestem in this area would set a precedent. Ms. Bettard noted the applicants have revised development conditions and plats that they would like to present to the BZA.

The applicants' attorney, Keith Martin, with the law film of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, 950 North Glebe Road, Suite 300, Arlington, Virginia, addressed the BZA. He presented revised development conditions and plats to the BZA. He explained that the subject lot was the largest in the Ravenworth Subdivision and has 173 feet of frontage on Sleepy Hollow Road. Mr. Martin stated that the applicants would like to subdivide the parcel into 2 lots with a pipestem configuration to create two lots approximately 30,000 square feet similar in size and configuration. He noted that Lot 1 would have approximately 6 feet and Lot 2 would have approximately 164 feet of road frontage and expressed his belief that the proposed subdivision would be compatible to the area.

Mr. Martin noted that the lot was heavily wooded and that the proposed structure would be constructed on the only open section of the property. He further noted that the applicant would abide by the proposed development conditions that mandates the removal of the existing carriage house. Mr. Martin stated that the applicant had taken the environmental considerations in account when planning the proposed subdivision so the environmental corridor as well as the Resource Protection Area (RPA) area to the rear of the property would be preserved.

Mr. Martin stated that the applicant was requesting to revise the date incorporating the variance plat and to change Condition 9 which would allow the applicant time to remove the carriage house. He noted that the applicant would prefer to remove it at the time the occupancy permit for the new structure was issued.

In summary, Mr. Martin said the proposal represents a density of 1.4 units per acre in the R-3 Zoning District which only requires a density of 2-3 units per acre. He expressed his belief that the design of the proposal would be aesthetically pleasing, would consolidate two driveway entrances, would remove a non-conforming use, would preserve the maximum of tree, has the neighbors and the Homeowners Association support, would not have a detrimental impact on the area, and would be in harmony with the Zoning District.

In response to Mrs. Harris' question as to where the access would be for Lots 1 and 3, Mr. Martin used the viewgraph to depict the access easements which would serve the lots when they are developed.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the easements were not reflected on the tax map and expressed staff's concerns regarding the issue.

In response to Vice Chairman's question as to whether there were easements on record, Mr. Martin stated that the applicants' research reflected that the lots were subdivided in the 1940's and the owners had established easements at that time.

The applicants' agent, Richard H. Pleasants, IV, with the firm of Pleasants and Associates, Inc., 6404-G Seven Corners Place, Falls Church, Virginia, addressed the Board. He stated that although he had not researched the easements on the properties, the owner of Lot 1 had assured him that an access easement ran along the property line. He stated that he did not know the status of Lots 2 or 3.

Mr. Pammel expressed his concern regarding the criteria of compatibility with development and stated that the surrounding properties were consistent with the subject lot in its present configuration. Mr. Martin referred to the tax map and said that it depicted dozens of 15,000 square foot lots.

In response to Mrs. Harris' question as to how long the carriage house had been rental property, Mr. Pleasants stated that the applicant had been renting the house for ten years.

Ms. Kelsey stated that although under the present zoning two dwellings units would not be allowed, the carriage house had been on the property for many years. She noted that although staff's research could not confirm that the structure was legally established, the proposed development conditions mandated that the carriage house be removed. She noted that this could have occurred if Lots 17 and 17A had previously been one lot, therefore, a guest house would have been allowed on the property.

In response to Mrs. Harris' question as to whether a guest house could be used as rental property, Ms. Kelsey said the Zoning Administrator must establish if the carriage house is non-conforming. She confirmed that if it had been constructed under the present zoning Ordinance, the carriage house could not be rented.

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In response to Mr. Pammel's question as to the lot width requirement in the R-3 District, Ms. Bettard stated that it was 80 feet.

In response to Vice Chairman Hammack's question as to whether the existing driveway would be removed, Mr. Martin stated it would be moved and consolidated.

Vice Chairman Hammack called for speakers in support and the following citizens came forward.

Mason District Planning Commissioner, Henry (Hank) Strickland, 9085 Holmes Run Road, Falls Church, Virginia, addressed the Board. He stated that although he had opposed the prior subdivision proposal, he supported the current proposal submitted by the applicant. Mr. Strickland explained that although the subject property could be subdivided by-right, the subdivision plan before the BZA would be better both environmentally and aesthetically. He said that the Sleepy Hollow Citizen's Association, as well as the neighbors support the proposal before the BZA. Mr. Strickland noted that the applicant had agreed to provide a 12 foot evergreen buffer along the northeast lot line and a 25 foot side yard and expressed his belief that the pipestem subdivision would be superior to the lot configuration that would be allowed by-right.

Mrs. Thonen thanked Mr. Strickland for his testimony, but explained to him that the BZA must rule on the land hardship issue.

In response to Mrs. Harris' question as to whether the hardship was self-imposed, Mr. Strickland stated he was before the BZA to protect the interest of the adjoining neighbor and could not testify to the applicants' hardship issued.

Mr. Pleasant addressed the BZA. He stated that the subdivision would result in two lots that would be similar in size to the neighboring lots. He explained that the applicants were proposing the subdivision in order to finance the extensive renovations that are needed for their 100 year old house.

Vice Chairman Hammack explained to Mr. Pleasants that when a parcel may be developed by-right, then the applicant must demonstrate a hardship which would justify the granting of the variance. Mr. Pleasants stated that the proposed subdivision would be in the best interest of the community.

After a brief discussion, it was the consensus of the BZA that the applicants must submit documentation to demonstrate a land hardship.

Mr. Pleasant stated that if the property were subdivided by-right, then many of the mature trees on the lot would have to be removed. He noted that with the proposal before the BZA no trees would have to be removed. Mr. Pleasant agreed to submit documentation as to the environmental issue.

There being no further speakers in support and no speakers in opposition, Vice Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to defer VC 91-M-106 to January 7, 1992 at 10:25 a.m. He instructed the applicants to present documentation regarding the land hardship.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 276, December 3, 1991, (Tape 2), Scheduled case of:

10:10 A.M. KOREAN PENIEL PRESBYTERIAN CHURCH, SP 91-S-053, appl. under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities on approx. 2.5047 acres located at 11927 Braddock Rd., zoned R-C, WS, Springfield District, Tax Map 67-1((4))41.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Mittereder replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the 2.5 acre undeveloped site is zoned R-C and WSPOD and is planned for residential use at one dwelling unit per acre. Ms. Dickey noted that the applicant was requesting approval of a special permit to construct a two-story church which will comprise 250 seats with 65 parking spaces and a maximum building height of 30 feet. Ms. Dickey stated that the primary church services would be held weekly on Sundays from 10:00 a.m. to 1:00 p.m. She further stated that no private school of general education or child care center was proposed in the application. Ms. Dickey also indicated that no steeples or domes would be involved in the request. She noted that the church would have a gross floor area of 6,000 square feet which translates to a floor area ratio (FAR) is .05.

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Ms. Dickey stated that the applicant was requesting a modification of the transitional screening requirements on the south lot line to allow the landscaping shown on the submitted plat to satisfy the screening requirement along the south lot line. She said that the applicant was also requesting a waiver of the barrier requirements on all four lot lines to allow the barriers shown on the special permit plat to satisfy the barrier requirement.

In summary, Ms. Dickey stated that it was staff's belief that the application did not meet the standards necessary for special permit approval. She explained that the request would present negative impacts which would be inconsistent with the purpose and intent of the R-C designation and would not be in harmony with the land use and environmental recommendations contained in the Comprehensive Plan. Outstanding issues included the intensity and incompatibility of the proposed non-residential use in a very low-density residential area, protection of the water quality in the Occoquan Basin, the accumulation of institutional uses in a low density residential area, the extensive clearing and grading proposed which would leave little undisturbed open space and tree preservation, and the lack of adequate screening from surrounding residential uses.

Ms. Dickey stated that on December 2, 1991, the applicant had submitted a revised statement and plat which depicted a 10 foot reduction to the building width and the relocation of the storm water management pond. She explained that staff had not had sufficient time to review the information, therefore, staff's recommendation to deny the application remained unchanged.

In response to Vice Chairman Hammack's question as to how long it would take staff to review the new plats, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she had briefly reviewed the changes which are minor and that she believed staff's position would remained unchanged.

The applicant's agent Mark Mittereder, with the firm of ArchVest, Inc., 4300 Evergreen Lane, #306, Annandale, Virginia, addressed the Board. He stated that upon receiving the staff report the applicant had endeavored to improve the application. He explained that they had focused on the screening and clearing issues and had revised the plat. Mr. Mittereder said that the applicant also plans to revise the landscape plan and to meet with members of the community in order to present a more acceptable application. Mr. Mittereder requested a deferral so that these concerns could be resolved before the BZA acted on the request.

In response to Mrs. Harris' question regarding the existing structure, Mr. Mittereder stated that the house would be removed.

Mr. Kelley made a motion to defer SP 91-S-053 to January 28, 1992 at 9:00 a.m. Mrs. Harris seconded the motion.

Vice Chairman Hammack called for speakers to the request for deferral and no one came forward. He explained that due to the significant changes in the application, the deferral would allow staff, members of the community, and the applicant time to resolve issues of concern.

The motion carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 276, December 3, 1991, (Tape 2), Scheduled case of:

10:25 A.M. EDWIN W. DAVIS, SP 91-M-061, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on approx. 19,168 s.f. located at 3505 Rustic Way La., zoned R-2, Mason District, Tax Map 61-1((11))535. (OTH GRANTED 10/15/91)

In response to Vice Chairman Hammack's question as to whether a withdrawal had been requested, Lori Greenlief, Staff Coordinator, confirmed that it had.

Mrs. Thonen made a motion to withdraw SP 91-M-061. She expressed concern regarding the newly implemented procedure which allowed the approval of a second kitchen without the approval of the Board of Zoning Appeals (BZA).

Vice Chairman Hammack noted that Mrs. Thonen had not been present at the meeting when the BZA had received testimony from William Shoup, Deputy Zoning Administrator, regarding the new procedure. He said that he would brief her on the issue after the public hearing.

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

Mrs. Harris noted that in the past, requests of this type were usually to allow blood relatives to reside in the structure. Lori Greenlief, Staff Coordinator, stated that staff had reviewed the application and the request was to allow a relative to reside in the house.

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10:35 A.M. GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-1, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to amend SP 73-L-152 for church and related facilities to allow child care center, waiver of dustless surface requirement, and addition of land area on approx. 4.3555 acres located at 7434 Bath St., zoned R-3, Lee District, Tax Map 80-3((2))(54)9 and 80-3((1))1D. (DEFERRED FROM 10/29/91 FOR ADDITIONAL INFORMATION)

Vice Chairman Hammack noted that the Board of Zoning Appeals (BZA) had issued an intent to defer on November 19, 1991.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and suggested a deferral date of February 18, 1992 at 8:00 p.m.

Vice Chairman Hammack called for speakers to the deferral and no one came forward.

Mr. Kelly made a motion to defer SPA 73-L-152-1 to the suggested date and time. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

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10:40 A.M. FRANK A. FUERST, SP 91-D-062, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on approx. 20,700 s.f. located at 1194 Winter Hunt Rd., zoned R-1 (developed cluster), Dranesville District, Tax Map 20-4((7))12. (OTH GRANTED 10/15/91)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Fuerst replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit to allow the establishment of an accessory dwelling unit within the basement of the existing dwelling. She noted that the accessory dwelling unit would consist of no more than 845 square feet or 32 percent of the total dwelling. Ms. Greenlief stated that there would be an internal connection between the accessory dwelling unit and the principal dwelling unit. She noted that the principal dwelling would be occupied by at least one person over the age of fifty-five and the accessory dwelling unit would be occupied by one person not related to the applicant. She stated that staff believed the parking provided on site would be sufficient for both dwelling units. Ms. Greenlief stated that it was staff's belief that the request met the applicable standards; thus, staff recommended approval.

Ms. Greenlief stated that the wording in Development Condition 9 would be substituted as stated: "The cooking facilities shall be redesigned to conform to the provisions of the Zoning Ordinance." She noted that this change would allow the applicant to keep a wet bar or microwave oven once the accessory dwelling unit is removed from the property.

In response to Mr. Kelley's question as to why such a condition would be required, Ms. Greenlief explained that the condition ensures that the kitchen would be removed when the accessory dwelling unit was no longer needed. She further explained that the applicant may wish to sell the property prior to the expiration of the five-year term.

Vice Chairman Hammack stated that he did not understand why the applicant was concerned with the issue since the buyer could keep the accessory dwelling unit by writing a statement saying that a family member would be living in it.

In response to Mr. Kelley's question as to whether the condition could be removed, Ms. Greenlief stated that if the condition were to be removed then at the end of the five-year term the component which constituted the accessory dwelling unit would not have to be removed. Ms. Greenlief stated that the applicant would not be able to sell the property with an accessory dwelling unit because the use would be granted to the applicant only.

After a brief discussion, it was the consensus of the BZA that comments concerning accessory dwelling units be confined to the application before the BZA.

The applicant, Frank A. Fuerst, 1194 Winter Hunt Road, McLean, Virginia addressed the BZA. He stated that he needed a professional live-in to help care for his invalid wife. He noted that although there would be a separate external entrance, there would be no external changes to the structure. He further noted that there would an internal entrance which would connect the two uses. Mr. Fuerst indicated that the neighbors support the request and submitted a letter of support from an adjoining neighbor. He explained to the BZA that he wished to have a specific condition that would remove the accessory dwelling unit so that any other improvements made to his residence would not be in jeopardy. In summary, Mr. Fuerst asked the BZA to waive the eight-day waiting period.

In response to Mr. Kelley's question regarding the four parking spaces requirement, Mr. Fuerst stated that while he only has one car, there are four parking spaces available.

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In response to Mrs. Harris' question as to whether the applicant would construct a walkway to the external entrance, Mr. Fuerst stated that he would install cement blocks from the entrance to the sidewalk. He assured the BZA that no trees or shrubs would be disturbed by the walkway.

Mr. Kelley again referred to the four parking spaces and asked for staff's input on the requirement. Ms. Greenlief stated that while two spaces would be required for the principle dwelling, four spaces were available. She explained that since four spaces were available, staff did not wish to restrict the parking accommodations.

In response to Vice Chairman Hammack's question as to whether the accessory dwelling unit conditions would be recorded in the land records, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the first paragraph after the development conditions required that staff be responsible for the matter.

Mr. Fuerst noted that the process for obtaining a special permit was very difficult for the alderly and disabled. Vice Chairman Hammack explained that the BZA was very concerned regarding the possibility of abuse by individuals establishing accessory dwelling units. He noted that this trend would deteriorate single family neighborhoods.

Vice Chairman Hammack called for speakers in support and the following citizen came forward.

Jeremy Novak, with the Fairfax County Department of Housing and Home Improvement Program, One University Plaza, Fairfax, Virginia, addressed the BZA. He stated that the application would not call for any exterior changes and met all the necessary requirements. He assured the BZA that the walkway would not disturb the landscaping and would be aesthetically pleasing.

Mr. Novak stated that although the applicant experienced great hardship in filing for the special permit, he had decided that he wanted to go through the process and meet the requirements. He explained that Mr. Fuerst's wife had to wait to receive the needed care until the BZA heard the case.

In response to the BZA's request to clarify what he meant by the remark that the applicant chose to go through the process, Mr. Novak stated that many of his clients have illegally established an accessory dwelling unit. He explained that approximately two months ago, the Board of Supervisors had requested the zoning staff to prepare a revision to the Accessory Dwelling Unit Ordinance. Mr. Novak noted that the new Ordinance would allow the Zoning Administrator to approve accessory dwelling units for full-time care givers and for family members. He agreed to submit the material regarding the relevant decision by Board of Supervisors to the BZA.

Mr. Kelley made a motion to grant SP 91-D-062 subject to the development conditions contained in the staff report dated November 26, 1991, with the modifications as reflected in the Resolution. He expressed his belief that since the Zoning Administrator had been granted the latitude to approve accessory dwelling units without a BZA hearing, then the citizens that go before the BZA should not be penalized by requiring the accessory dwelling unit to be recorded in the land records.

Mrs. Thonen seconded the motion.

Vice Chairman Hammack stated that he did not believe that the paragraph requiring the accessory dwelling unit to be recorded in the land records should be deleted. He explained that he could not support the motion if the requirement was deleted.

Mr. Kelley stated that he would withdraw his deletion of the requirement if Vice Chairman Hammack objected so strongly. He stated that he believed that all future accessory dwelling unit applicants that come before the BZA should not be subject to a requirement that is not imposed on all Fairfax County citizens who received permission to have such a use. He clarified his position by pointing out when the Zoning Administrator grants permission for a citizen to install an accessory dwelling unit the requirement is not mandatory.

Vice Chairman Hammack stated that although he understood Mr. Kelley's position, he did not believe that the BZA had the authority to change the Code. He explained that the applicant planned to have a hired person live in the unit and one of the required standards under the Code was for the use to be recorded in the Land Records.

Mrs. Thonen noted that the new policy only requires that one person over 55 years of age reside in one of the units.

The motion carried by a vote of 4-1 with Vice Chairman Hammack voting nay. Mr. Ribble was not present for the vote and Chairman DiGiulian was absent from the meeting.

Mr. Kelley made a motion to waive the eight-day waiting period for the final approval. Mrs. Harris and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch addressed the BZA. She stated that when the Zoning Ordinance mandates that the Clerk to the BZA follow a certain procedure, then

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even if the Resolution does not reflect the requirement, the Clerk must follow the guidelines of the Code.

Mrs. Harris requested that staff arrange for a meeting with the Zoning Administrator and the Deputy Zoning Administrator to discuss the ramifications of the new procedure.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-062 by FRANK A. FUERST, under Section 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 1194 Winter Hunt Road, Tax Map Reference 20-4((7))12, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1 (developed cluster).
3. The area of the lot is 20,700 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the building and uses indicated on the plat submitted with this application by W. L. Meskins, Inc., dated November 23, 1977 and received in this office on October 8, 1991. This condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. This Special Permit is subject to the issuance of a building permit for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 845 square feet of the structure.

5. The accessory dwelling unit shall contain no more than one bedroom.

6. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

7. This special permit shall be approved for a period of five (5) years from the final approval date with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.

8. Three (3) parking spaces shall be provided on site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if

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a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 4-1 with Vice Chairman Hammack voting nay. Mr. Ribble was not present for the vote and Chairman DiGiulian was absent from the meeting.

Mr. Kelley made a motion to waive the eight-day waiting period for the final approval. Mrs. Harris and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 280, December 3, 1991, (Tape 3), Scheduled case of:

10:40 A.M. THE SALVATION ARMY, SPA 78-A-269-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 78-A-269 for church and related facilities to allow building addition, on approx. 4.5369 acres located at 4915 Ox Rd., zoned R-1, Braddock District (formerly Annandale), Tax Map 68-1((1))11. (DEFERRED FROM 10/29/91 FOR NOTICES)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Rickard replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Regina C. Murray, Planner II, with the Rezoning and Special Exception Branch. She explained that Ms. Murray had presented the special exception to the Board of Supervisors and would present the special permit to the BZA.

Ms. Murray stated that the applicant was requesting approval of a special permit to allow a 3,004 square foot building addition to the existing church structure in order to provide additional classroom space for the existing child care center. She noted that the floor area ratio (FAR) proposed with this application is 0.13. Ms. Murray said that the application also included requests to modify the transitional screening requirement, to modify the barrier requirement, and to waive the service drive requirement along the Ox Road (Route 123) frontage of the site in favor of the existing partial service drive. Ms. Murray stated that staff recommended approval subject to the development conditions contained in Attachment 1 of Addendum 2 dated November 20, 1991.

In summary, Ms. Murray distributed the Special Exception Development Conditions to the BZA. She explained that they had been approved by the Board of Supervisors on October 28, 1991, and had been inadvertently excluded from Addendum 2.

The applicant's agent, James M. Rickard, 4915 Ox Road, Fairfax, Virginia, addressed the BZA. He stated that the Board of Supervisors had approved the special exception application and asked the BZA to approve the special permit. Mr. Rickard expressed his belief that the Salvation Army provided a much need service to the community.

Vice Chairman Hammack called for speakers to the request and the following citizens came forward.

Paul F. Barnard, 5112 Portsmouth Road, Fairfax, Virginia, addressed the BZA. He stated that he was an adjoining neighbor and expressed his support for the request. Mr. Barnard complimented the applicant and staff regarding the landscaping and barrier requirements.

The representative of The Church of Jesus Christ of Ladder Day Saints, Gregory H. Payne, 5822 Bridgetown Court, Burke, Virginia, addressed the BZA. He stated that the church supported the applicant's request. Mr. Payne stated that in addition to the shared driveway, the church would agree to allow the applicant to use available parking on the church property as needed.

There being no further speakers in support and no speakers in opposition, Vice Chairman Hammack closed the public hearing.

Mr. Pammel made a motion to grant SPA 78-A-269-1 subject to the development conditions contained in the contained in Attachment 1 of Addendum 2 dated November 20, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application, SPA 78-A-269-1 by THE SALVATION ARMY, under Section 3-103 of the Zoning Ordinance to amend SP 78-A-269 for church and related facilities to allow building addition, on property located at 4915 Ox Road, Tax Map Reference 68-1((1))11, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.5369 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 9-304, 8-303, and 9-309 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approved for the location and specified addition as shown on the plat approved in conjunction with SPA 78-A-269 prepared by Donald F. Mori, P.C. as received by the Office of Comprehensive Planning September 26, 1991 and is not transferable to other land.

2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat approved with this application, as qualified by these development conditions.

3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available during the hours of operation of the permitted use.

4. The maximum number of seats in the sanctuary shall be limited to 150 seats.

5. The design and construction materials for the proposed building additions shall be compatible with and consistent with the existing structure as determined by DEM at the time of site plan review.

6. A landscape plan in conformance with Sheet #3 of the SE/SPA Plat entitled Salvation Army Headquarters for Fairfax County, shall be submitted for review and approval of the Urban Forestry Branch prior to the time of Final Site Plan approval. Four (4) clusters of vegetation, including shrubs and one (1) flowering tree per cluster, shall be provided along the Route 123 frontage of the site to enhance the visual appearance of the site frontage. The species of vegetation provided along the periphery of the site shall be a mixture of deciduous and evergreens. The final location and species of all supplemental vegetation shall be as determined by the Urban Forester in consultation with the Braddock District Supervisor's Office.

7. Inserts shall be provided within the existing four (4) feet high chain link fence along the eastern periphery of the site as determined by DEM.

8. The proposed addition shall be constructed with or retrofitted with materials so as to achieve a maximum interior noise level of 45 dBA Ldn and a maximum exterior noise level of 65 dBA Ldn within the play area.

9. Right-of-way shall be dedicated to the Board of Supervisors in fee simple along the entire Ox Road frontage of the site to 80 feet from the centerline of Ox Road and all ancillary easements shall be conveyed along the Ox Road frontage of the site to the Board of Supervisors at the time of site plan or within 60 days upon demand, whichever first occurs.

10. A Type I asphalt trail eight (8) feet wide within an a twelve (12) feet wide public access easement shall be provided, in the event the existing trail is disturbed during construction.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 11, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 282, December 3, 1991, (Tape 3), Scheduled case of:

10:50 A.M. AMERIBANC SAVINGS BANK, FSB, SP 91-Y-059, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 15.3 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-107) on approx. 35,719 s.f. located at 2952 Treadwell La., zoned R-1 (developed cluster) Sully District (formerly Centreville), Tax Map 35-2((2))15. (OTH GRANTED 10/8/91) (DEFERRED FROM 11/12/91 FOR ADDITIONAL INFORMATION)

Vice Chairman Hammack called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Avis replied that it was.

Bernadette Bettard, Staff Coordinator, addressed the BZA. She stated that the application had been deferred from the November 12, 1991, public hearing to allow time for staff to research the County records in order to obtain the additional information requested by the BZA. She said that the applicant had been instructed to investigate a way in which to mitigate potential noise impacts. Ms. Bettard noted that the BZA had indicated that additional testimony from both the applicant and the neighbors would be allowed.

In response to the BZA's request, Ms. Bettard submitted a copy of the building permit application, a copy of the building permit dated November 12, 1991, copies of inspection request forms for footing and foundation inspections dated August 31, 1991 and September 5, 1984. Ms. Bettard stated that at the time of the inspections, the footing and foundations were not approved. She noted that the information did not reveal that all necessary inspections for the addition had been obtained. Ms. Bettard indicated that staff was unable to obtain a copy of the house location plat which had accompanied the building permit application. In summary, Ms. Bettard stated that staff recommended approval subject to the development conditions contained in the staff report dated November 5, 1991.

In response to Vice Chairman Hammack's question regarding the building permit, Ms. Bettard stated that staff was unable to locate the house building plat submitted with the application. She explained that had the plat been obtained, then staff would have been able to determine if the addition had been built in conformance.

Vice Chairman Hammack called for speakers in support and the following citizen came forward.

The applicant's agent, Pamela L. Avis, 7630 Little River Turnpike, Annandale, Virginia, addressed the BZA. She stated that she had received recommendations from an acoustical specialist, William Peterson, to mitigate the noise problems. She stated that he had indicated that the major noise reflective materials were the house siding and to a lesser extent the ceiling. Ms. Avis expressed her willingness to adopt Mr. Peterson's suggestion and to install acoustical material on the ceiling of the porch and to install a board-on-board barrier on the outside of the screened porch. She also stated that the applicant would change the door closer to ensure that doors would not create noise when closed. In regards to the lighting issue, Ms. Avis stated that while there are floodlights on the structure, the only porch light was attached to a fan and had very low voltage. In summary, Ms. Avis stated that the purchasers of the property had expressed their desire to retain the porch and requested the BZA grant the request.

In response to Mr. Pammel's question as to who would be responsible for the removal of the porch if the request was not granted, Ms. Avis stated that the applicant would remove the porch.

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There being no further speakers in support, Vice Chairman Hammack called for speakers in opposition and the following citizens came forward.

Robert Combs, 2960 Treadwell Avenue, Herndon, Virginia, addressed the BZA. He stated that although he had been concerned with the porch addition, he had assumed that the previous owner had received the proper permits. He said that although the applicant's lot is large, the house was constructed on the far corner of the lot. Mr. Combs expressed his belief that, Mr. Davis, the former owner realized that he was building the porch too close to the lot line. He stated that with regards to the hardship issue, Mr. Davis would not be penalized, the new owner had prior knowledge that the porch may be removed, and since the previous owner is a bank they could absorb the monetary hardship. In summary, Mr. Combs expressed his belief that the porch should never have been built so close to the lot line and asked the BZA to deny the application.

Kathy Douchez, 2956 Treadwell Lane, Herndon, Virginia, came forward. She had submitted a letter of opposition to the BZA. She expressed her belief that the applicant's lawyer should have thoroughly investigated the Fairfax County setback requirements before acquiring the property. She stated that the porch was highly detrimental to the use and enjoyment of her property, infringed upon her privacy, generated a negative noise impact, would create friction between the neighbors, and asked the BZA to deny the application.

In response to Mr. Pammel's question as to her position regarding the deck, Ms. Douchez stated that she had no position on the deck as it was not in violation.

Mr. Pammel requested that staff research the matter to determine if the deck was also in violation. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and assured Mr. Pammel that the open deck was in compliance. She stated that any open deck with any part of its floor higher than four feet above finished ground level may extend 12 feet into the minimum 10 feet yard requirement, but not closer than 5 feet.

Mr. Kelley asked Ms. Douchez how far her dwelling was from the shared property line. Ms. Douchez explained that the closest corner of her house was approximately 13 feet from the shared property line and 45 to 50 feet from the porch.

Mrs. Harris asked whether the screened porch backed into Mrs. Douchez front yard. Mrs. Douchez used the viewgraph to depict the location of the house. She explained that the house was angled to face the applicant's property.

Vice Chairman Hammack asked Mrs. Douchez what noise mitigation measures would be acceptable to her. Mrs. Douchez stated that the most effective measure would be to remove the porch. She explained that she reluctantly made the suggestions when she was asked to do so by Ms. Bettard and Ms. Avis.

Mrs. Harris asked Mrs. Douchez if there were any measures the applicant could take to relieve the negative impact imposed by the porch. Ms. Douchez again stated that she would prefer that the porch be removed. She stated that while the deck may create a negative noise impact, it would be less intrusive to the neighbors.

There being no further speakers to the request, Vice Chairman Hammack closed the public hearing.

In response to Mr. Kelley's question as to whether the applicant would be willing to agree upon various noise mitigation measures, Ms. Avis stated that the applicant would be willing to adopt some of the measure suggested at the hearing. She explained that she would not be able to commit to the installation of double glass windows without first consulting with the purchaser.

After a brief discussion, it was the consensus of the BZA to add a development condition which stated, "Noise incidental to the use of the addition shall meet all applicable Fairfax County Noise Ordinances and shall not be intrusive or impact on the immediately adjoining residences."

Mr. Kelley made a motion to grant SP 91-Y-059 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 5, 1991, and modified as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-059 by AMERIBANC SAVINGS BANK, FSB, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 15.3 feet from rear lot line, on property located at 2952 Treadwell Lane, Tax Map Reference 35-2((2))15, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 3, 1991; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This Special Permit is approved for the location of the specific addition shown on the plat (dated September 26, 1991) prepared by Bartlett Consultants, Ltd. and submitted with this application.

2. This Special Permit is granted only for the purpose(s), structure(s) and /or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. This Special Permit shall comply with all applicable standards relating to noise and glare as specified in Article 14 of the Zoning Ordinance.

4. A building permit shall be obtained and inspections approved for the addition within thirty days of the final approval date of this special permit. A plat showing the approved location and the dimensions of the addition in accordance with this special permit shall be submitted and attached to the building permit.

5. Noise incidental to the use of the addition shall meet all applicable Fairfax County Noise Ordinances and shall not be intrusive or impact on the immediately adjoining residences.

This approval contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional

Page 285, December 3, 1991, (Tape 3), AMERIBANC SAVINGS BANK, FSB, SP 91-Y-059, continued from Page 284)

time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Kelley made a motion to waive the eight-day waiting period for the final approval. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 3, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 285, December 3, 1991, (Tape 3), Action Item:

Approval of Resolutions from the November 26, 1991, Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk with the exception of the Resolution for Belva J. Warner, VC 91-D-101, which was being held for new plats. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 285, December 3, 1991, (Tape 3), Action Item:

Approval of Minutes from the October 1, 1991 and October 8, 1991 Hearings

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that she had contacted the Deputy Zoning Administrator, William Shoup, but had been unable to contact the Zoning Administrator, Jane W. Gwinn. Ms. Kelsey noted that Mr. Shoup would attend the next five meetings of the BZA and would be available to answer questions regarding the new procedures on accessory dwelling units. However, the BZA said they also would like Jane W. Gwinn, the Zoning Administrator, present.

Vice Chairman Hammack expressed his interest in the statements made by the Department of Housing representative, Jeremy Novak, regarding the issue. Ms. Kelsey noted that Mr. Shoup had indicated to her that the Department of Housing had requested that the Board of Supervisors amend the Zoning Ordinance so that a special permit would not be required for certain accessory dwelling units.

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As there was no other business to come before the Board, the meeting was adjourned at 1:07 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

Paul Hammack, Vice Chairman
Board of Zoning Appeals

SUBMITTED: January 24, 1992

APPROVED: January 28, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on December 10, 1991. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:13 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 287, December 10, 1991, (Tape 1), Scheduled case of:

9:00 A.M. HANS J. SCHMIDT, VC 91-D-109, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 2 lots with Lot 10B having lot width of 131.43 ft. and Lot 10A having lot width of 125.20 ft. (150 ft. min. lot width required by Sect. 3-106) on approx. 1.8326 acres (total subdivision 224 acres) located at 901 and 909 Whann Ave., zoned R-1, Dranesville District, Tax Map 21-4((6))10A, 10B.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Ritzert replied that it was.

Greg Chase, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. The subject properties are located north of its intersection with Sorrel Street; are zoned R-1; and are approximately 0.46 acres and 1.37 acres, respectively, in size. Lot 10A is currently developed with a single family detached dwelling fronting on Whann Avenue. Lot 10B is undeveloped and also fronts on Whann Avenue. The applicant was requesting a variance to the minimum lot width requirement to allow a subdivision of Lots 10A and 10B into 2 lots, proposed Lots 10A-1 and 10B-1. Proposed Lot 10A-1 will contain 0.884 acre and will have a lot width of 125.20 feet. Proposed Lot 10B-1 will contain 0.9486 acre and have a lot width of 131.43 feet. Section 3-106 of the Zoning Ordinance requires a minimum lot width of 150 feet for interior lots in the R-1 Zoning District; therefore, the applicant was requesting variances to the minimum lot width requirements of 24.8 feet for proposed Lot 10A-1 and 18.57 feet for Lot 10B-1.

Mr. Chase stated that staff believed the application failed to meet several of the standards for variance approval as discussed on page 3 of the staff report. He stated that staff noted Variance Standard 6 requires a finding that the strict application of the Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property or that granting a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant. He stated that staff believed that the applicants have a reasonable use of the subject property since they have a dwelling on proposed Lot 1 and the applicant's statement indicated that he knew of the constraints presented by Lot 10A at the time it was purchased, thus staff believed that the application did not meet Standard 6.

Mr. Chase stated that Variance Standard 9 requires a finding that the proposal would be in harmony with the intended spirit and purpose of the Zoning Ordinance and would not be contrary to the public interest. Staff believed that the proposed subdivision was not in harmony with the intended spirit and purpose of the Comprehensive Plan since it will result in a development with a proposed density of 1.097 dwelling units per acre which, while within the density range of 1 to 2 dwelling units per acre planned for this area, exceeded the Plan text recommendation that infill development in this area not exceed one dwelling unit per acre. The proposed density was also higher than 0.89 dwelling unit per acre density for Langley Forest Subdivision in which the property is located. For these reasons, staff believed that the application did not meet the provisions of Standard 9.

In response to a question from Mrs. Thonen, Mr. Chase replied that the two lots directly across the street from the subject property were configured as shown on the plat at the time of the original subdivision.

Mr. Hammack stated that it appeared that the two lots were buildable lots at the present time and if the variance was granted it would not be creating any more density. He asked staff if that was correct. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that was correct although technically staff did view the request as a resubdivision.

The applicant's agent, Gerald M. Ritzert, Esq., 4117 Chain Bridge Road #420, Fairfax, Virginia, came forward and called the BZA's attention to a handout that noted parcels in the area that were less than an acre in size and have lot frontage of less than 150 feet. He stated that the package also included a letter wherein the County indicated that the property is grandfathered and was subdivided by the filing of a plat in 1949 prior to the Zoning Ordinance, thereby Lot 10A is a buildable lot as it now stands. Mr. Ritzert stated that there are improvements on Lot 10B but not on Lot 10A and the improvements on Lots 22B and 22B1 were built in the mid '50's, and since there was no requirement for a variance at that time he assumed the lots were subdivided merely by the recording of a plat. Because Lot 10A is so narrow, the applicant was trying to adjust the boundary line between Lots 10A and 10B to allow for two buildable lots that would be more consistent with the harmony of the neighborhood. Mr. Ritzert stated that he believed the application met Standard 6 in that the property, while buildable at this time, was not conducive to a structure that would be in line with the other houses in the neighborhood.

Mr. Pammel asked if the speaker was suggesting that since the lot is a legal lot of record the applicant would probably need a variance to build on the lot and would come before the BZA with a variance application. Mr. Ritzert said that he believed the applicant could build on the lot without a variance. He stated that the lot is grandfathered, therefore the lot would not have to meet the Zoning Ordinance requirements. (Mr. Ritzert used the viewgraph to show the narrowness of the lot.) Mr. Pammel said that he was not suggesting that the applicant obtain a variance and pointed out that although the lot may be grandfathered the applicant could not meet the setback requirements stipulated in the Zoning Ordinance. Mr. Ritzert stated that the setback requirements call for 20 feet and the applicant could meet the requirement, but it would not make a lot of sense to build a house on the property without a variance and that was why the applicant was before the BZA. Mr. Pammel said that was the point he was trying to make.

Vice Chairman Ribble asked the speaker if he had completed his presentation.

Mr. Ritzert said that he would like to address the standards which staff did not believe the applicant met. He stated there would be a demonstrable hardship if the BZA denied the variance with regard to the type of structure that would be constructed. Regarding Standard 9, Mr. Ritzert said the density would not be changed and pointed out each of the proposed lots would be in excess of the 36,000 square feet requirement for the R-1 District. He stated the only problem he had with the staff report was the Chesapeake Bay Act requirements which had not even been approved.

There were no speakers, either in support or in opposition, to the request and Vice Chairman Ribble closed the public hearing.

In response to a question from Mr. Pammel regarding the ownership of the parcels, Mr. Ritzert replied that the Jacobis own Lot 10A and Mr. Schmidt owns Lot 10B. He stated that both parties would like to see the variance granted but officially he represented Mr. Schmidt.

Jane C. Kelsey, Chief, Special Permit and Variance, stated that she had not been aware Mr. Ritzert did not represent both parties and asked if the BZA would ask Mr. Jacobi to come forward and note for the record that Mr. Schmidt represented him.

Mr. Hammack stated that it had been his understanding that the County Attorney's office reviewed the affidavits prior to the public hearing to make certain that everything was in order. Ms. Kelsey stated that perhaps the County Attorney had not realized the attorney did not represent both parties.

Mr. Schmidt called the BZA's attention to the affidavit contained in Appendix 2 which listed all parties involved.

Mr. Pammel said the application was only in the name of Hans J. Schmidt and the affidavit listed Mr. Ritzert as the agent for the applicant. He pointed out the affidavit listed the Jacobis as a title owner to Lot A not as an applicant.

Tom Jacobi, son of Richard and Laverne Jacobi, came forward and agreed that Mr. Ritzert was acting on their behalf.

Mr. Hammack made a motion to grant the applicant's request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated December 3, 1991, with the deletion of Condition Number 3.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-109 by HANS J. SCHMIDT, under Section 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 2 lots with Lot 10B having lot width of 131.43 ft. and Lot 10A having lot width of 125.20 ft., on property located at 909 Whann Avenue, Tax Map Reference 21-4((6))10A, 10B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.8326 acres.
4. There is an extraordinary situation or condition on the use and development of the subject property.

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5. The request will not create any additional density in the subdivision.
6. It clearly is beneficial to the neighborhood to allow development of the property into two reasonably, normal sized lots with a variance rather than having some kind of bullet or narrow house built on the existing lot, that would certainly not be in conformance with what is in the neighborhood.
7. The applicant has satisfied the other conditions for the approval of a variance.

The application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of two lots into two (2) lots as shown on the plat prepared by Andrew P. Dunn and dated October 24, 1991 (revised).

2. If deemed necessary by the Director, DEM, a geotechnical study shall be required as part of subdivision plan review.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 290, December 10, 1991, (Tape 1), Scheduled case of:

9:10 A.M. TRACY A. & STEPHANIE K. SMITH, VC 91-M-110, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.3 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 11,232 s.f. located at 3103 Lewis Pl., zoned R-4, Mason District, Tax Map 50-3((4))238.

Vice Chairman Ribble called for the next case and the applicant did not respond. Mr. Kelley made a motion to pass over the case and noted some parts of the County were experiencing traffic problems. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 290, December 10, 1991, (Tape 1), Scheduled case of:

9:20 A.M. MELANIE ROTZ, VC 91-Y-117, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 13.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 20,997 s.f. located at 5097 Piney Branch Rd., zoned R-C and WS, Sully District (formerly Springfield), Tax Map 56-3((9))35.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Rotz replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated the subject property is developed with a single family detached dwelling and the surrounding lots are developed with single family detached dwellings which are also zoned R-C (Cluster) and WSPOD. The applicant was requesting approval of a variance in order to construct a one story addition 13 feet from the side lot line. The Zoning Ordinance requires a minimum of 20 feet from the side lot line in the R-C District, thus the applicant was requesting a variance of 7 feet. Mr. Jaskiewicz stated that the resolution of the other issues concerning the application was noted on page 1 of the staff report.

The co-owner, Jay Rotz, 5097 Piney Branch Road, Fairfax, Virginia, referenced the statement of justification submitted with the application, and pointed out there was no objections from the neighbors, and stated that he believed the addition would enhance the neighborhood.

In response to a question from Mr. Hammack, Mr. Rotz replied that the area shown on the viewgraph shaded in green was now partially a deck with the remainder a garden area at the lower end of the lot. He stated that he would like to remove the deck and construct a sunroom addition. Mr. Rotz said the variance was necessary due to the placement of the house on the lot.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel asked staff what the property had originally been zoned. Mr. Jaskiewicz stated his notes indicated it was recorded as R-1 Cluster in June 1978 which predates the current Zoning Ordinance and the minimum side yard at that time was 12 feet with a total minimum side yards of 40 feet.

Mr. Pammel made a motion to grant the applicant's request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated December 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-117 by MELANIE ROTZ, under Section 18-401 of the Zoning Ordinance to allow addition 13.0 ft. from side lot line, on property located at 5097 Piney Branch Road, Tax Map Reference 56-3((9))35, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 20,997 square feet.
4. There is a rather unique situation in that the lot does have an unusual configuration, being narrow in the portion where the house itself is built and wider at the front portion of the property with the obvious reason being the septic field.
5. There are obvious restrictions on the house and what the individuals can do.

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This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the building addition as shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval* date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Vice Chairman Ribble again called the Smith case. The applicant was still not present in the Board Room and Vice Chairman Ribble asked staff to contact the applicant.

Jane Kelsey, Chief, Special Permit and Variance, informed the BZA that she had been in contact with Ms. Smith and she had indicated to Ms. Kelsey that she had simply gotten the days confused. Ms. Smith had requested that the BZA pass over the case until 11:15 a.m. and she would be present. The BZA agreed.

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Page 291, December 10, 1991, (Tape 1), Scheduled case of:

9:30 A.M. CALVARY BAPTIST CHURCH, SP 91-D-057, appl. under Sects. 3-E03 and 8-915 of the Zoning Ordinance for a camp and recreation grounds to allow deletion of land area and waiver of dustless surface requirement on approx. 43.623 acres located at 101 Springvale Rd., zoned R-E, Dranesville District, Tax Map 3-2((1))3.

Page 292, December 10, 1991, (Tape 1), CALVARY BAPTIST CHURCH, SP 91-D-057, continued from Page 291)

Vice Chairman Ribble asked if the applicant was ready to proceed.

Bud Testerman, attorney for the applicant, 3905 Railroad Avenue, Fairfax, Virginia, came forward and stated that the church was not ready to be heard since it appeared that the application had to be amended. He said the church was requesting approval of a special permit in order to construct a caretaker's residence on a campground site, which is a permitted accessory use, but staff had now informed the applicant that a separate lot must be created that can stand on its own. Mr. Testerman said that the applicant had proposed to construct the residence within 100 feet of one of the boundary lines and one of the additional standards stipulates that it must be 100 feet and staff has informed the applicant that the BZA does not have the power or authority to waive the requirement. He asked the BZA to defer the application to February 11, 1992, if that was a meeting.

Vice Chairman Ribble asked staff to respond.

Mrs. Harris asked the speaker if she had understood him to say that staff was requiring the applicant to delete land in order to construct the caretaker's house. Mr. Testerman said that was correct. Mrs. Harris asked why the applicant did not amend the application to provide 100 feet between the dwelling and the lot line and Mr. Testerman said that may be the way the applicant decides to go but the applicant did not want to disturb the land any more than necessary.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated February 11th was fine but should the applicant need to apply for a variance, staff would need time to readvertise. Mr. Testerman stated he understood.

Mr. Kelley made a motion to defer the case to February 11, 1992, at 9:00 a.m. Mr. Hammack seconded the motion.

Vice Chairman Ribble polled the audience to determine if there was anyone present to speak to the deferral. There was no response.

The motion passed by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 292, December 10, 1991, (Tape 1), Scheduled case of:

9:45 A.M. MIMA S. & SALLY NEDELCOVYCH, VC 91-C-112, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (deck) 4.1 ft. from rear lot line (5 ft. min. rear yard required by Sects. 3-307 and 2-412) on approx. 10,344 s.f. located at 2208 Milburn La., zoned R-3 (developed cluster) Centreville District, Tax Map 16-4((9))(28)5.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Hopack, agent for the applicant, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval of a variance in order to construct a deck 4.1 feet from the rear lot line. The deck is 3.4 feet in height and accordingly an extension of 20 feet is permitted that therefore establishes a 5 foot minimum rear yard requirement. The applicants were requesting a variance of 1.9 feet. Mr. Riegle noted that the applicants were also proposing to construct an upper deck but that deck will be in compliance with the permitted extension and will not need a variance. The rear of the subject property abuts common open space as provided in conjunction with the cluster zoning.

Bill Hopack, 2206 Milburn Lane, Herndon, Virginia, came forward and agreed with staff's comments and stated that he would answer any questions the BZA might have.

Mrs. Harris noted that in paragraph 4 of the applicant's statement of justification it was stated that if the Ordinance was strictly applied the depth of the decks would have to be reduced by 10 feet. She stated that she assumed that to be a misunderstanding. Mr. Hopack said that was correct. He explained that when he went to the County to apply for a building permit he was told because part of the deck was above 4 feet the minimum rear setback requirement was 13 feet. He stated that he had made the application with that in mind and after staff reviewed the application the limitations were further defined. Mrs. Harris asked if the deck could be reconfigured to accommodate the 1.9 feet. Mr. Hopack said that the deck could be reconfigured and noted that the deck was designed with the two levels in mind. He added that in order to cut back on the corner of the proposed deck that required the variance would require cutting the deck down by 3 to 4 feet.

In response to another question by Mrs. Harris, Mr. Hopack replied that the square footage of the combined decks would be approximately 700 square feet.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

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Mrs. Thonen made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated December 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-112 by MIMA S. AND SALLY NEDELCOVYCH, under Section 18-401 of the Zoning Ordinance to allow addition (deck) 4.1 ft. from rear lot line, on property located at 2208 Milburn Lane, Tax Map Reference 16-4((9))(2B)5, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 10,344 square feet.
4. The request is for only .9 feet.
5. Such a minimal variance is appropriate.
6. The property abuts open space to the rear which will become park land and part of the Reston Homeowners Association; therefore, the request will not impact anyone.
7. The strict application of the Zoning Ordinance would restrict the size and location of the deck and the proposed elevation from the rear door.
8. It is really "ify" if the applicant would need a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific deck shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 294, December 10, 1991, (Tape 1), Scheduled case of:

9:55 A.M. RONALD D. GILLETTE & SHEREEN SHACHNOW-GILLETTE, VC 91-V-115, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8.0 ft. from edge of flood plain (15 ft. min. distance from edge of flood plain required by Sect. 2-415) on approx. 1.149 acres located at 8306 Marble Dale Ct., zoned R-3, Mt. Vernon District, Tax Map 102-3((27))28.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Gillette replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval of a variance in order to construct a building addition 8 feet from the edge of a flood plain. Sect. 2-415 of the Zoning Ordinance requires a minimum of 15 feet from the edge of a floodplain; therefore, the applicants were requesting a variance of 7 feet. Mr. Riegle noted that the application had been routed to the Environmental and Heritage Branch and that Branch had no problems with the application since the addition will not require any additional clearing, will not disrupt any of the existing vegetation, and will not be in the flood plain. The Branch also noted that there is a Conservation Easement in the area of the flood plain that was negotiated with the developer.

Ronald D. Gillette, 8306 Marble Dale Court, Alexandria, Virginia, stated that he and his wife owned a rather large lot in the neighborhood but most is consumed by easements which makes the lot narrow to build on. He said that they would like to a build a elevated second story addition off the existing dwelling. Mr. Gillette explained that the structure would be well above and back from the flood plain line and noted that the flood plain line is already elevated 5 feet above the flood plain.

In response to a question from Mrs. Harris, Mr. Gillette replied that underneath the deck would be either pilings or a slab. He stated that right now they favor the pilings and leave the area open in order for it to continue to take ground water and runoff.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated December 3, 1991, with the following addition: "No slab shall be constructed beneath the addition."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-115 by RONALD D. GILLETTE AND SHEREEN SHACHNOW-GILLETTE, under Section 18-401 of the Zoning Ordinance to allow addition 8.0 ft. from edge of floodplain, on property located at 8306 Marble Dale Court, Tax Map Reference 102-3((27))28, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

Page 295, December 10, 1991, (Tape 1), RONALD D. GILLETTE & SHEREEN SHACHNOW-GILLETTE, VC 91-V-115, continued from Page 294)

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.149 acres.
4. The lot has unusual characteristics with respect to the topography of the land.
5. The amount of land that is in floodplain easements does restrict the applicant's use of the property.
5. The deck will not encroach into the floodplain but simply in the setback from the floodplain.
6. The request will not cause a zoning hardship nor an environmental hardship.
7. The granting of the variance will alleviate a demonstrable hardship.
8. The applicant has chosen a location that has the most leeway to the floodplain line.
9. The house has double doors that exit into the proposed location.
10. A 15 foot wide addition is a reasonable size addition and the proposed location is the only place that it can be put on the back of the house.
11. The request will be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to public interest.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. No slab shall be constructed beneath the addition.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the

Page 296, December 10, 1991, (Tape 1), RONALD D. GILLETTE & SHEREEN SHACHNOW-GILLETTE, VC 91-V-115, continued from Page 295)

date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-1 with Mrs. Thonen voting nay. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Since it was not yet time for the next scheduled case, the BZA moved to the Action Items.

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Page 296, December 10, 1991, (Tape 1), Scheduled case of:

Approval of the December 3, 1991 Resolutions

Mr. Kelley made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion. The motion passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to the resolution for Frank A. Fuerst, SP 91-D-062, and asked if what was reflected was correct. Mr. Kelley said the resolution was correct.

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Page 296, December 10, 1991, (Tape 1), Scheduled case of:

10:05 A.M. GERALD A. & W. JEAN LATOUR, VC 91-S-114, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 17.6 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 10,533 s.f. located at 6512 Sara Alyce Ct., zoned R-3, Springfield District, Tax Map 88-1((17))31.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. LaTour replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the property is located on Sara Alyce Court an area southwest of the intersection of Old Keene Mill Road and Lee Chapel Road. The subject property and the surrounding lots are zoned R-3 and are developed with single family detached dwellings. The variance results from the applicants' proposal to enclose an existing deck for use as a sunroom addition to 17.6 feet from the rear lot line. A minimum rear yard of 25 feet is required by the Zoning Ordinance on the lot. Accordingly, the applicant was requesting a variance of 7.4 feet from the minimum rear yard requirement. In regard to surrounding uses, a review of the files in the Office of Zoning Administration revealed that the dwelling on adjacent Lot 40 to the west is located approximately 35 feet from the shared rear lot line. The dwelling on adjacent Lot 30 to the north is located approximately 31.5 feet from the shared side lot line, and the dwelling on adjacent Lot 32 to the south is located approximately 16.6 feet from the shared side lot line.

Gerald LaTour, 6512 Sara Alyce Court, Burke, Virginia, stated that he believed the justification for the variance was pretty straight forward as noted on the application. He said that the granting of the variance would give them an opportunity to fully utilize the property since the deck cannot be used year round due to inclement weather. Mr. Latour added that he is sun sensitive and to be allowed to enclose the deck would be beneficial to his health.

Vice Chairman Ribble pointed out that the hardship under the Ordinance was the shallowness of the lot and the siting of the house on the lot as noted in the statement of justification submitted with the application.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated December 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-114 by GERALD A. AND W. JEAN LATOUR, under Section 18-401 of the Zoning Ordinance to allow addition 17.6 ft. from rear lot line, on property located at 6512 Sara Alyce Court, Tax Map Reference 88-1((17))31, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,533 square feet.
4. The applicant meets the required standards, in particular the exceptional shape of the lot since it sets on a cul-de-sac.
5. The lot is shallow.
6. If the house had been placed differently on the lot, perhaps the applicant could have possibly constructed the deck by right.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific sunroom addition shown on the plat (prepared by Larry N. Scartz, Certified Land Surveyor, dated January 4, 1990) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The sunroom addition shall be architecturally compatible with the existing dwelling.

Page 298, December 10, 1991, (Tape 1), GERALD A. & W. JEAN LATOUR, VC 91-S-114, continued from Page 297)

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval* date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the Board of Zoning Appeals. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Since it was not yet time for the next scheduled case the BZA took action of Action Items.

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Page 298, December 10, 1991, (Tape 1), Action Item:

Birgit Hamel Bawell, VC 89-L-150
Additional Time Request

Mr. Pammel made a motion to grant the applicant's request since it was quite clear from the applicant's letter that Mr. Bawell had been out of the country and the construction could not commence until his return. The new expiration date is May 25, 1994. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 298, December 10, 1991, (Tape 1), Action Item:

Century Oaks Limited Partnership, SP 91-C-066
Out of Turn Hearing

Mr. Kelley made a motion that the applicant's request be granted. He asked staff for a suggested date. Jane Kelsey, Chief, Special Permit and Variance Branch, said that the case was presently scheduled for February 14, 1992, and suggested January 14, 1992.

Mrs. Thonen so moved. Mr. Kelley seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 298, December 10, 1991, (Tape 1), Action Item:

St. Mark's Catholic Church Appeal Request
For Change in Public Hearing Date

Mr. Kelley made a motion to approve the appellant's request and reschedule the public hearing for April 14, 1992 as suggested by the Clerk. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 298, December 10, 1991, (Tape 1), Action Item:

United Land Company Appeal, A 90-L-014
Intent to Defer

Mrs. Harris made a motion to approve the appellant's request that the BZA issue an intent to defer the public hearing. Hearing no objection, the Chair so ordered.

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Page 298, December 10, 1991, (Tapes 1-2), Scheduled case of:

10:15 A.M. JOSEPH J. SEIFRIED, VC 91-M-111, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 15,041 s.f. located at 6423 Cavalier Corridor, zoned R-2, Mason District, Tax Map 61-1((11))543.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Seifried replied that it was.

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Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the subject property is located on the east side of Cavalier Corridor west of its intersection with Lyric Lane, is zoned R-2, is developed with a single family detached dwelling, and is surrounded by other lots similarly developed and zoned. Ms. Bettard said that the applicant was requesting a variance in order to construct a 576 square foot garage addition to be located 7.0 feet from the side lot line. Section 3-207 of the Zoning Ordinance requires a minimum side yard of 15.0 feet in the R-2 Zoning District; therefore, the applicant was requesting a variance of 8.0 feet. She stated that an existing flagstone patio is located at ground level approximately 7.0 feet from the western lot line but a variance is not needed for this patio since it is less than 4.0 feet in height. Ms. Bettard stated that research of the files in the Zoning Administration Division and the results of that research was contained on page 1 of the staff report.

Vice Chairman Ribble informed the applicant that the BZA had received two letters in opposition to the request and asked if he had received copies. Joseph Seifried, 6423 Cavalier Corridor, Falls Church, Virginia, said he had not seen the letters but he was aware of the opposition. Vice Chairman Ribble asked staff to provide the applicant with copies, which they did. Mr. Seifried took a moment to read the letters.

Mr. Seifried stated that the purpose for the variance request was to construct an adjoining double garage with the door facing the street. He explained that the door of the present garage faces the neighboring house rather than the street and requires an extreme sharp turn from a narrow driveway to get into or out of the existing garage. Mr. Seifried said that the widening of the driveway is not an option because of the steep bank next to the driveway. When backing out of the garage, he said someone runs the risk of driving over the edge and getting the back of the car stuck. Mr. Seifried explained that during the winter when the garage is the most desirable he must frequently park in the driveway and when the driveway is slippery it is impossible to enter or exit the garage due to the sharp turn and the steep driveway which causes the car to slide. He said the house is situated in the middle of the hillside with the grade dropping away from the house on the south and west sides and because of the steep grade it is impossible to widen the driveway without removing large oak trees and building a substantial retaining wall. Mr. Seifried said Barcroft Lake Shores is an established neighborhood where most residences have large double garages and the average age of the houses is between 30 and 40 years; therefore, it is highly unlikely that the association would receive any requests for a similar variance. He said that he discussed the proposed plans with the neighbors on the adjacent lot in August and at that time the neighbors were in support of the request. Mr. Seifried pointed out that the garage would provide the neighbors with more privacy since the houses are now separated only by a row of trees and shrubberies. He stated that the garage would not be visible from the street and the materials used in the construction of the garage would match those on the existing dwelling.

Vice Chairman Ribble asked when he purchased the house and Mr. Seifried replied September.

In response to a question from Mrs. Harris, Mr. Seifried replied that he would like to build a single story garage with a flat roof and he planned to put a patio on top of the garage which would be accessible from the kitchen and a bedroom.

Mr. Hammack asked the applicant if he planned to take out part of the existing patio. Mr. Seifried said there was a flat area where the garage would be constructed. He said that the architect was present if the BZA had questions. Mr. Hammack pointed out that the house location survey did not show the footprint of the proposed garage and it was difficult to understand what the applicant planned to do. Mr. Seifried used the viewgraph to point out the location of the proposed garage.

The architect for the applicant, James Cummings, AIA, with A Collaborative Design Group, 1549 35th Street, NW, Washington, DC, came forward. He said that the need for the straight entrance into the garage was well stated in the applicant's application. Mr. Cummings stated that they began the design process by looking for alternative solutions, many of which did not include a straight entrance into the garage, and they were proven not to be successful in terms of providing a safe way of getting a car into a garage. He stated that the garage has been designed smaller than the standard size to still accommodate the applicant's cars and it will be a one story brick structure matching the brick on the existing dwelling. On the south side adjacent to the neighbor, Mr. Cummings stated that there are rhododendrons which stand 5 to 6 feet high which would be preserved and the wall that faces the neighbor would be heavily planted. Mr. Cummings stated that typically improving a property also improves the value of the adjacent properties and the space inside the house that is presently used as a garage will be improved as well, thereby increasing the overall value of the house and theoretically increasing the value of the adjacent properties.

Vice Chairman Ribble asked the speaker to conclude his remarks as his alloted time had expired.

Mr. Cummings stated that the effect on the adjacent property probably would be that it would have improved separation since the south wall will be fully planted and there will no windows or hand rails.

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There were no further speakers in support and Vice Chairman Ribble called for speakers in opposition to the request.

Robert Larson, 6427 Cavalier Corridor, Falls Church, Virginia, stated that he would like to reinforce the comments set forth in the letter he submitted to the BZA. He said that because of the fall off of the grade, the height of the proposed garage, will be about 12 feet and because there will be a patio on top of the garage there will be an additional wall to protect the occupants of the patio making the actual dimensions of the wall 14 to 15 feet. Mr. Larson said that because of the grade the applicant's lot falls off about 4 feet down to his deck and the visual impact would be a wall as high as 18 to 20 feet. He said he believed that the applicant's request would change the ambiance of the neighborhood which consists of mature treed lots. Mr. Larson pointed out that the BZA approved a variance for the lot directly across the street from the applicant approximately two years ago wherein the applicant requested approval to construct a garage and a jacuzzi which also required additional plantings. He added that those plantings have never been installed and has adversely affected the neighbors and since this happened it caused him to pay particular attention to Mr. Seifried's request. Mr. Larson stated that he believed his neighbors to be fine people but that this was a situation that they genuinely disagreed on.

Mrs. Harris asked Mr. Larson for the location of the piece where the applicant has not provided the required plantings. He said that he believed it was Lot 518.

In rebuttal, Mr. Seifried said that his primary concern had been what his neighbor thought of the plan and the first thing that he did was to discuss the proposal with Mr. Larson and at that time Mr. Larson was in full support of the plan. Mr. Seifried said that he had not been made aware of the neighbor's objection until last December 7, 1991, when Mr. Larson left a message on his answering machine stating that he planned to object to the request. He said that whatever the applicant wanted in the way of plantings would be done.

Mr. Hammack asked the applicant if he planned to put a patio on top of the garage with a retaining wall around the patio and Mr. Seifried replied that was correct. He said that if Mr. Larson strongly objected to the wall perhaps a railing could be substituted for the brick wall. Mr. Seifried stated those issues should have been discussed months ago.

There was no further discussion and Vice Chairman Ribble closed the public hearing.

Mr. Kelley stated that he would like to defer the case for decision only so that photographs could be submitted to the BZA showing the impact of the applicant's request on Mr. Larson's property. Mrs. Thonen said that she was not sure that the applicant met the standards and a deferral might be causing the applicant additional work for no reason.

Mrs. Harris made a motion to deny the request for the reasons noted in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-111 by JOSEPH J. SEIFRIED, under Section 18-401 of the Zoning Ordinance to allow addition 7.0 ft. from side lot line, on property located at 6423 Cavalier Corridor, Tax Map Reference 61-1((11))543, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,041 square feet.
4. In looking at the shape and topography of the applicants's lot, the lot looks pretty routine.
5. The lot is very similar to the majority of the lots in the subdivision with the trees.
6. There are a lot of little hills in the area and this property is no different.
7. The applicant has reasonable use of the property and what he is proposing will be a detriment to the neighbor. Even with the 2 foot reduction, which the applicant agreed to, it would still be a 4 foot variance off the side lot line.
8. The Board of Zoning Appeals has granted 4 foot variances in the past but not to an applicant who already had a two car garage.

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9. The applicant testified that it was difficult to get up the driveway and maneuver into the garage during the winter, but there are a lot of houses that have the same type of turn around situation.
10. There is no inherent land use reason to alleviate a hardship approaching confiscating by the granting of the variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991.

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Page 301, December 10, 1991, (Tape 2), Scheduled case of:

10:25 A.M. WOMEN'S HEALTH CENTERS, INC., SP 91-Y-058, appl. under Sect. 5-503 of the Zoning Ordinance to allow health club and associated parking on approx. 10,000 s.f. of 11.75 acres located at 14175 Sullyfield Circle, zoned I-5, AN, WS, Sully District (formerly Springfield), Tax Map 34-4((11))H1; 34-3((5))H2, and H3.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Downey, attorney for the applicant, 11320 Random Hills Road, Fairfax, Virginia, replied that it was.

Mr. Downey pointed out that due to a bankruptcy of the shareholder of Woman's Health Centers, Inc. the stock is being held by the shareholder's personal attorney and a letter stating this fact had been forwarded to the BZA. He stated that a deferral had been requested to allow the applicant time to amend the affidavit since there will be a name change, but staff had informed him that the issue could be addressed in the development conditions. Mr. Downey stated that he would like to withdraw the request for a deferral and proceed with the public hearing.

Mrs. Thonen asked staff if Mr. Downey's assumption was correct. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the issue was similar to a situation when a community recreational facility is constructed by a developer and then transferred to the homeowners association through a change in name only. Vice Chairman Ribble agreed.

Mr. Kelley asked how many people were aware of the deferral request and possibly were not present because of the request. Mr. Downey stated that he would be 99% satisfied that was not a problem since the deferral request had only been submitted to staff on December 9, 1991. Ms. Kelsey stated that staff had not received a written request from the applicant but that she had been approached when she got to the Board room regarding the deferral request.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the subject property is located south of Lee Jackson Memorial Highway near the intersection of Sullyfield Circle and Brookfield Corporate Drive. The property is abutted on the north, south, east, and west by property that is zoned and developed for industrial uses. The portion of the site in which the special permit is proposed is in the easternmost structure of two existing structures on Lot H2, within Cambridge Plaza, which is in the Sullyfield Business Park.

She stated that the applicant was requesting approval of a special permit to allow the use of 10,000 square feet of an 11.75 acre site for a health club and associated parking. The special permit will allow the applicant to continue to exist in the proposed amount of space specified in the Special Permit application. Ms. Bettard stated that the amount is 5,000 square feet less than that currently being utilized without Special Permit approval. The remaining 24,000 square feet of the subject building is occupied by office uses. No new construction is planned.

The applicant anticipated that the membership will not exceed 800 members, with no more than 50 members present at any one time. The maximum amount of employees will be 10, with no more than 6 present at any one time. Twenty-three parking spaces will be provided in conjunction with this use. The hours of operation are as indicated on page 1 of the staff report.

Ms. Bettard stated that staff reviewed the application according to the applicable Special Permit Standards. It was staff's judgment that if the Development Conditions contained in Appendix 1 were implemented, the use will be in conformance with all applicable standards for this special permit use, as contained in Sects. 8-006 and 8-503 of the Zoning Ordinance. Therefore, staff recommended approval of SP 91-Y-058. Ms. Bettard stated that Condition Number 1 was revised to reflect the change in name, Number 4 should be revised to reflect "27 parking spaces", and Number 5 should reflect "10 employees."

In response to a question from Mr. Hammack about the number of employees, Ms. Bettard replied that the applicant was now requesting 10 employees.

Mr. Kelley stated that it appeared that the parking was totally inadequate. Ms. Bettard explained that the number requested did meet the requirement for the type of use as set forth in the Zoning Ordinance.

The applicant's agent, Mr. Downey, pointed out that the use already exists and one of the joint venturers entered into the project without the permit unknown to the other joint venturer, Massachusetts Life Insurance Company, and the landlord. Mr. Downey stated that when the landlord and Massachusetts Life became aware of the problem an application was filed and because of financial problems of the other joint venturer the current management would like to enter into the project as the new tenant.

Mr. Kelley asked how the current management came to be involved in the project and Mr. Downey stated that it involved a foreclosure.

Mr. Downey stated he believed that the use was clearly needed in the area, the use had not caused any problems, and the use is very pleasantly and very competently run club. He stated that he believed all the standards had been met.

In response to a question from Mr. Hammack about the parking, Mr. Downey replied that the landlord was in agreement with the restrictions.

Mr. Pammel asked the name of the new joint venturer. Mr. Downey replied "Auld Enterprises, Inc. trading as the Women's Club" as opposed to "Women's Health Centers, Inc. trading as the Women's Club."

There were no speakers, either in support or in opposition, to the request and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant the request subject to the Development Conditions as modified by staff and reflected in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-058 by WOMEN'S HEALTH CENTERS, INC., under Section 5-503 of the Zoning Ordinance to allow health club and associated parking, on property located at 14175 Sullyfield Circle, Tax Map Reference 34-4((11))H1 and 34-3((5))H2, H3, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is I-5, AN, WS.
3. The area of the lot is 10,000 square feet of 11.75 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant and the successor corporation which shall be known as "Auld Enterprises, Inc." trading as the "Women's Club"

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Huntley, Nyce and Assocs., dated July 24, 1991) approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. There shall be a minimum of twenty seven (27) parking spaces associated with the health club use. At the time of site plan review, a parking tabulation shall be submitted and approved by DEM which shows that the required parking can be provided for all the uses on the total site.

5. There shall be a maximum of ten (10) employees associated with this use and on the site at any one time.

6. There shall be a maximum of fifty (50) patrons on site at any one time.

7. Any signs erected shall be in conformance with Article 12 of the Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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10:40 A.M. NATIONAL MEMORIAL PARK, INC., SPA 88-P-050-2, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 88-P-050 for a cemetery to allow addition of a mausoleum and change in hours on approx. 76.34 acres located on Hollywood Rd., zoned R-1, Providence District, Tax Map 50-1((1))36. (CONCURRENT WITH VC 91-P-134)

10:40 A.M. NATIONAL MEMORIAL PARK, INC., VC 91-P-134, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure to remain 2.9 ft. from side lot line (22.5 ft. min. side yard required by Sect. 3-107) on approx. 76.34 acres located on Hollywood Rd., zoned R-1, Providence District, Tax Map 50-1((1))36.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Robert Lawrence, replied that it was.

Bernadette Bettard, Staff Coordinator, stated that she would like to change Development Condition Number 5 to read, "The existing brick wall which is 6 feet in height and 295 feet in length and located along the western property line to a point adjacent to the existing Loop Road shall be maintained." She asked that the next sentence be deleted.

Mr. Hammack asked if the wall had already been constructed and Ms. Bettard replied that it had. Ron Derrickson, Planning Technician, distributed copies of the revisions to the BZA. Mr. Hammack stated that he wanted the words "shall be preserved" inserted to make certain that the existing vegetation was maintained. Ms. Bettard stated that the applicant had requested that Development Condition Number 10 be revised but staff did not agree. She stated that staff was requesting that a 6 foot board on board fence be provided along the entire length of the lot line south of the maintenance building. Mr. Hammack asked how long the lot line was and Ms. Bettard replied 1,400 feet. She stated that the applicant was not requesting a change in the hours of operation but wanted to continue to operate under the current hours and staff was in agreement. Ms. Bettard asked that Development Condition Number 2 be deleted which referred to the issuance of a building permit for the maintenance structure since it already exists.

Ms. Bettard presented the staff report by stating that the property is currently developed as a cemetery and is generally located north of Lee Highway on the north and west sides of Hollywood Road. She stated that it is known as King David Memorial Cemetery and includes a pet cemetery known as Noah's Ark Pet Cemetery. The subject lot is zoned R-1, and HC (Highway Noise); property to northeast is zoned R-3 and developed with single family dwellings; property to the southeast is zoned R-3 and developed as a public park; and, to the west of Lot 36 is a parcel zoned PDH-2. She stated that the land was deleted from the cemetery with the approval of SPA-88-P-050 and a copy of the approved development plan was attached as Appendix 5. Ms. Bettard stated that single family attached dwellings are located on Lots 14 and 15 between both parts of Lot 36 and multifamily uses are located on Lot 18A, south of Lot 36.

She stated that the applicant was requesting approval to amend an existing Special Permit for a cemetery on Lot 36 to allow the addition of one mausoleum 7,800 square feet in size on the approximately 76.34 acre lot. The mausoleum will contain 723 total crypts, consisting of 61 single crypts, 40 tandem crypts and 7 private rooms containing a total of 70 crypts. A maintenance building and shop, an office, garage and a mausoleum currently exist on other areas of lot.

In addition, the applicant was requesting a variance to the minimum side yard requirement to allow an existing maintenance building to remain 2.9 feet from the side lot line. The maintenance facility is located on a 4.89 acre portion of Lot 36 and was reviewed in conjunction with a previously approved Special Permit #8-79-69, but no variance for the location of the structure was requested or approved. Section 3-107 requires an angle of bulk plane or a minimum side yard of 20.0 feet. The height of the structure is 22.5 feet, which equates to a minimum side yard requirement of 22.5 feet; therefore, the applicant was requesting a variance of 19.6 feet to the side lot line.

Ms. Bettard stated that staff had concluded that the expansions of the interment use can be provided in a manner that will be in harmony with the Comprehensive Plan and in conformance with the requirements of the Zoning Ordinance, provided a variance is obtained for the location of the maintenance building on Lot 36. With regard to the existing screening and the mitigation of adverse visual impacts, staff suggested in the Proposed Development Conditions in Appendix 1 that a 6.0 foot fence be provided between the maintenance building and the residential area on the north to help mitigate any adverse visual impact from the structure.

In closing, Ms. Bettard stated that staff believed that, with the adoption and implementation of the attached Development Conditions in Appendix 1, SPA 88-P-050-2 should be approved. She noted that the development conditions incorporated all applicable development conditions imposed by previous special permit approvals.

Mr. Hammack asked staff the dimensions of the mausoleum and Vice Chairman Ribble suggested that perhaps the applicant could answer the question.

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In response to a question from Mrs. Harris as to when the maintenance building was constructed, Ms. Bettard replied that staff could not confirm the date of construction. She added that the notes dated 1968 contained in the file stated the building was grandfathered.

Mrs. Harris asked why the building had not been filed as an error application rather than a variance. Ms. Bettard stated that the building had been constructed prior to the present Zoning Ordinance. Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out there had been no indication that the structure was constructed in error.

Mr. Hammack asked if the shed had been shown on other plats when the applicant had been before the BZA. Ms. Kelsey replied that it was. She stated that it appeared that the shed had been overlooked in the previous applications and that she would have to take full responsibility for this oversight since Ms. Bettard had not been involved. She stated that all of Lot 36 had been included in previous approvals but there was no question that a variance was needed since the building does not meet the bulk regulations for the district.

Mr. Hammack stated it was his understanding that the BZA approved plats which showed all structures that were on the site, thereby bringing the entire site into compliance. Ms. Kelsey stated that was true. She explained that if the BZA approved a plat with a building on it that did not meet the yard requirements and was not subject to a separate variance application then the approval would not have included that particular structure.

Robert A. Lawrence, Esq., attorney with the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, stated that the applicant would probably not have to be before the BZA for a variance if the staff back in 1949 or 1957 had indicated that a variance was needed. He stated that the cemetery was established in 1933 and since 1935 the maintenance facility has been on the site and noted that it was very difficult to prove a non-conforming use over 53 years ago. Mr. Lawrence stated when staff told the applicant that a variance was needed the application was filed to resolve the issue and noted that the structure had been included on previous plats. Mr. Lawrence pointed out a quotation by Charlie Runyon in 1969, which stated, "The National Memorial park has owned this particular tract since 1935 and has used it as a maintenance yard, garage area, and a general storage area. It is a non-conforming use in the R-12.5 zone." He stated that apparently at one point everyone agreed it was a non-conforming use but it was never pronounced so by the Zoning Administrator so far as the records. With respect to both the special permit and variance, Mr. Lawrence called the BZA's attention to letters from the neighboring homeowners association indicating no objection to the applicant's request. (He submitted the letters into the record.)

With respect to the hours of operation, Mr. Lawrence stated that the hours of operation referenced were not in the statement of justification but in the applicant's statement. He explained that the hours were referenced for information purposes required under the Code to fill out the application rather than to request any hours designation. Mr. Lawrence asked that the hours be allowed to remain the same.

Mr. Hammack stated that hours of operation had not been addressed in the development conditions. Mr. Lawrence stated he had only wanted to clarify that staff had indicated that the applicant had asked for the hours shown. He pointed out that the applicant had merely answered a question listed on the application form.

Mr. Lawrence stated that the applicant would like to construct a one story mausoleum that will sit back 65 feet from the lot line and will abut property that is zoned residential but is undeveloped. He called the BZA's attention to the letters he had submitted into the record from two of the adjoining homeowners association voicing no objection to the request. Mr. Lawrence stated that he had written letters to each of the homeowners in the new Misty Wood subdivision and there had no objections.

Mrs. Harris asked what the dimensions of the mausoleum would be. Mr. Lawrence stated that the dimensions were shown on the plat. He explained that part of the sheets before the BZA were for a mausoleum that would be constructed on the other tract of land owned by the applicant that was part of a separate application.

Mrs. Harris asked if the applicant had compared the placement of the mausoleum to the location of the houses proposed on the adjoining property. Mr. Lawrence stated that the developer of the adjoining property had caused the applicant's previous special permit to be requested to separate the adjoining property from the cemetery. He explained that the developer was now going forward with the development plan for the property and noted that part of the special permit had been conditioned with respect to buffering and to a wall and those conditions had been incorporated into the conditions before the BZA in this application. Mr. Lawrence stated that the mausoleum will be a one story marble faced structure that will be sit back 65 feet from the lot line with a minimum buffer of 36 feet with a 25 foot planted buffer that has already been established by the County Arborist. Mrs. Harris asked if the applicant had considered other locations and Mr. Lawrence replied that they had.

Mr. Hammack pointed out that although the structure would be one story it would be rather large. Mr. Lawrence stated that he did not believe it would be an intensive use and noted that there would be an extensive buffer between the mausoleum and the residential development.

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With respect to the development conditions, Mr. Lawrence called the BZA's attention to a handout on which he had made changes to the development conditions. He stated that the stipulations noted in Condition Number 5 have been already been implemented. Mr. Lawrence stated that he did not believe a fence along the entire length of the lot line was appropriate because the rear of the property is all wooded.

Mr. Hammack asked the size of the work area where the monuments are constructed. Mr. Lawrence used the viewgraph to show the area. Mr. Pammel asked if there was any type of fence there now. Mr. Lawrence replied there is a wire fence.

Mr. Lawrence called the BZA's attention to development conditions dated December 10, 1991, that incorporated the changes to Condition Number 5 and the Condition Number 10. He stated that the other development conditions were verbatim of those contained in the staff report. With regard to the variance development conditions, he asked that the condition requiring the applicant to obtain a building permit be deleted since the structure is already built.

Mr. Hammack asked about inspections to the maintenance structure. Mr. Lawrence stated that the building had been constructed for a long time and that he did not understand the need for inspections in connection with the variance. Mr. Hammack stated that the BZA had always required inspections. Mr. Lawrence stated that the applicant would have no objections.

Mrs. Harris asked if people would be entering the mausolaum and if the crypts were going to be on the inside. Mr. Lawrence replied that the crypts would be on both the inside and the outside. Mrs. Harris asked where the outside crypts would be located on the new structure in comparison to the residential development.

Paul C. Sussman, President of National Memorial Park, came forward. He stated that some would open from the outside across from the residential development although most would be predominantly from the front and the rear of the building.

Mrs. Harris expressed concern with the crypts fronting the residential property and asked if they could be relocated. Mr. Lawrence stated that he did not understand the concern since the area between the mausoleum and the residential property will be buffered. Mr. Hammack stated that people would be visiting the mausoleum and Mr. Sussman stated there would not be that many visitors on a day to day basis.

Mrs. Thonen stated that the BZA pointed out potential problems to the developer when they were fighting so hard to have the land deleted from the cemetery during the previous application. Mr. Hammack pointed out that the applicant was a co-applicant in that application and benefited from the sell but still wants to develop the property right up to the lot line.

Mr. Hammack asked staff how parking was calculated on mausoleums. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that the Zoning Ordinance has no requirement for cemetery uses and staff was not sure how to address the issue. Since the cemetery has several long circular driveways, staff believed that the parking could be satisfied for the cemetery although staff did require parking for the office. Ms. Kelsey stated that staff had not considered the direction the crypts faced and perhaps that was an oversight but staff was not that familiar with mausoleums. Mrs. Thonen stated there was a mausoleum in the area where she lived and the only time there seemed to be a problem was during a funeral.

Mr. Lawrence stated there are two mausoleums on the applicant's other tract of land and there has never been a traffic problem. Mr. Hammack stated that he lived in that area and was familiar with the property; therefore, he was interested in the impact on the adjoining community.

Mr. Pammel asked what type of screening or barrier existed on the north lot line shown on the plat. Mr. Lawrence stated there was a 6 foot fence right on the lot line that comes almost to the roof eave of the building itself. He stated that the developer of the townhouse subdivision adjacent to the cemetery erected the fence. He stated that the fence, coupled with the building, acts as both a visual and noise buffer for what goes on in the maintenance yard.

Mr. Hammack asked what type of screening the applicant was proposing between the mausoleum and the lot line. Mr. Lawrence stated that the screening noted in Development Condition Number 5 is on the property.

There were no further questions and Vice Chairman Ribble called for speakers, either in support or in opposition, to the request.

Mr. Hammack asked staff if there were any other development conditions that applied to the property that was not included in the staff report. Ms. Bettard replied there was not.

Mrs. Harris asked what percentage of the crypts at the cemetery were available and Mr. Lawrence replied approximately 10 on the King David property and the mausoleum on the other tract was of a different religious faith. Mrs. Harris asked why there was a difference in the design of the mausoleums. Mr. Sussman stated that people had expressed an interest in a mausoleum with an internal access during conversations with the cemetery personnel.

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There was no further discussion and Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant the variance request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated December 3, 1991, as modified in the resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-134 by NATIONAL MEMORIAL PARK, INC., under Section 18-401 of the Zoning Ordinance to allow existing structure to remain 2.9 ft. from side lot line, on property located on Hollywood Road, Tax Map Reference 50-1((1))36, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 76.34 acres.
4. The lot is an extremely unique piece of property both in size, shape, and the time that the lot was constructed.
5. Strict application of the Ordinance would produce an undue hardship on the applicant.
6. The granting of the variance will not be of a substantial detriment to either the Zoning Ordinance or the adjacent properties, nor will it conflict with the purpose of the Zoning Ordinance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

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1. This variance is approved for the maintenance structure on the plat (dated July 24, 1991) prepared by Richard O. Spencer and dated April 20, 1990 and included with this application, and is not transferable to other land.

2. All applicable inspections shall be obtained for the location of the maintenance structure in this location.

3. A 6.0 foot high board on board fence shall be provided along the 700 linear feet from the edge of the right of way from Hollywood Road.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval* date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack made a motion to grant the special permit request subject to the development conditions contained in the staff report dated December 3, 1991, as modified in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 88-P-050-2 by NATIONAL MEMORIAL PARK, INC., under Section 3-103 of the Zoning Ordinance to amend SP 88-P-050 for a cemetery to allow addition of a mausoleum, on property located on Hollywood Road, Tax Map Reference 50-1((1))36, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 76.34 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-203 and 8-204 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Richard O. Spencer and dated April 20, 1990 (certified on September 26, 1991, and approved with this application, as qualified by these development conditions.

3. A copy of this resolution approving SPA 80-P-050-2 and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

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4. This Special Permit use is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

* 5. A thirty-six foot (36') buffer area shall be maintained along the entire length of the western property line (approximately 1,583 feet) of the remaining cemetery property. This buffer strip shall contain no structures, roads, except the existing Loop Road, or grave sites, except for the existing grave sites. No burials shall take place within the 36 foot buffer area along the entire western property line from the southwestern corner of the property to the northern end of the brick wall. This buffer area shall contain the following:

A brick wall six feet (6') in height and two hundred and ninety five feet (295') in length and located along the western property line to a point adjacent to the existing Loop Road shall be maintained. The existing holly trees in the 36 foot buffer area shall be preserved and shade-tolerant and other evergreen trees shall remain planted as stated below.

Transitional Screening 1 (25' wide) shall be maintained along the entire length of the western property line from the southwestern corner of the property to the beginning of the brick wall referred to above.

Existing vegetation within the Transitional Screening 1 area shall be maintained within this 25 foot wide buffer strip in order to satisfy the Transitional Screening 1 requirements as approved by the Urban Forestor.

A total of 156 shade-tolerant and other evergreen trees shall be preserved in the 11 foot wide buffer strip directly adjacent to the 25 foot wide buffer strip in accordance with the landscape plan previously approved by the County's Urban Forestor (Arborist).

Any trees required by these conditions for screening purposes shall be replaced by the applicant if any such trees should die or become diseased.*

* 6. The applicant may plant shrubs or additional trees on the subject property outside the 36 foot buffer area. All trees required to be replanted within the 11 foot wide buffer strip shall have a planted height of 6 to 8 feet.

* 7. Stormwater Best Management Practices (BMP's) shall be provided as determined by the Department of Public Works and the Director of DEM at the time of site plan review. If determined necessary by DEM, a pro rata contribution toward the construction of the Pine Wood Detention Pond (Project #X0006) shall be provided.

8. The landscaping plan previously approved in SPA 88-P-050-1 shall remain in effect. The existing vegetation along all other lot lines shall remain and be maintained.

* 9. No burials shall take place within 25 feet of the western property line north of the brick wall.

10. The barrier requirement shall be waived except for the aforementioned brick wall, except that a 6.0 foot board on board fence shall be provided approximately 700 feet from the edge of Hollywood Road in order to enclose the work area of the maintenance building and shop. The undisturbed treed area beyond that shall remain undisturbed until further development which may require a change in the condition is approved.

11. The special permit plat and the cemetery shall comply with Chapter 3 of Title 57 of the Virginia Code.

These conditions incorporate all applicable previously imposed Development Conditions which remain valid and in force.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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Mrs. Thonen seconded the motion which carried by a vote of 4-1 with Mrs. Harris voting nay; Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 310, December 10, 1991, (Tape 2), Scheduled case of:

11:00 A.M. LEES GAS SUPPLY, A 91-V-018, appl. under Sect. 18-301 of the Zoning Ordinance to appeal decision of the Zoning Administrator that the appellant must obtain site plan approval in order to continue the retail sales of welding supplies with an outdoor display area, on approx. 24,260 s.f. located at 6825 Richmond Highway, zoned C-8, H-C, Mt. Vernon District, Tax Map 93-1((1))5.

Robert F. Flinn, Flinn and Beagan, 8330 Boone Boulevard, Vienna, Virginia, attorney for the appellant came forward and asked that the BZA grant a short deferral in order for the appellant and staff time to try to resolve the issue. He stated that Jane Kelsey, Chief, Special Permit and Variance Branch, had suggested January 7, 1992, and he was in agreement.

Mr. Pammel made a motion to defer A 91-V-018 to January 7, 1992, at 11:30 a.m. Mr. Hammack seconded the motion which passed by a vote of 5-0; Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 310, December 10, 1991, (Tapes 2-3), Scheduled case of:

11:30 A.M. TOM V., JOAN J., KIMBERLY W., AND TOM V. III RICHARDSON, SP 91-Y-035, appl. under Sects. 3-C03 and 8-915 of the Zoning Ordinance to allow riding and boarding stables and waiver of dustless surface on approx. 40.00 acres located at 6001 Bull Run Post Office Rd., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 42-4((1))12. (DEFERRED FROM 10/22/91 - NOTICES NOT IN ORDER) (DEFERRED FROM 12/3/91 TO ALLOW BZA TO REVIEW REPORT)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Richardson replied that it was.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He noted that Connie Crawford, with the Environmental and Heritage Resources Branch, was present to respond to any environmental questions the BZA may have. Vice Chairman Ribble welcomed Ms. Crawford.

Mr. Jaskiewicz stated that the subject property is located on the east side of Bull Run Post Office Road, west of Pleasant Valley Road, and approximately 475 feet south of the Loudoun County Line. It is a working farm with horse boarding and hay growing activities. The property was recently rezoned for an Agricultural and Forestal District, contains 40 acres zoned R-C and WSPOD, and is developed with a single family detached dwelling, secondary quarters, a 20-stall horse barn, a riding ring and related outbuildings. The site is surrounded on the east, north, and south by property also recently approved for an Agricultural and Forestal District and used for agricultural purposes and is developed with one single family detached dwelling. Property to the west is zoned R-C but is currently in pasture.

The applicants were requesting approval of a special permit in order to establish and operate a riding and boarding stable which will also include riding instruction and horse shows. Thirty-five horses will be located on site, of which 25 to 30 will be boarded and no horses will be rented to visitors. The hours of operation for the riding and boarding stable will be from 8:00 a.m. until 10:00 p.m., with proposed riding instruction held from 8:00 a.m. to 8:00 p.m. Monday through Saturday, with varying Sunday hours. There will be a maximum of 5 students per day who will bring their horses to the site for riding instruction. There will also be horses boarded on the site whose owners may also be enrolled in riding instruction. There will be no more than 10 students receiving instruction on-site at any one time. Besides the applicants, there will be no more than 6 employees on-site at any one time. Six horse shows annually are also proposed; 3 shows between the hours of 8:00 a.m. to 6:00 p.m. and 3 shows between the hours of 4:00 p.m. to 9:00 p.m. The applicants have estimated that there will be a maximum of 40 horse show participants, and a public address system will be used during the shows. The applicants were requesting a waiver of the transitional screening and barrier requirements along all lot lines and a waiver of the dustless surface requirement to allow the proposed parking area and entrance drive to be gravel.

The applicants' site was proposed to be further intensified into a non-residential special permit use with the provision of riding instruction and the allowance of horse shows. Staff believed that the primary concerns regarding the intensification of the site have been addressed with the Revised Proposed Development Conditions, included in a memorandum to the

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BZA, dated December 2, 1991. The only remaining outstanding issue between staff and the applicants was staff's belief that the uncertain impact of the proposed horse shows on the surrounding properties and the local transportation network necessitate a 5 year term to allow the BZA to reassess the intensity of use. This was reflected in Development Condition Number 22.

Mr. Jaskiewicz stated that the case had been deferred from December 3, 1991. He stated that staff had distributed a revised set of Development Conditions, dated December 2, 1991, to the BZA. Since the last meeting, staff had conversed with the applicants and staff had agreed to delete the second-to-last sentence of Condition Number 13 on page 3, which stated, "The limits of the wetlands shall be approved by the Environment and Heritage Resources Branch, OCP, and DEM prior to site plan approval."

In closing, he stated that with the implementation of the conditions, staff believed that the application met all applicable Zoning Ordinance provisions for the use, was in harmony with the Comprehensive Plan, and was in harmony with the general purpose and intent of the R-C Zoning District. Accordingly, staff recommended approval of SP 91-Y-035 in accordance with the Revised Proposed Development Conditions, dated December 2, 1991.

The applicant, Tom Richardson, 6001 Bull Run Post Office Road, Centreville, Virginia, stated that he agreed with the development conditions with the exception of Condition Number 22 which stipulated a 5-year term on the use. Mr. Richardson stated that the staff report covered the characteristics of the area, the Comprehensive Plan, and the environmental considerations. He stated that to the north of the subject property there is a sliver of land which is in the AF District and the land to the south, east, and north of the subject property is also in the AF District, which was put in last summer. His neighbor, Dr. Sakington, owns the property to the south, east, and the north of the subject property. Mr. Richardson used the viewgraph to show an excerpt from the Comprehensive Plan on which he had outlined his property and discussed the surrounding uses. He stated that to the east of his property is private open space which provides a natural buffer to the east and a park is proposed to the west. He noted that the private open space extends to the property to the south in addition to a considerable easement for the power company and because of these limitations the property will probably never be developed. Mr. Richardson called the BZA's attention to photograph number 1 which showed the pond to the west where the park land will be located; photograph number 2 showed a second pond behind his house to the west of the private open land; and photograph number 3 showed the power lines that run through the property to the south. He pointed out the location of several proposed trails in the Stonebridge community, one being an equestrian trail running along the front of his property and one running diagonally across the south of his property. Mr. Richardson stated that the Comprehensive Plan did not contain any provisions for improving Bull Run Post Office Road and the Virginia Department of Transportation does not even have a traffic count for the road. He estimated that less than 100 vehicles pass his house on a daily basis. Mr. Richardson stated that there were also no plans for sewers and the Plan talks about very low density residential development in the area in order to preserve the water. He stated that the development on the subject property is located in the center of the property and the concern the County has expressed in Condition Number 22 regarding the impact on the neighbors from the horse shows. Mr. Richardson stated that he presently has no neighbors and from what he has read in the Comprehensive Plan and in the engineering studies he will not have neighbors for a long time.

Mr. Richardson stated that staff has expressed concern with the traffic impact and that he believed that would be a valid concern but there is no traffic now. He stated that he is proposing only six shows a year, lights may be used for three of the shows, and the public address system that will be used would be for the riders not the audience.

In response to a question from Mr. Hammack, Mr. Richardson replied that approximately 40 people would attend a show.

The co-applicant, Joan Richardson, came forward and explained that the shows would be schooling schools and the shows would be attended by neighboring equestrian riders.

Mr. Hammack asked if it were possible that as many as 100 people would attend a show. Mrs. Richardson stated that it would be difficult to say how many people might attend a show.

There were no further questions of the applicants and Vice Chairman Ribble polled the audience to determine if there were any speakers, either in support or in opposition to the request.

Mrs. Richardson read a letter of support into the record from a neighbor.

In response to questions from Mr. Pammel, Mr. Richardson replied that the shows were not sanctioned by any national organization. Mrs. Richardson stated that the shows were not rated since they would only be schooling shows.

There was no further discussion and Vice Chairman Ribble closed the public hearing.

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Mr. Hammack made a motion to grant the request subject to the revised development conditions dated December 2, 1991, with modifications to Conditions 6 and 22 as reflected in the resolution.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had recommended deleting the limits of the Wetlands because of conflicting statements in the Condition.

Connie Crawford, with the Environmental and Heritage Resources Branch, stated staff was requesting a modification to Condition 13 only if the applicants chose to construct in the hydric soils on the property. She stated that the applicants were going to be conducting a Wetlands Study that will be approved by the Department of Environmental Management and the Heritage Resources Branch if they construct in the hydric soils. Ms. Crawford stated that the sentences basically say the same thing.

Mr. Hammack and the seconder agreed to the deletion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-035 by TOM V., JOAN J., KIMBERLY W., AND TOM V. III RICHARDSON, under Sections 3-C03 and 8-915 of the Zoning Ordinance to allow riding and boarding stables and waiver of dustless surface, on property located at 6001 Bull Run Post Office Road, Tax Map Reference 42-4((1))12, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 40.00 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-603, 8-609, 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat, prepared by Holland Engineering and dated May 20, 1991, approved with this application, as qualified by these development conditions. This approval does not extend to Notes 1 through 15 on Sheet 1 of the plat.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum number of horses boarded on site shall be 35, and no horses shall be rented to visitors.

6. The hours of operation shall be limited to the following:

   General Hours of Operation
   Monday through Sunday - 8:00 a.m. to 10:00 p.m.

Hours for Riding Instruction
Monday through Saturday - 8:00 a.m. to 8:00 p.m.
Sunday - 8:00 a.m. to 4:00 p.m.

Horse Shows:

A maximum of six (6) schooling shows shall be permitted annually with a maximum of 40 participants per show.

Three (3) shows may occur between the hours of 8:00 a.m. to 6:00 p.m. and three (3) shows may occur between the hours of 4:00 p.m. to 9:00 p.m.

7. There shall be a maximum of 5 students daily who may bring their horses to the site for riding instruction. There shall also be horses boarded on the site whose owners may also be enrolled in riding instruction. There shall be no more than 10 students receiving instruction on-site at any one time.

8. There shall be no more than six (6) employees at any one time on the premises.

9. The transitional screening requirements shall be waived along all lot lines. The existing fencing shall be deemed to satisfy the barrier requirement along the western and southern lot lines. Fencing, approximately 4 feet high, shall be provided along the portions of the southern and eastern lot lines where the existing fencing is not located on the subject property.

10. The minimum and maximum number of parking spaces on site shall be 18, and the five (5) easternmost spaces shall be relocated closer to the proposed five (5) spaces near the existing well house and outside of an area that is fifty (50) feet from the centerline of the adjacent stream channel that is part of the Environmental Quality Corridor.

11. The entrance drive shall be widened, as determined by the Division of Environmental Management (DEM) at site plan review, so as to allow two (2) vehicles to pass. The additional width may be constructed of gravel.

12. The site entrance shall meet Virginia Department of Transportation (VDOT) requirements for commercial entrances, unless waived or modified by VDOT.

13. Prior to the issuance of any grading permit within the area depicted as hydric soils on the Fairfax County Soils Map, a wetlands study shall be conducted by the applicants, submitted to the Department of Environmental Management (DEM), and approved by the Office of Comprehensive Planning (OCP) and DEM to ascertain whether the areas containing hydric soils are non-tidal wetlands and will delineate their limits on the site if the proposed clearing, grading, and/or construction of the proposed structures will adversely impact these wetlands. The appropriate U.S. Army Corps of Engineers permits shall be obtained prior to site plan review, if required.

14. If DEM or the Fairfax County Health Department requires additional drainfields for public sanitary facilities, a geotechnical study shall be provided to identify those areas suitable for the location of temporary or permanent public toilets and drainfields, or alternative systems on the site prior to site plan approval. Any recommended drainfield shall be located such that it will not necessitate any change in the proposed special permit plat dated May 20, 1991 or any of these conditions.

15. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook and shall be coordinated with the Department of Environmental Management (DEM). These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation fencing. If determined by DEM at the time of site plan review that additional erosion and sedimentation control measures beyond Public Facility Manual (PFM) standards are desirable, such measures shall be provided to the satisfaction of DEM.

16. In order to preserve water quality in the Bull Run watershed, an Environmental Quality Corridor (EQC) buffer of a minimum of fifty (50) feet from the centerline of the tributary stream shall be provided. In any area where existing fencing or existing structures preclude the provision of this buffer, then the buffer may be reduced to a minimum distance of twenty-five (25) feet or a greater distance which would still allow the passage of farm equipment between the fencing and the edge of the EQC. Furthermore, any areas identified as non-tidal wetlands in Condition No. 13 above shall be included within an EQC.

There shall be no clearing or grading of any vegetation in this EQC, except for dead or dying trees or shrubs, and the existing hedgerows along the western, eastern and southern lot lines shall be preserved. No field mowing shall be allowed within

fifteen (15) feet of the centerline of the tributary. There shall be no new structures or site improvements located in the EQC area or any modification to the existing gravel drive which affords access across the EQC to the eastern grazing fields.

17. The existing farm pond shall be upgraded to function as a Best Management Practices (BMP) designed to remove at least 50 percent of the incoming phosphorus load for the entire subject property, in accordance with the design criteria of the Water Supply Protection Overlay District regulations in the Public Facilities Manual (PFM).

18. Any lighting of the outdoor riding ring shall be in accordance with the following:

    The combined height of the light standards and fixtures shall not exceed thirty-five (35) feet.

    The lights shall focus directly on the subject property.

    Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.

    The lights shall not be lit beyond the approved hours of operation for the use.

19. The sound emanating from the public address system and from the riding ring shall not be in excess of the sound levels prescribed in Chapter 108 of The Code of Fairfax.

20. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The term of the waiver of the dustless surface shall be in accordance with the provisions of the Zoning Ordinance.

    Speed limits shall be kept low, generally 10 mph or less.

    The areas shall be constructed with clean stone with as little fines material as possible.

    The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

    Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

    Runoff shall be channeled away from and around driveway and parking areas.

    Periodic inspections shall be performed to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

    There shall be pavement to a point twenty-five (25) feet into the entrance drive from the existing edge of pavement of Bull Run Post Office Road to inhibit the transfer of gravel off-site.

    Gravel may be used to construct the additional width of the entrance drive.

21. Any storage tanks present on site shall meet the provisions of Chapter 62 of the Fairfax County Code, which regulates the storage of flammable, combustible, and hazardous materials.

22. This Special Permit shall expire five (5) years after the final approval date, to allow for assessment of the impact of horse shows on the surrounding properties and the local transportation network.

23. The existing structure identified as secondary quarters shall not be rented out and shall not be used for commercial purposes other than the approved special permit use.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 315, December 10, 1991, (Tape 1), Scheduled case of:

9:10 A.M. TRACY A. & STEPHANIE K. SMITH, VC 91-M-110,

(The BZA had passed over this case earlier in the public hearing to allow the applicant time to appear in the Board Room.)

Vice Chairman Ribble polled the audience to determine whether or not the applicant in the 9:10 a.m. case was present in the Board Room.

Stephanie Smith, 3101 Lewis Place, Falls Church, Virginia, came forward and reaffirmed the affidavit.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the subject property is located at 3103 Lewis Place, which is south of Arlington Boulevard and east of Graham Road, in Section 4 of the Woodley subdivision. The surrounding lots are zoned R-4 and are developed with single family detached dwellings. He stated that the applicants are the owners of 11,232 square foot lot which is developed with a single family detached dwelling and a wood storage shed. Mr. Jaskiewicz stated that the applicants were requesting a variance of the minimum side yard requirements to permit a building addition to be located 6.3 feet from the side lot line. Since the Zoning Ordinance requires a minimum side yard of 10 feet, the applicants are requesting a variance of 3.7 feet.

Ms. Smith stated that the alternate location would be the back yard of the lot which has a very steep terrain and several mature trees. She stated that to construct the addition would require terracing the back yard and removal of trees which would be more costly.

Vice Chairman Ribble asked if the proposed location was the only place to construct the addition and Ms. Smith replied that was correct.

Mr. Hammack noted that it appeared that only one small corner of the addition would require a variance. Ms. Smith agreed.

Vice Chairman Ribble called for speakers, either in support or in opposition, and hearing no reply closed the public hearing.

Mr. Pammel made a motion to grant the request for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated December 3, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-110 by TRACY A. AND STEPHANIE K. SMITH, under Section 18-401 of the Zoning Ordinance to allow addition 6.3 ft. from side lot line, on property located at 3103 Lewis Place, Tax Map Reference 50-3((4))238, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,232 square feet.
4. The lot has an unusual shape with a very narrow front portion of the lot and irregular shape in the rear making it difficult to locate the addition in any other area.
5. The addition is necessary to serve the needs of the applicant's family.
6. The lot has mature, hardwood trees in other portions which makes it extremely difficult to put the addition in any other location.
7. The lot is only 55 feet across the front and is not like other rectangular lots, which are by far the norm for the neighborhood.

8. The request is for a minimal variance since the variance is for only one corner of the addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific building addition shown on the plat (prepared by Huntley, Nyce and Associates, P.C., dated September 6, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The building addition shall be architecturally compatible with the existing dwelling.

4. The existing storage shed shall be relocated on the property so as to meet the minimum yard requirements of the Zoning Ordinance.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1991. This date shall be deemed to be the final approval date of this variance.

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Page 31, December 10, 1991, (Tape 1), INFORMATION ITEM:

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that former Chairman, Daniel Smith, had had another heart attack and was in Fairfax Hospital in very serious condition.

Vice Chairman Ribble wished Mr. Smith a speedy recovery on behalf of the BZA.

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As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Betsy S. Hartt, Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: March 17, 1992 APPROVED: March 31, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, December 17, 1991. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:15 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 319, December 17, 1991, (Tape 1), Scheduled case of:

8:00 P.M. SURINDER KHANNA APPEAL, A 91-D-017, appl. under Sect. 18-301 of the Zoning Ordinance to appeal determination by the Director of Environmental Management that a proposed subdivision, which includes a portion of Lot 1 of the Meadow Run subdivision, cannot be approved until a special exception for a cluster subdivision is approved by the Board of Supervisors to allow that portion of Lot 1 to be deleted from the Meadow Run subdivision, on approx. 6.238 acres, located on outlot road off of Spring Hill Rd., zoned R-1, Dranesville District, Tax Map 20-4((13))1; 20-4((1))15.

Chairman DiGiulian noted that the agenda indicated that a request for deferral of this case had been received. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board of Zoning Appeals (BZA) that a letter had been received that day requesting a deferral of at least two months. Ms. Kelsey noted that the BZA's agendas for February were very full and suggested that the applicant and the Department of Environmental Management might agree to having the case heard on March 3, 1992. Mr. Hammack made a motion to defer this case until March 3, 1992, at 9:00 a.m. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Mr. Ribble was absent from the meeting.

Mrs. Harris requested that Ms. Kelsey ask Mr. Hansbarger to submit any additional information at least one week prior to the scheduled hearing date. Ms. Kelsey said she assumed that the BZA would also want to receive any response by County staff at least one week prior to the hearing and they said that they would.

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Page 319, December 17, 1991, (Tape 1), Action Item:

Approval of Resolutions from December 10, 1991

Mr. Hammack made a motion to approve the resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 319, December 17, 1991, (Tape 1), Action Item:

Request for Additional Time
Northern Virginia Baptist Church, SP 88-P-88

Mrs. Harris said that, after reading the letters from the applicant and Supervisor Hanley, she was convinced that the applicant had diligently tried to implement the use. She made a motion to grant a new expiration date of December 7, 1992. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 319, December 17, 1991, (Tape 1), Action Item:

Request for Additional Time
Rebecca Ann Crump, SP 84-S-079

Mrs. Harris made a motion to grant this request. The new expiration date is December 16, 1992. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 319, December 17, 1991, (Tape 1), Action Item:

Request for Waiver of 12-month Time Limitation
Glenn A. Jones, VC 91-D-043

Mrs. Harris advised that a letter from the applicant stated that the initial application was heard and Mr. Jones presented the statement of justification. She said that Mr. Jones further said that, since he was not an attorney and not versed in the law, he would like to be represented by an attorney at a new hearing. Mrs. Thonen questioned whether the BZA was empowered to grant such a request. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the BZA that they had recently changed their policy on requests for waivers

Page 320, December 17, 1991, (Tape 1), REQUEST FOR WAIVER OF 12-MONTH TIME LIMITATION, GLENN A. JONES, VC 91-D-043, continued from Page 319)

of the 12-month limitation to allow the BZA the flexibility of either granting a waiver requested at the time of the hearing, or requested at such other time as it may deem appropriate. Mrs. Harris advised that the vote had been 5-0 when the application was denied. Chairman DiGiulian said that, in reviewing the plat, the application appeared to have been straightforward, and he did not believe that having had an attorney present would have had any affect of the decision. He said that he would not like to see the same exact application come before the BZA again.

Mrs. Thonen made a motion that the request for the waiver be denied. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 320, December 17, 1991, (Tape 1), Action Item:

Request for Additional Time
Sunrise Country Day Schools, Inc., SP 89-D-048

Mrs. Harris said that, in reading all the information available, she believed that the applicant diligently had tried to incorporate the old and new standards for the implementation of the special permit. She made a motion to grant a new expiration date of December 15, 1992. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 320, December 17, 1991, (Tape 1), Scheduled case of:

8:45 P.M. SEYED M. FALSAFI, VC 91-V-116, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lots 1 and 2 having lot widths of 12.0 ft. (100 ft. min. lot width required by Sect. 3-206) on approx. 2.22 acres, located on Ludgate Dr., zoned R-2, Mount Vernon District, Tax Map 110-4((1))5.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board of Zoning Appeals (BZA) that, although this case was not scheduled to be heard until later in the meeting, Mr. Fagelson was present and had been retained by the applicant. Mr. Fagelson advised that a letter requesting deferral had been forwarded by telefax that afternoon to the BZA's attention because his name did not appear on the affidavit yet, since he had just been retained the previous Friday.

Chairman DiGiulian asked if there was anyone present who wished to address the requested deferral and received no response. Mr. Riegle advised that the applicant had requested a copy of the speakers list and had contacted all of the people listed to notify them of the proposed deferral. Chairman DiGiulian asked Ms. Kelsey for an appropriate deferral date. Ms. Kelsey said that February 17, 1992 at 8:15 p.m. was available.

Mrs. Thonen made a motion to issue an Intent to Defer to February 17, 1992 at 8:15 p.m. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

(See deferral later in the meeting.)

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The Board recessed at 8:20 p.m. and reconvened at 8:40 p.m.

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Page 320, December 17, 1991, (Tape 1), Policy Item:

Mr. Kelley made a motion that, henceforth, all evening cases be scheduled for 8:00 p.m.; the reason being that the cases scheduled for evening meetings were usually controversial and more likely to be deferred than other cases. By scheduling all cases for 8:00 p.m., long waits between cases could be avoided in the event that a case is deferred.

Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 320, December 17, 1991, (Tape 1), Scheduled case of:

8:30 P.M. OAKTON SWIM & RACQUET CLUB, INC., SPA 82-C-067-2, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 82-C-067 for community swim and tennis club to allow addition of 3 tennis courts on approx. 6.75214 acres, located at 11714 Flemish Mill Ct., zoned R-1, Sully District (formerly Centreville), Tax Map 46-2((13))A2. (DEFERRED FROM 10/15/91 FOR MORE INFORMATION FROM APPLICANT AND STAFF)

Chairman DiGiulian advised that, when the decision to defer was made, it was also stated that testimony from both sides would be limited to a total of five minutes.

Mark W. Baker, with the firm of Paciulli, Simmons & Associates, 1821 Michael Faraday Drive, Reston, Virginia, represented the applicant and stated that the Oakton Swim & Racquet Club, Inc., worked hand-in-hand with the Homeowners Association; however, the Club represents its membership which, through a democratic process, had voted for the three proposed tennis courts to go forward.

Mr. Baker said that the Club is very open with its membership and tries to keep them informed. He said that the proposed three new tennis courts would meet the general standards of the County. The courts are located in a position further away from the surrounding homeowners than the existing four tennis courts. Mr. Baker said that the Club had made a conscientious effort to select lower light poles in order not to impact adjacent properties. He said that they have made an effort to minimize impervious surface and address water quality issues. Mr. Baker said that the Club intends to work with the various County agencies through the next steps of the process, and intends to work within the Conditions imposed by the County.

Mr. Baker called the BZA's attention to the information which had been submitted, addressing the issues raised at the previous public hearing.

Mrs. Harris called Mr. Baker's attention to the open space areas to the northeast and asked why the proposed tennis courts could not be rotated, with more impact on that lot line, as opposed to the lot line of Lot 86.

Mr. Baker said that the point of the corner of the court is closest to the open space parcels than any other point. Mrs. Harris said she understood that, but she was referring to rotating the three tennis courts to distance them from the residential property and impact open space. Mr. Baker said the reason for placing the proposed courts in the position chosen was to take advantage of the optimum playing area and the best conditions; i.e., when a player was serving, the sun would not be in their eyes, etc. He said the positioning was the most highly recommended and optimum to the orientation for playing conditions.

Mrs. Harris said that she was questioning whether the alternative had been considered from the standpoint of less impact on the contiguous neighbors. Mr. Baker said that the position was planned with consideration to drainage.

Mr. Pammel said that he had been trying unsuccessfully to locate the tennis hut on the plans. Mr. Baker said that the tennis hut was labeled "gazebo" on the plans.

Mr. Hammack asked Mr. Baker if he was agreeable to the Development Conditions dated December 16 and he said that he was.

Hal Hughes, 11708 Flemish Mill Court, Reston, Virginia, spoke in opposition to the application. He thanked the BZA and staff for their interest in the points raised by all in opposition at the last hearing. He said that sending staff back to research and consider had produced some very meaningful improvements to the Conditions recommended, particularly the lower lights, the limits on the sound system and parties, the adding of missing adjoining properties, channeling the water runoff, and limits on commercial activities.

Mr. Hughes said the property owners still were concerned about Condition 11, which stated that plantings would be supplemented as determined appropriate by the Urban Forestry Branch; elsewhere it said that such planting shall be required if necessary. Mr. Hughes said that the BZA had previously noted that the existing vegetation was quite thin and he suggested that the Condition provide that supplemental evergreen plantings be required to provide effective screening, to be located as directed by the Urban Forestry Branch; thereby recognizing that they are needed and the location would be left to the Branch.

Mr. Hughes said that the swim club admits claims made by opponents, but promises to do better with its more intensive land use. As to visibility, he said that they admit to "sparse vegetation," but are willing to plant "if deemed necessary"; they admit that timers don't work properly, but say they will be fixed. On trespassing, Mr. Hughes said that the Club's minutes reflect that all members present recognized the problem of cutting through and said that efforts were underway to put in trails. Concerning the noise and use of loudspeakers before 9:00 a.m., Mr. Hughes said that a suggestion was made that announcements heard across the public address system, which are considered non-essential, will be reviewed and alternatives would be discussed. As to meeting existing conditions, Mr. Hughes said that what was described as a tennis shop in the flyer submitted previously, is now described as a portable tennis hut. He said that the flyer from the tennis club admits that they are advertising and that calling it a shop was somewhat misleading. As to after-midnight socials, Mr. Hughes said that the Club admits that the one described by opponents had occurred and that no County authorization had been obtained, as necessary; that about ten percent of the membership comes from outside of the zip code, which is not defined as a community identifier. Regarding the flooding, Mr. Hughes said that the BZA saw the pictures and could judge for itself whether the flooding was apparent or real. He said the Club admitted that their findings were inconclusive and further study would be required. He said that the opponents would submit that, on the record submitted by the applicant, that would justify denial at this time, or at least a suspension of activities on more intensive use until existing problems were solved.

Mr. Hughes said that there had been a suggestion that the opponents had faked their photographs, that no one had called to complain first, and that there was some obligation to report flooding, trespassing, and violations, when the flooding was apparent.

Mr. Hammack referred to the revised Proposed Development Conditions which were distributed that evening and said he was taken aback by Condition 5. He believed it was presumptuous to tell the swim and racquet club that they should amend their by-laws and in telling them from which zip codes they are limited to accept membership.

Mr. Riegle said that there was considerable discussion at the initial hearing about the fact that members of the Club resided well out of Northern Virginia and Fairfax County, and a situation existed whereby the Club had been established before the houses were constructed. He said that the original residents of the newly constructed homes were apparently given an opportunity to join the Club, but no system existed whereby buyers of the homes at a later late would have an opportunity to participate in the Club. Mr. Riegle said that the applicant recognized the foregoing as an issue and much of the language of Condition 5 was suggested by the applicant as a means of rectifying the situation and keeping the membership reasonably restricted to residents of the subdivision and the surroundings environs. Mr. Riegle said that staff had no objection to the applicant being willing to regulate the membership in that manner and it seemed to be in keeping with the spirit of a Group 4 use. Mr. Hammack asked Mr. Riegle what would happen to the Club if the membership voted against the restriction. Mr. Riegle said that the applicant would not be in compliance if the membership voted against the restriction. Mr. Hammack said he believed the restriction to be unnecessary and, in such cases where owners wished to sell their memberships as incentives to sell their house, they would be deprived of their property rights.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that she was not at the previous public hearing of this application; however, she was at the original public hearing and supervised the writing of the staff report for the original hearing and, at that time, the Club had been established by persons outside the subdivision because the subdivision had not yet been developed. Since it was in the open space of this particular subdivision, and the Zoning Ordinance requires that the open space for the subdivision be for the benefit of those people who reside within, that was the reason for the original condition that the people who lived within the subdivision had the first right of refusal, intended to assure that the open space would still run to the benefit of those people within the subdivision. She said that the applicant had agreed to the Condition, even though it was restrictive. Mr. Hammack said that he believed it was a bad policy to have staff require the swimming clubs to amend their by-laws and telling them where their membership must come from.

Mrs. Thonen said that the BZA had always recommended priority membership to respective subdivision residents. Ms. Kelsey said that staff had no problem with going back to the originally written condition. Mr. Hammack said he also had a question with Condition 8, dealing with the restrictive limitation on parties, which he said the BZA did not impose on any other Club in Fairfax, to his knowledge, where the parties was limited to Friday, Saturday and pre-holiday, and then put veto power in the hands of the adjoining neighbors. He said that if this was done in this instance, it should be done in all instances, which he did not approve of. He said he did not believe that neighbors should have the right to veto parties of a particular organization. Mr. Riegle said that Condition 8 had been conceived as part of the standard condition most recently imposed on all the swimming clubs. Mr. Hammack said he could not recall ever seeing a condition whereby the next-door neighbors had the right to veto any party. Mr. Riegle said that the difference here was that staff specified the lots which had input into whether or not the Club had a weekday party because, in this case, there were several portions of common open space that abut the site and it would be deceiving to say all contiguous property owners must concur. Mr. Hammack said that the BZA has never had a policy to regulate so restrictively, and that it was totally inappropriate.

Ms. Kelsey said that there was a time when the BZA had wished to allow a particular swim club to have a week-night party and had to change their policy in order to do so. Mr. Hammack said that they did not change the policy to give veto power to the next door neighbor. Mr. Riegle said that the policy previously was to state that written proof had been provided to show that contiguous property owners concur. He said that the reason for specificity in naming the particular lots was as stated previously, the fact that open space created a unique situation.

Mrs. Harris said that she believed the BZA was getting into establishing covenants, rather than land use issues, and was concerned that the Conditions had gone overboard in what they were restricting.

Mrs. Harris asked Mr. Baker who owned Lots 89, 90, and 92 and he said they were not owned by the Club, but by private owners. In answer to a question from Mrs. Harris, Mr. Baker said that the proposed tennis courts would be further from the residences than the existing courts.

Mrs. Harris questioned Mr. Baker about the lights and he stated that the new lights would be lower, but there was no plan to replace the existing lights as there had been no complaints.

Mr. Hammack said he believed that some of the issues raised were not appropriate for this forum. He said he believed there were other means to address issues such as trespass, whether community paths have been maintained and available to the children, and whether they were allowed to trespass. He said he was very concerned about the addition of the tennis

house, partly because the plats had been approved as submitted and the tennis house is obviously much larger and in a different location than what was previously approved. He said that no explanation had been given for the construction of that house and it was built in violation of the original special permit. He said that the Club must recognize that, if they wished to be in compliance with Development Conditions, they would be required to come back before the BZA and submit proposed changes and go through the hearing process and allow compliance issues to be aired. Mr. Hammack said that he was not sure that the use had been abused and would address that in the Development Conditions. He said he also was concerned about the runoff and was sympathetic to the argument made by the opposition that compliance should be shown but, as is the case with much of the County which is developed, compliance comes with development and the Development Conditions would require that the water runoff be diverted away from the adjoining property owners so that it would not impact the adjoining properties, if they do now. This would also be an issue when the applicant develops the proposed additional tennis courts.

Mr. Hammack said that three additional tennis courts at a Club like this is good land use. He said he realized that some of the club members were not in agreement, but that was an internal club matter and the BZA's duty was not to veto the Club's Board of Directors or membership, nor to solve internal squabbles. Mr. Hammack said he believed that, overall, the Development Conditions had been met.

Mr. Hammack made a motion to grant SPA 82-C-067-2 for the reasons outlined in the Resolution, subject to the amended Proposed Development Conditions dated December 9, 1991.

Mr. Hammack changed Condition 8 by deleting the language starting with, "limited to Friday, Saturday and pre-holiday evenings (New Year's Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day, Christmas Day). Of the six total parties, three may be week-night parties, provided written proof is submitted which shows all contiguous property owners concur. For purposes of administering this Development Condition, contiguous property owners shall be defined as residents of the following Lots: 305, 303, 302, 306, 308, 515, 514, 513, 48 and 49." The remainder of the Condition shall remain the same. Mr. Hammack said he believed this would make the special permit consistent with the BZA's approved policies which apply to clubs throughout Fairfax County. Mr. Hammack said that the reason the number of parties was limited to six was to hold down abuses. Any non-conformance could be called to the attention of the Zoning Administrator.

Mr. Hammack changed Condition 15 to read: "Sales activity from the tennis hut shall be limited to members of the Club only." He said that if there is non-compliance or need for more refinement of the Conditions, the BZA can always take some action later, since there has been no testimony concerning violations.

Mr. Kelley seconded the motion and asked if Mr. Hammack had struck the words, "...shall not extend beyond 12 Midnight...." Mr. Hammack said that he had not.

Mr. Kelley and the other members present, agreed that the BZA should not impose conditions to control the internal issues of swim clubs in the area.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-C-067-2 by OAKTON SWIM & RACQUET CLUB, INC., under Section 3-103 of the Zoning Ordinance to amend SP 82-C-067 for community swim and tennis club to allow addition of 3 tennis courts, on property located at 11714 Flemish Mill Ct., Tax Map Reference 46-2((13))A2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 17, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 6.75214 acres.
4. Three additional tennis courts for a club like this is a good land use.
5. The fact that some members do not approve of this use is an internal club affair and should be handled by the Club's Board of Directors or, possibly, by membership vote.
6. Overall, the development conditions have been met, in spite of some issues having been raised; and the tennis courts should be allowed on the basis that the proposed development conditions will be complied with.

WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

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THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Paciulli, Simmons and Associates, LTD., dated May 1991, revised through July 11, 1991) approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Paciulli, Simmons and Associates, LTD., dated May 1991, revised through July 11, 1991 and these development conditions.

5. There shall be a maximum of 500 family memberships. Residents of the surrounding Waples Mill Estates Subdivision shall be granted priority for membership.

6. There shall be 77 parking spaces provided as shown on the special permit plat. All parking shall be on site.

7. Tennis court lights for the new courts shall be on standards which do not exceed 20 feet in height. All tennis court lights shall be equipped with an automatic shut-off mechanism designed to ensure that the lights are only on when the courts are in use during the approved hours of operation. This mechanism shall be tested monthly and adjusted or repaired as necessary to ensure compliance. To further minimize the impact of the lights on adjacent properties, the lights shall be directed downward, and shall be shielded to prevent glare on adjacent properties.

8. The maximum hours of operation for all tennis courts on the site shall be between 7 a.m. and 10 p.m. The regular hours of operation for the swimming pool shall be 9 a.m. to 9 p.m., except that competitive teams from the swim club shall be allowed to practice as early as 7 a.m. The 7 a.m. swim practice shall not involve the use of amplified sound including but not limited to amplified timing systems, pre-recorded music, starters pistols, or public address systems. After hour parties for the swimming pool shall be governed by the following:

   Limited to six (6) per season.

   Shall not extend beyond 12:00 midnight

   The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

   Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

9. During discharge of swimming pool waters the following operation procedures shall be implemented:

   Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

   If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.

10. If a public address system is used, its use shall be limited to swim meets, special parties and emergencies and its volume shall be modulated to comply with the requirements of the Noise Ordinance.

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11. To fulfill the requirements for Transitional Screening, all existing vegetation, including the supplemental evergreen plantings on the western lot line required in the approval of SP 82-C-067, shall be retained and supplemented with plantings consisting of a row of evergreen trees to be planted 10 feet on center along the site's boundary with Lots 408, 409, and 305 as determined appropriate by the Urban Forestry Branch. All evergreens used as supplemental plantings shall have a planted height of 8 feet and an ultimate height of at least 25 feet as determined feasible by the Urban Forestry Branch. Existing evergreens may be used to fulfill the requirement for supplemental plantings along Lots 408, 409, and 305 provided the existing trees are determined by the Urban Forestry Branch to be of a height and quality which will provide effective screening of the tennis courts and lights. Existing vegetation along the remaining portions of the eastern, northern, and western lot lines shall be reviewed by the Urban Forestry Branch and supplemental plantings may be required if necessary to meet the intent of Transitional Screening 1.

12. The Barrier requirement shall be waived.

13. Runoff attributable to the three (3) new tennis courts shall be in accordance with requirements for Stormwater Best Management Practices (BMP's). On-site BMP's or contributions to off-site detention facilities based on the runoff generated by the three (3) new tennis courts shall be provided as determined necessary and feasible by DEM.

14. To ensure that any water or runoff which may flow across the site does not adversely impact adjoining property owners, the grading plan for the new tennis courts shall be designed and engineered with swales or other methods as determined appropriate by DEM to ensure that runoff is properly channeled into the existing inlet located southeast of the new tennis courts as may be deemed appropriate by DEM.

15. Sales activity from the tennis hut shall be limited to members of the club.

16. A written copy of all applicable development conditions shall be provided to the individual responsible for any after-hours party or event, to all members, to contractors providing services at the club, and to parties who may rent the club's facilities.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mrs. Thonen was not present for the vote. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 25, 1991. This date shall be deemed to be the final approval date of this special permit.

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Page 325, December 17, 1991, (Tape 1), Scheduled case of:

8:45 P.M. SEYED M. FALSAFI, VC 91-V-116, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lots 1 and 2 having lot widths of 12.0 ft. (100 ft. min. lot width required by Sect. 3-206) on approx. 2.22 acres, located on Ludgate Dr., zoned R-2, Mount Vernon District, Tax Map 110-4((1))5.

Consistent with an Intent to Defer which had been issued previously in the meeting, Mrs. Harris made a motion to defer VC 91-V-116 until February 17, 1992 at 8:00 p.m.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mrs. Thonen was not present for the vote and Mr. Ribble was absent from the meeting.

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9:00 P.M. RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-4, appl. under Sect. 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to allow reconfiguration of parking, reconstruction and expansion of club house, locker room, cart maintenance building, and addition of tennis pro shop on approx. 151.321 acres located at 9901 Beach Mill Rd., zoned R-E, Dranesville District, Tax Map 8-1((1))22,23,41; 8-3((1))4. (DEFERRED FROM 10/29/91 FOR NOTICES) (DEFERRED FROM 11/26/91 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Bryan replied that it was.

Kennon W. Bryan, 4117 Chain Bridge Road, Fairfax, Virginia, represented the applicant and stated that, pursuant to the BZA's request at the last meeting, Dick Peters, Vice President of the Great Falls Citizens Association, was present and would like to address the BZA at the appropriate time.

Mike Jaskiewicz, Staff Coordinator, advised that this case was heard by the BZA on November 26, 1991, but was deferred to allow the applicant and staff to resolve outstanding issues. He said that the BZA had also requested that staff provide information on how the 312 foot contour interval was chosen as detailed in Proposed Development Condition 9, and requested that the Environmental Planner be present. Mr. Jaskiewicz said that Connie Crawford, Environmental Planner, was present.

Mr. Jaskiewicz said that staff had met with the applicant who modified the special permit plat to include a redesigned loading area that eliminated a direct, below-grade entrance, and pulled back the limits of clearing and grading to the 308 foot contour interval. He said that staff had also provided revised Proposed Development Conditions dated December 16, 1991, and recommended approval subject to those conditions.

Mr. Jaskiewicz said that the change which the applicant had made was to provide an at-grade turnaround with a freight elevator which is under an overhang and suggested that the applicant provide further details in his presentation.

Mr. Bryan said that the development plan had been revised to provide for an elevator and stairs, rather than having to go below grade. He said that the turnaround area would remain on top of the hill, not infringing upon the slope. Mr. Bryan said that, in meeting with staff, it was his understanding that an agreeable limitation had been reached on the limits of clearing and grading, resulting in a 308 foot contour. He said the applicant was satisfied with that facet and he believed staff also was satisfied. Mr. Bryan said that the wording of the Development Conditions had been revised to incorporate the language discussed at the previous meeting. He said that Condition 11, addressing the tree save plan, provided for confinement within the limits of clearing and grading; Condition 23 had been clarified to indicate that existing vegetation and fencing around the perimeter of the entire Club would be maintained along all lot lines, which would be deemed to satisfy the transitional screening barrier requirements, without additional planting.

Mr. Kelley asked Mr. Bryan if the applicant was in agreement with the revised Development Conditions. Mr. Bryan said that the only condition they had any question about was number 17, addressing Best Management Practices (BMPs) on the runoff, but he had been informed that, by a Plan amendment in August, had become part of the standards in the Public Facilities Manual (PFM), and they could not dispute that. He said that the applicant would have liked to establish the limits of clearing and grading and the runoff in that area, but he did not believe that to be an appropriate request in view of the Plan amendment. Mr. Bryan said that the Zoning Administrator's Office was aware of the issue raised at the previous meeting regarding the hours of operation, and that they would prefer not to make a change at this time, since it could not be done without readvertising. He said that the applicant expected to be back before the BZA in the future and that they could address that issue at that time, with appropriate advertising.

Mr. Hammack asked staff if Mr. Bryan's understanding of the BMPs being applicable to the entire site was correct, according to the Plan amendment. Ms. Crawford said that the interpretation which was presented to the applicant was that BMP renovation of existing ponds was a Comprehensive Plan update, meaning that all existing ponds, according to the current Comprehensive Plan, were requested to be renovated and function as BMPs. Mr. Hammack asked if that could not be limited just to the areas of clearing and grading. Ms. Crawford said that, in this instance, because of the use of the golf course and the associated special circumstances, they recommended that this apply to the entire site. Mr. Hammack asked if it was a recommendation, interpretation, or a requirement because of the Plan amendment, that the applicant had to cover the entire site. A discussion ensured between Mr. Hammack and Ms. Crawford concerning whether the implementation of the BMPs was a legal requirement or a recommendation. Ms. Kelsey said that Ms. Crawford was explaining what the Comprehensive Plan recommends, as amended in August. Chairman DiGiulian suggested that the Condition be modified to satisfy the BZA and, if there was another County entity which required something other than that, they could make it known to the applicant. It was Mr. Hammack's suggestion that Condition 17 be deleted by the BZA and addressed by the agency requiring the applicant's compliance with BMP regulations.

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Ms. Crawford told Mr. Hammack that the applicant had the opportunity to make calculations on the site and that the open space on this site might automatically provide the BMP. She did not know if that would be the case. She said that the issue was that the PFM allowed staff to request that the applicant implement BMPs just for the developed site; however, in order to be in conformance with the Plan, staff believed that the entire site should be accommodated to the BMP requirements.

Mrs. Harris asked if, when the applicant went through the site plan process, it would be determined whether the applicant would be required by the Department of Environmental Management (DEM) to implement BMPs. Ms. Crawford said that it would. Ms. Crawford said that the distinguishing factor was whether or not the load would be calculated from the proposed developed portion or from the entire site, with either requirement having advantages and/or disadvantages. Ms. Crawford said that slight alterations would have to made to provide for the runoff from increased impervious surface.

Richard Peters, Vice President of the Great Falls Citizens Association and Co-chairman of its Planning and Zoning Committee, said that, having learned that a question had been raised in the BZA proceedings regarding the view of the Great Falls community towards the subject project, the Association's Executive Committee, in its monthly meeting the previous evening, agreed to his coming forward with a statement. He said that, "The Association is aware of no objections in the community and has none itself." He said that the matter came under consideration when the application was filed approximately a year ago, and the Association concluded that changes in the Club facility, deep within the Club grounds, was not likely to have adverse community effects and, barring unforeseen developments or community objections, they did not feel the need to concern themselves with the application. Mr. Peters said that the Association is a lightening rod for any complaint or objection to developments in the community, but have heard none concerning this project. He said that the general Great Falls view towards River Bend was to appreciate the vast amount of open space which it maintains and the fact that it serves the main objectives of the Citizens Association, which is to maintain low residential density and preserve the existing semi-rural character of the area. Mr. Peters said that he was personally aware that one of the many contiguous property owners receiving the required notification of the Club's proposed project asked the Club for clarification and, being entirely satisfied with the explanation given, had nothing further to say. Mr. Peters said that he had been a member of River Bend since he retired thirteen years previously; he golfed and dined there several times a week, which gave him a privileged position from which to view whether this project would conflict with the interests guarded by the Citizens Association. He said that members of the Club who were present would remember that he was not a silent nor uncritical participant in the internal deliberations leading up to a Club vote on the project.

Mr. Kelley made a motion to grant SPA 82-D-101-4 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions, dated December 16, 1991: Condition 17 was deleted; a line was added to Condition 4, stating that the BZA has no objection to the granting of a site plan waiver.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-D-101-4 by RIVER BEND GOLF AND COUNTRY CLUB, INC., under Section 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to allow reconfiguration of parking, reconstruction and expansion of club house, locker room, cart maintenance building, and addition of tennis pro shop, on property located at 9901 Beach Mill Rd., Tax Map Reference 8-1((1))22,23,41; 8-3((1))4, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 17, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The property contains 151.321 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

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1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat [Sheet 1 prepared by Gordon Associates, dated December 16, 1991 (revised) and Sheet 2 prepared by BDLK, Inc., stamped July 29, 1991] approved with this application, as qualified by these development conditions. This approval does not include Notes 1 through 20 on Sheet 1 of the plat.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. The Board of Zoning Appeals has no objection to the granting of a site plan waiver.

5. The hours of operation shall be limited to the following:

   Clubhouse - 11:00 a.m. to 1:00 a.m.
   Swimming Pool - 7:30 a.m. to 10:00 p.m.
   Golf Course - 7:30 a.m. to Dusk
   Outdoor Tennis Courts - 7:30 a.m. to 11:00 p.m.
   Enclosed Tennis Courts - 6:00 a.m. to 11:00 p.m.

6. The inflation of the air-enclosed bubble shall be permitted only between October 1 and May 31.

7. Country club membership shall be limited to 600 persons with a corresponding minimum of 150 parking spaces. There shall be a maximum of 163 parking spaces, all located on-site in the location shown on the Special Permit plat. Handicapped spaces shall be provided in accordance with the County Code.

8. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

9. The limits of clearing and grading shown on the Special Permit plat shall be reconfigured so as to align with the existing 308-foot contour line in the vicinity of the loading dock and access drive to the loading dock south of the clubhouse and the bath house, thus preserving the steep slopes adjacent to the existing drainage swale and Environmental Quality Corridor (EQC).

10. There shall be no further construction or paving in the area of the floodplain. In addition, vegetation shall be maintained immediately to the southeast of the existing paved area to promote filtration of stormwater runoff prior to its entry into the swale.

11. Prior to site plan approval, a tree save/tree replacement plan shall be submitted for review and approval by the County Urban Forester. This plan shall identify and provide for the preservation of all vegetation within the limits of clearing and grading, as modified by Condition No. 9 above, and shall locate and preserve individual mature, large and/or specimen trees and tree save areas to the greatest extent possible as determined by the County Urban Forester. The plan shall provide for the replacement of vegetation which will be lost during clearing and grading activities, with size and number of species to be determined by the County Urban Forester.

12. The row of trees which lines the entrance drive in the area of the relocated tennis courts shall be preserved. A row of evergreen trees, six feet in planted height, 10 feet on center, shall be maintained along the western and northern sides of the tennis courts along the earthen berm to screen the visual impact of the fencing and lighting of the courts. The type, number, and location of these trees shall be reviewed and approved by the County Urban Forester and may include those trees relocated from the proposed parking lot area.

13. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook and shall be coordinated with the Department of Environmental Management (DEM). These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation fencing.

    If determined by DEM at the time of site plan review that additional erosion and sedimentation control measures beyond Public Facility Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DEM.

14. During discharge of swimming pool waters the following operation procedures shall be implemented:

    Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

    If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.

15. An integrated fertilizer, herbicide, and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the Pond Branch watershed shall be implemented for these uses. This program and plan shall provide for periodic monitoring and adjustment that demonstrates an intent to reduce the amounts of nutrient, phosphate, and pesticide applied to the property over time. These actions shall be coordinated with the Northern Virginia Soil & Water Conservation District of the Department of Extension and Continuing Education, and reviewed by DEM at site plan review.

16. Information shall be provided to the Department of Environmental Management (DEM) at the time of site plan review that demonstrates that the existing stormwater management ponds will adequately handle the additional runoff generated by the proposed expansions.

17. Any lighting of the tennis courts shall be in accordance with the following:

    The combined height of the light standards and fixtures shall not exceed twenty-one (21) feet.

    The lights shall focus directly on the subject property.

    Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.

    The lights, including those associated with the air-enclosed bubble, shall be controlled by an automatic shut-off device.

18. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.

19. An evergreen hedge, with an ultimate height of four (4) feet, shall be planted on the northeast side of the parking lot in accordance with the approval of the County Urban Forester.

20. The septic field shall be appropriately designed to accommodate the sewer loads that may result from the increase in the square footage of the clubhouse, as approved by the Health Department .

21. The existing evergreen trees and additional plantings required pursuant to the approval of SPA 82-D-101-2 shall be maintained in the area between the new parking lot and air-enclosed tennis bubble and the adjacent subdivision to the north.

22. Existing vegetation and the existing fencing shall be maintained along all lot lines, and shall be deemed to satisfy the transitional screening and barrier requirements.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen was not present for the vote. Mr. Ribble was absent from the meeting.

Page 330, December 17, 1991, (Tape 1), RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-4, continued from Page 329)

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*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 25, 1991. This date shall be deemed to be the final approval date of this special permit.

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As there was no other business to come before the Board, the meeting was adjourned at 9:40 p.m.

Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: March 17, 1992 APPROVED: March 31, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 7, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:22 a.m. and Mrs. Thonen gave the invocation. Chairman DiGiulian stated the first order of business would be the election of officers for the coming year. He called for nominations for Chairman.

Mr. Ribble made a motion to nominate John DiGiulian to continue to Chair the Board of Zoning Appeals in 1992. Mr. Pammel seconded the motion. There were no other nominations and the motion carried by an unanimous vote.

Mrs. Thonen made a motion to nominate Paul Hammack and John Ribble to again serve as Vice Chairmen. Mr. Pammel seconded the motion which carried unanimously.

Mrs. Thonen made a motion to nominate Betsy S. Hurtt as Clerk. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Chairman DiGiulian called for the first scheduled case.

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Page 331, January 7, 1992, (Tape 1), Scheduled case of:

9:00 A.M. UNITED LAND COMPANY APPEAL, A 90-L-014, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of Department of Environmental Management's decision that all building permits must be obtained in order to extend the approval of a site plan, and that the issuance of a Building permit for the construction of a retaining wall does not extend the approval of the entire site plan on approx. 13.49 acres of land located at 3701 thru 3736 Harrison Lane and 3600 thru 3657 Ransom Pl., zoned R-8, Lee District, Tax Map 92-2((31))Parcel C and Lots 1 thru 86. (DEF. FROM OCTOBER 30, 1990, AT APPLICANT'S REQUEST - DEF. FROM 2/12/91 AT APPLICANT'S REQUEST - DEF. ON 6/25/91 AT APPLICANT'S REQUEST - BOARD ISSUED INTENT TO DEFER ON 10/1/91 - DEFERRED FROM 10/8/91 AT APPLICANT'S REQUEST.)

Chairman DiGiulian noted that the Board of Zoning Appeals had issued an intent to defer on December 12, 1991.

Mrs. Thonen stated that because of the delay caused by a dispute between Fairfax County and the original developer, the property went into receivership. She stated that a new developer had taken over the project. Mrs. Thonen said that although preparing the land for construction was very time consuming and costly, it did not constitute the beginning of construction.

Lori Greenlief, Staff Coordinator, stated that the applicant had requested a deferral of 120 days.

Mrs. Thonen made a motion to defer A 90-L-014 to May 5, 1992, at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 331, January 7, 1992, (Tape 1), Scheduled case of:

9:15 A.M. PATRICIA SHANNON, VC 91-V-107, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (deck) 1.0 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 13,122 s.f. located at 1917 Glen Dr., zoned R-4, Mt. Vernon District, Tax Map 83-3((14))(9)9B. (DEFERRED FROM 12/3/91 - NOTICES NOT IN ORDER)

Chairman DiGiulian called for the applicant to come to the podium and was informed that the applicant had not arrived at the Board Room.

Mr. Kelley made a motion to pass over the case and hear the after agenda items. Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 331, January 7, 1992, (Tape 1), Action Item:

Request for Additional Time
Mehdi Mirshahi and Akhtar Mirshahi
6407 Columbia Pike
Tax Map Reference 61-3((3))3

Mrs. Harris made a motion to grant the additional time. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date will be February 21, 1994.

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Request for Date and Time
Silverbrook Consortium Limited Partnership Appeal

Mrs. Harris made a motion to schedule the appeal on March 3, 1992 at 11:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Mr. Pammel made a motion to extend the usual time limit to 30 minutes. He explained that this would be necessary because of the complexity of the case. The motion carried by a vote of 7-0 and the Chair so ordered.

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Request for Additional Time
Floris United Methodist Church
Centreville Road
Tax Map Reference 25-1((1))37

Mrs. Hammack made a motion to grant the additional time. Mrs. Thonen seconded the motion which carried by a vote of 7-0. The new expiration date will be January 19, 1993.

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Request for Date and Time
Metro Sign and Design, Inc., Lee Jackson Station Partnership Appeal

Mr. Pammel made a motion to deny the request. He stated that there was no justification for the appeal.

The appellant's agent, Robert Anderson, 8197 Euclid Court, Manassas Park, Virginia, addressed the Board of Zoning Appeals (BZA). He stated that the application was submitted on July 23, 1991, and denial was received on August 8, 1991. Mr. Anderson explained that since Jane W. Gwinn, Zoning Administrator, did not sign the application, he had requested a meeting to discuss the case. The meeting was held after the appellant had been given notification to remove the sign or to bring it into conformance.

Mr. Anderson expressed his belief that the only issue involved in the appeal was the copy on the sign and noted that an attempt to clarify the issue had been made.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that William Shoup, the Deputy Zoning Administrator, would be present later in the hearing; therefore, he would be available to answer any questions the BZA may have with regard to the issue.

Mr. Pammel withdrew his original motion.

After a brief discussion, it was the consensus of the BZA to hold the case over so that Mr. Shoup could speak to the issue. The Chair so ordered.

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Request for Reconsideration
Tom V. and Joan J., Kimberly W., and Tom V. II Richardson, SP 91-Y-035
December 10, 1991 Public Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She stated that although she had submitted a memorandum to the BZA noting that the decision had been final, she had been unable to discuss the issue with Mr. Richardson. She suggested that the BZA pass over the issue until she could discuss the matter with Mr. Richardson.

After a brief discussion it was the consensus of the BZA to pass over the item. The Chair so ordered.

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Request for Intent to Defer
Electronic Data Systems Corporation Systems Appeal, A 91-C-022

Mrs. Harris made a motion to issue an intent to defer A 91-C-022 which was scheduled to be heard on January 21, 1992. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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9:15 A.M. PATRICIA SHANNON, VC 91-V-107, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (deck) 1.0 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 13,122 s.f. located at 1917 Glen Dr., zoned R-4, Mt. Vernon District, Tax Map 83-3((14))(9)9B. (DEFERRED FROM 12/3/91 - NOTICES NOT IN ORDER)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Shannon replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow the construction of an 8.0 foot high deck to be located 1.0 foot from the side lot line. Section 3-407 of the Zoning Ordinance requires a minimum side yard of 10.0 feet; therefore, the applicant was requesting a variance of 9.0 feet for the proposed deck addition.

Ms. Bettard noted that the Zoning Administration's files indicated that a variance to allow construction of a dwelling 25 feet from the street line on abutting Lot 10 had been previously approved.

The applicant's husband, Richard B. Shannon, 1917 Glen Drive, Alexandria, addressed the BZA. He stated that the terrain, as well as the odd size and shape of the lot, caused the need for the variance.

Mrs. Harris asked why the addition could not be constructed on the southwestern portion of the lot. Mr. Shannon submitted pictures to the BZA and stated that the retaining wall depicted on the pictures precluded the addition from being built there. Mrs. Harris noted that the rear of the property had a steep slope.

Mr. Hammack stated that the addition would extend to within 1 foot from the property line on adjacent Lot 10. He asked if due to the slope of the property, Lot 10 was much higher than the subject property. Mr. Shannon stated that there is only 12 feet from the corner of the house to the lot line which would preclude the building of the addition without the variance. He stated that because of the slope of the property, the deck would also slope.

Mr. Kelley stated that he lived near the applicant and could attest to the steep slope of the land in the area.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 91-V-107. He stated that he could not support a variance which would allow a deck within 1 foot of the lot line. He noted the difficulty with the maintenance, that no hardship of the property existed, or that it would unreasonably restrict the use of the property. Mr. Hammack expressed his belief that the variance would be for a convenience rather than for a hardship.

Mr. Pammel seconded the motion which failed by a vote of 3-4 with Mrs. Harris, Mr. Hammack and Mr. Pammel voting aye; Chairman DiGiulian, Mrs. Thonen, Mr. Kelley and Mr. Ribble voting nay.

Mr. Kelley made a motion to grant VC 91-V-107 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 26, 1992.

Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she would support the motion because the terrain and the shape of the lot would preclude the building of the addition any place on the property without a variance.

Mrs. Harris stated that although she agreed with the majority of the motion, she could not support it because the addition would be within 1 foot of the property line. She explained that maintenance of the 1 foot area would be extremely difficult.

After a brief discussion regarding the height of the deck, the BZA deferred to the applicant. Mr. Kelley asked Mr. Shannon what the height of the deck would be when it neared the side lot line. Mr. Shannon stated that it would be between 2 to 3 feet off the ground near the side lot line.

Mr. Hammack stated that although he had concerns regarding the maintenance of the land near the side lot line, the deck would be too large. He again reiterated that the request was for a convenience and the hardship issue did not apply.

Mrs. Thonen expressed her belief that a lesser deck would not be practical.

Chairman DiGiulian called for the vote.

The motion carried by a vote of 4-3 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley and Mr. Ribble voting aye; Mrs. Harris, Mr. Hammack and Mr. Pammel voting nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-107 by PATRICIA SHANNON, under Section 18-401 of the Zoning Ordinance to allow addition (deck) 1.0 feet from side lot line, on property located at 1917 Glen Drive, Tax Map Reference 83-3((14))(9)9B, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 13,122 square feet.
4. Topographic conditions and the terrain is such that it does cause a hardship.
5. The entire area has steep slopes and hills.
6. The BZA has granted ten or twenty variances for the Belle Haven area.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the specific addition (deck) to the dwelling shown on the plat prepared by Kenneth W. White, dated July 24, 1991 and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

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Mr. Ribble seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley, and Mr. Ribble voting aye; Mrs. Harris, Mr. Hammack, and Mr. Pammel voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 335, January 7, 1992, (Tape 1), Scheduled case of:

Request for Reconsideration
Tom V. and Joan J., Kimberly W., and Tom V. II Richardson, SP 91-Y-035
December 10, 1991 Public Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She said that she had explained to Mr. Richardson that the BZA's decision was final and he understood the situation. Ms. Kelsey stated that although she had discussed the filing of an amendment application with Mr. Richardson, he had requested that he be allowed to address the BZA.

The applicant, Tom Richardson, 6001 Bull Run Post Office Road, Centreville, Virginia, addressed the BZA. He stated that although he understood staff's position, the correspondence had stated that the approval would not be final until the 8 day waiting period had expired. Mr. Richardson stated that when he applied for the reconsideration, he was told that the Resolution was final and the request should have been submitted on the 7th day. He explained that Development Condition 22 limited the use for a 5 year term, and said that he understood the condition was dictated by the request for horse shows on the property. He then expressed his willingness to withdraw the horse show request if the condition requiring the 5 year term was deleted from the Resolution.

Chairman DiGiulian stated that the Fairfax County Attorney had indicated that the Board of Zoning Appeals cannot reconsider a decision if the decision has already become final. He stated that if a new revised application was submitted, the BZA would direct staff to give it an expeditious review. Chairman DiGiulian further stated that although Mr. Richardson removed the horse show request from the special permit, the BZA may be unwilling to grant the special permit without imposing a set term.

After a brief discussion, it was the consensus of the BZA to take action on the reconsideration request.

Mr. Hammack made a motion to deny the request for reconsideration. He stated that the application had been given a thorough review at the previous public hearing and expressed his belief that the development conditions should not be changed.

Mr. Ribble seconded the motion. He explained that the BZA often included a term as a condition on special permits. He stated that when the BZA members review applications, all aspects of the request are taken into consideration. Mr. Ribble further stated that just because the applicant might remove the horse shows from the special permit request, it did not mean the BZA would remove the term from the conditions.

The motion carried by a vote 4-1 with Mr. Pammel voting nay. Mrs. Harris and Mr. Kelley abstained from the vote.

Mrs. Thonen made a motion that would require staff to expedite the application if Mr. Richardson filed a new amendment application.

Mr. Hammack stated that the BZA had a thorough discussion regarding the application at the previous public hearing. He noted that at the hearing Mr. Richardson had refused to withdraw the request for the horse shows. Mr. Hammack said that the 5 year term would not impose any immediate hardship on the applicant and that staff would have no reason to expedite the application.

Mr. Ribble seconded the motion which carried by a vote of 4-3 with Mrs. Harris, Mr. Hammack, and Mr. Pammel voting nay.

Mr. Hammack explained that although the eight-day waiting period allowed the applicant to request a reconsideration, it was adopted in order to give the BZA the time to reconsider the motion.

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9:30 A.M. JOLEEN MILLER, VC 91-S-119, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 7.7 ft. from side lot line with side yards totaling 18.6 ft. (8 ft. min. side yard and 20 ft. min. total side yards required by Sect. 3-307), on approx. 8,498 s.f. located at 7706 Maritime La., zoned R-3 (developed cluster), Springfield District, Tax Map 97-2((3))675.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Miller replied that it was.

Lori Greenlief, Staff Coordinator, addressed the BZA and noted that although she would present the staff report, it had been prepared by Greg Riegle, Staff Coordinator. She stated that the applicant was requesting approval of a variance to permit the enclosure of an existing carport at a location 7.7 feet from the side lot line such that the side yards total 18.6 feet. Ms. Greenlief stated that the Zoning Administration's files indicated that the dwelling on adjacent Lot 76 is located approximately 13 feet from the shared lot line.

The applicant, Joleen Miller, 7706 Maritime Lane, Springfield, Virginia, addressed the BZA. She stated that she was merely requesting to enclose an existing carport. Ms. Miller stated that all the other houses on Maritime Lane have enclosed garages and expressed her belief that by enclosing the carport it would enhance the neighborhood. She stated that the garage would not only protect her car but would provide a safe storage area for her belongings. In summary, Ms. Miller stated that there is no other site on the lot where a garage could be placed without a variance.

In response to Chairman DiGiulian's question as to whether the garage would extend any further into the side yard than the existing carport, Ms. Miller stated that it would not. She further noted that she planned to install new siding on the house and garage in order to ensure that it would be aesthetically pleasing.

Mr. Pammel asked whether the house had a basement and Ms. Miller replied that it did.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-S-119 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 30, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-119 by JOLEEN MILLER, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 7.7 feet from side lot line with side yards totaling 18.6 feet, on property located at 7706 Maritime Lane, Tax Map Reference 97-2((3))675, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 8,498 square feet.
4. The application meets the necessary standards required for the granting of a variance.
5. The request is for a minimum variance.
6. The applicant would be merely closing in an existing structure.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   - A. Exceptional narrowness at the time of the effective date of the Ordinance;
   - B. Exceptional shallowness at the time of the effective date of the Ordinance;
   - C. Exceptional size at the time of the effective date of the Ordinance;
   - D. Exceptional shape at the time of the effective date of the Ordinance;
   - E. Exceptional topographic conditions;
   - F. An extraordinary situation or condition of the subject property, or
   - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific garage shown on the plat included with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 337, January 7, 1992, (Tape 1), Scheduled case of:

9:45 A.M. DONNA L. MASON, SP 91-Y-060, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition (screened porch) to remain 16.9 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 9,284 s.f. located at 6304 Clear Springs Ct., zoned R-3 (developed cluster), WS, Sully District (formerly Springfield), Tax Map 65-2((7))113.

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Martin replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit based on error in building location to allow a screened porch to remain 16.9 feet from the rear lot line. She noted that the Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, the applicant was requesting a modification of 8.1 feet to the minimum requirement. Ms. Greenlief said that the error was discovered when the applicant applied for a building permit to construct a deck adjacent to the existing screened porch. She noted that staff's research of the background of this error appeared on Page 2 of the staff report.

Mrs. Harris asked if the dotted line on the grading plat included in the staff report was the footprint of the porch. Ms. Greenlief stated that although it usually indicated an above ground structure, she was unsure of the exact significance of the dotted line. Mrs. Harris noted that when this type notation is included in a plat, a subsequent buyer usually has the right to finish the construction.

The applicant's attorney, Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the BZA. He stated that the screened porch addition was built during the original construction of the house. Mr. Martin said that the building permit had been issued on October 3, 1986, and the house and screened porch were both constructed within the next six months. He noted that the house location survey, dated May 15, 1987, depicted the porch as a screened wooden deck. He further noted that the Residential Use Permit (RUP) was issued on July 16, 1987, and the applicant had purchased the structure on July 23, 1987. Mr. Martin stated that the sale letter issued to the applicant listed a covered deck with skylight and screens as a specific option item which the applicant had paid for when the house was purchased.

Mr. Martin explained that although he could speculate on the basis of the error, he was uncertain as to why it was made. He again noted that the screened porch existed at the time the RUP was issued in July 1987. Mr. Martin stated that during the time of construction, it was Fairfax County's procedure to approve a builder's set of architectural plans for a design applicable to any lot in Fairfax County. He noted that the approved building permit included in the staff report, it was noted that the architectural plans for the structure were on file. Mr. Martin stated that once these plans were approved, a builder could basically build the design County wide as long as the setback requirements were met. He explained that the error was discovered four years later when the applicant applied for a building permit to construct a deck adjacent to the existing screened porch. He noted that the applicant had purchased a fully approved structure; there would be no detrimental impact on the neighborhood; and there would be no increase in density. In summary, Mr. Martin stated that the application met the necessary criteria for the granting of a special permit to correct a building in error and asked the BZA to approve the request.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SP 91-Y-060 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 30, 1991.

Mr. Hammack and Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley stated that Development Condition 3, which required a building permit, should be deleted. He explained that the testimony had indicated the addition existed at the time the applicant purchased the property. Mrs. Thonen agreed to delete the condition.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-060 by DONNA L. MASON, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition (screened porch) to remain 16.9 feet from rear lot line, on property located at 6304 Clear Spring Court, Tax Map Reference 65-2((7))113, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

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E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED, with the following development conditions:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat, prepared by Christopher Consultants Ltd. and dated September 20, 1991, and approved with this application, as qualified by these development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.

Mr. Hammack and Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1992. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel stated that the previous case had demonstrated the need for better control of the process when Residential Use Permits or Occupancy Permits are permitted. He expressed his belief that if an "As-Built" had been submitted, the discrepancy would have been discovered. Mr. Pammel stated that closer scrutiny would have prevented the error and staff should be made aware of the problem.

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Page 339, January 7, 1992, (Tape 1), Scheduled case of:

10:00 A.M. DORRIE L. GORDON, VC 91-Y-120, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard of corner lot (4 ft. max. fence height allowed in front yard by Sect. 10-104), on approx. 10,321 s.f. located at 5274 Ellicott Ct., zoned R-3 (developed cluster), WS, Sully District (formerly Springfield), Tax Map 54-2((4))250.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Gordon replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow a 6.0 foot high fence to remain in the front yard adjacent to Ellicott Drive. She noted that the maximum height permitted for a fence in the front yard was 4.0 feet; therefore, the applicant was requesting a variance of 2.0 feet to the maximum permitted height. Ms. Greenlief said that the surrounding lots in the subdivision are developed with single family detached dwellings with the exception of Lot C which is the lot adjacent to the yard in which the fence is located. She stated that Lot C is undeveloped homeowners open space.

The applicant, Denise L. Gordon, 5274 Ellicott Court, Centreville, Virginia, addressed the BZA. She said that she would like the 6.0 foot fence because of her large Belgium Sheep Dogs. Ms. Gordon explained that the neighbor children, as well as people walking their dogs, frequently use the common grounds. She stated that the higher fence would prevent her dogs from jumping the fence; thereby, ensuring the safety of the children. She stated the fence is adjacent to common ground and there would be no obstruction of vision at the corner. In summary, Ms. Gordon asked the BZA to grant the variance and submitted a signed petition of support from the neighbors.

Chairman DiGiulian noted that the photographs substantiate Ms. Gordon's contention that the fence would not obstruct the view from the intersection.

Mrs. Harris stated that when she had visited the site she noted that the applicant's house sat up very high on a little knoll. She expressed her belief that the 6.0 foot high fence in the front yard would not be in conformance with the community. Ms. Gordon again stated that a 6.0 foot fence would ensure that the dogs would not jump the fence and endanger people.

In response to Mr. Hammack's question as to what section of the fence was in the front yard, Ms. Greenlief used the viewgraph to depict that the existing fence enclosed the total front yard.

In response to Mrs. Thonen's question as to whether the property was located on a major thoroughfare, Ms. Gordon stated that it was located in a remote area adjacent to a national park.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Roberta Wynne, 5222 Ellicott Court, Centreville, Virginia, addressed the BZA. She stated that she owned the adjacent property and supported the request for a 6.0 foot fence. Ms. Wynne said that she believed the fence was needed to ensure the safety of the neighboring children and asked the BZA to grant the request.

Virginia Olander, 5277 Ellicott Court, Centreville, Virginia, addressed the BZA. She said that her house was across the street from the subject property and expressed her support for the fence. Ms. Olander stated that although she was not afraid of the applicant's dogs, but believed the fence was needed for safety reasons. She noted the financial burden that would be imposed on the applicant if forced to remove the existing fence and asked the BZA to approve the request.

Mrs. Thonen explained to Ms. Olander that the BZA was governed by the variance standards. Ms. Olander stated that although she understood the standards, she did not agree with them.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny VC 91-Y-120 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-120 by DORRIE L. GORDON, under Section 18-401 of the Zoning Ordinance to allow 6.0 foot high fence to remain in front yard of corner lot, on property located at 5274 Ellicott Court, Tax Map Reference 54-2((4))250, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is R-C (developed cluster), WSPOD.
3. The area of the lot is 10,321 square feet.
4. The strict application of the Zoning Ordinance would not produce a hardship.
5. The property is contiguous to the Eleanor Lawrence preserve and the open space, rolling hill character of the area would be changed.
6. The subject fence is unique to the neighborhood.
7. The hardship was created by the applicant's dogs and the BZA should not set a precedent for approving 6.0 foot high fences in the front yard because of dogs.
8. The applicant can take mitigating measures to ensure that the dogs do not jump over the fence.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;

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D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 5-2 with Mr. Kelley and Mr. Pammel voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1992.

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The BZA recessed at 10:30 a.m. and reconvened at 10:55 a.m.

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Page 341, January 7, 1992, (Tape 2), Scheduled case of:

10:10 A.M. LONG BRANCH SWIM & RACQUET CLUB, SPA 77-A-010-1, appl. under Sect. 3-303 of the Zoning Ordinance to amend S-10-77 for community swimming pool and tennis court to allow change in location of entrance (driveway), addition of land area, and deletion of land area, on approx. 2.847 acres located at 9100 Burnetta Dr., zoned R-3, Braddock District (formerly Annandale), Tax Map 69-4((1))11; 69-4((15))B. (OTH GRANTED 10/29/91)

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Sheehy replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of an amendment to the existing special permit in order to change the location of the entrance to the Club from Mignonette Court to Burnetta Drive. Ms. Greenlief noted that the change in entrance would necessitate a deletion of land area where the previous entrance had been located and the addition of land area where the new entrance is located. She said that the change in the entrance location had already occurred and the area where the previous entrance had been located has been revegetated. Ms. Greenlief stated that although the applicant must obtain an entrance permit from the Virginia Department of Transportation (VDOT), staff had no concerns regarding the application and recommended approval with the development conditions contained in the staff report dated December 30, 1991.

In response to Mr. Hammack's question as to why the application took so long before it was presented to the BZA, Ms. Greenlief explained that although an application was filed in 1988 it had never been acted upon. She further explained that she did not know when the change in entrance occurred.

The applicant's representative, Michael W. Sheehy, 9712 Ceralene Drive, Fairfax, Virginia, addressed the BZA. He thanked the BZA for granting the out-of-turn hearing and also thanked

staff for their assistance with the application. Mr. Sheehy stated that the special permit had been granted in 1977. He explained that although the entrance was granted to go through Lot 26 on Mignottee Court, it was acknowledged that at some future date the entrance would have to be changed to Burnetta Drive. Mr. Sheehy said that in 1978, Lot 26 was sold and the entrance change had taken place.

In presenting the background of the case, Mr. Sheehy conceded that the special permit should have been amended in 1978. He explained that although he had researched the reasons for the omission, he could not give any justifications to the BZA. He noted that the club's Board of Directors consisted of volunteers and presumed that they were not aware of the legalities involved with the entrance relocation. Mr. Sheehy stated that in 1987, Fairfax County had notified the club that an amendment to the special permit would be necessary. He noted that although the amendment application was filed and twice scheduled it was never acted upon. Mr. Sheehy said that in the spring of 1991, Fairfax County again notified the club that an amendment to the special permit was needed and the application before the BZA was filed.

Mr. Sheehy stated that the current entrance from Burnetta Drive has been used as the sole means of vehicular entry/exit since 1978 and asked the BZA to grant the request.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SPA 77-A-010-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 30, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 77-A-010-1 by LONG BRANCH SWIM AND RACQUET CLUB, under Section 3-303 of the Zoning Ordinance to amend S-10-77 for community swimming pool and tennis court to allow change in location of entrance (driveway), addition of land area, and deletion of land area, on property located at 9100 Burnetta Drive, Tax Map Reference 69-4((1))11; 69-4((15))B, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land
2. The present zoning is R-3.
3. The area of the lot is 2.847 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Dewberry & Davis, dated May 19, 1983, revised through October 28, 1991) approved with this application, as qualified by these development conditions. It is noted that this approval does not included the two (2) tennis courts shown as future on the plat.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. There shall be a maximum of 300 family memberships. Residents of the surrounding Long Branch Subdivision shall be granted priority for membership.

5. There shall be 81 parking spaces provided as shown on the special permit plat. All parking shall be on site.

6. The hours of operation for the swimming pool shall be limited to 9:00 a.m. and 9:00 p.m. The hours of operation for the tennis courts shall be limited to 8:00 a.m. to 9:00 p.m. After hour parties for the swimming pool shall be governed by the following:

   Limited to six (6) per season.

   Limited to Friday, Saturday and pre-holiday evenings (New Year's Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day, Christmas Day).

   Three (3) of the six (6) permitted parties may be week night parties provided written proof is submitted which shows that all contiguous property owners concur.

   Shall not extend beyond 12:00 midnight

   The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

   Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

7. During discharge of swimming pool waters the following operation procedures shall be implemented:

   Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

   If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.

8. The existing vegetation and fencing along all lot lines shall be preserved and shall be deemed to satisfy the Transitional Screening and Barrier requirements for this use except as qualified below.

   - An evergreen hedge, at least four (4) feet in planted height, shall be provided along the north side of the entrance drive from its intersection with Burnetta Drive to the existing fence. The type and location of the hedge shall be reviewed and approved by the County Urban Forester.

9. A written copy of all applicable development conditions shall be provided to the individual responsible for any after-hours party or event, to all members, to contractors providing services at the club, and to parties who may rent the club's facilities.

10. An entrance permit shall be obtained from the Virginia Department of Transportation.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1992. This date shall be deemed to be the final approval date of this special permit.

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10:25 A.M. STEVEN T. GOLDBERG & JANE M. HARVEY, VC 91-M-106, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed lot 1 having lot width of 6.0 ft. (80 ft. min. lot width required by Sect. 3-306) on approx. 1.39786 acres located at 3129 Sleepy Hollow Rd., zoned R-3, Mason District, Tax Map 51-3((1))17A. (DEFERRED FROM 12/3/91 FOR ADDITIONAL INFORMATION FROM APPLICANT)

Chairman DiGiulian called the applicants' attorney to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Martin replied that it was.

Bernadette Bettard, Staff Coordinator, noted that the application had been deferred from the December 3, 1991 public hearing in order to allow the applicants the opportunity to provide the additional hardship issue information which had been submitted to the BZA. Ms. Bettard said that although staff had researched the Zoning Administration records and consulted the Director, Department of Environmental Management (DEM), the legality of the carriage house could not be firmly established. She referred to the revised development condition submitted by the applicant and stated these conditions would allow the cottage and carriage house to remain until the issuance of an Residential Use Permit. Ms. Bettard noted that staff recommended the cottage and carriage house be removed prior to the approval and issuance of a building permit.

The applicant's attorney, Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, addressed the BZA. He stated that the applicants were proposing to subdivide the parcel into two lots and noted that a previous variance request for a greater subdivision had been denied by the BZA. Mr. Martin expressed his belief that the proposed subdivision for two equally shaped lots would be environmentally superior to the subdivision which would be allowed by-right. He noted that Hank Strickland, Planning Commissioner, and the surrounding neighbors had endorsed the application.

Mr. Martin referred to the previous public hearing issue regarding the documentation of the extraordinary condition of the subject property and stated that 100 year old spruce trees, as well as a 40 year old maple tree, would be preserved if the variance was granted. He submitted revised plats as well as photographs which documented the existence of the trees. Mr. Martin observed that the existing open area would be an ideal location for the proposed structure. He noted that the application was responsive to the environmental constraints, provided for tree preservation, and provided for protection of the Resource Protection Area (RPA).

Mr. Martin asked the BZA to consider the revised development conditions dated January 7, 1992. He explained that the additional conditions had been requested by the neighbors. He noted that staff supported the revised development conditions with the exceptions of Conditions 6 and 9 which mandated the removal of the carriage house. Mr. Martin explained that while staff recommended that the carriage house be removed at the time the Building Permit is issued, the applicant would like to have the option of removing the carriage house at the time the Occupancy Permit is issued.

Mrs. Harris expressed her concern as to how the builder would access and egress the building site if the carriage house remained during the construction. Mr. Martin stated that the existing driveway would provide sufficient access to the building site.

The applicants' agent, Richard H. Pleasants, IV, with the firm of Pleasants and Associates, Inc., 6404-G Seven Corners Place, Falls Church, Virginia, addressed the BZA. He stated that the existing driveway provided sufficient room for the construction material to be brought to the site. Mr. Pleasants noted that the carriage house would be removed prior to the installation of the permanent driveway.

Mr. Martin noted that although the Commonwealth of Virginia does not have a precedent on the issue, the Georgia Supreme Court and the Pennsylvania Court of Appeals have ruled that the saving of a substantial quantity of trees on a property would constitute a hardship.

In summary, Mr. Martin stated that the variance would allow the applicant to preserve the existing trees, the adjacent neighbor supported the applicant, and the proposal would provide two desirable lots. He asked the BZA to grant the request.

Mr. DiGiulian called for speakers in support and the following citizen came forward.

Mr. Pleasant addressed the BZA and stated that he had worked very closely with the community in order to present a proposal that would satisfy not only the applicants' needs, but would also alleviate the concerns of the neighbors. He expressed his belief that the applicant had provided the necessary documentation in support of the hardship issue, the structure would be aesthetically pleasing, and that the lots would be in conformance with the surrounding community.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She submitted the information requested by the BZA regarding the exact dimensions of the proposed lots.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Page 345, January 7, 1992, (Tape 2), STEVEN T. GOLDBERG & JANE M. HARVEY, VC 91-M-106, continued from Page 344)

Mr. Hammack made a motion to grant VC 91-M-106 for the reasons reflected in the Resolution and subject to the modified development conditions as reflected in the Resolution.

Mr. Hammack asked if staff had reviewed the documentation submitted by the applicant. Ms. Bettard stated that it had been reviewed. Ms. Kelsey noted that because the new plat was dated January 7, 1992, Condition 1 would have to be revised to reflect the new date.

Mr. Pammel asked if he was correct in his belief that the construction would take place on Lot 1 and the dwelling on Lot 2, as depicted on the plat, would remain. Ms. Kelsey confirmed that he was correct.

Mr. Hammack made a motion to defer decision so that the revised plat and conditions could be studied. He stated that it was his belief that the carriage house should be removed prior to approval of issuance because it would be important to the preservation of the trees.

Mrs. Thonen seconded the motion.

Ms. Kelsey stated that staff had reviewed the revised development conditions and plat and asked if she could help clarify any issues of concern.

Mr. Pammel stated that the existing house would have no impact on the subdivision or the proposed construction. He further stated that since the carriage house would be removed, he did not believe that the proposed development conditions presented any problems regarding Lot 17. Chairman DiGiulian explained that Development Condition 8 would preclude future development near the outlet road.

Ms. Kelsey noted that the revised development condition had been submitted by the applicant; therefore, she was unable to advise the BZA as to why the condition had been included in the application.

The Chairman called Mr. Pleasants to the podium and asked that he resolve the matter. Mr. Pleasants explained that the owner of Lot 17 had wanted absolute protection that nothing would be done that would encroach the buffer. He noted that Development Condition 8 was included in order to alleviate the neighbor's concerns.

Mrs. Harris seconded the original motion and expressed her belief that the revised development condition was the result of interaction between the community and the applicant.

Ms. Kelsey requested that the wording in Condition 1 be revised to reflect that the plat had been submitted to the BZA on January 7, 1992. Mr. Hammack so amended the motion and Mrs. Harris seconded the amendment.

Chairman DiGiulian called for discussion.

Mrs. Harris said she supported the motion because there were many lots on Valley Lane that are configured with pipestem drives. She noted that because of this existing situation, the granting of the variance would not set a precedent. She expressed her belief that the proposed subdivision would be superior to the subdivision configuration that would be allowed by-right.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-106 by STEVEN T. GOLDBERG AND JANE M. HARVEY, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed Lot 1 having lot width of 6.0 feet, on property located at 3129 Sleepy Hollow Road, Tax Map Reference, 51-3((1))17A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.39786 acres.
4. The application meets the necessary standards required for the granting of a variance.

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5. The property has unusual characteristics in its size and because it is a transitional lot between the wetlands, the Congressional School, and the Sleepy Hollow subdivision area.
6. The applicant has submitted some legal authority to show that the preservation of trees can constitute a hardship. Although the tree preservation is essential, the applicant has also demonstrated that additional hardships exist.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of Lot 17A into two lots as shown on the plat prepared by Pleasants and Associates, Inc., and dated December 2, 1991 and submitted at the public hearing on January 7, 1992.

2. The proposed driveway for Lots 1 and 2 shall meet all applicable standards set forth in the Public Facilities Manual (PFM).

3. A fifty (50) foot "Natural Vegetation" filter strip shall be provided between the proposed dwelling on Lot 1 and the stream. All healthy trees and shrubs that occur within the 50 foot strip shall be retained. Additional native vegetation (trees and shrubs) shall be planted within the 50 ft. area to re-establish a vegetated filter strip along the tributary stream channel. A landscaping plan shall be submitted and coordinated with the Office of Comprehensive Planning (OCP) and the Department of Environmental Management (DEM) to ensure that the filter strip will be designed in such a manner that will improve water quality and provide wildlife habitat functions.

4. The 100-year floodplain of both the unnamed tributary stream and Tripps Run shall be mapped prior to subdivision plan approval, no clearing, grading, or placement of structures shall occur within the mapped 100 year floodplain areas that are approved by DEM . If the floodplain extends more than 50 feet from the stream, the dwelling on Lot 1 shall be set further away from the stream so that no construction occurs within the floodplain area.

5. The cottage/carriage house on Lot 2 shall be removed prior to the approval and issuance of a building permit for the proposed dwelling on Lot 1.

6. The pipestem driveway shall be constructed generally along the northeast property line of the subject property, but no closer than twelve (12) feet to the property line of Lot 17. This driveway shall serve both Lots 1 and 2; no other driveway shall exit onto Sleepy Hollow Road. The general orientation or front yard of structures on proposed Lots 1 and 2 shall be toward the pipestem driveway.

7. A buffer of twelve (12) feet on the subject property, undisturbed except for screening vegetation, shall extend along the entire southwest property line of Lot 17. Evergreen trees, preferably Layland Cyprus, at least two (2) inches in diameter or at least four (4) feet in height, shall be planted and maintained in two (2) rows within the buffer strip. The rows shall be four (4) feet apart and the trees planted in each row at twelve (12) foot intervals and staggered with those in the adjacent row. The two (2) rows of evergreens along the common property line between Lot 17 and the subject property near Sleepy Hollow Road to a distance at least thirty (30) feet beyond the intersection of the property line of Lot 17 and the extension of the common property line between proposed Lots 1 and 2.

8. No structure on the proposed Lot 2 shall be closer than forty-nine (49) feet to the southwest property line of Lot 17; as per Section 2-416, "Yard Regulations for Pipestem Lots and Lots contiguous to Pipestem Driveways," of the current Zoning Ordinance.

9. No structure on proposed Lot 1 shall be closer than twenty-five (25) feet to the southwest property line of Lot 17.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless this subdivision has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BZA. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 347, January 7, 1992, (Tapes 2 and 3), Scheduled case of:

11:00 A.M. ALLEN FAGAN APPEAL, A 91-Y-020, appl. under Sect. 18-301 of the Zoning Ordinance to appeal decision of the Deputy Zoning Administrator that the proposed cluster subdivision authorized under SE 86-S-082 was not legally established and construction did not commence prior to the expiration date and that new Category 6 Special Exception approval must be obtained in order to implement the proposed subdivision on approx. 10.1773 acres, located on Piney Branch Rd., zoned R-1 (developed cluster), Sully District (formerly Springfield), Tax Map 56-3((5))3, 4.

Chairman DiGiulian asked the applicant's attorney to identify himself. William Cahill, with the law firm of Hazel and Thomas, P.C., 3110 Fairview Park Drive #1400, Falls Church, Virginia, stated he was ready to present the case.

Chairman DiGiulian called for location of the property and for a staff report.

The Zoning Administrator's representative, William Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and stated that the property is located at 4827 and 4831 Piney Branch Road, on 10.22 acres of land, zoned R-1, Tax Map Reference 56-3((5))3 and 4. Mr. Shoup stated that it was his determination that Special Exception, SE 86-S-082, had expired. He noted that the special exception which had been approved by the Board of Supervisors on February 23, 1987, was to allow the establishment of a cluster subdivision. Mr. Shoup said that under that approval, and based on the provisions of Section 9-015 of the Zoning Ordinance, the applicant had been given 18 months in which to establish the use or commence and diligently pursue construction unless additional time was approved by the Board of Supervisors. Subsequently additional time had been approved and the expiration date was extended to August 23, 1990. He noted that no further additional time requests were submitted or approved.

Mr. Shoup stated that on April 16, 1990, the Department of Environmental Management (DEM) approved the subdivision plan for the proposed cluster subdivision. However, because the approved subdivision has never been legally recorded, the authorized use was not established prior to the August 23, 1990 expiration date. Mr. Shoup said that Fairfax County has consistently administered the provisions of Sect. 9-015 with respect to cluster subdivisions to require recordation of the individual cluster lots as the validating factor for the special exception. He explained that although the appellant had performed some of the site work that was necessary to implement subdivision, the only work that commenced prior to the expiration date was some clearing and grading activity. He noted that the appellant could

have recorded the lots but chose not to and instead performed site work in order to reduce bond. Mr. Shoup also noted that the Virginia Supreme Court had previously ruled in the cases of O.W. McClung v. County of Henrico, 108 S.E. 2d 513 (1959) and WANV v. Houff, 244 S.E. 2d 760 (1968) that "...removing trees and stumps, grading a portion of land, setting up stakes for four corners of a building, marking grade level, hauling quantity of building stone to site and contracting to have trenches dug and concrete poured for foundation did not constitute 'construction'..." He stated that the work conducted by the appellant was considered to be preliminary to construction and did not constitute the commencement of construction in accordance with Sect. 9-015, consequently the authorized use was not established and construction did not commence prior to the expiration date. He said that since SE 86-S-082 expired on August 23, 1990, a new special exception approval would be necessary in order to establish the proposed subdivision.

Chairman DiGiulian asked if any of the work that had been done prior to the expiration of SE 86-S-082 had been bonded or were required for public improvement. Mr. Shoup stated that the clearing and grading activity would have been a bonded item. He explained that clearing and grading was necessary as preparation for the installation of the road and the storm water detention pond. Mr. Shoup stated that while clearing and grading could not be considered public improvement, it could conceivably be considered preliminary work to the implementation of the public improvements.

Mr. Pammel noted that in the affidavit submitted by Mr. Fagan, he testified that Fairfax County staff members had specifically advised him that the special exception would remain valid and he would not need to apply for an extension prior to the expiration date. He expressed his belief that the staff members who had taken part in these discussions should be present to testify at the public hearing.

Mrs. Harris noted that the records had indicated that Julie Schilling was the County representative and asked if she was available to testify to the appeal. Mr. Shoup stated that although Ms. Schilling had been involved in this case, she no longer worked for the Office of Comprehensive Planning. He explained that Ms. Schilling, acting as the representative of the Zoning Administrator, had done the initial research and had also asked for guidance regarding the matter. He emphasized that although he had been consulted by Ms. Schilling when the question initially arose, she never indicated that she had made a determination that the special exception would be validated.

In response to Mrs. Thonen's question as to what work was done on the site, Mr. Shoup stated the clearing and grading, as well as the work on storm water detention pond was performed prior to the expiration date. He said that the work had continued after the expiration date, the road was graded and a gravel base installed. He also noted that the storm water detention pond with a concrete trickle ditch and storm drainage system was installed.

Mrs. Harris asked what more the appellant could have done to validate the project. Mr. Shoup stated that while the appellant had proceeded with some preliminary site work, the subdivision plat was not recorded. He noted that recordation has consistently been considered by the County to be the indicator for the validating of a cluster subdivision special exception. Mr. Shoup explained that the recordation of the subdivision would be comparable to obtaining a building permit for the construction of a building. He stated that this criteria has been well established and is the logical validating factor for subdivisions. Mr. Shoup again stressed that the preliminary work did not constitute commencement of construction based on Fairfax County guidelines as substantiated by the judgments handed down by the Virginia Supreme Court.

Chairman DiGiulian expressed his belief that the guidelines for the subdivision of land could not be compared to standards of commencement of construction for a building project. Mr. Shoup agreed that the criteria for the commencement of construction for the subdivision of land can be complicated.

Mrs. Harris asked Mr. Shoup if she was correct in her understanding that if the appellant had performed the same preliminary work but had also gone to recordation, it would have established the commencement of construction to the satisfaction of the County. Mr. Shoup stated that she was right. He explained that the staff investigated each case on its own merit and noted that the appellant had installed the storm drainage system after the expiration of the special exception. He again emphasized the correlation between a builder obtaining a building permit and a developer recording a subdivision, and noted they were consistently considered to be the validating factors for the commencement of construction.

Mr. Ribble expressed his concern regarding the affidavits that specifically mention Ms. Schilling. He stated that since the applicant and the engineer who had taken part in the discussions were present, the County should have ensured that Ms. Schilling would also be present to answer questions. Mr. Shoup explained that although he believed Ms. Schilling was still in the area, she no longer worked for the Office of Comprehensive Planning. He said that it would have been Ms. Schilling's responsibility to perform the necessary research and to address questions regarding the issue. Mr. Shoup noted that she had consulted with him on this matter.

Mr. Pammel expressed his belief that the traditional indicators for the commencement of construction could not be applied to subdivisions. He too expressed concern regarding the absence of Ms. Schilling, the staff person who had been involved in the discussions.

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Mr. Cahill addressed the BZA and stated that the appellant, Mr. Fagan, and the engineer, Mr. Matin, were present to answer any questions the BZA might have. He said that the affidavits would be used as a factual basis for his presentation. He referred to Attachment 11 of the staff report and said that the subdivision plan provided for the construction of a right-of-way through the center of the property as well as a storm water control facility. He explained that the construction basically involved clearing and grading. Mr. Cahill stated that the road had been cut, it had been brought to final grade and the initial layer of gravel had been installed prior to the expiration date of the special exception. He noted that the Fairfax County inspector's report, as contained in the staff report, also indicated that the basic clearing and grading and movement of soil necessary to establish the storm water control facilities had been done.

Mr. Cahill used the viewgraph to depict the three different regulatory processes used by Fairfax County. He explained that the first step had been to obtain the special exception which had been approved by the Board of Supervisors in 1987. He noted that the special exception had provided for a time frame in which the appellant could establishment the use. He further explained that the second process was the subdivision review which involved plan submission, approval of preliminary plan, subdivision construction plan approval, final plan approval, bonding, and recordation of the final plat. He noted that the appellant had obtained preliminary approval of the preliminary plan as the time line indicates, had received a subdivision construction plan, and a public improvement plan. Mr. Cahill stated these bonded items allowed the appellant to clear and grade the road, install initial pavement, and initiate the construction of the storm water facility. He said that the reason the appellant had gotten the preliminary plan and the subdivision construction plan approval prior to recordation was because once those plans are obtained, the bond posted prior to recordation is significantly reduced. He expressed his belief that the appellant took this action as an alternative procedure that is permitted under the Ordinance.

Mr. Cahill stated that in his view, the steps that must be taken for commencement of construction under the building permit procedure were so vastly different that no comparison could be made to commencement of construction for a subdivision. He noted that the appellant had diligently pursued the project as the following critical chronology would substantiate:

April 9, 1990	-	County Fees and Bond Paid
April 16, 1990	-	Construction Plan Approved
April 24, 1990	-	County Inspector Review Plans
June 24, 1990	-	Preconstruction Meeting
June 27, 1990	-	Stake, Clear & Grade
July, 1990	-	Construction Meeting
July, 1990	-	Clear ROW and Grade Storm Pond
August 4, 1990	-	Cut Road to Final Grade
August 15, 1990	-	County Inspector Reports clearing, Diversion dike (temporary berm for erosion control) and silt trap (stone at low point) also installed
August 17, 1990	-	Grading and Clearing of ROW complete and debris removed
August 23, 1990	-	Special Exception Expiration date
August, 1990 to April, 1991	-	Construction Continues
April 23, 1991	-	Subdivision 80 percent complete DEM raises issue of SE expiration.

Mr. Cahill said that the final coat of a road and the storm water management facilities were not completed because they are not done until the construction of a project is almost finished. He noted that although the appellant had installed the public improvements, installed the water, completed the storm water pond, and had reduced the bond by 80 percent, the County had decided that construction had not commenced.

Referring to the Virginia Supreme Court case of O.W. McClung v. County of Henrico, Mr. Cahill noted that the case involved the construction of a veterinarian clinic. Again he contended that the case involved a structure; therefore, the criteria was completely different. Noting the contrast between the two cases, Mr. Cahill said that in the McClung case a building permit was not required for work on the land; but in the Fagan case, the appropriate permits had to be obtained before the clearing and grading could begin.

Mr. Cahill stated that Mr. Fagan and Mr. Matin had consulted with the Fairfax County staff and had followed the proper procedures as outlined in the meetings. He said that staff had assured the appellant that additional time would not be necessary as the public improvement plan would be sufficient to establish the use. Mr. Cahill noted that it was not until April 1991, that the County decided that commencement of construction had not begun.

In response to Chairman DiGiulian's question as to whether 80 percent of the bonded work had been completed before the expiration date, Mr. Cahill stated that the work had been completed before April 23, 1991. He explained that the subdivision had progressed, under the guidance of the appropriate County officials, until the appellant was informed that because the recordation had not been done, commencement of construction had not taken place. Mr. Cahill expressed his belief that the issue before the BZA was whether the term "construction", as used by the Virginia Supreme Court in a building permit case, would apply to a subdivision construction case. He again expostulated that it would not.

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Mr. Cahill stated that his testimony could be attested to by Mr. Fagan and Mr. Matin. He noted that both gentlemen had submitted affidavits and were also present to answer any questions the BZA might have.

In response to Chairman DiGiulian's question as to whether, from a legal standpoint, the gravel for the road could be considered an intrinsic part of the road, Mr. Cahill said it could.

Chairman DiGiulian asked if the road of a subdivision could be considered the equivalent of a wall of a building, Mr. Cahill said he believed it could.

In response to Mrs. Harris' question as to whether the appellant would have installed both the storm water pond and road had they not planned on building the houses, Mr. Cahill said that they would not have invested their time and money into a project if they had not planned to complete the subdivision. He explained that the preliminary improvement as shown on the plan were required prior to the construction of house.

In response to Mr. Hammack's question as to whether the installation of the sewer lines had included taps into the individual lots, Mr. Cahill said that they did not. He explained that the public improvement plan did not authorize improvement to specific lots. He stated that in order to develop the individual lots, another County approval would be necessary.

The appellant, Alan J. Fagan, 4030 Maple Avenue, Fairfax, Virginia, addressed the BZA. He said that he had photographs that depicted the preliminary work that had been completed on the site. Mr. Fagan stated that he and his partners are lifelong residents of Fairfax County. He explained that they had bought the property, after the special exception was granted, with the intention of building on 8 lots all of which would be serviced by septic tanks. He stated that they had consulted with staff to ensure that every aspect of the project would be in compliance with County regulations. Mr. Fagan explained that while some of the work had been delayed due to subcontractors economic difficulties, the only reason the recordation had not taken place was that he had been led to believe by the County staff that he did not have to do so. He stated that proceeding with the bulk of the work before the recordation took place was the most economically sound way to do business. In conclusion, Mr. Fagan stated he had specifically gone to the appropriate County offices to inquire about requesting additional time and was told it was not necessary. He noted that having spent so much time and money, he would not have let the project die for the lack of one minor procedure.

In response to Mrs. Harris' question as to whether perk tests had been done and if septic fields had been designated for each lot, Mr. Fagan said they had.

Mrs. Thonen asked if it were true that subdivision site work is not done until the recordation of the site plan. Mr. Fagan stated he did not know what other companies did, but his company was able to reduce the bond 80 percent by doing the site work prior to the posting of the bond.

In response to Mrs. Thonen's question as to whether the procedure followed by the appellant was customary for a subdivision that had already divided, Mr. Shoup said that it was.

Mrs. Thonen expressed her belief that because of the construction projects that have been left half-finished, the County should have stricter development requirements. She noted that the abandonment of the sites leaves much of the landscape in an unsightly condition and can be damaging to the environment.

Mrs. Harris asked what work had taken place prior to the expiration date of the special exception. Mr. Fagan stated that the permits had to be obtained before any construction could be started. He explained that after six rejections the plan was finally approved by the County. He further explained that when septic field problems cause another delay, he had approached the appropriate County staff and had been assured that additional time was not required.

In response to Mrs. Harris' question as to whether Ms. Schilling had given him the assurance that he was following the proper procedures, Mr. Fagan stated he did not know the name of the person he had dealt with. He said that he had also consulted Mr. Matin and another engineer and again was told that he was following acceptable County procedures. Mr. Fagan stated that he had then received a permit, had proceeded to install the public improvements, and had posted an $11,000 bond.

Mr. Cahill submitted the photographs depicting the work that had been done on the site and introduced Mr. Matin.

Hamad Matin, President of NOVA Associates, Inc., 4300 Evergreen Lane, Annandale, Virginia, addressed the BZA. He stated that he was the engineer on the project. He noted that although he had only been involved with the project since 1989, his firm had been involved with the project since 1976. Mr. Matin testified that when he conferred with Ms. Schilling, he had been assured that they were following the proper County procedures. He said that he had been told that in order to commence construction you can either start construction or record the plat. Mr. Matin stated that the second time he had met with Ms. Schilling, she

had consulted with Mr. Shoup who rendered the decision that the special exception had expired. Mr. Matin stated that he had worked in Fairfax County for many years and had always worked on the premises that the builder had two choices, record the plat or commence construction, he noted that the appellant had chosen to commence construction.

In response to Chairman DiGiulian's question as to the beginning of the construction, Mr. Matin stated that construction began with the clearing and grading.

There being no further speakers to the appeal, Chairman DiGiulian called for staff rebuttal.

Mr. Shoup stated that although the appellant showed a long list of activities that were done prior to the expiration date, construction had not commenced. He noted that they had the plan reviewed, had construction meetings, paid fees, but did not meet the County requirement for the commencement of construction. He noted that the work continued after the expiration of the special exception and the Department of Environmental Management (DEM) inspector continued to inspect the site because they had not been informed that the special exception had expired. He noted that there is no requirement for the County to notify a builder when a special exception expires. Mr. Shoup stated that although it was represented that the road was cut to final grade before August 23, 1990, the inspector's notes reflected that the cut sheets were not reviewed until September 17, 1990. He noted although a cluster subdivision is unique, it was his belief that the appellant had not done enough work to validate the cluster subdivision special exception.

Mr. Hammack stated that Sect. 9-015 used broad language and asked how the County could define it. Mr. Shoup stated for example that when a special permit is issued for a church and the permit authorizes construction of a parking lot and the applicant graded the parking lot site, it would not be considered commencement of construction. The church building itself would have to have been started for the commencement of construction to be valid. He again expressed his belief that the appellant did no work on the project that would have been unique to the special exception that had been issued to him.

Mrs. Harris expressed her belief that the act of conducting perks on each of the eight lots would be unique to the cluster subdivision. Mr. Shoup stated that they would had to have been identified in any subdivision; therefore, they were not unique to a cluster subdivision. He noted that they did not install the septic fields and that performing perk tests was considered to be preliminary work.

Mrs. Harris stated that a special exception that had been granted, eight lots had been identified, and the perk sites on each lot were identified. She expressed her belief that when the applicant had invested the money in order to identify the perk sites, that established the special exception use. Mr. Shoup explained that when a plan is approved, numerous things are identified and the identification of the septic fields could not be considered a validating factor for a special exception.

Mrs. Harris stated that the whole point was that the Board of Supervisors approved the cluster subdivision and the appellant had submitted a site plan and had installed a road. She expressed her belief that just because the appellant had decided for economical reasons not to record the lots, it should not be the deciding factor as to whether the use was established.

Mr. Hammack stated that he did not understand the County's definitions of "commencement of construction." He noted that although the appellant had installed a sewer line and subpavement for the road, it was decided that construction had not commenced. Mr. Shoup stated it was his responsibility to interpret, on a case to case basis, the validation of a special exception. He expressed his belief, based on his experience, that the appellant had not met the County requirements.

In response to Mr. Hammack's question as to whether the appellant could have done the clearing and grading without County approval, Mr. Shoup stated that they could not. Mr. Hammack noted that in the case of O.W. McClung v. County of Henrico, they only needed approval to build the structure and not to clear the lot.

In response to Mr. Pammel's question as to whether Health Department approval had been given for the septic fields, Mr. Shoup stated the Health Department had indicated that the septic fields may be approvable. He noted that this was a preliminary action and they would not be given final approval until the record plat stage.

In response to Mr. Hammack's question as to what could have been done to validate the use, Mr. Shoup stated that a builder is required to receive final plat approval from DEM and to record the lots at the Court House. He noted that although this procedure is not specifically required in the Zoning Ordinance, it is standard operating procedure for the establishment of a cluster subdivision special exception.

Chairman DiGiulian called for rebuttal from Mr. Cahill.

Mr. Cahill reiterated that the clearing and grading and been done, and the base of the road, as well as the storm water pond, had been installed. He expressed his belief that these improvements were an intrinsical product of the cluster subdivision and substantiated the fact that, although recordation had not taken place, construction had commenced.

Page 352, January 7, 1992, (Tapes 2 and 3), ALLEN FAGAN APPEAL, A 91-Y-020, continued from Page 351)

Mr. Pammel made a motion to defer decision to January 21, 1992, so that the County employee who had been involved in the project could be present to testify. He expressed his belief that the BZA could not render a fair decision without the testimony of Ms. Schilling and the building inspector involved in the case.

Mr. Hammack seconded the motion.

In response to Mr. Kelley's question as to whether either of the individuals had been asked to participate in the public hearing, Mr. Shoup said they had not.

Mr. Kelley opposed the motion. He stated that the BZA could rely on the sworn statement of two well-respected professions.

Mrs. Thonen stated that she too opposed the motion. She noted that the testimony regarding the advice given to the appellant by Ms. Schilling had not been challenged. She expressed her belief that when a member of the Zoning Administrator's staff renders a ruling, that ruling is the Zoning Administrator's responsibility.

Chairman DiGiulian stated that he too opposed the motion. He stated that his decision would be based on the construction that had been done prior to the expiration date as well as the equity that the appellant had invested in the project.

The motion failed by a vote of 1-6 with Mr. Pammel voting aye.

Mrs. Harris made a motion in Appeal, A 91-Y-020, to overturn the Deputy Zoning Administrator's determination that the proposed cluster subdivision authorized under SE 86-S-082 was not legally established and construction did not commence prior to the expiration date and that new Category 6 Special Exception approval must be obtained in order to implement the proposed subdivision. She stated that she believed that construction had commenced and had been diligently pursued within the time frame specified in the special exception; therefore, the special exception had been established. She noted that the road was cut, the septic fields were perked, and the water detention pond directly related to the cluster subdivision was installed.

Mr. Kelley seconded the motion.

Mr. Pammel stated that he supported the motion. He expressed his belief that there was enough evidence to support the appellant's position that construction had commenced.

Mr. Hammack noted that the Deputy Zoning Administrator had conceded that by its very nature, a cluster subdivision does not involve physical construction of buildings. He expressed his belief that recordation was not the only means in which to establish validation and noted that ample construction had taken place under procedures established by the County for development of sites. He stated that because all of the improvements had required County approval, it should be considered as validation of the use. Mr. Hammack said that the statute may need revision or modification in order to avoid future problems of this type.

Chairman DiGiulian expressed his belief that the clearing, grading, and the installation of the gravel base for the road, should be considered a part of construction of a subdivision just as a concrete foundation is considered to be part of the construction of a building.

The motion carried by a vote of 7-0.

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The Board of Zoning Appeals recessed at 12:30 p.m. and reconvened at 12:45 p.m.

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Page 352, January 7, 1992, (Tape 3), Scheduled case of:

11:30 A.M. LEES GAS SUPPLY, A 91-V-018, appl. under Sect. 18-301 of the Zoning Ordinance to appeal decision of the Zoning Administrator that the appellant must obtain site plan approval in order to continue the retail sales of welding supplies with an outdoor display area, on approx. 24,260 s.f. located at 6825 Richmond Highway, zoned C-8, H-C, Mt. Vernon District, Tax Map 93-1((1))5. (DEFERRED FROM 12/10/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian called for location of the property and for a staff report.

The Zoning Administrator's representative, William Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and stated that the property is located at 6825 Richmond Highway, on 24,620 square feet of land, zoned C-8 and HC, Tax Map Reference 93-1((1))5. Mr. Shoup stated that the issue was the timeliness of the appeal. He noted that the BZA had deemed the appeal to be complete, but had reserved decision as to the timeliness of the appeal.

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Mr. Shoup stated that the Zoning Administrator did not consider the appeal to be timely filed. He noted the Zoning Ordinance considers the use, the sale of welding supplies and propane gas, to be a retail sales establishment under the Zoning Ordinance. Mr. Shoup said that previous site plan waivers had been approved for the use in 1985 and again in 1988; the last of which expired on July 12, 1990. He stated that on September 18, 1990, a notice of violation was issued to the appellant advising them that the site plan waiver had expired and new site plan waiver approval would be needed. He noted that although the determination was not appealed, the appellant filed for a new site plan waiver on November 2, 1990. On August 7, 1991, the site plan waiver request was denied by the Department of Environmental Management (DEM) and on August 15, 1991, the Zoning Enforcement Branch issued a notice of violation which reiterated the position presented in the September 18, 1990 notice of violation Mr. Shoup stated that on September 13, 1992, the appellant filed an appeal of the DEM denial of the site plan waiver and the fact that site plan approval was required. He said that the State Code, as well as the Zoning Ordinance required that appeals be filed within thirty days of the decision. Mr. Shoup explained that since DEM denied the site plan waiver on August, 7, 1991, and since the August 15, 1991 notice of violation reiterated a previous determination and was not a new decision, the appeal filed on September 13, 1991, did not satisfy the thirty day filing requirement. He noted that a separate appeal of the site plan waiver denial, which was filed with the County Executive under the provision of Article 17, was still pending. Mr. Shoup stated that the fact that the appellant had applied for and received a site plan waiver in 1985, indicated that he was cognizant of the requirement.

In response to Mr. Pammel's question as to what facts changed between the time of the last site plan waiver and the subsequent reject, Mr. Shoup deferred to Mr. Winfield.

John Winfield, Deputy Director Plan Review, Design Review Division, DEM, addressed the BZA. He stated that the original approval was based on a two year temporary use permit; whereas, the last site plan waiver request was for a permanent use on the site. He noted that the criteria for a temporary use would not be as stringent as the criteria for a permanent use.

Mrs. Thonen stated that the Route 1 area has been experiencing many changes. She expressed her belief that in order to upgrade the area, only companies that qualify for site plan approval should be allowed to continue to do business in the area. She noted that the use of temporary waivers must be restricted because many companies have been doing business with temporary waivers for as long as 20 years.

Chairman DiGiulian call the appellant's attorney, Mr. Flinn to the podium to speak to the timeliness issue only.

Robert Flinn, an attorney with the law firm of Flinn and Beagon, 8330 Boone Boulevard, Suite 440, Vienna, Virginia, addressed the BZA. He stated that it was difficult to isolate the timeliness issue. He explained that the facts and circumstances surrounding the appeal are relatively convoluted, therefore, hard to condense. Mr. Flinn stated that the appellant has occupied the property since 1984, and was not trying to avoid the responsibilities by the Site Plan Ordinance. He explained that Lee Gas had purchased the property, that had been used as a Shell Oil station, in 1984. He noted that the property had only been purchased after some extensive meetings with the Zoning Administrator's staff. Mr. Flinn contended that the appellant's attorney had met with Walley Covington, Deputy Zoning Administrator, and had received assurance that the modification which were planned by the appellant would not require site plan approval. He explained that no physical characteristics of the property other than to convert the gasoline station into a station for the sale of propane would be made. He noted that Mr. Covington had made a determination that since Lee Gas was making no changes to the use, only the outside display of gas cylinders would need a site plan waiver. Mr. Flinn stressed that the only other change to the use was installation of two large propane tanks which are fixed to the outside surface. Mr. Flinn stated that the appellant had only purchased the property after having received both legal advice and reassurance from the appropriate County official that the site would meet all the County requirements. He noted this determination had again been validated when a second site plan waiver had been issued.

Mr. Flinn said that an incident had occurred on the property. He explained that a vandal had dislodged one of the valves on a propane gas truck which caused the fire department to evacuate the area. He noted that the only other action taken by the fire department was to turn off the propane gas valve. Mr. Flinn stated that after being evacuated, in the middle of the night, some of the neighbors had contacted Supervisor Hyland.

He noted that although his client had been remiss in not reapplying for renewal of the site plan waiver before the expiration date, nine months had elapsed before a letter, dated August 15, 1991, was received from the County which stated that the third site plan waiver for an outside display had been denied. Mr. Flinn explained that the letter had advised his client that he was to either obtain an approved Site Plan or remove the outside display. Knowing that site plan approval would be impossible, the appellant removed the outside display.

In response to Mrs. Thonen's question as to whether a waiver of the setback requirement was required , Mr. Flinn stated that the substandard lot would have required multiple waivers.

Mrs. Harris asked that Mr. Flinn to limit his testimony to the timeliness issue.

Mr. Flinn stated that although the first citation was received in September of 1990 and was the premise for the charge that the appeal was not timely filed, the citation was suspended pending the application for a new site plan waiver. He again noted that the citation had presented two options, one to submit a site plan waiver request and the other to remove the outside display.

In response to Mrs. Harris' question as to whether he could apply for site plan approval, Mr. Flinn stated that it was not a feasible alternative. He again noted that the appellant had submitted the application for the site plan waiver and pending the decision on that application, the citation was suspended. He explained that it was not until August 15, 1991 that the appellant was informed that the site plan waiver would not be granted and was cited for violating the provision of the Ordinance restricting outside display. He noted it was at this time that the appellant was told to submit and obtain approval of a site plan or remove the outside display. Mr. Flinn stated only after requesting confirmation from the Zoning Enforcement Branch that they were in compliance, were they advise that the earlier determination was reversed. The appellant was informed that the County had erred in 1985 and again in 1988 when the site plan waivers were issued. He noted that the appellant was also informed that the County had again erred by informing the appellant that in order to clear the violation the outside display must be removed. Mr. Flinn explained that the appellant was appealing the August 15, 1991 ruling; therefore, by filing on September 13, 1991, the appellant was within the thirty-day time frame. He stated that because the staff judged the 15th to be the operative time, he believed the appeal was timely filed. He noted that the appellant was not appealing the September 19, 1990 citation which had informed the appellant that they must submit an application for a site plan waiver or remove the outside display. He further noted that not only had the appellant applied for the waiver, but when it was denied, the appellant had removed the display.

Mr. Pammel made a motion that the appeal was timely filed. He stated that the facts presented by Mr. Flinn supported the case that until the August 15, 1991 letter, the County had merely informed the appellant what measures were to be taken in order to satisfy the requirements of the Code.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

Chairman DiGiulian called for the staff report.

Mr. Shoup stated the use, the retail sales of welding supplies and propane gases with outdoor storage of propane cylinders and other items, is a permitted use in the C-8 District. He noted that Par. 2 of Sect. 17-102 requires site plan approval of all permitted uses in a C District; Par. 8 of 17-102 requires site plan approval for any changes in use; and Par. 3 of Sect. 4-805 requires site plan approval of any outdoor storage in the Zoning District. Mr. Shoup said that based on these three provisions, it is the Zoning Administrator's position that there must be valid site plan approval for the use. He explained that the position was based on the fact that it is a permitted use in the C-8 District, it constituted a change when it changed from the service station to a retail sales establishment, and there is outdoor storage associated with the use. Mr. Shoup stated that although it has been represented that staff was not clear as to whether site plan approval was required for the overall use or just for outdoor storage, the previous site plan waiver approvals authorized both the outdoor display and the retail sales. He noted that it was the Zoning Administrator's position that since the use represented a change from the previous service station use, site plan or site plan waiver approval was required to continue the use. Mr. Shoup said that since the last site plan waiver approval had expired on July 12, 1990, the continued operation constituted a violation of the Ordinance provision.

In response to Mr. Kelley's question as to whether the action by the County would put Lee Gas out of business, Mr. Shoup stated that the appellant could apply for approval under Article 17. He explained that the appellant had not provided proper justification for the site plan waiver. He noted that although the use would be considered a permanent use, if the appellant submitted proper justification under Article 17, they might receive some form of site plan approval that would allow them to stay in business.

Mr. Pammel asked if the interpretation that the Zoning Administrator had rendered with respect to the use was made under same the Zoning Ordinance provisions that were in place when Wallace S. Covington rendered his decision. Mr. Shoup stated that it was probably made under the same Zoning Ordinance provisions. He noted that Mr. Covington's determination was viewed as being incorrect.

Mrs. Harris asked whether the appeal was for the citation for violation of Par. 2 of Sect. 17-102 which requires all permitted uses in the C District to receive either a waiver of site plan approval or site plan approval. Mr. Shoup stated that it was and noted the appellant did not believe they must go through the site plan process. Mrs. Harris said that the appellant has repeatedly applied for site plan waivers; therefore, they were well aware of the requirement.

Mrs. Thonen noted that a Revitalization Committee was active in the Route 1 corridor. She said that the Committee was currently evaluating the deteriorating area and expressed her belief that while some businesses would not be able to meet the Zoning Ordinance requirements, the improvement of the area was essential. Mrs. Thonen stated that every attempt was being made to allow businesses to meet the intent of the site plan without having to meet the entire site plan requirements.

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Mr. Flinn stressed that the appeal was a life and death issue for Lee Gas. He noted that it would be impossible for the appellant to satisfy the site plan requirement; therefore, they would be put out of business.

In response to Mr. Kelley's question as to whether the appellant would qualify for some type of site plan waiver, Mr. Flinn stated that while the County staff had been very cooperative, they could not make a commitment regarding any type of site plan waiver approval. Again, Mr. Flinn insisted that the appellant had satisfied the citation by removing the outside display.

Mrs. Harris stated that by their own language, the appellant was appealing the citation for violation of Par. 2 of Sect. 17-102 of the Zoning Ordinance. Mr. Flinn again stated that the appellant was cited for devoting a portion of the property for the outdoor storage and display of materials without the specific approval of a site plan. He stressed the nature of the citation and explained that the Zoning Enforcement Branch had given the appellant the option of obtaining a site plan waiver or removing the outside display. He emphasized the fact that Attachment 8 of the staff report states, "You are hereby directed to clear this violation within thirty (30) days of receipt of this notice. Compliance can be accomplished by obtaining site plan approval for the outdoor display area or removing the outdoor display area from the property". He said that he believed the statement validated his testimony. Mr. Flinn said that the October 9, 1991, inspection of the property by Rebecca J. Goodyear, Senior Zoning Inspector, verified that the propane cylinders had been removed. He noted that the tanks, which are affixed to the surface, are not movable and are not considered a display. He further noted that they cannot be seen from outside the property and contain combustible fuel which cannot be housed inside a building. Mr. Finnn said that the appellant's method of selling the propane gas is similar to other such businesses in the County.

There being no additional speakers to the appeal, Chairman DiGiulian call for rebuttal.

Mr. Shoup stated that it was the Zoning Administrator's position that site plan approval under Article 17 would be required for the use and it was not just the outside display that was at issue. He stated that admittedly there was some confusion in the staff representation on the issue, but noted that the two previous site plan waivers specifically referenced the use as well as outdoor display. Mr. Shoup said that in the site plan waiver application which was submitted and denied, the appellant represented that the use was for the retail sales of welding supplies with an outdoor display area. He again reiterated that it was staff's position that the site plan approval under Article 17 was needed for the entire use. Mr. Shoup stated the appellant had allowed the site plan waiver to expire; therefore, they are in violation of the Zoning Ordinance.

Mrs. Harris asked if in order to satisfy the option listed in the September 18, 1990 letter, the appellant had opted to remove the outside display instead of applying for a site plan waiver, would they have been in compliance. Mr. Shoup stated that although he suspected that the case would have been closed, it would not have been the correct action because the expired site plan waiver was for the entire use.

Mr. Kelley asked if the BZA would be hearing the case if the appelant had decided not to have an outside display. Mr. Shoud stated the he beleived that a determination would have been made that the appellant did not have a valid site plan approval under Article 17.

Mrs. Harris expressed her belief that the determination in 1984 was wrong, and it is still wrong.

There being no rebuttal from Mr. Flinn, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to uphold the Zoning Administrator's determination that site plan approval was needed in order for the appellant to continue the retail sales of welding supplies with an outdoor display area and outdoor storage. She expressed her belief that the appellant was cognizant of the need for a site plan waiver for the entire use. Mrs. Thonen stated that the County must work with the small businesses to improve the area.

Mrs. Harris seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Harris stated that she supported the motion. She expressed her belief that the applicant knew that the site needed to comply with Sect. 17-102 of the Zoning Ordinance.

Mr. Kelley stated that he could not support the motion. He said that in 1984, the appellant had been advised by the appropriate County officials that a site plan waiver was needed in order to add a new use to the property. Mr. Kelley noted that the appellant has vacated the use as instructed in the letter dated August 15, 1991. He expressed his belief that the citizens of the County must be able to rely on the guidance they receive from County officials. He noted that after numerous meetings, the appellant had been assured that the use was appropriate for the site.

Mr. Pammel stated that he too could not support the motion. He expressed his belief that the appellant had done everything possible to comply with the requirements. He said that they took the options presented to them and have complied with the letter provided by County. Mr. Pammel noted that Mr. Covington's determination had never been appealed.

Chairman DiGiulian stated that he could not support the motion. He stated that the appellant had complied with the letter advising them to remove the outdoor display, Mr. Covington's determination was never appealed, and the appellant should be able to rely on a determination that had been supported for six years.

Mrs. Thonen stated that the site plan waiver had been given a two year term and the appellant had not been guaranteed that they could obtain temporary waivers indefinitely.

The motion failed by a vote of 3-4.

Mrs. Thonen called for the vote count.

Mr. Hammack, Mrs. Thonen, and Mrs. Harris voted aye; Chairman DiGiulian, Mr. Pammel, Mr. Kelley and Mr. Ribble voted nay.

Mr. Pammel made a motion in Appeal, A 91-V-018, to reverse the Zoning Administrator's determination that site plan approval is needed in order for the appellant to continue the retail sales of welding supplies with an outdoor display area and outdoor storage.

Mr. Kelley seconded the motion. He said that in 1984, the appellant had been advised by the appropriate County officials that a site plan waiver was needed in order to add a new use to the property. Mr. Kelley noted that the appellant has vacated the use as instructed in the letter dated August 15, 1991. He expressed his belief that the citizens of the County have the right to rely on the guidance they receive from County officials. He noted that after numerous meetings, the appellant had been assured that the use was appropriate for the site.

Mrs. Harris said that all permitted uses in the C District need site plan approval and the use was expanded and should be required to comply with the Zoning Ordinance.

Mr. Kelley stated that the appellant had been told that they needed the site plan waiver for the outside display area and then after they had conformed with all the instructions given by the appropriate County officials, then the rules were changed.

Mrs. Harris noted that the appellant had changed the use from a gas station to a retail sales establishment.

Chairman DiGiulian stated that the County had instructed the appellant to correct the violation by removing the outside display. The appellant had acted on these instructions as set out in the August 15, 1991 letter, and was then informed that the County deemed that the letter signed by Rebecca J. Goodyear, Senior Zoning Inspector, as well as all the former decisions, were wrong.

Mr. Hammack stated that just because a Zoning Inspector tries to give a little gratuitous advice, that advice does not necessarily bind the County and change the County Ordinance.

Chairman DiGiulian stated that he viewed the letter as a directive, and if it were advice, it was very strong advice.

In response to Mr. Hammack's question as to whether the letter had been a standard form letter, Mr. Shoup said that it was not.

Mrs. Harris stated that the appellant must take the responsibility for the site. She noted that the County officials have consistently said that the County is not in a position to tell an appellant what steps to take in order to comply with the Zoning Ordinance.

Chairman DiGiulian expressed his belief that the appellant could submit an application to DEM for ten years and never receive an indication as to what would be approved.

The motion carried by a vote of 4-3 with Chairman DiGiulian, Mr. Kelley, Mr. Pammel, and Mr. Ribble voting aye; Mrs. Harris, Mrs. Thonen, and Mr. Hammack voting nay.

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Page 356, January 7, 1992, (Tape 3), Action Item:

Request for Date and Time
Metro Sign and Design Incorporated for
Lee Jackson Station Partnership Appeal

Chairman DiGiulian stated that the Zoning Administrator had determined that the appeal was not timely filed.

Metro Sign and Design's representative, Robert B. Anderson III, 8197 Euclid Court, Manassas Park, Virginia, addressed the Board of Zoning Appeals (BZA). He stated that although the time had elapsed, he would like the BZA to hear the case. He explained that because the denial had been received from Joseph Bakos, a relatively new Zoning Inspector, the appellant had postponed the filing of the appeal until December when the official position of the Zoning Administrator was rendered.

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Page 357, January 7, 1992, (Tape 3), REQUEST FOR DATE AND TIME, METRO SIGN AND DESIGN INCORPORATED FOR LEE JACKSON STATION PARTNERSHIP APPEAL, continued from Page 356)

Mr. Shoup stated that although the appellant had met with Jane Gwinn, the Zoning Administrator, it was just to conform that it was appropriate to deny the sign permit. He said since the decision had been rendered on August 8, 1991, and the appeal was filed on December 20, 1991, the appeal was not timely filed.

In response to Mrs. Harris' question as to the identity of Mr. Bakos, Mr. Shoup introduced Joseph Bakos, Assistant Chief, Zoning Enforcement Branch. He stated that Mr. Bakos had previously worked for the Zoning Enforcement Branch, had transferred to the Department of Environmental Management (DEM), and had returned to the Zoning Enforcement Branch.

Mr. Pammel made a motion to uphold the Zoning Administrator's determination that the appeal was not timely filed.

Harris seconded the motion which carried by a vote of 5-2 with Chairman DiGiulian, Mrs. Harris, Mr. Hammack, Mr. Pammel, and Mr. Ribble voting aye; Mrs. Thonen and Mr. Kelley voting nay.

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Page 357, January 7, 1992, (Tape 3), Action Item:

Recommendation of an Outstanding Performance Award Nomination
for Ronald Derrickson, Planning Technician
Special Permit and Variance Branch
Zoning Evaluation Division
Office of Comprehensive Planning

Mr. Thonen made a motion to nominate Ronald Derrickson, Planning Technician, for an Outstanding Performance Award in the amount of $1,000. She instructed staff to take the necessary administrative steps and to include the following in the minutes:

"Board of Zoning Appeals hereby resolves that Ron Derrickson has performed the tasks involved in providing staff support to the BZA in an outstanding manner and believes that he exceeds that which is required for this position. His ability to anticipate problems which arise during the hearing and take quick and efficient remedial action contributes greatly to the smooth flow of the BZA meetings.

Mr. Derrickson has a wide range of skills. The maps he prepares for our staff reports are always correct and professional in appearance. While this task as well as that of the distribution of material, the operation of the timer, the preparation of the Board Room for the meetings are required tasks for his position, he performs them in an outstanding manner and goes beyond that which is required. When the overhead projector breaks in the middle of the meeting, he promptly takes action to see that it is repaired quickly and quietly so that the meeting can continue during the repair. He anticipates problems such as an overcrowded board room for controversial cases and contacts the security guard in order to be prepared for potential problems; he voluntarily parks Board members cars in order that they can get into the meeting promptly rather than having to search for a parking space. This is particularly important when there are only four members present which is the minimum for a quorum. He anticipates the need for additional documents and has them available for the Board members when they are needed. He keeps track of the various submissions from the various applications and has never distributed the incorrect documents for a case, nor mixed them up.

Mr. Derrickson's outstanding contribution to the smooth flow of the meeting shortens the meetings, thus saving staff time, which saves County money. It also saves citizens time spent in their hearings which contributes to their perception of the County government.

The BZA believes that Mr. Derrickson should be recognized for his outstanding efforts and should be awarded an outstanding performance award in the amount of $1,000."

Mrs. Harris and Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Mr. Hammack requested that when staff receives invitation for BZA members that they are promptly mailed so that they are received before the activity date.

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As there was no other business to come before the Board, the meeting was adjourned at 2:20 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: May 5, 1992

APPROVED: May 12, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 14, 1992. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Robert Kelley; and James Pammel. Chairman John DiGiulian; Mary Thonen; and, Paul Hammack were absent from the meeting.

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Vice Chairman Ribble called the meeting to order at 9:20 a.m. and asked if there were any Board Matters to bring before the Board. He pointed out to all applicants that four affirmative votes were needed to approve any special permit or variance request.

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Page 359, January 14, 1992, (Tape 1), Scheduled case of:

9:00 A.M. THE WASHINGTON SAE HAN PRESBYTERIAN CHURCH, SP 90-M-090, appl. under Sect. 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 1.2264 acres located at 6901 Columbia Pike, zoned R-2, HC, Mason District, Tax Map 60-4((1))23. (DEFERRED FROM 3/5/91 AT APPLICANT'S REQUEST - DEFERRED FROM 6/14/91 AT PLANNING COMMISSION'S REQUEST - DEFERRED FROM 7/23/91 AT APPLICANT'S REQUEST)

Michael Jaskiewicz, Staff Coordinator, informed the BZA that the Planning Commission was asking that the case be deferred in order for them to hold a public hearing which was tentatively scheduled for March 5, 1992. He stated that a similar situation occurred in July 1991 when two days before that public hearing date the applicant requested an indefinite deferral.

Mrs. Harris asked staff for a deferral date. Mr. Jaskiewicz said that staff suggested March 10, 1992.

Mr. Pammel expressed concern that the case had been deferred at the Planning Commission's request in June but the BZA still had not received input from the Planning Commission. He stated that he believed that was an inconvenience to the public, generated additional expense to the process, and that he was not in favor of any further deferrals of the application.

Mr. Kelley agreed but pointed out that the Planning Commission had deferred the case based on a request from the applicant. He stated that he believed the BZA owed the Planning Commission the courtesy of hearing the case if it chose to do so.

A discussion took place among the BZA members as to the most appropriate way to proceed. Vice Chairman Ribble asked if the BZA would like to hear from the applicant. The BZA agreed.

Mark Mittereder, 4300 Evergreen Lane #306, Annandale, Virginia, agent for the applicant, came forward. He stated that he was prepared to proceed with the public hearing but that he did not want to circumvent any process and would be willing to agree to another deferral. Mr. Mittereder stated that the only issue that might possibly change would be the extension of the service drive which staff had addressed in the Development Conditions and pointed out that the citizens were still not satisfied.

Vice Chairman Ribble polled the audience to determine if there was anyone present who wished to speak to the deferral request. There was no reply.

Mr. Kelley stated that he would like the BZA to grant the Planning Commission's request to defer the case.

Mrs. Harris stated that it did not appear there would be any harm in deferring the case since it was not an existing problem. She added that perhaps the outstanding issues between the citizens and the applicant could be resolved prior to the BZA hearing the case. She then made a motion to defer SP 90-M-090 to March 10, 1992, at 9:00 a.m.

Mr. Kelley seconded the motion. He asked if staff was recommending approval of the application based on the revised Development Conditions. Mr. Jaskiewicz replied that was correct.

Mr. Pammel stated that he would reluctantly support the request for the deferral. He asked that the motion be amended to include that a memorandum be forwarded to the Planning Commission stating it was difficult for the BZA to agree to the deferral given that the BZA had set a date and time certain for a public hearing.

The BZA discussed the amendment. Mr. Kelley stated that he did not want the memorandum to be construed as criticism of the Planning Commission as he did not believe any was warranted. Mr. Pammel stated that he believed it was an inconvenience to the general public and others involved when cases were continually deferred and the memorandum was merely a reminder.

There was no second to Mr. Pammel's amendment and it was not accepted by the maker of the motion. Mr. Kelley's original motion passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

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Page 360, January 14, 1992, (Tape 1), Scheduled case of:

9:15 A.M. LYNN KAHLER BERG, VC 91-V-077, appl. under Sects. 18-401 and 2-505 of the Zoning Ordinance to allow 6.2 ft. high fence to remain in front yard of corner lot and allow addition 1.8 ft. from front lot line of corner lot (4 ft. max. fence height allowed and 30 ft. min. front yard required by Sects. 10-104 and 3-307) on approx. 14,575 s.f. located at 6401 Sixteenth St., zoned R-3, Mt. Vernon District, Tax Map 83-4((2))(8)13, 14, 15, 16. (DEF. FROM 11/12/91 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to a memorandum containing a request for a deferral.

Mrs. Harris made a motion to defer VC 91-V-077 to April 7, 1992, at 9:00 a.m. Mr. Kelley seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

Ms. Kelsey corrected the public hearing date to April 9th since the Board of Supervisors will be holding budget hearings in the Board Room on April 7th.

Mrs. Harris amended her motion to reflect April 9, 1992. Mr. Kelley seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

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Page 360, January 14, 1992, (Tape 1), Scheduled case of:

9:15 A.M. MARKEY BUSINESS CENTER APPEAL, A 91-S-002, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that ingress/egress and public access easements for interparcel access must be provided on appellant's property before December 1, 1990 on approx. 4.34 acres located at 14522 and 14524 Lee Road, zoned I-4 & I-5, Sully District (formerly Springfield) Tax Map 34-3((8))4522 A-J and 4524 A-J. (DEFERRED FROM 6/4/91 AT APPLICANT'S REQUEST - DEFERRED FROM 10/1/91 AT APPLICANT'S REQUEST)

Mr. Pammel stated that he would abstain from any discussion on the case since he has had a business relationship with the representative of the appellant in the past.

Mr. Kelley asked if Mr. Pammel could vote on a procedural matter. It was the consensus of the BZA that Mr. Pammel could vote on the deferral request.

Mr. Kelley made a motion to defer A 91-S-002 to April 9, 1992, at 9:15 a.m. Mrs. Harris seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

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Page 360, January 14, 1992, (Tape 1), Scheduled case of:

9:30 A.M. KEVIN M. COLE, VC 91-Y-124, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 24,750 s.f. located at 4726 Village Dr., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 56-4((4))65.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Cole replied that it was.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the subject property is located south of Lee Highway and west of the Piney Branch stream valley park. The applicant's property is developed with a one story single family detached dwelling with a driveway and parking pad in the southwest corner of the front yard. Mr. Jaskiewicz stated that the applicant was requesting a variance to the minimum side yard requirement to permit construction of a two-story addition 7.5 feet from the side lot line. Since the Zoning Ordinance requires a minimum side yard of 20 feet in the R-C Zoning District, the applicant was requesting a variance of 12.5 feet to the minimum side yard requirement.

Mrs. Harris asked why Lot 64 was not a buildable lot as noted in the applicant's in the statement of justification. Mr. Pammel stated that the land would not perk.

The applicant, Kevin Cole, 4726 Village Drive, Fairfax, Virginia, came forward and explained that the granting of the variance would allow him to upgrade a very old house. He stated that the addition would allow him to construct a new two car garage with additional living space above the garage.

Mr. Kelley asked if the addition could be built in the rear of the lot. Mr. Cole stated there is a septic field in back of the house.

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Mrs. Harris expressed concern with the size of the addition since it would almost double the size of the house. Mr. Cole stated the garage had determined the length of the addition. He stated that prior to moving to Fairfax County two years ago from St. Louis he had a garage this size. Mr. Cole stated that he had a boat, a trailer, and two cars and these factors had been considered when he decided on the size of the garage.

Mr. Kelley stated that he also would have a concern if the lot next door to the subject property was a buildable lot. Mrs. Harris asked who owned Lot 64. Mr. Cole stated that three lots next to him and the lots across the street are owned by a group of lawyers in Rockville, Maryland, who bought the lots years ago as an investment. He explained that Lot 64 will not perk and was recently designated as floodplain in addition to the back half of his property beyond the septic field.

Mr. Pammel asked if the boat would be housed in the garage. Mr. Cole replied that was correct. Mr. Pammel asked if the boat will fit into the garage if the size is reduced and Mr. Cole replied that it would not.

Mr. Pammel asked staff to enlighten the BZA as to the restrictions of outdoor storage of boats. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that she did not believe there any restrictions as to where a boat or trailer can be placed on a homeowner's property. Mr. Cole pointed out there were also no restrictions in his homeowners association although he did believe that the neighbors might object to the boat being in the front yard.

Vice Chairman Ribble called for speakers, either in support or in opposition, to the request. Hearing no reply, he closed the public hearing.

Mr. Pammel stated it was a difficult decision looking at the bulk of the addition involved; however, when looking at the plat and the dimensions of the lot it became clear the applicant had no other alternatives. He stated that he believed that the applicant had provided documentation as to why the addition was needed. Mr. Pammel then made a motion to grant VC 91-Y-124.

Mr. Kelley made a substitute motion to defer the case for two weeks in order to give the applicant an opportunity to possibly reconfigure the addition to reduce the size.

Mrs. Harris seconded the substitute motion. She stated that she did believe the applicant had an unusual situation since the lot next door is not a buildable lot but to double the house size with a variance would set a bad precedent.

The motion passed by a vote of 3-1 with Vice Chairman Ribble, Mrs. Harris, and Mr. Kelley voting aye; Mr. Pammel voting nay. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

Vice Chairman Ribble asked staff for a date and time. Greg Riegle, Staff Coordinator, suggested January 28, 1992.

Mr. Kelley asked the applicant if two weeks was sufficient to revise the plan. Mr. Cole stated that he had had an architect to review the plan and the only solution was before the BZA. Mr. Kelley explained to the applicant that the BZA had not directed him to change the plan, only suggested. Mr. Cole asked if there was a proposal on the overall length. Vice Chairman Ribble stated that the BZA could not negotiate the length. Mr. Cole pointed out that he was spending additional money and was concerned that the BZA might still believe it was too much of a precedent. Vice Chairman Ribble stated that he would not support 40 feet.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested 11:00 a.m., January 28, 1992. Mr. Kelley so moved. Mrs. Harris seconded. Hearing no objection, the Chair so ordered.

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9:40 A.M. LAWRENCE W. DUGGAN, VC 91-V-125, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (carport) 2.1 ft. from side lot line such that side yards total 10.5 ft. (5 ft. min. side yard and 15 ft. min. total side yards required by Sects. 3-307 and 2-412) on approx. 8,400 s.f. located at 1905 Sword La., zoned R-3 (developed cluster), Mt. Vernon District, Tax Map 111-1((14))535.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Duggan replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the subject property is located on the south side of Sword Lane, east of its intersection with Litton Lane. The surrounding lots in the Stratford on the Potomac subdivision are zoned R-3 and developed under the cluster provisions of the Ordinance with single family detached dwellings, with the exception of Lot B to the south, which is homeowners open space. Mrs. Greenlief stated that the applicant was requesting a variance to the minimum side yard requirement, and the total minimum side yard requirement, to allow the construction of a carport 2.1 feet from the side lot line such that side yards total 10.5 feet. The Zoning

Ordinance requires a minimum side yard of 8 feet and a combined side yard measurement of 20 feet. Section 2-412 does allow a carport to extend 5 feet into the minimum required yard, thus the carport could be located as close as 5 feet to the side lot line without a variance. Mrs. Greenlief stated that the applicant was requesting a variance of 2.9 feet to the minimum requirement and 4.5 feet to the total minimum requirement.

She stated that on August 5, 1980, the BZA approved a variance on the subject property to allow a carport to within 2.3 feet of the side lot line but construction did not begin within the 12 month timeframe and the variance expired. In 1987, Mrs. Greenlief stated a variance was approved on the adjacent lot, 536, to allow a carport 1.3 feet from the side lot line and noted that it is not the lot line adjacent to the applicant's proposed carport. She noted that the carport would contain a shed within it which is different than those the BZA has seen before. The shed is 8 feet in height and is not attached to the dwelling nor does it form a side of the carport; therefore, it can be located as shown on the plat. However, the BZA can consider the impact of the carport and shed combined since it is shown as one proposal. She stated that a question was raised with the application about the proximity of the carport to the adjacent carport in terms of the fire code and staff has been unable to determine if the proximity of the two carports would pose a problem. Mrs. Greenlief explained that the carport on the adjacent lot is 10.9 feet from the shared lot line so there would be a separation of 13 feet between the structures, which is not unlike other applications the BZA has seen. She stated that it was her understanding that the Public Facilities Manual has guidelines for the separation of structures based on the pressure of the water in the water main in the street and that was what staff had been unable to determine in this case.

Mr. Kelley said if there were two structures and they were both right at the minimum without a variance that would allow for a 10 foot difference. Mrs. Greenlief replied that was correct. She stated that two carports could be within 5 feet of the side lot line without a variance.

The applicant, Lawrence W. Duggan, 1905 Sword Lane, Alexandria, Virginia, came forward. He stated that he and his wife purchased the house in 1975 with the only drawback being that it did not have a carport or a garage and it had been their intent to remedy that problem as soon as they were financially able. Mr. Duggan said that in the summer of 1980 they had put aside enough money to construct the carport, they hired a contractor, and applied for and was granted a variance. He stated that three days before construction was scheduled to begin he received orders to report to Fort Bragg, North Carolina, which required him to depart within five days. Since he would be unable to supervise the construction nor could he handle it financially having to be located in two locations, they had to abort the project and the variance subsequently expired. Mr. Duggan stated that the logical place for the carport is the proposed location since there is an existing concrete slab on the east end of the house, the rear of the lot slopes down towards the woods, there is a 20 foot easement at the rear end of the lot, and the lot is narrow. He pointed out that other houses in the neighborhood have carports in the same relative position. Mr. Duggan said the next door neighbor had a similar situation and were granted a variance in 1987 and with the addition of the neighbor's carport there are only two houses out of the nineteen that does not have a carport or garage and his is one of them. He said that the addition of the carport would shade the kitchen from the extreme heat in the summer and would replace an unsightly slab and metal shed that has been there ever since the house was built.

Mr. Pammel pointed out that the applicant had indicated that the concrete slab is on the east side of the house when it is on the west. Mr. Duggan said he had misspoke.

In response to a question from Mrs. Harris about the removal of the shed, Mr. Duggan replied that the existing shed would be removed and a new wooden shed with aluminum siding to match the house would be constructed.

Mrs. Harris asked why the carport needed to extend over the shed rather than having the shed behind the carport similar to the neighbors. She expressed concern that the variance would run the entire length of the house. Mr. Duggan stated that he had considered that possibility but the lot slopes downward and to locate the shed behind the carport would have required putting in fill dirt, extending the slab into the rear yard, and roofing the shed. He said that process would have been very costly. Mr. Duggan stated that he believed that it would be more economical and more feasible to follow the existing roof line of the house.

Vice Chairman Ribble called for speakers, either in opposition or in support, of the request. Hearing no reply, he closed the public hearing.

Mrs. Harris made a motion to grant VC 91-V-125 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated January 7, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-125 by LAWRENCE W. DUGGAN, under Section 18-401 of the Zoning Ordinance to allow addition (carport) 2.1 feet from side lot line such that side yards total

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10.5 feet, on property located at 1905 Sword Lane, Tax Map Reference 111-1((14))535, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 14, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 8,400 square feet.
4. The property has an unusual characteristic being that the proposed location is the only place that the carport could be located.
5. Based on the photographs submitted by the applicant, the hardship is not shared generally by other property owners in the zoning area.
6. The variance will be in harmony with the intended spirit and purpose of the Ordinance.
7. The applicant is constrained by topographical problems to the rear of the property and there is an easement on the rear of the property.
8. The owner of the adjacent lot obtained a variance for the entire length of the house; therefore, the granting of the applicant's request would not set a precedent.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific carport shown on the plat (prepared by Kenneth W. White, Certified Land Surveyor, dated October 8, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if

Page 364, January 14, 1992, (Tape 1), LAWRENCE W. DUGGAN, VC 91-V-125, continued from Page 363)

a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 364, January 14, 1992, (Tape 1), Scheduled case of:

9:50 A.M. MICHAEL & ARMEDA S. PALLONE, VC 91-S-121, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.3 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 36,015 s.f. located at 6511 Burke Woods Dr., zoned R-1, Springfield District, Tax Map 88-1((23))1.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gerald Ritzert, 10149 Mosby Woods Drive, Fairfax, Virginia, attorney for the applicants, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the subject property is located just to the west of Old Keene Mill Road, is zoned R-1, contains 36,015 square feet, and is presently developed with a single family detached dwelling. Mr. Riegle stated that the application is for a variance to allow a structure to be located 6.3 feet from the side lot line. He stated in the R-1 District a 20 foot side yard is required, thus a variance of 13.7 feet is requested. Mr. Riegle stated that the plat labels the structure as a patio; however, the structure is proposed to be enclosed by a 4 foot solid wall thus it does not meet the Zoning Ordinance definition of a deck and must comply with the full minimum side yard requirement. He noted that this is the second time that the BZA has heard an application on the subject property within the past year. The first application requested a variance to construct a similar deck to be located 5.3 feet from the side lot line, one foot closer, with a second deck to be located 18.7 feet from the side lot line. Mr. Riegle stated the applicants have removed the second deck and the remaining deck has been moved back one foot. At the same public hearing, the BZA granted the applicants a waiver of the 12-month time limitation for filing a new application.

Mr. Ritzert came forward to represent the applicants. He stated that he had listened to the tape of the previous public hearing along with David Foster, contractor for the applicants. Mr. Ritzert stated that it appeared from listening to the tape that the BZA believed that the first application was too ambitious which prompted the applicants to eliminate a large part of the deck and back the patio away from the lot line as much as possible. He noted that without the variance the applicants would have an area of only 3.3 feet to construct the deck. Mr. Ritzert said that he believed the distinction between a deck and an addition is somewhat confusing. He said that the property falls off from the back of the house and pointed out that the brick wall is merely being used as a retaining wall. The subject property is a corner lot which was used a model home and the back lot line is a wooded area thereby eliminating visual impact on the neighbors. Mr. Ritzert said that he believed that the application did meet the required standards, that the hardship is not shared by other members of the community, there are other properties in the neighborhood with decks, the design of the house anticipated the construction of the deck, and the applicants have tried to redesign the deck to address the BZA's concerns from the previous public hearing.

Mr. Kelley stated that the part he believed was all right had been removed. Mr. Ritzert said they had removed the part of the deck which he had believed the BZA had indicated was too expansive and too ambitious. He said they had left the deck in the location where the doors exit the house. Mrs. Harris pointed out there are two separate sets of French doors and she agreed with Mr. Kelley said that the applicant had chosen to leave the part of the deck that would require the greatest variance.

Mr. Ritzert said he understood but the part of the house that is closest to the asphalt driveway is where people would be wanting to exit the house onto the patio from the kitchen rather than from the dining room. He said that the impression he had gotten from listening to the tape was that the expansiveness of the previous request was the part that led out to the gazebo. Mr. Ritzert said the real core where the patio is and the way it is actually designed, the deck had to come off the part of the house where the applicants were proposing. He pointed out that the side yard is wooded and the lot drops off which requires some type of stabilizing structure to allow the patio to be placed there. Mr. Ritzert said that the developer constructed the house 23.4 feet from the side lot line to begin with and that was where the applicants' hardship lies that is not shared by other people in the community.

Mr. Kelley stated that in looking back at the minutes, Mrs. Harris had made the motion and he had seconded the motion. He stated that he had agreed that he also would not have a problem with the 18.7 portion of the request, but did have a problem with the other portion as he

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believed that it was too close to the lot line and too ambitious. Mr. Ritzert said that was the impression that he got from listening to the tape of the public hearing. Mrs. Harris stated that she had asked the applicant if they would settle for an in-part granting and they had said "no." Mr. Ritzert said that he believed that the applicants had been asked if they would settle for a lesser variance and the answer was "no." He said that they had now tried to reduce the scale of the project and relocate the remaining deck. Mrs. Harris pointed out that the lesser part of the variance was the 18.7 foot portion. Mr. Ritzert agreed footwise that was correct but the project had to be looked at from the practical standpoint. He stated that it was very possible that a walkway could be constructed off the back of the house and extended way over to the side of the yard where a variance would not be needed, but it would be architecturally incompatible.

Mr. Ritzert submitted photographs of the subject property showing the topography of the lot.

In response to a question from Mr. Kelley, Mr. Riegle replied that the house on the adjoining lot was 35 feet from the shared lot line.

Mrs. Harris asked what part of the adjoining house would face the deck. Mr. Ritzert said that the side of the neighbor's house would face the back end of the applicants' house.

Mr. Kelley noted that the developer had not placed the house properly on the lot. Mr. Riegle said that the front yard of the subject property was in excess of the requirement on both streets. Vice Chairman Ribble noted that the placement of the house on the site generated the need for the variance.

Vice Chairman Ribble called for speakers in support of the request.

David Foster, 8616 LeGrange Street, Lorton, Virginia, stated that he had presented the previous application and pointed out that the location of the proposed patio was in the same location of a sunroom. He said that without the variance the applicants would only be able to build an addition 3.3 feet from the side lot line.

Vice Chairman Ribble called for speakers in opposition to the request. Hearing no reply, he closed the public hearing.

Mr. Kelley said that he believed the applicants had made a good faith effort to come back with an amended application and made a motion to grant the request. He stated that if the house had been sited properly on the lot there would be no need for the variance, there are severe topographic conditions on the lot, and the applicants' agent has testified that the proposed location is the only practical place to construct the patio.

The motion died for the lack of a second.

Mrs. Harris made a motion to defer the case for one month. She stated that she agreed with Mr. Kelley that some type of variance was going to be needed for the deck, but that she was not convinced that the proposal before the BZA was the best configuration. Mrs. Harris stated that she would like to give the applicants an opportunity to try to reconfigure the proposal or come back with the same proposal.

Mr. Pammel seconded the motion.

Vice Chairman Ribble stated that he was not real enthusiastic about deferring cases but that he did understand Mrs. Harris' concerns. He said that he believed that the applicants had made a case.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested March 10, 1992, at 9:15 a.m.

Mrs. Harris so moved. Hearing no objection, the Chair so ordered.

Mr. Ritzert asked if the deferral was due to only four members being present. Vice Chairman Ribble told Mr. Ritzert that it was because the motion to grant was going to fail. Mr. Ritzert agreed with the deferral.

Mr. Pammel suggested that the applicants go back and look at the previous application and try to fashion something that requires a minimal variance.

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The BZA recessed at 10:25 a.m. and reconvened at 10:32 a.m.

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Page 365, January 14, 1992, (Tapes 1-2), Scheduled case of:

10:10 A.M. FAIRFAX COUNTY REDEVELOPMENT & HOUSING AUTHORITY (FCRHA), SP 91-S-056, appl. under Sect. 3-C03 of the Zoning Ordinance to allow community center on approx. 9.21 acres of land located at 12111 Braddock Rd., zoned R-C, WS, Springfield District, Tax Map 67-1((1))35.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Evans, the applicant's agent, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the subject property is 9.21 acre site, zoned R-C, WSPOD, and is located on Braddock Road in the Lincoln-Lewis-Vannoy Conservation District. The site is presently developed with a prefabricated structure which serves as a community center and contains a Environmental Quality Corridor (EQC) in the southeastern portion of the property. Mr. Riegle stated the applicant was requesting approval of a special permit to establish a new community center on the site which will be housed in a permanent building, will contain 6,000 square feet equal to a Floor Area Ratio (FAR) of .02, and will have 102 parking spaces. Mr. Riegle stated that the site is planned for public facilities in the Comprehensive Plan and staff believed that the use as a community center is in harmony with the recommendation. He stated that since the land surrounding the site is zoned and planned for residential use staff believed that the land use issues center on whether the proposed development will adversely impact the use or development of the adjoining land. Staff believed that the low FAR, the commitment to preserving 70% of the site as open space, and the screening and buffering commitments contained in the Proposed Development Conditions will prevent the proposed development from having an adverse impact.

With regard to the transportation and the environmental recommendations in the Comprehensive Plan, Mr. Riegle said that the applicant had agreed to preserve the EQC and provide Stormwater Best Management Practices required of development in the R-C District. The applicant had also agreed to provide transportation improvements necessary to provide safe ingress/egress that is required by the special permit standards, most notably left and right turn lanes into the site.

Mr. Riegle stated that staff had no outstanding issues with the application and believed that with the implementation of the Development Conditions the application will meet the applicable standards, thus staff recommended approval of the request.

Mr. Pammel noted that the use was established approximately 17 years ago. Mr. Riegle replied that was correct and noted that at the time the use was established it did not require a special permit and was established pursuant to a 456 application. He said that since that time the Ordinance has been amended and the use now requires a special permit in addition to a "456" (section of the State Code under which a public hearing must be held for public uses) hearing.

In response to a question from Mrs. Harris, Mr. Riegle replied it was staff's understanding that the trail would be incorporated into the special permit plat. He said that he would defer to the applicant's engineering staff for further clarification.

Vice Chairman Ribble asked if staff had stated they were concerned with the impact on the future development of the adjacent property. Mr. Riegle said that staff was concerned from a land use standpoint that all the surrounding land is planned and zoned for residential uses but staff believed that with the FAR and the amount of open space the applicant meets that standard.

Bob Evans, engineer with the firm of Turner Associates, P.C., 111 Massachusetts Avenue, N.W., Suite 540, Washington, D.C., represented the Fairfax County Redevelopment and Housing Authority (FCRHA) and stated that members of the FCRHA staff were present. He said that the use would impact approximately 2 of the 9.21 acres and the existing prefabricated structure will be replaced with a 7,600 foot structure, 102 paved parking spaces, a new basketball court will be relocated, the existing tot lot will not be disturbed.

With respect to landscaping, Mr. Evans said only a nominal number of trees will be removed in order to construct the turn around cul-de-sac and the applicant will be adding trees in a number equal or greater to the amount removed. The green space to the rear of the lot will not be impacted at all.

Mr. Evans stated with respect to traffic flow two traffic schemes have been generated in the event the widening of Braddock Road occurs first. He explained that the ingress/egress will be in harmony with the proposed widening and meets the Virginia Department of Transportation (VDOT) and the County. The interim scheme would allow for designated turn lanes from both directions into the site. He said that the cul-de-sac had been placed to serve as a turn around and meets the requirements of the Fire Marshal and any other vehicles that may use it.

He explained that the site is presently served by a well system and a three inch pressure sewer. Mr. Evans stated that the well system will be replaced by County water which will be brought to the area prior to the construction of the site. The three inch pressure sewer system was originally designed with the expansion of the structure in mind; therefore, the system is adequate to carry any sewage loads generated by the new building. The stormwater management pond will be fenced and will meet all the safety requirements and all the BMP manual design criteria.

Mr. Evans stated that the applicant has taken all the steps to meet the height and size requirements, the tone of the site will blend in with the remainder of the neighborhood, the applicant will meet all the design criteria of the Zoning Ordinance and the Public Facilities

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Manual, and will comply with all the Development Conditions.

Vice Chairman Ribble called for speakers in support of the request. The following came forward.

Jim Mott, 12522 White Drive, Fairfax, Virginia, President of the Lincoln-Lewis-Vannoy Citizens Association; June Frame, 10395 Adelle Road, Oakton, Virginia; Loretta Marsh, 12537 Bunch Road, Fairfax, Virginia; Betty Crandall, 5135 Thrush Road, Fairfax, Virginia; Ada Scott, 4024 Olley Lane, Fairfax, Virginia.

The citizens voiced their strong support of the request and said that the community desperately needs a new center as the existing one is inadequate and the children need the center to provide them a safe environment.

Vice Chairman Ribble called for speakers in opposition to the request. There was no reply.

In response to a question from Mrs. Harris, Mr. Evans replied that the trail will remain intact.

There were no further questions and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant the request subject to the Development Conditions contained in the staff report dated January 7, 1992, being implemented.

Mrs. Harris stated that she would support the application as she and her children often picnic at the center. She said that she was delighted that the community was going to get a new center.

Vice Chairman Ribble stated that he too would support the motion and thanked the citizens who spoke in support of the request.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-056 by FAIRFAX COUNTY REDEVELOPMENT & HOUSING AUTHORITY (FCRHA), under Section 3-C03 of the Zoning Ordinance to allow community center, on property located at 12111 Braddock Road, Tax Map Reference 67-1((1))35, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 14, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 9.21 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat prepared by Turner Associates, received in this office on September 4, 1991, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any

plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Turner Associates, received in this office on September 4, 1991, and these development conditions.

5. A maximum of 102 parking spaces shall be provided as shown on the special permit plat.

6. It shall be demonstrated to the satisfaction of DEM that maximum interior noise levels at the community center do not exceed 45 dBA Ldn. If necessary to comply with the requirements of this condition the community center shall have the following acoustical attributes:

   Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

   Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade they shall have the same laboratory STC rating as walls

   Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

7. Prior to site plan approval, it shall be demonstrated to the satisfaction of DEM that maximum exterior noise levels in the play areas located east of the building do not exceed 65 dBA Ldn. At a minimum a densely planted evergreen hedge shall be placed between the cul-de-sac and the play areas located east of the building. An additional structural barrier may be required if determined necessary by DEM to mitigate outdoor noise to 65 dBA Ldn.

8. If the site develops prior to the completion of the widening of Braddock Road, right and left turn lanes shall be provided to the site from Braddock Road. These turn lanes shall be constructed to a standard as required by VDOT.

9. Modifications to the traffic signal planed for the intersection of Braddock Road and the Fairfax County Parkway shall be provided as determined necessary by VDOT and DEM. These modifications, if necessary shall ensure that turning movements from the site to be safely coordinated with the turning movements governed by the traffic signal planned for the intersection of Braddock Road and the Fairfax County Parkway. If not provided at the time of construction, funds for this improvement shall be escrowed in an amount determined by DEM at site plan review.

10. The limits of clearing and grading shall be as depicted on the approved special permit plat.

11. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval. This plan shall preserve to the greatest extent possible substantial individual trees or stands of trees. Emphasis shall be placed on preserving the trees located along the site's frontage to Braddock Road. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to located utility lines trails etc., then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on the site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to (Part 4 of Section 12-0403.7) of the Public Facilities Manual (PFM).

12. All areas of the site within the floodplain line denoted on the special permit plat shall be designated as an Environmental Quality Corridor (EQC). There shall be no structures located in the EQC and there be no clearing and grading, or removal of vegetation in the EQC except for dead or dying trees.

13. The requirement for Transitional Screening 1 along all lot lines shall be modified to allow the existing vegetation to fulfill the applicable requirements provided that the existing vegetation preserved pursuant to Development Conditions 10, 11, and 12 is supplemented as follows:

   - Along the site's frontage to Braddock Road, a single row of evergreen trees shall be planted at 10 feet on center in an area between the eastern edge of the cul-de-sac and the entrance to the parking area.

   - To compensate for vegetation lost due to the construction of the cul-de-sac, the area east of the cul-de-sac shall be planted with a minimum of twenty-five (25) new evergreen and deciduous trees.

   - Along the westernmost edge of the parking area, a single row of evergreen trees shall be planted 10 feet on center.

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- o Along the westernmost lot line, a single row of evergreen trees shall be planted 10 feet on center in the area adjacent to the baseball diamond.

All evergreen trees required as supplemental plantings shall have a minimum planted height of at least six (6) feet as may be deemed appropriate by the Urban Forestry Branch. All deciduous trees shall have a caliper of at least two (2) inches. Species of all trees shall be as determined by the Urban Forestry Branch.

14. The Barrier requirement shall be waived.

15. The structural detention pond located south of the parking area shall be constructed to BMP and WSPOD standards as determined by DEM at site plan review. Open space may also be used to fulfill BMP requirements as may be acceptable to DEM.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 369, January 14, 1992, (Tape 2), Scheduled case of:

10:25 A.M. ANGEL T. & ISABELITA V. FILAMOR, VC 91-B-122, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence in front yards of corner lot (3.5 ft. and 4 ft. max. fence height allowed in front yard of corner lot by Sects. 2-505 and 10-104), on approx. 14,420 s.f. located at 4976 DeQuincey Dr., zoned R-3, Braddock District (formerly Annandale), Tax Map 69-1((9))21.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Filamor replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. The subject site is located at the northwest corner of Braddock Road and DeQuincey Drive, is zoned R-3, and is developed with a single family detached dwelling. The site is bordered by other lots on the south and west that are also zoned R-3 and developed with single family dwellings. To the north and across the Outlet Road is a lot zoned R-1 and developed with single family detached dwellings. A public park is located across Braddock Road to the east of the site. Ms. Bettard stated that the applicants were requesting approval of a variance to allow a 6.0 foot high fence to be constructed in the front yards of a corner lot which is bounded on the east by Braddock Road and on the south by DeQuincey Drive. She stated that Paragraph 3B of Sect. 10-104 of the Zoning Ordinance allows a fence that does not exceed 4 feet in height in any front yard on any lot, and on a residential corner lot that abuts a major thoroughfare, a fence that does not exceed 8.0 feet in height is permitted with some provisions which are: (1) the driveway entrance to the lot is from a street other than the major thoroughfare and the principal entrance of the dwelling faces a street other than the major thoroughfare, and (2) the lot is not contiguous to a lot which has its only driveway entrance from the major thoroughfare. The fence shall not extend into the front yard between the dwelling and the street other than the major thoroughfare and it shall also be subject to the provisions of Sect. 2-505.

Ms. Bettard said that Sect. 2-505 of the Zoning Ordinance states that on a corner lot, having an interior angle of 90 degrees or more at the street corner, sight distance should be provided to a point 30 feet from the property lines extended. Such sight distance should be maintained between two horizontal planes, one which is 3 1/2 feet, and the other 10 feet above the established grade of either street. Accordingly, an 8 foot high fence is permitted along that portion of Braddock Road that is not within the front yards of DeQuincey Drive and the Outlet Road.

She stated that the applicants were requesting a variance of:

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- 2.0 feet to the requirements of Sect. 10-104 to allow a 6.0 foot high fence along Braddock Road within the front yards of DeQuincey Drive and the Outlet Road and along the Outlet Road as shown on the plat submitted with the application.

- 2.5 feet to the requirements of Sect. 2-505 to allow a 6.0 foot high fence within a portion of the triangle created by extending the property lines 30 feet east and north of the intersection of Braddock Road and DeQuincey Drive.

In closing, Ms. Bettard called the BZA's attention to a sketch prepared by staff showing the area where the fence was not affected by the variance and showing the triangle formed by Sect. 2-505.

In response to a question from Mrs. Harris, Ms. Bettard used the viewgraph to outline the location where the fence would not be affected by Sects. 2-505 and 10-104. She explained the existing fence is 3 to 4 feet high but the applicants plan to replace it with a 6 foot high fence.

The applicant, Isabelita V. Filamor, 4976 DeQuincey Drive, Fairfax, Virginia, came forward and read a prepared statement into the record. (A copy is contained in the file.) She stated that when she and her husband bought the house in 1966 there was an existing 6 foot fence along Braddock Road which was a main consideration in their decision to buy the property. Mrs. Filamor said that in 1988 when the widening of Braddock Road began she and her husband sold a parcel of their property for the widening and allowed a portion of their property to be used for a temporary easement which required the removal of the 6 foot high fence. She stated that during the widening process her family suffered from loss of privacy, dust, dirt, pollution, and worst of all, noise which has increased now that Braddock Road is four lanes. Mrs. Filamore stated that although the Zoning Ordinance was amended to allow corner lots along a major thoroughfare to put up an 8 foot fence in front yards it did help them since because they have three front yards. On June 6, 1991, she presented her case before the Planning Commission and although they were sympathetic did not have the power to grant an exception to her case. She said she then contacted Supervisor Bulova who made a motion at the Board of Supervisors' meeting on July 22, 1991, to waive the filing fees and expedite a request for a variance. Mrs. Filamore stated that her family had made sacrifices by giving up a small portion of their property for the widening of Braddock Road, their request would not be detrimental to adjacent properties, and the granting of the variance will clearly alleviate a hardship.

Mrs. Harris asked staff if the County had not been obligated to restore the fence that it removed for the widening of Braddock Road. Mrs. Filamore said that it was the Virginia Department of Transportation (VDOT) that removed the fence and she had been reimbursed for the cost of reconstructing the fence. Mrs. Harris asked where the 6 foot fence had been located. Mrs. Filamore responded along Braddock Road almost to the corner of her lot. She said that it stopped at that point because of the existing vegetation which afforded privacy, but now that Braddock Road has been widened additional buffering is needed. Mrs. Harris asked who constructed the original 6 foot fence and Mrs. Filamore said that it might have been the builder.

In response to a question from Mrs. Harris as to whether there had been a variance granted for the original fence, Ms. Bettard replied that Leslie Johnson, with the Zoning Administrator's office, who handled the case during the time of the Zoning Ordinance amendment had indicated that the fence was in violation at that time.

Vice Chairman Ribble called for speakers, either in support or in opposition, to the request. Hearing no reply, he closed the public hearing.

Mrs. Harris made a motion to grant-in-part the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated January 7, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-B-122 by ANGEL T. AND ISABELITA V. FILAMOR, under Section 18-401 of the Zoning Ordinance to allow 6.0 foot high fence in front yards of corner lot (**THE BOARD OF ZONING APPEALS APPROVED THE FENCE ALONG BRADDOCK ROAD ONLY**), on property located at 4976 DeQuincey Drive, Tax Map Reference 69-1((9))21, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 14, 1992; and

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WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,420 square feet.
4. The subject property has an unusual characteristic because it is bounded on one side by a major thoroughfare and has three front yards.
5. The variance request was caused in part by the widening of Braddock Road.
6. While the variance to allow a 6 foot fence along Braddock Road is justified, it has not been clearly established that a similar hardship exists along the Outlet Road.
7. A fence along the Outlet Road would possibly prohibit clear access to the entrance to that road.
8. There is considerable hardship and the granting of the variance to allow a 6 foot fence along Braddock Road would alleviate a demonstrable hardship approaching confiscation in this area.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location (along Braddock Road) of the specific fence shown on the plat (dated October 4, 1991, revised October 15, 1991) prepared by Rice and Associates and included with this application, and is not transferable to other land. This fence shall not be greater than six (6.0) feet in height except for that portion which may be eight (8) feet in height along Braddock Road located outside of the front yards of DeQuincey Drive and the Outlet Road.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley and Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

Page 372, January 14, 1992, (Tape 2), ANGEL T. & ISABELITA V. FILAMOR, VC 91-B-122, continued from Page 371)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 22, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 372, January 14, 1992, (Tape 2), Scheduled case of:

11:00 A.M. NORTHERN VIRGINIA ELECTRIC COOPERATIVE APPEAL, A 91-Y-019, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Director of the Department of Environmental Management's denial of Site Plan #8112-SP-01-2 for an addition to the electric substation on approx. 2.7584 acres located at 15001 and 15005 Lee Hwy., zoned R-C, WS, Sully District (Springfield), Tax Map 64-2((3))26A, 27.

Mrs. Harris stated that apparently the appeal was being withdrawn due to the resolution of the issues between the appellant and the County. Hearing no objection, the Chair so ordered.

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Page 372, January 14, 1992, (Tape 2), Scheduled case of:

11:15 A.M. CENTURY OAKS LIMITED PARTNERSHIP, SP 91-Y-066, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 20.1 ft. from lot line contiguous to pipestem driveway (25 ft. min. front yard required by Sect. 2-416), on approx. 10,873 s.f. located at 12622 Misty Creek La., zoned PDH-3, Sully District (formerly Centreville), Tax Map 45-2((11))57A. (OTH GRANTED)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate.

Lee Fifer, attorney for the appellant, 8280 Greensboro Drive #900, McLean, Virginia, came forward and informed the BZA that Gail Bearden, with the County Attorney's office, had told them that the affidavit was not in order. He requested a deferral for one week to allow the applicant time to amend the affidavit.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested January 21, 1992, at 8:15 p.m. Mrs. Harris so moved.

Mr. Pammel disclosed that he had a business relationship with the law firm involved in the appeal and he would abstain from the public hearing. He said that he would participate in the vote on the deferral.

Mr. Kelley said that he would not be present at the January 21st public hearing and just wanted to point out that in light of Mr. Pammel's being unable to participate in the public hearing, to alleviate a quorum problem. Vice Chairman Ribble suggested deferring the case to January 28, 1992.

Ms. Kelsey said that perhaps the BZA might want to poll the audience to determine if anyone was present who wished to speak to the deferral. Vice Chairman Ribble apologized to the audience and asked the speaker to come forward.

Martin Babst, 12620 Misty Creek Lane, the adjoining property owner to the north, stated that he would not be in town on January 28th but would be available the 21st. Ms. Kelsey said that one case was being removed from the January 21st agenda or February 4th was available.

It was the consensus of the BZA to schedule the case on January 21, 1992, at 8:15 p.m.

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Page 372, January 14, 1992, (Tape 2), Information Item:

Approval of Resolutions from January 7, 1992

Mr. Pammel made a motion to approve the Resolutions as submitted. Mrs. Harris seconded the motion. The motion passed by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack absent from the meeting.

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Page 372, January 14, 1992, (Tape 2), Information Item:

Approval of October 29, 1991 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted. Mrs. Harris seconded the motion. The motion passed by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack absent from the meeting.

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Page 373, January 14, 1992, (Tape 2), INFORMATION ITEM:

Arlan and Rita Finfrock, SP 91-B-045
Intent to Defer

Mr. Pammel made a motion to Issue an Intent to Defer. Mrs. Harris seconded the motion. The motion passed by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack absent from the meeting.

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Page 373, January 14, 1992, (Tape 2), Information Item:

Helen Creed, SP 91-P-063
Intent to Defer

Mr. Kelley made a motion to Issue an Intent to Defer. Mrs. Harris seconded the motion. The motion passed by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack absent from the meeting.

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Page 373, January 14, 1992, (Tape 2), Information Item:

Belva J. Warner, VC 91-D-101

Mr. Pammel said that Belva J. Warner, VC 91-D-101, had submitted a letter to the BZA stating that they could not live with the 22 foot wide garage the BZA had granted them. He said he believed the only relief the applicant had at this point would be to file a new application. Vice Chairman Ribble agreed and asked staff to convey the BZA's comments to the applicant. Mr. Kelley asked staff if that was correct.

Jane Kelsey, Chief, Special Permit and Variance Branch, agreed that was correct. She explained that the portion between the 24 feet and the 22 feet is the portion the BZA denied; therefore, in order for the applicant to file a new application the BZA would have to waive the 12-month time limitation.

Mr. Pammel made a motion to waive the 12-month time limitation to allow the applicant to file a new application if she chose to do so. Mr. Kelley said that it his understanding that the BZA could not make such a motion unless the applicant made the request. Ms. Kelsey said that the applicant had not made such a request but staff could advise the applicant that the option is available to her. Mr. Kelley said that he would have no problem with granting the applicant a waiver but the applicant may not wish to proceed with that option.

Mrs. Harris stated that she would be more comfortable with the BZA denying the request for reconsideration and informing the applicant that her only option would be to request a waiver of the 12-month time limitation. She added that she also was under the impression that unless an applicant made such a request the BZA could not grant a waiver. Vice Chairman Ribble agreed.

Mrs. Harris made a motion to deny the request for reconsideration. Mr. Kelley seconded the motion. The motion passed by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack absent from the meeting.

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Page 373, January 14, 1992, (Tape 2), Information Item:

Discussion of Lorton Area Comprehensive Plan Amendment

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that Lynda Stanley, Director, Land Use Division, Office of Comprehensive Planning, had agreed to explain the Lorton Area Plan. Ms. Kelsey said that staff had recently had an application for a golf driving range in the Lorton area and believed that it would be beneficial to the BZA to hear the discussion. She suggested 11:30 a.m. on January 28, 1992, and asked if this was agreeable to the BZA. The date and time was agreeable.

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Page 373, January 14, 1992, (Tape 2), Information Item:

Discussion Regarding Accessory Dwelling Units

Mrs. Harris asked what had happened to the discussion regarding Accessory Dwelling Units. Jane Kelsey, Chief, Special Permit and Variance Branch, said that she would talk to William Shoup, Deputy Zoning Administrator, and get back to the BZA. She added that it was her understanding that staff was currently looking at a Zoning Ordinance amendment at the Board of Supervisors' request in response to the BZA's request in addition to another area and staff wanted to bring both amendments to the BZA at the same time.

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Mrs. Harris said that it was her understanding that it was going to come up before the Board of Supervisors very soon and she would like to have an opportunity for the BZA to have input before it is passed by the Board of Supervisors. Ms. Kelsey suggested February 4th. Following further discussion, the BZA decided to schedule the meeting for March 24th.

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Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to a request for an interpretation regarding the National Evaluation Free Church that had been included in its package. Ms. Kelsey encouraged the BZA to review the information and provide staff with input.

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As there was no other business to come before the Board, the meeting was adjourned at 11:23 a.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: March 24, 1992 APPROVED: March 31, 1992

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The regular meeting of the Board of Zoning Appeals (BZA) was held in the Board Room of the Massey Building on January 21, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; James Pammel; and John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:10 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board.

Chairman DiGiulian moved that the BZA go into Executive Session, pursuant to Section 2.1-344 of the Virginia Code, to meet with legal counsel to discuss the following: (1) Counsel wished to advise the BZA of the Circuit Court ruling upholding its decision in the Ardak Corporation Appeal, A-90-P-013, in which the BZA overruled the decision of the Zoning Administrator that the addition of an office use at the Regency Condominium constituted an expansion or enlargement of the existing use, requiring the entire condominium to comply with the current Zoning Ordinance minimum parking requirements; (2) the Circuit Court's ruling in A 89-D-017, the Pulte Homes Appeal, from a decision of the Director of the Department of Environmental Management that a special exception is required for Pulte Homes' proposed roadway in the Sugarland Run floodplain. He said that, specifically, the BZA would discuss the fact that Judge Annunziata had remanded the case to the BZA to allow it to state the findings on which its decision had been based and to consider certain additional information set forth in her Order regarding the depth of the water over the proposed road during floods and to consider certain memoranda between County officials as more fully set forth in the Order. The BZA was also to determine whether to grant Pulte Homes and Fairfax County an opportunity to present additional evidence and/or argument in relation to the water's depth. The motion was seconded by Mr. Ribble and carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

The BZA reconvened at 8:45 p.m.

Mr. Ribble moved that the BZA grant Fairfax County and Pulte Homes an opportunity to present additional evidence and argument in A 89-D-017 at its meeting on March 31, 1992. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Mr. Ribble further moved to certify, pursuant to Section 2.1-344 of the Virginia code that, to the best of its knowledge, only public business matters, lawfully exempted from public meeting requirement were discussed or considered in the just completed Executive Session and that only such matters as were identified in the motion to convene the closed meeting were heard, discussed, or considered. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Mr. Ribble moved that each side be limited to a two-minute presentation and to require each side to submit written information two weeks prior to the hearing date, with response time of one week. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Appeal A 89-D-017 was scheduled for March 31, 1992 at 9:00 a.m.

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Page 375, January 21, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ELECTRONIC DATA SYSTEMS APPEAL, A 91-C-022, appeal of the Director of the Department of Environmental Management's denial of Site Plan #7809-SP-03 for the extension of Lawyer's Road across property located within a floodplain on the grounds that special exception approval is required under Section 2-903 of the Zoning Ordinance on property located on Tax Map 25-3((9))pt. I and pt. O containing approx. 136,500 sq. ft. of land, zoned R-3; Tax Map 25-3((9))pt. I, pt. L, pt. P containing approx. 224,200 sq. ft. of land, zoned R-3; Tax Map 25-3((4))pt. B1, pt. T; Tax Map 25-3((10))pt. C, pt. C1 containing approx. 181,500 sq. ft. of land, zoned R-3, PDH-3, Centreville District.

Chairman DiGiulian advised that the Clerk had requested a ninety-day deferral because proper notification had not been made. Mr. Hammack made a motion to grant a ninety-day deferral of A-91-C-022. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

Appeal A 91-C-022 was scheduled for Thursday, April 23, 1992 at 9:00 a.m.

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Page 375, January 21, 1992, (Tape 1), Scheduled case of:

8:15 P.M. HELEN C. CREED, SP 91-P-063, appl. under Sect. 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on approx. 17,891 s.f. located at 7342 Barbour Ct., zoned R-3, Providence District, Tax Map 40-3((2))30. (NOTICES NOT IN ORDER)

Chairman DiGiulian asked if staff knew why the notices had not been sent out. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant was unsure of how to send the notices; she had told staff that she could not send them and that her son had said that staff should send them. Ms. Kelsey said that she had advised the applicant that it

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was not the policy for staff to send the notices, but that staff would assist the applicant in finding the names of the property owners; however, the applicant did not ask for that assistance and did not send out the notices.

Mr. Ribble said that he believed staff should communicate with the son, who Ms. Kelsey said is an attorney. Ms. Kelsey said that she had told Mrs. Creed to have her son call Ms. Kelsey if he had any questions, but he did not call. Chairman DiGiulian said that he would recommend a ninety-day deferral. Ms. Kelsey said that the applicant was requesting an accessory dwelling unit to assist her financially and staff sympathized with her situation; however it was not staff's policy to send out the notices, unless so directed by the BZA.

Mr. Hammack said that he believed that staff should communicate with the son and explain that the burden is on the applicant to send out the notices and he made a motion to defer SP 91-P-063 for sixty days, to give the applicant an opportunity to send out the notices. If the applicant did not send out the notices in time for the case to be heard within sixty days, the case would be dismissed for lack of interest. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

SP 91-P-063 was scheduled for April 9, 1992 at 9:30 a.m.

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Page 376, January 21, 1992, (Tape 1), Scheduled case of:

8:15 P.M. CENTURY OAKS LIMITED PARTNERSHIP, SP 91-Y-066, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 20.1 ft. from lot line contiguous to pipestem driveway (25 ft. min. front yard required by Sect. 2-416), on approx. 10,873 s.f. located at 12622 Misty Creek La., zoned PDH-3, Sully District (formerly Centreville), Tax Map 45-2((11))57A. (OTH GRANTED. DEF. FROM 1/14/92 AT APPLICANT'S AND BZA'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Fifer replied that it was.

Mr. Pammel advised that he would abstain from participating in this case as he had a business relationship with the law firm with which Mr. Fifer is associated.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the site is located generally north of Lee Jackson Memorial Highway (Route 50) and east of the Fairfax County Parkway, on the north side of Misty Creek Lane; is zoned PDH-3; is developed with a single family detached dwelling; surrounding lots are also zoned PDH-3 and are developed with single family detached dwellings or are vacant. She said that the applicant was requesting approval of a special permit based on error in building location, to allow reduction to the minimum yard requirement, to allow a single family dwelling to remain 20.1 feet from the lot line contiguous to a pipestem driveway. Ms. Dickey said that Section 2-416 of the Zoning Ordinance requires a 25 foot minimum front yard along a lot line contiguous to a pipestem driveway; thus, a modification of 4.9 feet to the minimum front yard requirement was being requested to allow the dwelling to remain at its present location. Regarding surrounding uses, Ms. Dickey said that a review of the files of the Zoning Administration Division revealed that adjacent Lot 56A to the north is located approximately 6.3 feet from the shared lot line; Lot 58A to the west of the site is vacant. She said that the pipestem driveway abutting the subject lot, along the northeastern lot line, provides access to six lots; the subject lot, however, has no direct access to the pipestem driveway. Ms. Dickey said that, subsequent to the publication of the staff report, the applicant had submitted an amendment to the statement of justification, in the form of a letter to Van Metre Companies from the applicant's engineer, Dewberry & Davis, further clarifying their point of view on how the building error occurred (the letter was distributed to the BZA at this time). Ms. Dickey said that staff had that day received a revised affidavit which had been approved by the County Attorney's Office, which was also being distributed to the BZA.

Ms. Dickey said, if the BZA found that the application meets the standards for a special permit based on error in building location, staff recommended that the BZA condition its approval by requiring conformance with the Proposed Development Conditions contained in Appendix 1 of the staff report.

Mrs. Harris referred to the statement of justification which stated that no other houses had required any kind of variance thus far in the subdivision. She questioned how the house on 63A could be 6.3 feet from the lot line. Ms. Dickey said that the subdivision was a planned development and the grading plan for the home on 63A showed the house to be 6.3 feet from one side lot line and 17.6 feet from the other side lot line.

Mrs. Thonen asked for clarification of how the measurements were done in the case of a pipestem. Ms. Dickey said, as indicated in the staff report, the measurement would be from the edge of the pipestem pavement or the lot line, whichever is the closer distance. Mrs. Thonen said that could not be true, because the pipestem was further away than the lot line. Ms. Kelsey said that, in that case, the 25 feet would be measured from the lot line formed by the pipestem; if the pipestem driveway was closer to the house, the measurement would be from

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the house to the edge of the pipestem driveway. Chairman DiGiulian asked how that matched with Interpretation 16 by Mr. Yates in 1979 located on the last page of the staff report. Mrs. Thonen stressed the importance of always measuring from the same place, and that great care should be taken to do so. Ms. Kelsey said that the question which had been posed in Interpretation 16 was a different question: What is the required yard from an access easement; in the background, he indicated that, if the access to the lot was by a pipestem driveway, only a 25 foot minimum distance from the lot line formed by the pipestem or the edge of pavement, whichever is greater, would be required. Mrs. Thonen said that meant that it depended on whichever was further away, the pipestem or the lot line.

O. Lee Fifer, Jr, attorney with the firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive #900, McLean, Virginia, represented the applicant and stated that he would ask Philip Yates of Dewberry & Davis to comment on the previous question, but that he believed Mrs. Thonen had identified an issue of genuine confusion: trying to read the language of the Zoning Ordinance. He said he would not go into great detail, unless requested to do so, and that in general the standards were that it was an honest mistake, that they tried to take measures to address it when it arose, that it is really not detrimental for the house to stay where it is, and that the result of not receiving approval would create a hardship, which would be the tearing down of a portion of the house. Mr. Fifer said that the error was not discovered until the main house was under shingle, at which time efforts were taken to respond to what was determined to be a problem in applying what they thought had been the customary practice in the industry for some time, based on the confusing aspect of that particular section of the Zoning Ordinance and the Public Facilities Manual. Mr. Fifer asked Mr. Yates to comment.

Mr. Yates said that he would have preferred to file an appeal, rather than obtain a special permit for the building in error location. He said the wording in Section 2-416, which he had participated in drafting some years ago, is not "crisp" and does not adequately state the intent of the provision. He said that, in his seven years as Zoning Administrator, he had never been asked to interpret the Section, and he believed that this was the first time an interpretation had been requested. Mr. Yates said it was his opinion that this was the first time that the provision had been interpreted, and that the interpretation was contrary to the way the provision had been administered since 1979. He said that, in the Dewberry & Davis office, he had found six examples of houses that were located on a pipestem lot and set back 25 feet from the edge of the pavement, but not from the lot line; and he said that they have never been required to be set back 25 feet from the lot line, since 1979. Mr. Yates said that this "informal" interpretation was reversing a longstanding practice and really put a cloud over all the requests that had been approved in years gone by, one of which was approved in September of 1991 in Sully Station with only a 25 foot setback from the edge of the pipestem driveway and not the lot line. He said that, while the Zoning Administration Office may have been consistent in its interpretation, it had not been consistently administered by the Department of Environmental Management over the course of the years. Mr. Yates said that it was only the interpretation which made it necessary for this case to come before the BZA; notwithstanding that there were errors in measurements which led up to the construction of the house. Mr. Yates requested modification of the Conditions contained in the staff report, which he believed to be unfair and restrictive, requiring any future owner to come back before the BZA even to do as little as putting a dog house in the back. He said he would like to suggest some wording to negate the requirement. He asked that the BZA request staff to come forward with a formal interpretation or, preferably, an amendment to the provisions.

Mrs. Harris asked Mr. Fifer about a letter from the contract purchaser which stated that, when the foundations were being poured, they noticed that the house had been incorrectly sited and brought it to the attention of the sales person, who confirmed that it had been moved. Mrs. Harris pointed out that Mr. Fifer has said that the first time the builder knew there was an error was when the house was under shingle. She said that she believed this to be a contradiction. Mr. Fifer said that the main house was under shingle when the error was discovered. He said that the buyers elected to add the optional library and, at that time, it was discovered that the house was closer, as it is today, rather than what it was shown to be on the preliminary grading plan. He said that Mr. Yates was discussing moving the pavement to satisfy the custom as Van Metre and Dewberry & Davis understood it to be in the County and the industry; the setback was what was put into place, a part of the pavement was removed, so that the new addition which was called for in the contract could then be built in full compliance with the zoning Ordinance. He said it was at that point, considerably down the road, that the County's interpretation to the contrary was discovered. Mr. Fifer said that the error was discovered early, but the County's interpretation was discovered after the addition to the house was committed.

Mrs. Harris said that what had been represented by the contract purchasers was somewhat different that stated by Mr. Fifer regarding the shift in location and when it was noted. Mrs. Harris asked Mr. Fifer if they knew that the building had been shifted 3 feet and that the library could not be added because it was close to the pipestem. Mr. Fifer said that it was just one corner of the house which infringed upon the minimum side yard.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 91-C-066 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1992, with one modification to Condition 2: by putting a semi-colon at the end and adding,

"provided further that these Development Conditions shall not prevent the homeowner from adding an accessory structure, patio, deck or other improvements, in accordance with applicable provisions and interpretations of the Zoning Ordinance."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-066 by CENTURY OAKS LIMITED PARTNERSHIP, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling to remain 20.1 feet from lot line contiguous to pipestem driveway, on property located at 12622 Misty Creek La., Tax Map Reference 45-2((11))57A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 21, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and the specified single family dwelling shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions; provided further that these Development Conditions shall not prevent the homeowner from adding an accessory structure, patio, deck, or other improvements, in accordance with applicable provisions and interpretations of the Zoning Ordinance.

3. A revised grading plan and a revised Building Permit shall be submitted for review and approval by the Department of Environmental Management and the Zoning

Administration Division, and a Residential Use Permit shall be obtained prior to occupancy of the subject dwelling.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless the activity authorized has been legally established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1; Mr. Pammel abstained because of a conflict of interest. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 29, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 379, January 21, 1992, (Tapes 1&2), Scheduled case of:

8:30 P.M. THE CHURCH AT NORTHERN VIRGINIA-WHOLE WORD FELLOWSHIP & THE EDLIN SCHOOL, LTD., SPA 78-C-055-1, appl. under Sect. 3-E03 of the Zoning Ordinance to amend S-55-78 for church and related facilities to allow private school of general education, on approx. 17.9577 acres located at 10922 Vale Rd., zoned R-E, Centreville District, Tax Map 37-1((1))17,17A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Travesky replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that the property is located on the north side of Vale Road, between Fox Mill Road and Hunter Mill Road; contains approximately 18 acres; is zoned R-E; and developed with an existing church. She said that the proposed private school of general education began operation in the church facility in September of 1991, at which time the subject application process was begun. Ms. Dickey said that the surrounding properties on the north and west are zoned R-1 and are developed with single family detached dwellings or are vacant; to the east is Camp Crowell, a girl scout camp, which is zoned R-E; to the south is the Berryhill Farm Subdivision which is zoned R-1 and is developed with single family dwellings under the cluster provisions of the Ordinance. She said that the applicants were requesting approval of a special permit amendment in order to amend special permit S-55-78, for an existing church and related facilities, to add a private school of general education for students from kindergarten through grade 8, to the existing church use. A maximum daily enrollment of 99 students is requested; the hours of operation would be from 9:00 a.m. through 3:15 p.m., Monday through Friday, during the months of September through June. She said that the maximum number of full-time employees present daily would be nine, plus three part-time employees, who would not all be on site at one time; no preschool or after-school care would be offered on site and there would be no food preparation at the site. Ms. Dickey said that The Edlin School, Ltd., would lease the church facility and there would no joint use of the church and the school during the days that the school is in operation; no new construction or alteration of the existing site is proposed in the application and the Floor Area Ratio would remain 0.04. She said that the applicants had also requested a modification of the transitional screening and a waiver of the barrier requirements along all lot lines, in favor of existing and supplemental vegetation shown on the special permit amendment plat submitted with the application. She said staff concluded that the proposed addition of the private school to the existing church and related facilities is in harmony with the Comprehensive Plan, and satisfies all the general standards and the additional standards for private school use. For the foregoing reasons, staff recommended the approval of SPA 78-C-055-1, subject to the adoption of the Proposed Development Conditions contained in the staff report. Ms. Dickey noted that the Conditions incorporated all applicable conditions of the previous special permit approvals for the existing church facilities.

Mrs. Harris asked Ms. Dickey if the septic field would be adequate for the 99 students. Ms. Dickey said that the County Health Department did not answer that question precisely as Mrs. Harris had asked it, but they did state that the building for the church and the school must remain on the public water system and on the approved sewage disposal system, causing her to assume that it was adequate.

Marie B. Travesky, Esquire, 3900 Jermantown Road, Fairfax, Virginia, represented the applicant.

Mr. Pammel referred Ms. Travesky to a question which he had earlier addressed to staff, regarding the posting of the property. He said that he had been out to the site that afternoon and saw no indication whatsoever of posting on the property. He said that he had subsequently been informed that there had been posting at some point in time, but he needed someone to certify that the posting had been done. Ms. Travesky confirmed that there had been a sign on the property and it had been in the front of the property, toward the right hand side. Mr. Pammel asked if Ms. Travesky could remember when the last time was that she saw the sign in place. She said that she had been at the site about two weeks ago and the sign had been there at that time.

Ms. Travesky said that Edlin School had been operating a school for 40 children at Fair Oaks Community Church on West Ox Road since 1989 and they, themselves, had suggested restrictions to transport students by van and by cars through the teachers. They agreed to operate out of peak traffic periods and she said they had lived up to all of the conditions of the Special Permit at that location and have received no complaints from the County or the neighbors. She said that, because they are allowed to have only 40 students there, they are in the process of having to expand, and this application asks that they be allowed to put 99 students on this particular site. Ms. Travesky said that they have offered to transport the students by van and through carpools with the teachers, as they have previously done; their hours are outside of the peak period from 9:00 a.m. through 3:30 p.m. and over 85% of the present students at Edlin School are from a two-mile radius of the proposed site, which they expect to continue. She said that the usual concerns of a community are about traffic and noise, and the applicant understood that and had tried to address those concerns. She said that the neighbors had been invited to a meeting to hear an explanation of the application and discuss particular issues. She said they believed that a more ideal setting could not be found for a school; the site is 18 acres in size. She distributed maps showing the distances between the buildings and the adjacent property lines, and the buildings and the play areas and adjacent property lines. She said that there are many trees on the property and the applicant has agreed to mark them to prevent any additional clearing or grading; the property lines are heavily treed and the buildings form an angle and, within that angle, there are two areas where the children will play, shielded from the street and from the neighbors. Ms. Travesky said that the small children will be in the log cabin building, 500 feet away from the nearest adjacent property line; the closest corner of the building to a property line is over 75 feet, and that is the Walker property, where there is a tall wood fence that signifies the demarcation. She said that, at full capacity, the school will operate four vans and the remainder of the students would arrive in carpools. Ms. Travesky said that the traffic count in 1989 at the Vale Road location, done by the Virginia Department of Transportation (VDOT), was 4,016 vehicles per day; at the school the applicant operates at West Ox Road, a 1985 traffic count showed 18,000 to 20,000 vehicles per day. She said that the church which they would be occupying has a seating capacity of 430, and 127 parking spaces, and was a very minute part of the church community that would be using the facility. Ms. Travesky said that, in 1975, the addition of a classroom and assembly hall to the existing church was approved; in 1977, approval was received for a classroom and a sanctuary, and no limit was placed on the number of students allowed in the various buildings belonging to the church; they have very large, beautiful, extensive libraries in both buildings, which could accommodate a large number of students. She referred to the staff report indicating that the applicant met all of the necessary criteria.

The following people spoke in favor of the application: Linda Schreibstein, Director, 12506 Rock Chapel Court, Herndon, Virginia; Elayne Mellman, Director, 2802 Brei Hill Road, Oakton, Virginia; Steven Cox, 12400 Pine Court Road, Reston, Virginia; Jean-Giles Tchabo, 3216 Upper Wynnewood, Herndon Virginia; Michael Macrina, Physical Education Teacher at Edlin, 738 N. Madison Street, Arlington, Virginia; Kathryn Budd, Sally Bauer, 10030 Beacon Pond, Burke, Virginia; Marilyn Phillips, 11423 Vale Spring Drive, Oakton, Virginia; Gilda Rosenthal; Melody Lewis and Josh Lewis, 2915 Meadowview Road, Falls Church, Virginia; and Pastor Don Friedly, 3811 Oliver Avenue, Annandale, Virginia. They spoke of the ample space allowing the activity of the children to be far enough away from other people's property, the beauty of the natural grade and the way the buildings are set up, the tree lines, the safety of the children, and the contention that the school did not generate any more activity or noise than an average neighborhood street. Some spoke of car pooling and delivering the children in groups, as well as the lack of traffic at the time of transporting the children.

In answer to a question from Mr. Hammack, Ms. Mellman said that the junior high school would remain at West Ox Road and the main school would be at the subject location. Mr. Hammack said he recalled reading in the staff report that the school would be transporting children from one location to another by van and Ms. Mellman said that, at the present time, they have been having to do that in order to give them access to the computers. In the future, they hope to have two computer labs.

Ms. Mellman said that the children now are picked up by vans and transported to the schools to avoid causing unnecessary traffic. Mr. Macrina, the Physical Education Instructor at the school, said he has a B.A. in Physical Education (PE) and is half-way through his M.A. in Health. He spoke of the activities of the children in PE class outside, stating that the kindergartners had barriers between the two buildings and a fence, squaring it off; the first through sixth graders had PE in a rectangular area off to the side of the kindergartners; the seventh and eighth graders would be at West Ox Road. Mr. Macrina said that the children did not attend PE classes every day, only approximately three times a week, and were not outside more than two or two and one-half hours per day.

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Mr. Hammack asked Mr. Macrina what was done in the bad weather. Mr. Macrina said they stayed inside during bad weather. Mr. Hammack asked if there was recreation space provided inside and Mr. Macrina said they had a large area called a multi-purpose room, which was adequate for twelve students to participate in a PE class. He said that the children are very well supervised when outside and class is conducted in a learning mode, not to be construed as playtime. The PE classes are conducted approximately 249 feet away from the pond on the property, and the kindergarten PE class is conducted 420 feet away.

In answer to a question from Mrs. Harris, Mr. Macrina said that the seventh and eighth graders would be playing at the West Ox Road location. Mrs. Harris pointed out that the amendment included kindergarten through eighth grade and asked if the seventh and eighth graders would be transferred to the other location. Ms. Travesky said that the applicant had approval for kindergarten through eighth grade at West Ox Road and would like to have the same approval at the current site, allowing the flexibility to move classes from one location to another, in the future. She said that the children located at West Ox Road would have PE there and the children located at Edlin School would have PE at that location. Ms. Travesky said that the children are not moved from one location to another to take any classes. She said that, at the present time, they have to be moved because of the computer labs; this will not be necessary later on. Mrs. Harris asked why both schools needed to have the flexibility to have the same classification of students. Ms. Mellman said that they wished to provide for any changes in the future.

Mr. Pammel referred back to a question which Mr. Hammack had asked earlier and said that they both were confused about the letter to Ms. Travesky, dated September 30, 1991, from the Health Department, wherein they stated that this particular school does not come under the County requirements of Chapter 30. He said the letter went on to state that they understood that the children are not under the age eligible for enrollment in Fairfax County Public Schools. Ms. Travesky said that was because, at the present time, it is possible under certain circumstances to register children before they are five years of age. She said that the children would not be registered in this instance until they are five years old.

Mr. Kelley asked, since food is not provided, if lunches were brought by the students and Ms. Travesky confirmed that was true, including beverages. She said that there was a cafeteria and a small family-size refrigerator available to the students.

Mr. Ribble asked Ms. Travesky to confirm that no students would be transported from school-to-school, whether it be for PE or lab, and she did confirm it.

Mr. Hammack noted to Ms. Travesky that the carpool and transportation arrangements were rather unusual and one of the speakers had stated that he transports his children to the school and never has problems turning; yet, one of the Development Conditions requires the teachers to pick up and deliver all of the children not transported by vans, which does not appear to be happening at this time. He asked her how she intended to enforce the Condition. Ms. Travesky said that it had been enforced at the other location but, since moving to the new location, they do not yet have everything in place. She said that they have one van and will be buying another van, pointing out that the Development Conditions speak of a progression; wherein, at certain points, they must take certain action. Mr. Hammack said that the reference was to four vans right now. Ms. Travesky said that it meant when there were 99 students, as the present number of student did not require four vans.

Mrs. Harris said that it appeared to her that all of the speakers were transporting their own children; whereas, it had been stated that the School had committed to having vans and teachers transport the students. Ms. Travesky said that the School had committed to transporting children when they receive approval and when they commenced operations on the site. She referred to Condition 16 and said it is obvious that, if a parent lived in Reston and took a route which passed the homes of four other students, the applicant would prefer to have the parent bring the four students in than to send a teacher out who may live next door to the School; the Condition states that the other children will use eight carpool vehicles; the applicant would see that teachers transport the children every chance they get, because that is what they do at West Ox Road.

Mrs. Harris said that it appeared to her that the applicant had committed to having no more than four vans and eight cars transporting all the students and, in turn, they would not be required to install a left turn lane. Ms. Travesky said that was correct. Mrs. Harris asked what assurance was given that there would be four vans and eight teachers. Ms. Travesky said that the applicant had been asked to explain how the transportation would be handled and, in the conditions which the applicant had submitted to the County, the applicant stated that they would use vans and carpools which usually would be operated by the teachers. Mrs. Harris read the Condition, stating, "...if the applicant is willing to commit to these changes. The left turn lane recommended in the transportation impact report dated...will not be warranted..." Mrs. Harris asked what would happen if the applicant did not live up to the commitments. Ms. Travesky said that, if there were only eight vehicles, in addition to the four vans, coming in, she said she did not see that it would matter whether the drivers were teachers or not teachers. Mrs. Harris said that, so far, four parents had stated that they drove in the carpool, transporting six children in four cars. Ms. Travesky said that she only recalled one man saying that he transported four students. Mrs. Harris said that one lady said that she transported three, one man said that he transported one son, and she said she found this confusing. Mrs. Harris said she recalled that the Office of Transportation

would not recommend having a left turn lane if the number of trips were kept to a limited number. Mrs. Travesky said that the trips have been kept to a limited number and will continue that way; that was the reason for the carpools.

Mr. Hammack said that he was concerned because the School now was operating without a permit, and it was operating contrary to the conditions that the applicant had committed to. Ms. Travesky said that the School did not have a full program at the present time, but was only conducting a very limited program. She said that she did not know what the BZA wanted of the applicant, but she was sure that if the BZA asked them to operate only by teacher carpools, as of next week, they would be willing to do that. She said that, if approval were granted, that is what they would be required to do.

Mr. Hammack pointed out that the applicant was operating without approval at the present time. Ms. Travesky acknowledged that fact and said that, as soon as the applicant began the operation, they immediately filed an application to become legal, which she believed to be the normal thing to do. Mr. Hammack said that was in reverse order. Ms. Travesky said the application was filed ahead of time and they had tried to get an expedited hearing but, for some reason, the hearing was not scheduled for four months.

Mrs. Thonen said that she was concerned with a parent gathering children and transporting them to the School and changing it to having a teacher transport them to the School, because she did not see how that would cut down on traffic. Mrs. Thonen said that the object of the BZA was to impose carpooling and transportation by vans; they did not want cars driving up with only one student.

Ms. Travesky read what the applicant had agreed to do: "Students will be offered van pool service as they are at the Fair Oaks site. The vans and carpools will arrive outside of the peak periods and leave outside of the peak periods. At maximum enrollment, the School will own and operate four vans, each accommodating 17 students and each will make one trip to and from the site each day. Assuming the School owns four vans, the remaining 32 students will be accommodated in carpools of 2 to 5 students each, or approximately 11 cars which are, insofar as possible, driven by teachers at the school." Mr. Hammack said that the Development Condition did not say, "insofar as possible," and that was what he was trying to clarify, without being unfair; however, the Development Conditions were to be complied with. Ms. Travesky read the Development Condition: "...In addition, the teachers shall transport the remainder of the 99 students to and from the subject site in private vehicles, in order to reduce the number of vehicles accessing the site....." She said they would do that, unless it is absolutely impossible. Mr. Hammack said that what he objected to was, "unless it was absolutely impossible," because that was not what the Development Condition said. Mr. Hammack said that the applicant had agreed to the Conditions in an exchange of memoranda with the Office of Transportation, in order not to be required to construct a left turn lane, which otherwise would have been required. He said that the applicant would have to agree unconditionally, and not "unless it is impossible," unless they wished to install a left turn lane. Ms. Travesky said that the County added "only by teachers." She said the applicant did not say that because they were not sure that it would be 100% possible, but they knew they would vanpool or carpool and not have single students transported. She said that they were willing to accept that condition, wherein it is stated that, "teachers will drive in the carpools."

Mr. Ribble asked if Mr. Hammack could work on clarifying the text of the Condition while the BZA heard from the other speakers.

The following people spoke in opposition to the application: Robert Rice, 10932 Stuart Mill Road, Oakton, Virginia, whose property backs up to the Church property, also speaking for Bob Paris, Jim Gurtin, and Dr. Daniel Rooney of Lot 25, all of whose property also backs up to the Church property; Lou Kriser, 2505 Lakevale Drive, Vienna, Virginia, Lot 21 currently occupied by his son, written statement is on file; Roland Stecher 10937 Stuart Mill Road, Oakton, Virginia. The speakers were concerned about statements like, "will offer to carpool," "van service," or "will make every effort," which do not really mean anything. Other concerns were that the school had been in operation since September 1991 and was seeking permission from the BZA in January 1992; that there had been no notice to the neighborhood of the planned increase in enrollment; that there are unresolved safety factors outlined in the staff report; that the roads running off Vale Road and the immediate area are substandard; hearing that parents are transporting children to school; in 1989, the Virginia Department of Transportation (VDOT) counted 4,016 cars, with every possibility of an increase; that there is a two-acre pond on the site with no discussion of how the children will be protected; that the Comprehensive Plan would be impacted as it was amended for 0.2-0.15 dwellings per unit; that the property is zoned residential and had never been zoned for a seminary; that the School is a money-making corporation; that there is a potential for escalation of the number of students; that the School is a commercial entity in a residential area, and has no affiliation with the Church; that emphasis is being placed on the quality of the school which is not related to the land use issues; that the School is an intrusion and not in accordance with the Comprehensive Plan; that, on the plat, the playground is shown to be between the two school buildings, but there is another play area indicated to the right of the computer building; however, there is a very pretty play area near the church, which is very close to the residences, which is not shown on the plat; that there is something wrong with the figures given by the applicant in its statement; Fairfax Christian made a similar application a year ago, just down the street, and was denied; that the application made

comments about taking children out to racquetball and swimming, which will cause more traffic; that the Girl Scouts recently had filed an application to increase their attendance to 500 in the summer; and current residents initially moved into the neighborhood because there was no traffic and it was quiet.

Mr. Pammel asked Mr. Stecher what grades Fairfax Christian had been including in their application. Mr. Stecher said that he believed they went up to high school. Mr. Stecher said that, with rain or snow, the road was unsafe.

Ms. Travesky spoke in rebuttal to the opposition, stating that on December 23rd, they sent a letter out to the people they were able to identify in the community that they could identify from the tax map, inviting them to a meeting. She said that the applicant is willing to live with Condition 16, and has no problem with having 4 vans and teachers doing the carpooling. Ms. Travesky said that, if the BZA was uneasy about the 99-student figure, they were willing to talk about it; that there are seven springs in the back of the property and the children do not use that area; and that the school does not use playground equipment as a part of their operation. Ms. Travesky said that, when Edlin School began operating at the West Ox Road location, it was necessary for them to operate for profit for financing reasons. She said that they had instructed their attorney to take the necessary steps to change their status to non-profit, which was in the process of being done. Ms. Travesky pointed out that Edlin is a small school on a huge piece of property, with a huge Girl Scout bordering on their property.

Mrs. Harris made a motion to grant SPA 78-C-055-1 for the reasons outlined in the resolutions, subject to the Proposed Development Conditions in the staff report dated January 14, 1992, as amended. She referred to the gentleman who had said that the concerns here were not about the quality of the education being given by the School, but land uses as they applied to the property involved. Mrs. Harris changed the maximum enrollment from 99 to 50 in Condition 8 to lessen the impact upon the surrounding neighbors and the traffic generated. She reviewed Condition 16, stating that she did not believe there was any way that the BZA could hold the School to complying with the Condition. She said that she did not believe that Zoning Enforcement could sit outside the property and check that no more than 4 vans and 8 cars drove in and out of the school. Taking into account that children forget their lunch and have dental appointments, etc., she said it would be foolhardy of the BZA to believe that there will be only 12 vehicles going in and out of the facility in one day. Mrs. Harris said that she had looked at the plat in great detail and the property is set back enough so that a left turn lane could be installed. She said she believed that, in writing about this site and the amount of traffic generated, VDOT stated that, with the character of the surroundings and the existing roads, they recommended a left turn lane. She said that it was only with the School's strict stipulation that they would agree to 4 vans and 8 full-time teachers transporting the other 31 students that VDOT had not recommended a left turn lane. Mrs. Harris said she believed that the left turn lane would eliminate any backup on Vale Road; it is very close to a sharp turn, and it would not be wise to have cars backing up in that area. Mrs. Harris summed up by saying that, if the left turn lane were put in, with the reduced number of enrollment, the transportation problem would be diminished. Mrs. Harris recommended adding Condition 18 to read: "This special permit is for a term of five (5) years." Mr. Hammack seconded the motion and asked Mrs. Harris what she would do with Condition 16. Mrs. Harris said she would delete it; she believed that a left turn lane was sufficient, and it was not necessary to stipulate how many vans and cars go in and out of the School.

Mrs. Thonen said that she objected to a left turn lane for 50 students, saying she did not believe that it was feasible. She said that either the student enrollment should be increased, or the left turn lane should not be required. Mrs. Harris asked Mrs. Thonen what number of students she would be comfortable with. Mrs. Thonen said that she did not know what the cost of a left turn lane would be, nor how long it would take to have the left turn lane installed, or if the left turn lane would encourage an increase in traffic. Mrs. Thonen said that the applicant appeared, at least presently, to be using carpools and vans and she believed that, instead of building highways, it was better to keep the cars off the roads. Mrs. Harris asked how they could be regulated. Mrs. Thonen said that she believed that it had been regulated satisfactorily until the request was made for a new school. She said that, after they first opened, she had checked on the School regularly; but she had not done so recently, because she had not been seeing cars without at least four children in the cars and she believed that was doing very well for a carpool.

Mr. Pammel said that he had visited the subject site that afternoon at about 4:30 p.m. and he did not see that much traffic at that time. He said he would admit that Vale Road was not one of the better roads in the County, but it is a decent hard-surfaced road. Mr. Pammel said that he agreed with the staff's appraisal, that it is a rather substantial facility, with a large church and more-than-adequate space, and he believed that the request for 99 students was reasonable. He said the applicant had made certain commitments and had addressed the transportation issue by providing vans. Mr. Pammel said he believed that the applicant had done everything they could do to address the major issues, that the site could easily accommodate 99 students and probably many more, but he would stand fast on the limit of 99 because he believed it was reasonable. He said he would not support the motion.

The motion failed by a vote of 3-3. Chairman DiGiulian, Mrs. Thonen, and Mr. Pammel voted nay.

Mr. Pammel made a motion to grant SPA 78-C-055-1 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 14, 1992, as amended. Mr. Pammel added Condition 18, which states: "This special permit is for a term of five (5) years."

Mrs. Thonen seconded the motion, stating that she recalled discussing the transportation issue at great length and coming up with what was thought to be a very good transportation plan; it bothered her that the balance of the students would be picked up by the teachers. She said that the reason it bothered her was that the teachers would be required to drive out to pick up the students and drive back with them. Mr. Pammel said that he could add the wording, "...in approved carpools." Mrs. Thonen suggested stipulating that a carpool should have at least four riders. Mr. Pammel said that he would amend his motion to include "...in approved carpools, with a minimum of four riders..." in Condition 16.

Mr. Ribble asked if the maker of the motion would consider a lower number of students. Mr. Pammel said that he would not, because the number is justified as the site consists of 18 acres, which is more than the acreage of most applications the BZA sees before them. He mentioned an application not too long ago on Kirby Road, which precipitated a great deal of discussion and was on a much smaller site; approval was granted for close to the number of students now being considered. Mr. Ribble said that the same opposition was expressed about that application. Mrs. Thonen asked Mr. Pammel if he would change the maximum enrollment to 75 and the applicant could return later, if necessary. Mr. Pammel agreed to amend his motion and make the number 75.

Mr. Hammack said he believed that they were introducing a commercial school into a residential area, which the master plan says should be strictly maintained as residential; it is not a church-related school or a function of the church; the quality of the school is not an issue here. He said he had reservations about bringing this large an operation in, which seems to be contrary to the Comprehensive Plan, notwithstanding the existing facilities. He said he believed there was a problem with the transportation and was not satisfied with any of the arrangements discussed; he knows that section of Vale Road and drove in that area frequently; he said he believed there was a lot of traffic and some potential hazard in adding more vehicles per day. He said he would much rather see the approved enrollment at 50 and take a look at it in the future to see if there were compliance problems.

Mr. Ribble said that he had some difficulty with approving the application, considering the statements made by the other BZA members and the intrusion factor. He said that he had traveled on Vale Road and had seen a lot of traffic, although Mr. Pammel said he had been out there that day and saw very little traffic and he believed that to be true. He said he also had difficulty with the intrusion into the neighborhood, considering the opposition, and what he believed to be a commercial venture, whether it was called profit-making or non-profit.

Mrs. Harris said she believed that Mr. Ribble was saying that, if the number of students were brought down, the applicant could always come back before the BZA. She said that she would forgo the left turn lane, since the applicant would be using only 4 vans and 8 cars, although she thought the use was too intense.

The motion carried by a vote of 4-2; Mrs. Harris and Mr. Hammack voted nay. Mr. Kelley was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 78-C-055-1 by THE CHURCH AT NORTHERN VIRGINIA-WHOLE WORD FELLOWSHIP AND THE EDLIN SCHOOL, LTD., under Section 3-E03 of the Zoning Ordinance to amend S-55-78 for church and related facilities to allow private school of general education, on property located at 10922 Vale Rd., Tax Map Reference 37-1((1))17, 17A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 21, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land
2. The present zoning is R-E.
3. The area of the lot is 17.9577 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

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THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Walter E. Phillips, Inc., dated September 5, 1991 as revised through December 27, 1991) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. Hours of operation of the church shall be limited to the hours of normal church operation.

6. The maximum number of church seats shall be limited to 430.

7. There shall be no concurrent use of the existing facility by the church and the private school of general education. The church office shall remain open for use by the church pastor and administrative staff during hours of operation of the private school of general education.

8. The maximum daily enrollment of the private school of general education shall not exceed seventy-five (75) students, ages five (5) to fourteen (14) years, enrolled in grades kindergarten through eight (8).

9. The maximum number of employees of the private school of general education shall be limited to twelve (12) on-site at any one time.

10. Hours of operation of the private school of general education shall be limited to 9:00 a.m. until 3:15 p.m., Monday through Friday, during the months of September through June. No students shall arrive prior to 8:45 a.m.

11. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum and a maximum of 127 spaces, per Department of Environmental Management (DEM) approval. All parking shall be on site as shown on the special permit plat and shall be designed according to the Public Facilities Manual (PFM) requirements.

12. Transitional Screening shall be provided along all lot lines as shown on the special permit plat with supplemental evergreen plantings at least six (6) ft. in height added along the lot line in common with Lots 18 and 19. The type and location of supplementary plantings shall be reviewed and approved by the Urban Forester.

13. Interior parking lot landscaping shall be provided in accordance with Article 13.

14. Barrier requirements shall be waived along all lot lines in favor of the natural existing vegetation and supplemental evergreen plantings as shown on the approved special permit amendment plat, as reviewed and approved by the Urban Forester.

15. The limits of clearing and grading shall be established as shown on the approved special permit amendment plat prepared by Walter A. Phillips, Inc., dated September 5, 1991 as revised through December 27, 1991.

16. Four vans, each capable of carrying a minimum of seventeen (17) students, shall be operated by the applicants to transport students to and from the subject site. In addition, the remainder of the 75 students shall be transported to and from the subject site in approved carpools, with a minimum of four riders, in order to reduce the number of vehicles accessing the subject site to a minimum. A minimum of one (1) van and eight (8) carpool vehicles shall be instituted to accommodate the beginning enrollment of fifty (50) students and that one (1) additional van be added as the enrollment increases beyond fifty (50) students with each increment of seventeen (17) students.

17. The existing facility shall remain connected to public water and the previously approved on-site sewage disposal system.

18. This special permit is for a term of five (5) years.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator Orior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 4-2; Mrs. Harris and Mr. Hammack voted nay. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 29, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 386, January 21, 1992, (Tape 2), Action Item:

Approval of Resolutions from January 14, 1992 Meeting

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 386, January 21, 1992, (Tape 2), Action Item:

Approval of Minutes from October 22, November 11, and November 19, 1991

Mr. Pammel referred to page six and of the minutes from November 11 and said that, at the bottom of the page, where it said that "...Mr. Kelley moved...," it should say that "...Mr. Pammel moved...." He said that Mr. Kelley seconded the motion. Mr. Pammel made a motion to approve the minutes with that correction. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 386, January 21, 1992, (Tape 2), Policy Item:

Request for Out-of-Turn Hearing
BHP Associates, Ltd. Partnership, SPA 79-S-298-1

Chairman DiGiulian said he believed that this request was for the BZA to take action to allow a change of ownership, without having to appear at a public hearing. Mr. Donnelly came forward to represent the applicant, referring the BZA to a letter which had been distributed to them. Chairman DiGiulian said that Mr. Donnelly had made a good point in his letter. Mrs. Harris asked if there was not a procedural change through which a change in name only could be granted. Chairman DiGiulian said he believed the BZA could grant a change in name, but not a change in ownership. Mrs. Thonen said that she believed that, if the applicant was a corporation, that also made a difference.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the applicant did not come under either of the above categories but, as Mr. Donnelly said in his letter, even though the special permit Resolution had said that it was granted to the applicant only, it further said that it cannot be changed without further action of the BZA. She said she had discussed with Mr. Donnelly the issue of what was meant by further action of the BZA; Ms. Kelsey said that, heretofore, it had meant a new application would need to be submitted to change the permittee and Mr. Donnelly questioned why it had to mean that. Ms. Kelsey said that he had a good point and he wrote the letter accordingly. Ms. Kelsey said that, based on that, it seemed a reasonable request to bring before the BZA.

Mrs. Thonen said that she could go along with changing the permittee, but could not go along with saying that the permit went with the land and not with the owner, because that would

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cause a lot of problems. Chairman DiGiulian said he believed that this permit went with the land; that it was a land use decision. Chairman DiGiulian said the Resolution stated that the special permit was granted to the applicant only, but also stated that the applicant may allow operation of the use by a lessee; if nothing changes in the building or the terms and Conditions of the special permit, he believed that the BZA could, as an after agenda item, grant the change of ownership, without affecting the operation at all.

Mrs. Harris said that she could go along with a change of permittee, but not that the special permit went with the land. Chairman DiGiulian said he believed it did run with the land.

Mr. Hammack said that he believed the County Attorney's Office believed the Conditions to be as weighty as lead and wondered if the County Attorney had an opinion. Ms. Kelsey said that the County Attorney's Office had not been contacted about this specific case, but previously had recommended that the BZA do away with Condition 1 in most cases, on a case-by-case basis and not on a broad scale. She said that, in this case, the applicant came in a few years ago and asked that Parkway Veterinary Clinic be deleted from the application to allow BHP, the owner of the property, to be the applicant and, thereby, be able to lease it to anyone in the future. She said that she had been with the BZA many years, so she knew that one of the reasons why the BZA wanted the special permit granted to the applicant only was so that the applicant would be the actual person who would be operating under the special permit and be aware of the Conditions. In this care, the lessee would be no more aware of the Conditions than a new owner would be; therefore, allowing leasing the property to another entity would not solve the problem which started out to be the reason why the BZA granted the special permit to the applicant only.

Mrs. Thonen made a motion to grant a change of permittee to the Community Center Fund II, L.P. (the "Fund") which had recently contracted to purchase the Burke Center Shopping, including the site of the Parkway Veterinary Clinic; the Conditions which were previously imposed shall remain in effect. Mr. Pammel seconded the motion. It was confirmed that, in this case, the permittee was also the owner. Chairman DiGiulian said he believed the wording in Condition 1 should be taken out: "This special permit may not be transferred to another owner without further action of the Board." Mrs. Thonen, however, said that her motion and Mr. Pammel's second of the motion constituted action by the Board.

Bill Donnelly said that he was not asking the BZA to amend the Condition, because he knew that a Condition could only be amended by filing for a special permit, but the Condition does say that by further action of the Board, it can be transferred. He said he was asking the BZA to take that action as an Action Item. He said that, because the contract would not close until this action was approved, he did not wish to have the BZA transfer it to the prospective buyer until they own it. He asked the BZA to say that, "In the event that the Community Center Fund II, L.P. (the "Fund") acquires the subject property, SPA 79-S-298-1 shall be transferred to the Fund, who may allow operation of the use by a lessee." He said this was a precaution to avoid having to transfer the special permit back to the original owner in the event that the sale was not comsummated.

Mr. Pammel asked Mr. Donnelly, if the BZA approved this change, would he then finalize the negotiations with his client. Mr. Donnelly said that the closing of the transaction was being held up for this approval. He said that he expected that the closing would be held in several weeks, if not sooner.

Mr. Hammack said that the BZA had been told by the County Attorney's Office that they could not give conditional approvals. Mr. Donnelly asked: If the special permit was based on Conditions, was that not conditional? Mr. Hammack said he would prefer to defer this action for another week and he would work up some language to try to accomplish what Mr. Donnelly was requesting, with doing a disservice to the rules. Mr. Hammack asked when the settlement was scheduled for. Mr. Donnelly said that he had been told by the other party's attorney that this was the last issue of any consequence. A discussion ensued regarding a solution.

Ms. Kelsey said that what the BZA has previously done for builders who were building recreational facilities was to say that the special permit may be transferred upon the transfer of this property to "whatever the new owner's name is." A discussion took place regarding the acceptability of this wording.

Mr. Hammack made a motion to include the wording: "At such time as the Community Center Fund, II, L.P. (the Fund) acquires the subject property, SPA 79-298-3 shall be transferred to the Fund, who may allow operation by a lessee."

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 387, January 21, 1992, (Tape 2), Action Item:

Request for Approval of Plat
Belva J. Warner, VC 91-D-101

Approval was granted on November 26, 1992, to become official on the date of acceptance of the revised plat by the Board of Zoning Appeals. The applicants had requested a 26 foot

garage and the BZA had granted approval for a 22 foot garage. Ms. Kelsey said that Chairman DiGiulian had the one copy of the revised plat which had been submitted by the applicant for approval. Mr. Hammack made a motion to approve the revised plat for VC 91-D-101, submitted by the applicant, for a 22 foot garage. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-101 by BELVA J. WARNER, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 5.6 ft. **(THE BOARD GRANTED 9.6 FT.)** from side lot line, on property located at 6723 Weaver Ave., Tax Map Reference 30-4((17))153A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 26, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,641 square feet.
4. The lot has exceptional topographic conditions resulting in a water drainage problem.
5. Strict application of the Ordinance would produce undue hardship.
6. The character of the zoning district will not be changed by the granting of the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

Page 389, January 21, 1992, (Tape 2), APPROVAL OF PLAT, BELVA J. WARNER, VC 91-D-101, continued from Page 388)

1. This variance is approved for the specific garage addition to the dwelling shown on the plat (dated July 26, 1991) prepared by Kenneth W. White and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The water drainage system will be constructed by the applicant in a manner which shall not adversely affect the contiguous property owners.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and shall become final on January 21, 1992, the date the new plat was approved by the Board of Zoning Appeals. This date shall be deemed to be the final approval date of this variance.

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Page 389, January 21, 1992, (Tape 2), Action Item:

Request for Intent to Defer
George M. Neall, II, Trustee, SP 91-V-065

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the request for deferral was from the Planning Commission, but the applicant did not agree; they said they wanted to consider it, but they had not given verbal approval. Chairman DiGiulian asked if the BZA needed the applicant's approval and Ms. Kelsey advised that they were close to the 90 day limitaion for making a decision on an application. Mr. Pammel made a motion to proceed with hearing the application as scheduled on February 4, 1992. Mr. Hammack asked what the reason was for the special permit. Ms. Kelsey said that the property is in the Lorton area, and the Comprehensive Plan had very specific language for the particular area; the staff report had been prepared, but it would not be delivered to the BZA until the following week, and it was scheduled for public hearing the week after that. Chairman DiGiulian asked if he was correct in believing that the Planning Commission had not pulled the case within the thirty day period. Ms. Kelsey said that was correct; the Planning Commission was not aware of the p anning implications and the fact this was an area where the Comprehensive Plan had been recently amended, until it was brought to their attention. The motion to go forward carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 389, January 21, 1992, (Tape 2), Information Item:

Request for Interpretation
Groveton Baptist Church, SP 88-V-079

Mr. Pammel asked if this permit could receive an extension. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that, since this was an Information Item, she did not have all of the information on it; however, she did discuss this matter with Lori Greenlief, Staff Coordinator, who had been involved with the original approval. She said it appeared that the applicant never had received site plan approval and the Non-Rup, so the use had not become legally established. Mr. Pammel said that, in terms of the BZA Conditions, they will not have commenced construction by the time the permit had expired. Ms. Kelsey said that Ms. Greenlief was going to advise them to request additional time. Chairman DiGiulian asked if there was sufficient time for them to request additional time and Ms. Kelsey said there was.

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As there was no other business to come before the Board, the meeting was adjourned at 11:10 p.m.

Geri B. Bepko
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: April 9, 1992

APPROVED: April 14, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 28, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:18 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 391, January 28, 1992, (Tape 1), Scheduled case of:

9:00 A.M. KOREAN PENIEL PRESBYTERIAN CHURCH, SP 91-S-053, appl. under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities on approx. 2.5047 acres located at 11927 Braddock Rd., zoned R-C, WS, Springfield District, Tax Map 67-1((4))41. (DEFERRED FROM 12/3/91 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Mittereder replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report and said that the applicant was requesting approval of a special permit for a church and related facilities. She noted that the staff report dated November 26, 1991, recommended denial. Ms. Dickey said that the revised plat was identical to the original special permit plat except for relatively minor changes to the proposed locations of the structure, parking lot, and stormwater management pond. Ms. Dickey stated that in staff's evaluation, the changes resolve none of the substantial issues associated with the application. She noted that the overall design, the intensity, the amount of impervious surface, screening along the side lot line, and the landscaped areas of the proposed use had not changed. She further noted that the proposed use would still landlock one residential lot between two non-residential uses.

Ms. Dickey stated that in order to meet WSPOD water quality standards, the applicant had committed to retaining more of the site as undisturbed natural vegetation. She explained that the applicant had accomplished this by redesignating previously proposed open space and landscaped areas, rather than substantially increasing the amount of total open space. Ms. Dickey noted that the minor revisions to the special permit plat did not affect staff's position that the proposed use would not be in harmony with the Comprehensive Plan and would not meet the purpose and intent of the R-C District. Ms. Dickey stated that staff continued to recommended denial.

In conclusion, Ms. Dickey noted that should the BZA approve the application, revised development conditions dated January 21, 1992, had been submitted to the BZA. She explained that the revision were necessary because of the changes to Conditions 9 and 11.

The applicant's agent, Mark Mittereder, 4300 Evergreen Lane #306, Annandale, Virginia, addressed the BZA. He stated that the applicant had worked very hard to resolve staff's concerns and noted that the plan had been revised in order to appease staff. Mr. Mittereder said that although he understood staff's position, he disagreed on a number of points. He explained that he believed the most recent revisions had contained substantial changes to the plan. He noted that the storm water management area had been moved; the building width had been reduced by three feet; and the screening on the eastern and western portion of the property had been maximized. Mr. Mittereder expressed his belief that the application met the necessary standards. He explained that the location was excellent; there would be no traffic impact on the neighborhood; the property had good access to an arterial road; and the property was only one block from the proposed Fairfax County Parkway. Mr. Mittereder stated that the small 85 member church was requesting 250 seat capacity in order to provide for future expansion. He noted that the church would serve the neighborhood in which it was located.

Mr. Mittereder stated that staff's concerns regarding the environmental consideration were unfounded. He said that 58 percent of the site would remain as undisturbed woodland, and this along with the additional 14 percent landscaping would amount to 75 percent open space on the lot. Mr. Mittereder noted that there would be no traffic impact on the neighborhood; there was no community opposition; there would be no detrimental visual impact; and the size of the building would be in harmony with the area. In conclusion, Mr. Mittereder stated that the church would be beneficial to the community and asked the BZA to support the application.

Mrs. Harris expressed her concern regarding the cumulative effect of having four churches in the center of a residential area and asked what the seating capacity of all four churches would be. Mr. Mittereder said that although he did not know the seating capacity for St. Mark's Church, the Redeemer Christian Life Church had 600 seats. Mr. Mittereder stated that the proposed Virginia Department of Transportation (VDOT) plans for a six lane road would accommodate the uses. He noted that the plans were in the design stage.

Mrs. Thonen stated that although she was glad that Mr. Mittereder had faith in the future implementation of the Fairfax County Parkway, she could not share his optimism.

Ms. Dickey stated that, not including the application before the BZA, the three approved churches in the area would have 1,100 seats.

Chairman DiGiulian called for speakers to the request and the following citizen came forward.

Cris Fremuth, Principal of Dryad Design Group, a landscape/architectural firm, 4902 Cherokee Street, College Park, Maryland, addressed the BZA. He stated that he had consulted with Mr. Mittereder on the application. Mr. Fremuth said that the reason the applicant had requested modification of the screening on the north and south side of the lot was to ensure that the existing trees would be saved. He noted that the architect had placed the structure on the lot so that it would harmonize, both aesthetically and architecturally, with the surrounding area.

An unidentified member of the congregation addressed the BZA and said that the congregation was presently using other churches in the area for their services and asked that the BZA grant the request.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny SP 91-S-053 for the reason reflected in the Resolution.

Mrs. Harris seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that although he was sympathetic with the applicant, the primary issue was that the application was not in harmony with the Comprehensive Plan.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-S-053 by KOREAN PENIEL PRESBYTERIAN CHURCH, under Section 3-C03 of the Zoning Ordinance to allow church and related facilities, on property located at 11927 Braddock Road, Tax Map Reference 67-1((4))41, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the contract purchaser of the land.
2. The present zoning is R-C and WSPOD.
3. The area of the lot is 2.5047 acres.
4. Although the applicant has diligently strived to meet the requirements, the necessary standards have not been met.
5. The controlling factor is that the Lincoln-Lewis-Vannoy area is zoned for 5 acre parcels and the applicant has attempted to place a small church onto a very substandard lot.
6. The approval of an additional church in this residential area would have the negative impact of another institutional use in a confined area.
7. The long and narrow configuration of the lot does not lend itself to an institutional use and would intrude very deeply into the community.
8. In the long run, approval of the application would have a detrimental impact on the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Harris seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 1992.

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9:15 A.M. GREATER SPRINGFIELD VOLUNTEER FIRE DEPARTMENT #22, VC 91-L-113, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached structure 5.0 ft. from side and rear lot lines and 5.0 feet from right-of-way of principal highway, to allow addition 63.1 ft. from right-of-way of principal highway (25 ft. min. side yard, 25 min. year yard and 75 ft. min. distance from principal arterial highway required by Sects. 3-107 and 2-414), and to allow parking spaces to remain 0.0 ft. from front lot line (10 ft. min. distance from front lot line required by Sect. 11-102) zoned R-1 (proposed zoning change to R-3), Lee District, Tax Map 90-2((1))21A. (CONCURRENT WITH SEA 83-L-084-2 and RZ 91-L-024)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, John F. X. Ryan, 8203 Stationhouse Court, Lorton, Virginia, replied that it was.

Robby Robinson, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. He stated that a variance for the minimum separation of an interstate highway, a variance from the minimum side and rear lot requirements, and a variance for a parking lot too close to the front lot line were being requested. Mr. Robinson stated that the Planning Commission had approve the applicant's request for an expansion of the current site. He further stated that the Board of Supervisors had approved the concurrent applications. Mr. Robinson said that the enlargement of the existing fire station would allow the expansion of the facility for additional living quarters and office space.

In response to Mrs. Thonen's question regarding the Planning Commission hearing, Mr. Robinson stated the Planning Commission heard the 456 case in December 1991, and the Board of Supervisors had approved RZ 91-L-024 and SEA 83-L-084-2 on January 6, 1992.

In response to Mrs. Harris' question regarding the landscaping, Mr. Robinson stated that the landscaping proposed by staff had not been incorporated in the development conditions. He explained that the Planning Commission had deleted the proposed conditions.

The applicant's architect, Paul R. Erickson, with the architectural firm of LeMay Associates, 1821 Michael Faraday Drive, Reston, Virginia, addressed the BZA. He stated that the applicant had dedicated land for the road widening and the existing conditions reflected the situation. He noted that the fire station built in 1967, has had a number of additions in order to better serve the community. He further noted that although the former addition was to accommodate the community services, the present application was to expand the fire station.

Mr. Erickson stated that in order to serve the growing community, the fire station needed additional space for apparatus, living quarters, and storage. He noted that the use was unique in that it must accommodate large fire truck which need space to maneuver. Mr. Erickson stated that the unique needs of the fire station, along with the land deletion for road dedication have caused the need for the variances.

In response to Mr. Pammel's question as to whether the fire protection services to the community would be impaired if the variance were not granted, Mr. Erickson stated that they would.

Mr. Hammack asked if he was correct in his understanding that the Planning Commission had deleted some of the development conditions. Mr. Robinson stated that the Planning Commission had deleted one development condition regarding the landscaping.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel make a motion to grant VC 91-L-113 for the reasons reflected in the Resolutions and subject to the revised development conditions contained in the addendum to the staff report dated January 21, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-113 by GREATER SPRINGFIELD VOLUNTEER FIRE DEPARTMENT #22, under Section 18-401 of the Zoning Ordinance to allow detached structure 5.0 feet from side and rear lot lines and 5.0 feet from right-of-way of principal highway, to allow addition 63.1 feet from right-of-way of principal highway, and to allow parking spaces to remain 0.0 feet from front lot line, on property located at 7011 Backlick Road, Tax Map Reference 90-2((1))21A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.98 acres.
4. The applicant has met the necessary standards required for the granting of a variance.
5. The strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would prevent the user of all reasonable use of the land and buildings and would provide in addition a constraint on the much needed fire services of fire service.
6. The property restraints were cause by the widening of Backlick Road and Interstate Route 95.
7. The testimony has indicated that without the variances, the severe constraints on the very unusually shaped parcel would cause a hardship which would reduce the effectiveness of the site particularly in the provision of public services.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific additions shown on the plat entitled Greater Springfield Volunteer Fire Department #22 and prepared by LeMay Associates, which is dated August 1, 1991, as revised through October 23, 1991, and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless the activity authorized has been established, or unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

3. All development conditions imposed pursuant to SEA 83-L-084-2 shall be incorporated into this variance approval.

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Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 395, January 28, 1992, (Tape 1), Scheduled case of:

9:25 A.M. RAYMOND C. SCHUPP, TRUSTEE, VC 91-P-087, appl. under Sect. 18-401 of the Zoning Ordinance to allow building to remain 10.3 ft. from rear lot line (20 ft. min. rear yard required by Sect. 4-807) on approx. 2.25 acres, no address specified, zoned R-3 (pending rezoning to C-8), Providence District, Tax Map 49-2((9))1,2,3; 49-2((1))96A. (REPLACES SP 91-P-016) (CONCURRENT WITH RZ 91-P-011)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Reifsnyder replied that it was.

Carol Dickey, Staff Coordinator, introduced Theresa D. Hooper, Staff Coordinator, Rezoning and Special Exception Branch, Zoning Evaluation Division, to the BZA.

Ms. Hooper presented the staff report and stated that a portion of the property was rezoned to the C-8 District on January 6, 1992. She said that the applicant was requesting a variance to the minimum yard requirement to permit an existing building which straddles Lot 96A and Lot 1 to be located 10.3 feet from the rear lot line. The Sect. 4-808 of the Zoning Ordinance requires a minimum yard requirement of 20 feet; therefore, the applicant was requesting a variance of 9.7 feet from the minimum rear yard requirement. Ms. Hooper noted that there was a typographical error in Development Condition 1, which should read Parcel 49-2((9))1 and 49-2((1))96A. She further noted that pursuant to the Board of Supervisors action on January 6, 1992, Development Condition 4, should be deleted. She explained that the Board of Supervisors had waived the barrier requirement because the applicant proffered to consolidate parcel Lot 96A with Lot 1 which would require a proffer amendment should there be any construction or any action on the property.

In response to Mrs. Harris' question as to the incorporation of landscaping to mitigate visual impact of the building, Ms. Hooper stated that there was no additional landscaping requirement imposed by the Board of Supervisors. She stated that the proffers discussed landscaping to mitigate the visual impact on the townhouse community and the applicant had agreed to plant a row of trees along the abutting lot line.

Sarah H. Reifsnyder, with the law firm of Blankingship and Keith, 4020 University Drive, Suite 312, Fairfax, Virginia, addressed the BZA. She stated that the applicant had purchased the property in 1987 on the assumption that the entire property was zoned C-8. She explained that when the applicant had attempted to refinance the property, he had requested a zoning opinion and was informed by the Zoning Administrator that a sliver of the property on Parcel 96A was zoned R-3. Ms. Reifsnyder noted that the property rezoned by the Board of Supervisors was approximately 2,000 square feet. She further noted that the Board of Supervisors had waived the barrier requirement and modified the transitional requirement on the bases of the landscaping proffer. Ms. Reifsnyder stated that the Lee Landing Park Homeowner Association had also expressed their support of the application.

In conclusion, Ms. Reifsnyder requested that Development Condition 5 be deleted. She explained that it was her belief that the condition would only confuse future issues. Ms. Reifsnyder asked the BZA to grant the request.

In response to questions from the BZA regarding the landscaping requirement, Ms. Reifsnyder stated that the development conditions called for 6 foot evergreen trees, subject to the approval of the Urban Forestry Branch, Department of Environmental Management (DEM), be planted on the property.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 91-P-087 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 21, 1992, with the revisions as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-P-087 by RAYMOND C. SCHUPP, TRUSTEE, under Section 18-401 of the Zoning Ordinance to allow building to remain 10.3 feet from rear lot line, on property

located at 7630 Lee Highway, Tax Map References 49-2((9))1; 49-2((1))96A, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (pending rezoning to C-8).
3. The area of the lot is 2.25 acres.
4. The application meets the necessary standards for the granting of a variance.
5. The subject property was acquired in good faith.
6. The property is exceptionally narrow.
7. The application is a request for the BZA to correct an existing extraordinary situation.
8. The strict application of the Zoning Ordinance would definitely produce an undue hardship.

This application meets all of the following Required Standards for variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the existing structure which straddles Parcels 49-2 ((9))1 and 49-2((1))96A shown on the plat prepared by Walter L. Phillips, Inc., dated February 26, 1991, as revised August 26, 1991 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. To minimize the visual impact of the existing building on the Lee Landing townhouse development, evergreen trees a minimum of six feet in height or similar plant materials shall be provided along the north side of the building on the subject property as approved by the Urban Forestry Branch, Department of Environmental Management.

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4. Parking for the subject property shall be in accordance with Article 11 of the Zoning Ordinance.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 397, January 28, 1992, (Tape 1), Scheduled case of:

9:35 A.M. BARBARA S. MCDIARMID, VC 91-B-129, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.7 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 10,630 s.f. located at 8410 Thames St., zoned R-3, Braddock District (formerly Annandale), Tax Map 70-3((4))101.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. McDiarmid replied that it was.

Regina C. Murray, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. She stated that the applicant was requesting a variance to allow the addition of a sunroom by enclosing an existing patio which is 4.7 feet from the side lot line.

The applicant, Barbara S. McDiarmid, 8410 Thames Street, Springfield, Virginia, addressed the BZA. She stated that she purchased the house eight years ago and would like to improve the property by adding a sunroom. She noted that the topographic problems on the lot restrict the use of the backyard. She explained that the topographic conditions of the lot have caused the need for a four foot high brick wall along the front and a six foot high retaining wall along the back of the existing patio. Ms. McDiarmid expressed her belief that the addition would be aesthetically pleasing and conform with the other houses in the area. She noted that the existing trees would be preserved and asked the BZA to approve the variance.

In response to Mr. Hammack's question as to the distance of Lot 102 to the property line, Ms. McDiarmid stated that the structure was approximately 13 feet from the property line. She note that because of the steep slope of the land, the second floor of the structure on Lot 102 was level to the first floor of her house. She noted that the neighbors had expressed their support of the application.

Mrs. Harris asked if the applicant had considered enclosing the concrete patio to the rear of the house. Ms. McDiarmid stated that the main living space was on the first floor and the concrete patio was on the second floor of the house.

In response to Mrs. Thonen's question as to the applicant's injury, Ms. McDiarmid stated that she had bought the house in 1983 and had been very seriously injured in 1986.

There being no speakers to the request, Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant VC 91-B-129 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 21, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-B-129 by BARBARA S. MCDIARMID, under Section 18-401 of the Zoning Ordinance to allow addition 4.7 feet from side lot line, on property located at 8410 Thames Street, Tax Map Reference 70-3((4))101, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,630 square feet.
4. The property has very unusual topographical characteristics.
5. The property slopes one full floor from the front to the back of the lot.
6. Strict application of the zoning Ordinance would produce an undue hardship.
7. There is no other place on the lot that the applicant could increase the living space of the first floor without a variance.
8. The existing structure already has an awning and a pad.
9. The proposed site is the only feasible and possible place to put an addition.
10. There would be no detrimental impact to adjoining neighbors or to the community.
11. Brick walls already exist on both sides of the open porch.
12. The variance would be in harmony with the intended spirit of the Zoning Ordinance and would not be contrary to public interest.
13. The applicant is merely closing in the patio.
14. The addition will not extend any further into the yard than the existing patio.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the specific addition to the dwelling shown on the plat prepared by Larry N. Scartz dated June 18, 1991 and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mrs. Thonen and Mr. Kelley seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present for the vote.

Page 399, January 28, 1992, (Tape 1), BARBARA S. MCDIARMID, VC 91-B-129, continued from Page 398)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 1992. This date shall be deemed to be the final approval date of this variance.

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Page____, January 28, 1992, (Tape 1), Scheduled case of:

9:45 A.M. LELAND L. & RUTH H. NEVILLE, VC 91-M-130, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 19.1 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 11,696 s.f. located at 5403 Charlottesville Rd., zoned R-3, Mason District, Tax Map 80-2((2))175.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Neville replied that it was.

Greg Chase, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. He stated that the applicant was requesting a variance to permit the construction of a room addition to 19.1 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, the applicant was requesting a variance of 5.9 feet from the minimum rear yard requirement.

In response to Mr. Kelley's question as to how far the addition would be from the dwelling on Lot 183, Mr. Chase stated that it would be approximately 45 feet.

The applicant, Ruth Neville, 5403 Charlottesville Road, Springfield, Virginia, addressed the BZA. She stated that they would like to enclose the existing patio on the house they had purchased in 1987. Ms. Neville explained that many of the houses in the area have similar enclosures; therefore, the addition would conform with the other structures in the area. She said that because of the floor plan, the proposed site was the only practical location for the addition. Ms. Neville expressed her belief that the addition would have no detrimental impact on the neighbor, would be aesthetically pleasing, and asked the BZA to grant the request.

Mrs. Thonen noted that there was a large open area on the lot and asked if the addition could be built by-right. Ms. Neville stated that the garage was situated in the area referred to by Mrs. Thonen. She explained that the garage was partially underground.

In response to Mr. Kelley's question as to whether the addition would encroach any farther into the yard that the existing concrete patio pad, Ms. Neville stated that it would not.

There being no speakers to the request, Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to grant VC 91-M-130 for the reason reflected in the Resolutions and subject to the revised development conditions dated January 21, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-130 by LELAND L. AND RUTH H. NEVILLE, under Section 18-401 of the Zoning Ordinance to allow addition 19.1 feet from rear lot line, on property located at 5403 Charlottesville Road, Tax Map Reference 80-2((2))175, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,696 square feet.
4. The application has met the standards necessary for the granting of a variance.
5. The distance from Lot 183 is sufficient.
6. There is no other site on the lot that the sunroom could be placed.
7. The applicant would be merely closing in an existing use. It is already used as a patio, has a roof, and is furnished.
8. It would be impractical and very expensive to locate the addition on the other side of the dwelling.
9. The variance would not have been required if the structure had been centered on the lot.

10. The lot has a peculiar shape and size.
11. The granting of the variance would not set a precedent in the area

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific room addition shown on the plat (prepared by Alexandria Surveys, Inc., dated April 25, 1989 October 24, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The room addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 1992. This date shall be deemed to be the final approval date of this variance.

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The BZA recessed at 10:35 a.m. and reconvened at 10:45 a.m.

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9:55 A.M. JAMES & EVANGELIA MARTIN, VC 91-B-128, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (enclosed carport) 10.3 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 10,500 s.f. located at 7415 Jervis St., zoned R-3, Braddock District (formerly Annandale), Tax Map 71-3((4))(35)16.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Martin replied that it was.

Lisa Feibelman, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. She stated that the applicant was requesting a variance to enclose an existing carport. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicant was requesting a variance of 1.4 feet from the minimum side yard requirement.

The applicant James Martin, 7415 Jervis Street, Springfield, Virginia, addressed the BZA. He stated that the laundry room was situated in the storage space behind the carport. He explained that the addition would not only would provide more living space for his family, but would eliminate the need to leave the house in order to use the laundry room. Mr. Martin said that the addition would not extend any further into the side yard than the existing carport and asked the BZA to grant the request.

There being no speakers to the request, Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant VC 91-B-128 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 20, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-B-128 by JAMES AND EVANGELIA MARTIN, under Section 18-401 of the Zoning Ordinance to allow addition (enclosed carport) 10.3 feet from side lot line, on property located at 7415 Jervis Street, Tax Map Reference 71-3((4))(35)16, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. A hardship exists because the structure which is already 10.6 feet from the side lot line houses the laundry room. The applicant must go outside of the house to enter the laundry room.
6. The addition will not encroach any further into the side yard than the existing structure.
7. The request is for a minimal variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the enclosure of the carport shown on the plat (prepared by Herman L. Caurson, dated October 17, 1955) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The enclosed carport shall be architecturally compatible with the existing dwelling.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mrs. Thonen and Mrs. Harris seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mr. Hammack, and Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 402 January 28, 1992, (Tape 2), Scheduled case of:

10:05 A.M. FREDERICK R. & KATHLEEN A. SMITH, VC 91-S-126, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 15,035 s.f. located at 7822 Anson Ct., zoned R-3, Springfield District, Tax Map 89-2((4))(8)12.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Smith replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which was prepared by Greg Riegle, Staff Coordinator. She stated that the applicant was requesting a variance to allow construction of a garage addition 6.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicant was requesting a variance of 5.5 feet from the minimum side yard requirement.

In response to Mrs. Thonen's question as to how much of the lot would be covered, Ms. Kelsey stated that there is no Floor Area Ratio (FAR) requirement in the residential district. She noted that the requirement that no more than 30 percent of the required rear yard be covered was met.

The applicant, Frederick R. Smith, 7822 Anson Court, Springfield, Virginia, addressed the BZA. He stated that they had purchase the property in 1982, and due to their growing family needs, would like to construct a garage addition. Mr. Smith explained that he presently parks some of his vehicles in the street and desires the garage in order to house those vehicles. He stated that there was no other site on the pie shaped lot on which the addition could be located.

Mrs. Thonen referred to the letters the BZA received in opposition from Menlo Autry, the owner of Lot 10, and William and Bobbye Joe Lawlor, the owners of Lot 11. Mr. Smith stated that he had not seen the letters.

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Ms. Kelsey stated that two similar variances had been approved in the area. She noted that variances had been approved for Lots 9, 15, and 16. She explained that the variance granted on Lot 15 was to enclose an existing carport, and the variance granted on Lot 16 was to permit the construction of a garage addition.

Mr. Smith stated that he disagreed with the allegation expressed in the letters which indicated that the property values would decline if the addition was built. He noted that the BZA had granted other variances in the neighborhood and asked the BZA to grant the request.

There being no speakers in support of the request, Vice Chairman Ribble called for speakers in opposition and the following citizens came forward.

Bobbye Jo Lawlor, 7830 Anson Court, Springfield, Virginia, addressed the BZA. She presented photographs of her property to the BZA. Ms. Lawlor noted that the addition would be constructed approximately 6.5 feet from the property line, would diminish the visual observance on the property, and would devalue the property. She expressed her belief that the Zoning Ordinance setback requirements protects property owners and asked the BZA to deny the request.

There being no further speakers to the request, Vice Chairman Ribble asked Mr. Smith for rebuttal.

Mr. Smith noted that people in the area had constructed additions and expressed his belief that the structure would conform with the neighborhood.

Mrs. Thonen made a motion to deny VC 91-S-126 for the reasons reflected in the Resolution.

Mrs. Harris seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Kelley stated that while there may be a hardship in having to park the vehicles in the street, the hardship was shared by others.

Mrs. Harris stated that she too could not justify the granting of the variance. She noted that the applicant already had a one car garage and had reasonable use of the property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-126 by FREDERICK R. AND KATHLEEN A SMITH, under Section 18-401 of the Zoning Ordinance to allow addition 6.5 feet from side lot line, on property located at 7822 Anson Court, Tax Map Reference 89-2((4))(8)12, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,035 square feet.
4. The application does not meet the standards necessary for the granting of a variance.
5. There are other sites on the lot where the garage could be located without a variance.
6. The requested variance would be too large.
7. There is no hardship.
8. The adjoining neighbor has testified that the granting of the variance would have a detrimental impact on their property.
9. Although the BZA has granted a variance to enclose existing carport in the subject area, each individual case must be judged on its own merits.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;

C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Hammack not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 5, 1992.

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Page 404, January 28, 1992, (Tape 2), Scheduled case of:

10:10 A.M. ARLAN E. & RITA PINFROCK, SP 91-B-045, appl. under Sect. 8-917 of the Zoning Ordinance to allow 3 dogs on approx. 10,500 s.f. (12,500 s.f. min. lot required by Sect. 2-512) located at 8436 Thames St., zoned R-3, Braddock District (formerly Annandale), Tax Map 70-3((4))114. (DEFERRED FROM 11/12/91 AT APPLICANT'S REQUEST -NOTICES. SUGGESTED DATE 3/10/92)

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant had submitted a letter requesting deferral. She noted that the Board of Zoning Appeals (BZA) had issued an intent to defer on January 14, 1992. Ms. Kelsey explained that the applicant had retained an attorney who was unable to be present at the scheduled public hearing and had requested the deferral.

Mrs. Thonen made a motion to defer VC 91-S-126 to March 24, 1992, at 9:00 a.m.

It was the consensus of the BZA that no further deferrals would be issued.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Hammack not present for the vote.

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Page 404, January 28, 1992, (Tape 2), Scheduled case of:

11:00 A.M. ROBERT S. BAER APPEAL, A 91-D-023, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Deputy Zoning Administrator's determination that the southern lot line of proposed Lot 2, as shown on Subdivision Plan #7850-SD-01-3, is a rear lot line and as a result the proposed dwelling on Lot 2 does not satisfy the 25 foot minimum rear yard requirement, on approx. 1.023 acres, zoned R-3, Dranesville District, Tax Map 40-4((1))3B (formerly 3, 3A).

Mrs. Thonen stated that the Board of Zoning Appeals had received a letter from a neighbor, Mark G. Bender, requesting that the case be deferred. She explained that Mr. Bender believes that his property would be most affected by the decision and would like the deferral so that he could retain legal council.

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William E. Shoup, Deputy Zoning Administrator, stated that he would not oppose the deferral.

The appellant's attorney, J. Randall Minchew, with the law firm of Hazel and Thomas, 44084 Riverside Parkway, Suite 300, Leesburg, Virginia, addressed the BZA and stated that he opposed the deferral. He expressed his belief that Mr. Bender's lawyer had ample time to prepare for the hearing. Mr. Minchew stated that both the County's and the appellant's representatives were prepared to go forward with the public hearing.

Vice Chairman Ribble called Mr. Bender to the podium.

Mark G. Bender, 6860 Grande Lane, Falls Church, Virginia, addressed the BZA. He stated that he and other neighbors opposed the appeal. He expressed his belief that he was not competent to argue the case and said that he was seeking legal assistance.

Mr. Kelley stated that the issue had been advertised and the notifications were done according to the regulations. Mr. Bender stated that although the case had been going on for approximately two years, the ruling had always been against the appellant's position.

Mrs. Harris made a motion to defer A 91-D-023. She stated that the case had a long history and was very complicated. Mrs. Harris expressed her belief that because of the impact to the neighbors, the case should be deferred.

Mr. Pammel seconded the motion.

Mrs. Thonen stated that although the case should be deferred, it should not be a lengthly deferral.

Mr. Pammel requested that the case be deferred to a night meeting.

After a brief discussion, it was the consensus of the BZA to hear the appeal on February 18, 1992 at 8:00 p.m.

(A VERBATIM TRANSCRIPT IS CONTAINED IN THE FILE.)

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Page 405, January 28, 1992, (Tape 2), Scheduled case of:

11:00 A.M. KEVIN M. COLE, VC 91-Y-124, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 24,750 s.f. located at 4726 Village Dr., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 56-4((4))65. (DEF. FROM 1/14/92 TO ALLOW APPLICANT TIME TO REVISE PLAT)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Cole replied that it was.

Mike Jaskiewicz, Staff Coordinator, stated that the case had been deferred from January 14, 1992. He noted that the BZA had granted the deferral to give the applicant time to reconfigure the subject addition.

In response to Mrs. Harris' question as to whether a new plat had been submitted, Mr. Jaskiewicz stated that it had not.

Mr. Ribble stated that the BZA had requested the applicant to reconfigure the addition which was deemed to be too large and too long.

The applicant, Kevin M. Cole, 4726 Village Drive, Fairfax, Virginia, addressed the BZA. He stated that after consulting the architect and the builder, he would like to request the BZA approve the original request. He noted that if the 1,000 square feet addition were added to the 1,400 square foot house, the structure would only be 2,400 square feet and would conform with the other houses in the area.

In response to Mr. Kelley's question as to whether a variance would be needed for a second story addition, Mr. Jaskiewicz stated it would not.

Mrs. Harris made a motion to deny VC 91-Y-124. She stated that the property was not unusual in any respect, did not have any unusual narrowness, shallowness, size, shape, or topographic condition. Mrs. Harris stated that strict application of the Zoning Ordinance would not produce any undue hardship. She stated that the request for a 48 foot long variance was too large and a smaller addition would have allowed the applicant to have reasonable use of the property.

Mr. Kelley seconded the motion. He stated that although he could not support such a large variance, he could support a smaller addition.

In response to Mrs. Harris' question as to why the applicant had not revised the plat and request a smaller variance, Mr. Cole stated that he was led to believe by staff that the BZA had the authority to grant a smaller variance without him having to submit a revised plat.

Mr. Kelley made a substitute motion to defer the VC 91-Y-124 to February 11, 1992 at 10:45 a.m. He expressed his belief that the appellant did not fully understand the instructions given at the January 14, 1992 BZA meeting.

After a brief discussion it was the consensus of the BZA that the applicant submit a plat with the proposed addition that would match the building line of the existing house. The applicant agreed to the BZA's directive and stated that he fully understood their instructions.

Mr. Pammel seconded the motion which passed by a vote of 6-0 with Chairman DiGiulian not present for the vote.

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Page 406, January 28, 1992, (Tape 2), Information Item:

Approval of Resolutions from January 21, 1992 Hearing

M. Pammel made a motion to approve the Resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present for the vote.

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Page 406, January 28, 1992, (Tape 2), Information Item:

Approval of Minutes from December 3, 1991 Hearing

Mr. Pammel made a motion to approve the Minutes as submitted with the modifications as discussed with Jane C. Kelsey, Chief, Special Permit and Variance Branch. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present for the vote.

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Page 406, January 28, 1992, (Tape 2), Information Item:

Request for Intent to Defer
Golf Park, Inc., SP 91-C-070 and VC 91-C-138

Vice Chairman Ribble stated that the Reston Community Association, Inc. had requested deferral of the applications which were scheduled for February 11, 1992.

Mr. Kelley stated he had received a letter regarding the case and questioned the need for the deferral. Jane Kelsey, Chief, Special Permit and Variance Branch said that the applicant did not agree to the deferral and noted the 90 day State Code time limit for hearing an application.

After a brief discussion, it was the consensus of the BZA to address the matter at the scheduled BZA meeting on February 11, 1992.

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Page 406, January 28, 1992, (Tape 2), Information Item:

Request for Intent to Defer
Carlos A. Reyes, SPA 83-L-096-1 and VC 91-L-102

Vice Chairman Ribble stated that Carlos A. Reyes had requested deferral of the applications which were scheduled for February 11, 1992.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant had revised the application. She noted that staff would not have the time to prepare a new staff report and the applicant would be unable to meet the notification requirements without a deferral.

Mr. Kelley made a motion issue an intent to defer the case to March 17, 1992.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present for the vote.

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Page 406, January 28, 1992, (Tape 2), Information Item:

Request for Out-of-Turn Hearing
James and Ann Dimon, VC 92-V-004

In response to Mrs. Harris' question regarding the application, Jane Kelsey, Chief, Special Permit and Variance Branch stated that because the application was new, she was not familiar with the specifics of the case.

Page 407, January 28, 1992, (Tape 2), JAMES AND ANN DIMON, VC 92-V-004, continued from Page 406

Mr. Pammel made a motion to grant the out-of-turn hearing and scheduled the application on March 24, 1992.

Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present for the vote.

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Page 407, January 28, 1992, (Tape 2), Information Item:

Date and Time for Appeal
Bowl America Inc.

Mr. Pammel made a motion to schedule the appeal on March 17, 1992 at 8:00 p.m. The motion died for lack of a second.

After a brief discussion regarding the fact that the meeting would be held on St. Patrick's Day, it was the consensus of the Board of Zoning Appeals (BZA) that they would meet, reluctantly, on March 17, 1992.

The applicant's attorney, Richard R.G. Hobson, with the law firm of McGuire, Wood, Battle, and Booth, 8280 Greensboro Drive, Suite 900, McLean, Virginia, addressed the BZA. He explained that the building was almost complete and requested that the hearing be scheduled prior to March 17, 1992

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that it was her belief that the best way to proceed with the matter was to have the applicant file a special permit application. She noted that the BZA could then grant an out-of-turn hearing and hear both the appeal and the special permit on March 17, 1992.

Mr. Hobson stated that the special permit application would cost $1,800 and the applicant would like to have the appeal heard before filing the special permit.

Ms. Kelsey stated that a staff report had to be prepared, notification and advertisement requirement had to be met, and expressed her belief that the earliest possible date for the hearing would be March 17, 1992.

Mrs. Thonen made a motion to schedule the appeal on March 17, 1992 at 8:00 p.m.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present for the vote.

Mr. Pammel stated that he had just realized that he had an association with the law firm involved and would abstain from voting on the case at the scheduled public hearing.

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Vice Chairman Ribble thanked Mike Jaskiewicz, Staff Coordinator, for the fine job he had done while serving with the Board of Zoning Appeals' staff.

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Page 407, January 28, 1992, (Tapes 2 and 3), Information Items:

11:30 A.M. MEETING BETWEEN THE BZA AND LYNDA STANLEY, DIRECTOR, PLANNING DIVISION, RE: COMPREHENSIVE PLAN AMENDMENT

Linda Stanley, Director, Planning Division, Office of Comprehensive Planning, addressed the Board of Zoning Appeals (BZA). In presenting the background information on the Lorton Plan, she stated that in October, 1991, the Board of Supervisors adopted a Plan amendment for the Lorton, South Route One area. Ms. Stanley stated that the amendment included the general area south of Accotink Creek, west of the Potomac and Fort Belvoir, north of the Fairfax/Prince William County line, and east of the D.C. Department of Correction Site. She stated that although the Plan amendment included the Mason Neck area, she would not discuss that area.

Ms. Stanley explained that the amendment was the culmination of a very extensive four year planning process. The Plan, as adopted, contains very detailed recommendations on land use, transportation, environment heritage resources, parks and recreation, etc. She noted that the Route One Task Force worked closely with residence, business, and development community in formulating their recommendations.

She stated that the Plan sets forth a series of objectives, as well as a general concept for the entire area. Ms. Stanley stated that the objectives aimed at achieving a strong sense of place and a positive image, protecting and preserving existing stable neighborhoods, protecting the natural and historic character, and implementing a safe and efficient transportation system for the Lorton, South Route One area.

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In general, Ms. Stanley explained, there is provision for gateway area, primarily at the Interstate 95, Occoquan entry to Fairfax County. She noted that there was also smaller gateways in the smaller northern portion of the area. Ms. Stanley said that one of the key facets of the Plan is a provision for a town center which would give the community a focal point on land presently owned by the RF&P Railroad. She stated there were other provisions provided for the continuation of the public facilities and the preservation of low density residential uses. Ms. Stanley stated that the other main use in the area would be industrial. She noted that a large industrial complex existed in the northern portion of the area.

Ms. Stanley noted that BZA had a special permit application scheduled for the Shirley Acre area and stated that a rezoning application for I-4 Zoning and Industrial Flexes on the same area will be heard by the Planning Commission in March 1992. She used the viewgraph to depict the current uses and the projected uses for the area. Ms. Stanley emphasized the fact that the area would only be redeveloped if the property owners consolidated and initiated the changes.

In response to Mrs. Thonen's question regarding the circumstances for a rezoning, Ms. Stanley explained that the existing subdivisions and environmentally fragile vacant lands are planned to be preserved and protected. She said that although there has been no new development in the area, infill development of single family homes would be allowed. Ms. Stanley stated that if the land owners of the area feel that circumstances had changed to the extent that residential use was not longer viable, they may request industrial flex uses to .35 FAR. She said that the two large vacant areas on either side of Shirley Acres are planned for industrial flex space uses and can develop independently of the residential subdivisions. Ms. Stanley stated that very specific and stringent requirements were incorporated in the Plan to protect the residential area and to allow integrated industrial development.

Mrs. Thonen thanked Ms. Stanley for clarifying the situation regarding the Plan amendment provisions for the area.

Mrs. Harris referred to the pending BZA case and asked Ms. Stanley to point out the parcel's location. Ms. Stanley used the viewgraph to depict the land area involved with the case. She stated that one of the issues the BZA would have to consider was consolidation.

In response to Mr. Pammel's question as to whether the language relative to intern uses was not included in the Plan, Ms. Stanley stated it was not.

Mrs. Harris asked if the citizens in the area had support the proposed industrial flex uses. Ms. Stanley stated that the Task Force had included representatives from the Shirley Acres Community and expressed her belief that the final amendment Plan had the citizens' support.

Mr. Pammel asked if a detailed evaluation was made during the development plan process concerning recreational needs and deficiencies, and the bonding plans that were established by the authorities to provide these facilities, and if so what conclusions were reached. Ms. Stanley stated that although there had not been an extensive study on these issues, the Park Authority had been involved in the study and had made recommendations. She noted that additional recreation uses had been advocated.

Mr. Pammel made a motion to request that prior to the scheduled public hearing, the staff prepare an amendment to their report which would include a recreation needs and deficiency analysis of the area. He noted that the analysis would allow the BZA to determine whether there is adequate planned recreation for the area.

After a brief discussion, it was the consensus of the BZA to request a detailed report from the Park Authority on the recreational deficiencies in the area west of Route 1 in the Lorton area.

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:12 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: May 19, 1992

APPROVED: May 26, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 4, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:08 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 409, February 4, 1992, (Tape 1), Scheduled case of:

9:00 A.M. SOUTH RUN BAPTIST CHURCH, SPA 87-S-078-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 87-S-078 for church and related facilities to allow trailer additions and an increase in parking spaces on approx. 10.59 acres located at 8712 Selgar Drive, zoned R-1, Springfield District, Tax Map 89-3((3))2, 3. (DEFERRED FROM 10/22/91 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Clifton Barnes, 7595 Springfield Hills Drive, Springfield, Virginia, agent for the applicant, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA on behalf of the Staff Coordinator, Bernadette Bettard. She stated that the site is located northwest of Hooes Road and is abutted by Fairfax County Parkway on the north, land zoned R-3 on the east, and land zoned R-1 on the west. The applicant was requesting an amendment to their previously special permit amendment in order to allow three temporary trailers to be used as classroom space for Sunday school activities until permanent structures are built. Ms. Kelsey stated that the original special permit allowed the church to be developed in four phases, and the first phase has been completed. She said that following staff's review of the application staff found that the use met the standards. Ms. Kelsey pointed out that the Development Conditions had been revised subsequent to the October deferral, with one revision being the total number of parking spaces now being 245.

Chairman DiGiulian asked if the revised Development Conditions were dated January 28, 1992, and Ms. Kelsey replied that was correct.

Mr. Barnes came forward and stated that the church was not asking that the trailers remain through the entire building phase but only through the completion of Phase IV. He said the church was only asking for a time limit of three years.

Chairman DiGiulian asked if he had read the revised Development Conditions. Mr. Barnes said that he had and pointed out that the Stormwater Management Pond had already been approved and taken over by the County.

Ms. Kelsey explained that the original Development Conditions were brought forward to be incorporated into the application before the BZA.

In response to a question from Mrs. Harris, Mr. Barnes replied that the church would like to alter the phases which would allow them to proceed with the construction of the classroom space. He said the trailers will be removed once the classrooms are built.

There were no further questions and Chairman DiGiulian called for speakers, either in support or in opposition. The following came forward to oppose the request.

Carl Sakas, 8716 Selgar Drive, Springfield, Virginia, owner of Lot 4 which is adjacent to the church strongly opposed the proposed placement of three commercial sized trailers as requested in the application. Mr. Sakas said that if the trailers are sited as noted on the plat the trailers will create a huge 1,000 to 1,200 square foot billboard mass looming on a dominating hill overwhelming and highly visible from his property. He said that the transition zone could not mask the enormous presence of the trailers, thus he would see them every time he drove into his driveway, looked out his living room window, and the trailers will be the first and last thing he sees every day. Mr. Sakas said the church is very brightly illuminated and the three commercial trailers would definitely not be harmonious with the residential character of the neighborhood. He added that the disruption caused by the heating, venting, and ventilating systems would be unacceptably amplified by the hilly terrain and would operate day and night. Mr. Sakas stated that he believed the proposed trailer locations, size, and height are in violation of General Standard Number 3, Sect. 8-006, since the trailers would adversely affect his property and hinder and discourage appropriate development, enjoyment, and use of his land and building and impair the value thereof. He pointed out the proposed location is exterior to the applicant's property on Lots 2 and 3, not interior. Mr. Sakas recommended that the three trailers be located more in the central area of the church property, specifically on the existing hardstand near the proposed Phase IV building. He said that the location he proposed would place the trailers a comparable walking distance from the sanctuary and on a far safer pedestrian path and it appeared to him that the applicant had not seriously examined this location.

In response to a question from Mr. Pammel, Mr. Sakas replied that as a good neighbor he was trying to support the church and was not opposing the trailers but would like the trailers relocated. (He used the viewgraph to show the location of his property.)

Mrs. Thonen asked the speaker if he had seen the church's plan prior to the public hearing. Mr. Sakas said that he had not seen the plan until he arrived at the Board Room.

Chairman DiGiulian asked how far his house was from the shared lot line and Mr. Sakas estimated 50 to 75 feet.

In response to a question from Mrs. Harris, Mr. Sakas replied some of the parking would not exist until the last phase of construction. He said with the location of the trailers in the parking area there would still be ample room to enter and exit the site.

During rebuttal, Mr. Barnes said Mr. Sakas' house is located 200 feet from the church and the trailers are 75 feet from the lot line. (He submitted photographs to the BZA showing the view from the church site onto the speaker's property.) Mr. Barnes said the church had not considered placing the trailers in the location suggested by the speaker as it would require landfill and eliminate some of the parking spaces. He pointed out that the church may not put three trailers on the site and discussed the photographs which he believed showed there would be no visual impact on the neighbor.

Mrs. Harris asked when the church would construct the last of the parking lot. Mr. Barnes said that was the last thing the church wanted to do as it had been their intent to keep the trees as long as possible. He said that part of the trees would be removed in the next phase and the remaining trees would be removed, with the County Arborist's approval, when the main sanctuary is constructed.

Mrs. Thonen asked why the church had not discussed the plan with the neighbor. Mr. Barnes stated that he had not participated on the Building and Land Committee prior to June and he had been under the impression the neighbor was aware of the plan. He said that he had been contacted by several neighbors in September inquiring if the trees were going to be removed and he had told them "no."

There were no further questions and Chairman DiGiulian closed the public hearing.

Mr. Pammel said that the case presented a dilemma for him because normally there is a coordination between the applicant and the community as to what is being done and apparently in this case that had not occurred. He said that he believed that it would be appropriate to defer the case for a month to allow the applicant and the neighbor to discuss the plans. Mr. Pammel made a motion to continue the public hearing for approximately 30 days.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA there were 14 cases scheduled for March 3rd. Mr. Pammel asked for a date one week before or one week after. Ms. Kelsey said that on March 10th there were 9 cases scheduled. Mr. Pammel made a motion to continue the public hearing to March 10, 1992. Mrs. Thonen seconded the motion.

Mr. Kelley opposed the motion as he believed the applicant had testified that relocating the trailers was not feasible and pointed out that the trailers were going to be temporary.

Chairman DiGiulian stated that he would support the motion but that he questioned whether or not the neighbor would even see the trailers.

The motion carried by a vote 4-1 with Mr. Kelley voting nay. Mr. Hammack and Mr. Ribble were not present for the vote.

Ms. Kelsey suggested 10:45 a.m. for the continuation. Hearing no objection, the Chair so ordered.

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Page 410, February 4, 1992, (Tape 1), Scheduled case of:

9:15 A.M. HENRY M. & JILL K. BRUHL, VC 91-M-139, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 13.9 ft. from side lot line and deck 12.4 ft. from side lot line (15 ft. min. side yard required by Sects. 3-207 and 2-412), on approx. 21,341 s.f. located at 6921 Alpine Dr., zoned R-2, HC, Mason District, Tax Map 71-2((3))26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Bruhl replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report on behalf of Michael Jaskiewicz, Staff Coordinator. She said the subject property is located on Alpine Drive, which is south of Columbia Pike and north of Little River Turnpike. Ms. Kelsey said to the rear of the property is the Evergreen Heights subdivision, a development of single family detached dwellings; the properties to the north and east are zoned R-2 and developed with single family detached dwellings; and Lot 1 to the west is vacant and owned by the applicants. She explained the applicants were requesting a variance to the minimum side yard requirement to permit construction of a one and a half story addition 13.9 feet from the side lot line and a 4.5 foot high deck 12.4 feet from the side lot line. Therefore, the applicants were requesting a variance of 1.1 feet to the minimum side yard requirement for the building addition and a variance of 2.6 feet to the 15 foot minimum side yard requirement

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for the proposed deck. She said that the dwelling on Lot 2 to the west is approximately 125 feet from the applicants' carport and the dwelling on adjacent Lot 25 to the east is 10.8 feet from the shared eastern lot line.

Mrs. Harris asked if part of Lot 1 was purchased at the same time as Lot 26. Ms. Kelsey said that she did not know but perhaps the applicants could answer the question.

The applicant, Henry M. Bruhl, 6921 Alpine Drive, Annandale, Virginia, responded to Mrs. Harris' question by stating that he and his wife had purchased the lots as they are and that he did not know when they were combined.

Mr. Bruhl explained that the lot is narrow and long and that only a corner of the addition needed the variance. He pointed out that the neighbors on the east already set closer to the lot line than his house will even with the addition.

In response to a question from Mrs. Harris, Mr. Bruhl replied there is a deck on the back of the house and he believed that the natural look of the addition would be more aesthetic on the front of the house.

Mr. Pammel asked the applicant to show the location of the sunroom on the viewgraph and Mrs. Bruhl did so. Mr. Bruhl explained that the existing enclosed porch would be removed.

There were no further questions and Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated January 28, 1992.

Mr. Kelley seconded the motion and asked the maker to add a new Development Condition stipulating that the facade of the addition match the existing dwelling. Mrs. Thonen agreed.

Mr. Kelley added that he believed that an addition on the back of the house would not be functional and that the applicant had made an effort to keep the variance at a minimum.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-139 by HENRY M. AND JILL K. BRUHL, under Section 18-401 of the Zoning Ordinance to allow addition 13.9 feet from side lot line and deck 12.4 feet from side lot line, on property located at 6921 Alpine Drive, Tax Map Reference 71-2((3))26, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2, HC.
3. The area of the lot is 21,341 square feet.
4. The variance is a minor variance of 1 1/2 feet.
5. Only a corner of the addition needs the variance since most of the addition is over beyond the setback requirements.
6. The lot is long and narrow and the house is place sideways on the lot and perhaps if it had been placed lengthwise of the lot it would have fit on the lot better.
7. The lot does appear to have a topographic problem and has a lot of screening.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   - A. Exceptional narrowness at the time of the effective date of the Ordinance;
   - B. Exceptional shallowness at the time of the effective date of the Ordinance;
   - C. Exceptional size at the time of the effective date of the Ordinance;
   - D. Exceptional shape at the time of the effective date of the Ordinance;
   - E. Exceptional topographic conditions;
   - F. An extraordinary situation or condition of the subject property, or
   - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable

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the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Huntley, Nyce and Associates, P.C., sealed and dated November 18, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The facade of the addition should be compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 412, February 4, 1992, (Tape 1), Scheduled case of:

9:25 A.M. LEE AUTOMOTIVE, SP 91-L-029, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface on approx. 4.388 acres located at 7612 and 7616 Backlick Rd., zoned C-6, Lee District, Tax Map 90-4((1))5B,5F. (CONCURRENT WITH SE 91-L-017 AND PCA 86-L-019-2)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, attorney for the applicant, replied that it was.

Mary Ann Godfrey, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. She stated that the application property is located on the west side of Backlick Road, east of Fort Belvoir. The subject site and both adjacent properties located to the north and south are zoned I-5. Ms. Godfrey said that the applicant was requesting special permit approval to allow a modification of the dustless surface requirement at the rear of the site to be used for new car storage. (She pointed out the location on the viewgraph.) On January 6, 1992, the Board of Supervisors approved a concurrent Proffered Condition Amendment, PCA 86-L-019-2, and Special Exception, SE 91-L-017, with Development Conditions to permit a vehicle sales, rentals, and ancillary service establishment and body shop on the subject site. She stated that in staff's opinion the special permit application was in conformance with the requirements of the I-5 District, the General Standards for all special permits, and the provisions for modifying the dustless surface requirements specified in the Zoning Ordinance. Thus, staff recommended approval of the request subject to the Development Conditions contained in the staff report.

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Keith C. Martin, attorney with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, came forward. He said the special permit request was for a waiver of the dustless surface requirement for Lee Automotive. The Board of Supervisors recently approved a Proffered Condition Amendment and Special Exception application for the 4.38 acres for a vehicle sales and ancillary body shop. He explained that the 43,000 square foot area was proposed for new car storage which backs up to a wooded area, is surrounded by two industrial zoned properties, and there is a Best Management Practices Pond in the rear corner of the site adjacent to the area that will house the vehicles. Mr. Martin stated there were no environmental issues involved with the request and the staff report indicated that the proposed waiver met the provisions of Sections 8-006, 8-903, and 8-915 of the Zoning Ordinance. He said that the applicant agreed with all the Development Conditions contained in the staff report.

Mrs. Thonen asked why the applicant was requesting a dustless surface and expressed concern with the surrounding neighbors being affected by the dust. Mr. Martin said the subject property backs up to a wooded area and on both sides of the property are heavy industrial uses. He pointed out the applicant would have to comply with the standards of the Ordinance regarding the dustless surface which minimizes the impact.

In response to a question from Mr. Pammel, Mr. Martin replied that the applicant agreed with all the Development Conditions.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant the applicant's request for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated August 27, 1991.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-029 by LEE AUTOMOTIVE, under Section 8-915 of the Zoning Ordinance to allow waiver of dustless surface, on property located at 7612 and 7616 Backlick Road, Tax Map Reference 90-4((1))5B, 5F, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is C-6.
3. The area of the lot is 4.388 acres.
4. The request is a very small part of a whole plan for the area that has been approved by the Board of Supervisors under a Special Exception and a Proffered Condition Amendment.
5. The request has adequately met the appropriate standards of the Zoning Ordinance.
6. The use is for new car storage.
7. The surrounding zoning is I-5.
8. There are no environmental issues and there would be a worse runoff problem if the area were asphalted.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Springfield Engineering Corp. revised July 22, 1991 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The gravel surfaces for the parking lot, travel way and loading area shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall run for the period of time specified in the Zoning Ordinance.

   Speed limits shall be kept low, generally 10 mph or less.

   The areas shall be constructed with clean stone with as little fines material as possible.

   The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

   Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

   Runoff shall be channeled away from and around driveway and parking areas.

   During dry periods, application of water shall be made in order to control dust.

   The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

   The entrance shall be paved to a point at least twenty-five (25) feet into the site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Pammel and Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 9:43 a.m. and reconvened at 10:00 a.m.

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Page 414, February 4, 1992, (Tape 1), Scheduled case of:

9:40 A.M. YASEENULLAH AMIN, SP 91-M-069, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location, to allow addition to remain 20.7 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 10,500 s.f. located at 4103 Mesa Way, zoned R-3, Mason District, Tax Map 61-3((7))(B)20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Amin replied that it was.

Mary Ann Godfrey, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. She said the application property is located east of Braddock Road, and south of Arcadia Road, on the east side of Mesa Way. The property is zoned R-3 and is developed with a single family detached dwelling with the surrounding lots zoned R-3 and developed with single family detached dwellings. Ms. Godfrey said the applicant was requesting special permit approval based on error in building location to allow an existing

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addition to remain 20.7 feet from the rear lot. She said the Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, a modification of 4.3 feet was requested. In closing, Ms. Godfrey said that with the implementation of the Proposed Development Conditions staff believed the request met the applicable standards for approval. The dwellings on Lots 2 and 3, which face Dakota Court, are both a minimum of 25.0 feet from the shared rear lot line.

The applicant, Yaseenullah Amin, 4103 Mesa Way, Alexandria, stated he purchased the property on December 28, 1990, with the screened porch already constructed. He said he had merely covered the walls by putting up plywood and had not altered the roof line. Mr. Amin said according to the information he obtained, the screened porch was constructed approximately 15 years ago. He said he did not know why the former owner had not obtained the County's permission prior to construction.

There were no speakers, either in support or in opposition.

Mrs. Harris asked staff if the plat should be amended to reflect "addition" rather than a screened porch. Ms. Godfrey agreed. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that was correct. Mrs. Harris asked if the addition should be reviewed with respect to Code. Ms. Godfrey said Development Condition Number 3 addressed inspections. Mrs. Harris asked if the addition was in harmony with the neighborhood. Ms. Godfrey said there was quite a variety in the type of additions in the neighborhood.

Mr. Pammel asked if the shed on the applicant's property was in violation and Ms. Kelsey replied that it was not.

There were no further questions and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant the applicant's request subject to the Development Conditions contained in the staff report dated January 28, 1992. The approval was contingent on the submission of new plats.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-M-069 by YASEENULLAH AMIN, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 20.7 feet from rear lot line, on property located at 4103 Mesa Way, Tax Map Reference 61-3((7))(B)20, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED, with the following development conditions:

1. This special permit is approved for the location and the specified single family dwelling shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. All necessary final inspections and final approval shall be obtained for the enclosed porch within 120 days from the final approval date of this special permit. The applicant shall be responsible for the submission of building/construction plans or other submissions as determined by the Department of Environmental Management (DEM), assuring that all construction meets applicable building codes.

4. A new plat shall be submitted to show that the structure is an addition as opposed to an enclosed porch.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless the activity authorized has been legally established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 416, February 4, 1992, (Tapes 1-2), Scheduled case of:

9:50 A.M. GEORGE M. NEALL, II, TRUSTEE, SP 91-V-065, appl. under Sects. 3-103 and 8-915 of the Zoning Ordinance to allow outdoor recreational use (golf driving range, putting green, baseball batting cage, tennis club) and waiver of dustless surface requirement, on approx. 58.47 acres located on Lorton Rd., zoned R-1, Mt. Vernon District, Tax Map 107-3((1))3A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank McDermott, attorney for the applicant, replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She called the BZA's attention to the Staff Report Addendum and Revised Proposed Development Conditions.

She said the application property is generally located approximately 2,000 feet west of I-95, on the south side of Lorton Road and is abutted on the south by properties zoned R-1 and developed with single family detached dwellings in the Green Ridge and a portion of the Shirley Acres subdivisions. The property to the east of the site, which is designated as sub-unit B1-a in the Comprehensive Plan, is zoned R-1 and developed with detached single family dwelling units in the Curtis and a portion of the Shirley Acres subdivision. The subject site is abutted on the northwest by Parcels 1 and 2, which are zoned R-1.

Ms. Bettard said the applicant was requesting approval of a special permit for an outdoor recreation facility and a waiver of the dustless surface requirement on Lot 3A, a 58.477 acre site. The applicant proposed to operate an outdoor recreation use which will consist of a commercial golf driving range with 50 tees, a baseball hitting range with 9 batting stations, a putting green and a commercial recreation use, consisting of a tennis club with 8 tennis

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courts. The applicant proposed to construct several structures, one of which is a 24,000 square foot tennis club house. There will also be some ancillary sales of snacks and golf-related accessories on the site. These uses are requested for an interim period of approximately 10 years. The waiver of the dustless surface requirement was requested for all parking areas and travel aisles.

The outdoor recreational facility was proposed to be operated during the spring and summer seasons from 8:00 a.m. until 10:00 p.m., Monday through Thursday, and 8:00 a.m. to 11:00 p.m., Friday through Sunday. During the fall and winter seasons, the proposed hours of operation will be from 8:00 a.m. to 8:00 p.m., Monday through Thursday, and 8:00 a.m. to 10:00 p.m. Friday through Sunday. The maximum number of employees present at any one time will be 7. The applicant estimates that the daily usage of the facility will be 250 to 300 persons during the summer, 125 to 150 persons during spring and fall, and 100 persons during the winter season.

Ms. Bettard said staff had concluded that the application was not in harmony with the Comprehensive Plan and did not meet all of the applicable standards for special permit approval specified in the Zoning Ordinance. She said the Standards were discussed on pages 11 through 15 of the staff report and on page 3 of the Addendum, staff indicated how the proposal does not comply with the Comprehensive Plan. The proposed use was not in harmony with the Comprehensive Plan's recommendations for the area and will preclude the adjacent land from developing with their planned uses. In addition, the use does not meet the recommendations of the Plan as they relate to the environmental or transportation concerns. The use as currently proposed does not offer sufficient mitigation measures to ensure that there will be no adverse impact on the adjacent residential properties. Therefore, staff could not support application SP 91-V-065 and recommended that it be denied.

She said Chuck Almquist, with the Office of Transportation; Randy Stouder, with the Environmental Branch, Office of Comprehensive Planning; Pam Nee, with the Land Use Branch, Office of Comprehensive Planning, were present to address BZA's questions regarding the need for this type of use in the area.

Mrs. Harris asked what the traffic generation would be if the site was developed in accordance with the Comprehensive Plan as industrial flex. Mr. Almquist said the trip generation could be over 6,000 vehicles per day and over 1,100 vehicles per hour. He added there has not been any data collected on golf driving ranges per se and there is hardly any data available on tennis courts. Mr. Almquist said in his report he used the information provided by the applicant. He said taking into consideration all the uses that would be on the site, the trip generation would be 1,360 per day.

Mr. Pammel said that staff had not furnished information the BZA had requested on the need for recreation facilities in the area of the subject property. He pointed out that the applicant had submitted a letter from the Park Authority indicating support for the use. Ms. Nee agreed that the Park Authority had identified a deficiency of recreational facilities in the Lorton area including golf facilities. She said there is only one public park that is currently developed with recreational facilities.

Francis A. McDermott, Esq., attorney with the firm of Hunton & Williams, 3050 Chain Bridge Road #600, Fairfax, Virginia, came forward. He called the BZA's attention to the document he had submitted and stated he would discuss those later in his presentation.

Mr. McDermott said that on January 28, 1992, the Office of Comprehensive Planning made a presentation to the BZA and he took exception to the comment towards the end of the presentation that during the Comprehensive Plan process there were interim uses shown and the inference was that the recommendation was removed before the end of the process. In fact, the interim uses that were discussed were for Shirley Acres, the existing residential community immediately adjacent to the subject property on the east and south, and as the Plan was ultimately adopted the portion of Shirley acres, immediately adjacent to the subject property on Giles Run, is discussed in the Plan "as being encouraged to continue in its existing residential use." The remaining portion of Curtis and Shirley Acres subdivision on the east side of Giles are also shown in the Comprehensive Plan for an interim and ultimate use. The interim use being continuation at the current existing residential use at roughly one unit per acre, the ultimate use being residential at 16 to 20 dwelling units per acre. The inference in the presentation last week was that the entire Shirley Acres subdivision was all treated as one. On the east side of Giles Run, the property is planned for 16 to 20 dwelling units per acre. The subject property is planned for the ultimate use, the property immediately to the south, the east side of Giles Run is planned for residential for 16 to 20 dwelling units per acre, the piece of land just above Giles Run is currently developed with one acre and is planned for ultimate development for 16 to 20 dwelling units per acre, and Shirley Acres is planned for ultimate development of industrial at .35.

Mr. McDermott called the BZA's attention to page 6 of the staff report. He used the viewgraph to point out Lots 1 and 2, which were not being consolidated, and were owned by Mr. Hughes and noted that the access to the property is along an easement. The front portion of Mr. Hughes' property is predominately in an Environmental Quality Corridor (EQC) and it was staff's belief that the applicant's request would interfere with the ultimate use of Mr. Hughes' property. Mr. McDermott said the applicant had tried to purchase Mr. Hughes' property when the subject property was purchased in late 1988 but he was not interested in selling. Mr. Hughes has projected that he will remain on the property for at least 10 more

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years and the applicant is the likely entity he will sell to at that time. He said the interim use of the subject property will not interfere with the access to Mr. Hughes' property and if Mr. Hughes does decide to sell or develop the property, the applicant's office park would develop a large part of the Hughes property. If the Hughes property is developed prior to the applicant, Mr. Hughes could access on an interim basis out of the same right-of-way that is presently used.

Mr. McDermott said that when Shirley Acres consolidates that will satisfy the Comprehensive Plan requirements for at least 80 percent consolidation and will satisfy the Comprehensive Plan requirement that the circumstances are such that industrial is appropriate and the existing residential is no longer appropriate. Since his time for speaking had expired, he asked the BZA to give him some additional time.

Mr. Pammel made a motion to give the applicant an additional five minutes. The other members agreed.

He said that the conceptual drawing in the zoning case had been adjusted to allow Mr. Hughes access through the subject property to the industrial road, which would become a spine road. In terms of the interim use, if Mr. Hughes goes forward with the sell and the redevelopment of his property before the applicant than there is interim access along the same easement that he presently uses. (He called the BZA's attention to a letter in support of the request from Mr. Hughes.)

With respect to tree preservation, Mr. McDermott stated that he would defy anyone to look at the plat and say that the applicant did not plan to preserve the trees since 54 of the 58 acres of the site will remain in open space. Although portions of the site will be cleared, he said a substantial existing natural very matured buffer all the way around the use will remain, with the exception of the access road out to Lorton Road.

Mrs. Harris asked if the buffer would be very much the same with the recreational use as well as the industrial use. Mr. McDermott said it would be essentially the same but there would be some additional clearing with the industrial use. He added that the applicant was prepared under the special exception to proffer to a transitional screening area of 70 feet which would be double the Zoning Ordinance requirement. Mr. McDermott said that if the market opens up sooner than expected the applicant has the ability with the access road to go in and construct the first two buildings and not interfere with the majority of the uses in the special use permit. Mrs. Harris asked if additional vegetation would be planted in the buffer area when the industrial use is constructed. Mr. McDermott said there is a draft proffer which requires the applicant to add supplement plantings as directed by the Urban Forester.

Mr. McDermott continued by stating that with 440 feet of buffering the surrounding residential properties would be amply protected. He used the viewgraph to show the location of the EQC line and stated he believed the applicant had amply committed to preservation of the EQC. He said the driving range had been relocated away from the EQC and the steep slopes will be grassed with no structures.

In response to a question from Mr. Pammel, Mr. McDermott replied that the applicant's proposal was meant to be an interim use and the access to Lorton Road and the drive from Lorton Road through the property will be exactly the same in the industrial development. He said the entrance location arose out of meetings with staff of the Environmental Planning Branch, Office of Comprehensive Planning (OCP), and Office of Transportation. Mr. McDermott said the citizens involved with the Neighborhood Task Force believe the proposal will provide a much needed recreational use and will begin the upgrading of the image of the Lorton area. He added that the interim use will be for a term of 5 to 10 years. Mr. McDermott said he believed that the applicant has met all the criteria.

Steven Gageby, Chairman of the Shirley Acres Citizens Association Steering Committee, and a member of the Federation of the Lorton Communities, came forward. He said Rebecca Williams, President of the Federation of Lorton Communities, was also present, and he would be speaking on her behalf also. Mr. Gageby said that during the past 4 years the citizens have worked very hard to have land use and sewer recommendations that were made by the Lorton-South Route 1 Task Force a part of the Comprehensive Plan and the Board of Supervisors finally approved the recommendations on October 14, 1991, but not without objections from OCP. He said that the objective in making the recommendations was to improve the quality of life in Lorton and allow Lorton to improve its image through land uses more compatible with the residential nature of the community. Mr. Gageby said the battle was long and hard and was not yet over since OCP was still fighting every attempt the citizens make to implement the changes that were adopted. He said the special permit use before the BZA represented the first citizen attempt to try and improve Lorton and staff was against the application and that he believed they would also be against any efforts in the future to change the status quo. Mr. Gageby said the residents have been fully briefed on the request and any concerns of the citizens have been put to rest relative to how the proposed recreatfonal center would impact the neighborhood and community. He said the impact would be positive with a capital "P" and for this reason the residents strongly urged the BZA to approve the request.

There were no further speakers in support of the request and Chairman DiGiulian called for speakers in opposition to the request.

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John Byers, Planning Commissioner for Mount Vernon, came forward and said that he had mixed feelings about the application. He said the applicant had a proposal before the Planning Commission scheduled to be heard on March 25, 1992, to have the property rezoned for industrial purposes, which is in accordance with the Comprehensive Plan. Mr. Byers said he was aware of the poor economic climate which might prevent the applicant from constructing any type of industrial complex and that he understood the applicant's desire to get some kind of financial return from the property, but he did have two concerns with the application. The first being that he did not believe the application was in compliance with the Comprehensive Plan. He said the text of the Plan did not speak to any interim use on the subject property, only to the redevelopment of the Shirley Acres area. Mr. Byers said the Planning Commission and the Board of Supervisors have successfully defended the zoning process in the County through challenges in the court system by strictly adhering to the Comprehensive Plan. He said a developer that submitted an application that was not in conformance with the Comprehensive Plan has two options, one being to change the application so that it does meet the Plan, and the second being to request a change to the Plan itself. Mr. Byers said that a change to the Plan was not impossible and noted that just two weeks ago the Planning Commission had approved a change to the McLean Central Business District which would bring the area into conformance with the Plan and could be approved. He said the text in this case was specific for the reason that Mr. Gageby had just mentioned, which was the long process that involved the staff, the Lorton community, and the Lorton Task Force working out what would be done with each parcel in the Lorton area. Mr. Byers said with respect to this particular parcel staff and other people suggested that a more flexible text might be used which would allow some other uses and there are areas in the Lorton community that are recommended for private recreation as a primary or optional use. But at the insistence of Mr. Gageby and the Shirley Acres community, he said the exact text noted in the Lorton Plan was inserted. Mr. Byers said that it had been pointed out to the citizens that they "might be painting themselves into a corner", and the text was approved only three months ago. He said he did not have any problem with the proposed use per se, but he did have a major concern with any attempt to circumvent the text of the Comprehensive Plan. Mr. Byers said if someone does not like the text of the Plan, they should request a change to the text, but not create a precedent that will weaken the County's protection of the zoning process.

He said his second concern had to do with the length of the applicant's proposal as an interim use. Mr. Byers pointed out that during meeting on February 3, 1992, with the Mount Vernon Planning and Zoning Committee the applicant requested a 10 year period for the interim, and it appeared to him that would be more of a semi-permanent use. Staff had suggested that if the BZA were to approve the request that the time limit be reduced to 5 years, which he agreed with since the Comprehensive Plan is changed and updated every 5 years. Therefore if the applicant wants to make the use permanent after 5 years, he said the applicant could request a change to the Comprehensive Plan and have the change made permanent. Mr. Byers asked the BZA to protect the Comprehensive Plan and deny the request.

Mrs. Thonen asked Mr. Byers if he was aware of the support for the request expressed by the surrounding *community*, the Federation, and the Mount Vernon Planning and Zoning Committee. Mr. Byers replied in the affirmative. Mrs. Thonen said that it was her understanding there was a lot of controversy concerning what would be inserted into the Plan and asked him to explain the different plans that had been generated from those discussions. Mr. Byers said the existing Plan was developed by the Lorton Task Force and County staff and the text concerning the subject property was insisted upon by the Shirley Acres representatives. He said he had been involved in the process and at the time the Plan was finally accepted he was not aware of any major disagreement with the exception to the portion of the area having to do with the Gunston area.

Mrs. Harris said she really respected Mr. Byers' stance and asked what part of the request he saw precluding the eventual development in the industrial flex usage of the subject property. Mr. Byers said the only thing that he would see that might possibly preclude the industrial development would be if the proposed use became very profitable. Mrs. Harris explained that if the application is limited to 5 years then the life of the use would be limited. Mrs. Byers said he understood that but he was concerned that if the BZA granted the application that was not in conformance with the text of the Plan, it would create a precedence that would weaken staff's position from the Court's standpoint.

Mr. Pammel pointed out that the applicant had submitted an application for rezoning the subject property to provide for the industrial flex that is set forth in the Comprehensive Plan. He asked if that did not indicate a commitment on the part of the applicant to comply with the Comprehensive Plan. Mr. Byers said that was a partial commitment and suggested that assuming the rezoning application is approved, the special permit was approved, and the use became very popular and very financial viable, the use might continue indefinitely and there would be little incentive to change the use.

Mr. Kelley said at that point the applicant would have to come back to the BZA for a new public hearing. Mr. Byers suggested that the applicant ask that the Plan be changed to allow the recreational use. Mrs. Thonen said that she believed that Lorton was in need of recreational facilities and Mr. Byers agreed. Mrs. Thonen said the Comprehensive Plan was only a tool to guide the BZA in making decision.

Mrs. Harris asked how long it would take the applicant to go through the amendment process. Mr. Byers said it would take approximately 1 to 2 months. He suggested that the BZA defer decision to allow the applicant time to obtain an out-of-turn hearing plan amendment.

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Chairman DiGiulian called Mr. Gageby to the podium. In response to a question from Mrs. Harris, Mr. Gageby replied that the I-4 language that was inserted was a "safety net" for the Lorton citizens because at that time they were fighting the expansion of the I-95 Landfill and pollution and the citizens believed their homes would become unviable. Therefore, they requested that language be inserted into the Master Plan such that if the County facilities did expand the citizens would not be left high and dry. Mr. Gageby explained along with that the overall vision of the Task Force was to improve the quality of life in Lorton, and the applicant's request was a "gift horse" to the community. He said staff more than once turned what the citizens were trying to do around.

Mrs. Harris asked him not to "dunk" staff too badly and that she was only trying to determine why there was no room for negotiation. Mr. Gageby said the citizens drafted specific language as to what they would like to see in the Master Plan, but their suggestion was rewritten by staff.

In rebuttal, Mr. McDermott said he objected to an out-of-turn amendment due to the amount of time involved and cited one plan amendment that took 2 years to get approved and that he did not believe that the applicant needed an plan amendment. He suggested that the BZA add language to the Proposed Development Conditions stipulating that the use not be renewed after the 10 years unless the Comprehensive Plan has been changed to include the use.

Chairman DiGiulian closed the public hearing.

Mrs. Harris asked if the applicant would be willing to agree to apply for a plan amendment if the BZA deferred decision for approximately 2 months. Mr. McDermott said that the applicant would like to proceed since the property has been sitting undeveloped for several years.

Mr. Pammel asked if staff would still object to the request if parcels 1 and 2 were included in the request. Ms. Kelsey said that staff would have to address the application at that time. She pointed out the issue regarding the adverse impact of the lights that had not been addressed. Chairman DiGiulian said that he considered staff's comment rebuttal and that he would not allow that.

Mr. Hammack stated that since the BZA had been given Revised Development Conditions by staff and proposed revisions to the former development conditions by the applicant, he would make a motion to defer decision for one week. Mr. Kelley seconded the motion. The motion passed by a vote of 6-1 with Mrs. Thonen voting nay.

Ms. Kelsey suggested 11:00 a.m. and the BZA asked that it be scheduled at 9:00 a.m. The Chairman so ordered.

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The BZA recessed at 11:12 a.m. and reconvened at 11:25 a.m.

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Page 420, February 4, 1992, (Tape 2), Scheduled case of:

10:00 A.M. RODNEY B. COLEN, VC 91-C-136, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 17.2 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 11,611 s.f. located at 12604 Noble Victory La., zoned R-3 (developed cluster), Centreville District, Tax Map 25-2((12))116.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Colen replied that it was.

Greg Chase, Staff Coordinator with the Special Permit and Rezoning Branch, presented the staff report. The subject property is located at 12604 Noble Victory Lane east of its intersection with Club Pond Lane. The surrounding lots in the Polo Fields subdivision are also zoned R-3 and are developed with single-family detached dwellings. The applicant was requesting a variance to the minimum rear yard requirement to permit the construction of a room addition to 17.2 feet from the rear lot line. Section 3-307 of the Zoning Ordinance requires a minimum rear yard of 25.0 feet; therefore, the applicants were requesting a variance of 7.8 feet from the minimum rear yard requirement. Mr. Chase said that in regard to surrounding uses, research in the files of the Office of Zoning Administration revealed that the dwelling on adjacent Lot 139 to the north is located approximately 25 feet from the shared lot line.

The applicant, Rod Colen, 12604 Noble Victory Lane, Herndon, Virginia, explained that the purpose of the request was to construct a sunroom addition on the rear of the existing dwelling. He referenced the statement of justification submitted with the application.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant the request for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-C-136 by RODNEY B. COLEN, under Section 18-401 of the Zoning Ordinance to allow addition 17.2 feet from rear lot line, on property located at 12604 Noble Victory Lane, Tax Map Reference 25-2((12))116, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 11,611 square feet.
4. The applicant has demonstrated compliance with the nine criteria, specifically the irregular size and shape of the parcel involved; wherein there is a minimal area in the rear yard, and the only area, where such an addition could be located.
5. If you took a depth from the cul-de-sac to the rear property line, it is slightly over 100 feet.
6. The property is set back from the cul-de-sac 40.2 feet; thereby, giving an example of how narrow the lot is and the restrictions imposed by the location of the house.
7. There is no other location for such an addition.
8. The applicant has indicated a need for such an addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific room addition shown on the plat prepared by Urban Engineering & Assoc., Inc., dated June 29, 1987 and revised November 12, 1991, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The exterior materials and color of the room addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 422, February 4, 1992, (Tape 2), Scheduled case of:

10:10 A.M. ANNA MARIE TRUONG, SP 91-M-068, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location, to allow accessory structure (shed/workshop) to remain 2.1 ft. from rear lot line and 0.9 ft. from side lot line (11.8 ft. min. rear yard and 12 ft. min. side yard required by Sects. 3-307 and 10-104), on approx. 10,537 s.f. located at 4205 Muir Pl., zoned R-3, Mason District, Tax Map 72-2((3))(Q)14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dewey D. La, 6764 Bison Street, Springfield, Virginia, replied that it was.

Greg Riegle, Staff Coordinator, pointed out that Mr. La's name was not on the affidavit.

Mr. La said that his name was not on the affidavit but that Mrs. Turong was a relative and she had asked him to represent her since she was out of town. The BZA explained that he would have to go to the County Attorney's Office and amend the affidavit.

It was the consensus of the BZA to pass over the case to allow staff to discuss the affidavit problem with Mr. La. Mrs. Harris made a motion to defer the case to the end of the agenda. Mr. Hammack seconded the motion which passed by a vote of 7-0.

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Page 422, February 4, 1992, (Tape 2), Scheduled case of:

10:20 A.M. MICHAEL J. LOUSHINE, VC 91-D-131, appl. under Sect. 18-401 of the Zoning Ordinance to allow uncovered stairs 3.0 ft. from front lot line (15 ft. front yard required by Sects. 3-307 and 2-412), on approx. 10,194 s.f. located at 1482 Kingstream Dr., zoned R-3 (developed cluster), Dranesville District, Tax Map 11-1((4))347.

Carol Dickey, Staff Coordinator, explained that the applicant had requested a deferral of one month in order for the homeowners association's Architectural Committee to review the application. She suggested March 24, 1992, at 9:15 a.m.

Mrs. Harris made a motion to defer to the date and time suggested by staff. Mr. Hammack seconded the motion which passed by a vote of 7-0.

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Page 422, February 4, 1992, (Tape 2), Scheduled case of:

10:30 A.M. WALTER H. & JUNE A. SQUIRE, VC 91-V-135, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (deck) 5.33 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 17,415 s.f. located at 3599 Surrey Dr., zoned R-2, Mt. Vernon District, Tax Map 110-2((5))12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mrs. Squire replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. The property is located on Surrey Drive in an area between Mount Vernon Highway and Mount Vernon Road. The subject property and the surrounding lots are zoned R-2 and are developed with single family detached dwellings or are vacant. The request for a variance results from the applicants' proposal to

construct an open deck at a distance of 5.33 ft. from the side lot line. A minimum side yard of 15 feet is required by the Zoning Ordinance on an R-2 lot. Accordingly, the applicants were requesting a variance of 9.67 feet to the minimum side yard requirement. A review of the files in the Zoning Administration Division reveals that Lot 13, to the south, and Lot 23, to the east are vacant and are owned by the same property owner. Lot 23 would be most affected by the granting of this variance.

The applicant, June Squire, 3599 Surrey Drive, Alexandria, Virginia, referenced the handout that she had distributed to the BZA. She called their attention to Tab 7, which contained a letter from the property owner of Lot 23 in support of the request. Mrs. Squire said Tab 3, which outlined the planned construction of Lot 23, noted there would no construction adjacent to the rear of the applicants' property.

In response to a question from Mrs. Harris, Mrs. Squire replied that the builder had not told them how little room there was in the rear of the lot.

Mrs. Thonen said that she believed the Department of Environmental Management should stop approving houses with french doors on them unless there is a porch to exit onto because of the safety issue.

Mrs. Harris encouraged the applicant to contact the builder to voice her objection. Mrs. Squire said the adjacent vacant and Lot 13 are owned by Dr. Acevedo. She added that it was her understanding that the neighbor's proposed house will set back on the lot.

In response to a question from Mr. Hammack, Mrs. Squire replied the neighbor's house would set back approximately 174 feet.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply closed the public hearing.

Mrs. Harris made a motion to grant the applicants' request for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-135 by WALTER H. AND JUNE A SQUIRE, under Section 18-401 of the Zoning Ordinance to allow addition (deck) 5.33 feet from side lot line, on property located at 3599 Surrey Drive, Tax Map Reference 110-2((5))12, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 17,415 square feet.
4. The lot has unusual features, although it is a very rectangular lot.
5. Because of the easement along the front of the property, the house was situated in a way that there is no feasible use of the doors that exit off the back of the house without some kind of variance, which is an extraordinary condition on the lot.
6. The house to be placed on the adjacent lot is going to be a considerable distance from the applicant's house; therefore, there will be no direct impact on the next door neighbors.
7. The strict application of the Zoning Ordinance would effectively prohibit the use of the property because there is no way to exit from the two doors unless a variance is approved.
8. The applicant has applied for a reasonable variance being that the deck is only 12 feet wide and is not any longer than the length of the two french doors on the back of the house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;

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D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific deck addition shown on the plat (prepared by Kevin P. Steinhilber, Certified Land Surveyor, for William H. Gordon Associates, Inc., dated October 15, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 424, February 4, 1992, (Tape 2), Scheduled case of:

10:40 A.M. TRUSTEES OF THE PENDER UNITED METHODIST CHURCH, SPA 83-C-068-2, appl. under Sect. 3-303 of the Zoning Ordinance to amend SP 83-C-068 for church and related facilities, child care center, and nursery school, to allow building additions based on R-3 zoning, increase in parking, modification of screening barrier requirements, and addition of phasing condition for acoustical barrier, on approx. 4.48 acres located at 12500 Lee Jackson Memorial Hwy, zoned R-3 (formerly R-1), WS, HC, Centreville District, Tax Map 45-4((1))8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edgar Prichard, attorney for the applicant, replied that it was.

Mr. Pammel abstained from participating in the case as he had a business relationship with the law firm representing the applicant.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the property is located on the north side of Route 50, just west of the Fair Oaks Mall area, is zoned R-3,

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and lies within the Water Supply Protection Overlay and the Highway Corridor Overlay Districts, and contains 4.48 acres. It is developed with a church and related facilities and a nursery school/child care center which originally came under special permit in 1983 and was amended in 1990. The most recent zoning activity on the property occurred in October 1991 when the property was rezoned from the R-1 to the R-3 District to allow a greater Floor Area Ratio (FAR) and thus allow the church to construct the additions which they are now planning. She said the amendment before the BZA would allow two building additions, additional parking, and a modification of the transitional screening and acoustical barrier requirements previously imposed.

Mrs. Greenlief said the site is located in the Fairfax Center Area and, as such, staff looked for a high quality design with supplemental landscaping and the applicant worked with staff to achieve these goals. She said the staff report contained an architectural rendering of the front addition, the addition will be compatible with the existing sanctuary building, and the applicant had proffered to this in conjunction with the rezoning. The applicant had agreed to provide additional shade and flowering trees along the site's frontage, to provide building foundation plantings and an ornamental treatment for the site's entrance along Alder Woods Drive. Further, the applicant had agreed to supplement the area along the western lot line, in the vicinity of the addition, with evergreen understory plantings. All of these commitments are reflected in the Proposed Development Conditions in Appendix 1.

She said staff believed that the application would be in harmony with the Comprehensive Plan and met the standards for approval of a special permit. Thus, staff recommended approval of SPA 83-C-068-2 subject to the Development Conditions in Appendix 1.

Edgar Prichard, attorney with McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, represented the applicant. He said that the church has been in Pender since 1907 and the building was constructed on the subject property in 1964 and has been before the BZA on several occasions as the church has grown with the community. Mr. Prichard said this would be the last expansion as it would utilize the last available FAR. He said that the purpose for filing the rezoning was to allow the applicant to come under a different FAR limit since the FAR under R-1 zoning was 0.15 and under the R-2 zoning the FAR is 0.25. Mr. Prichard pointed out that the applicant has proffered to a 0.21 FAR, which is slightly less than that allowed and the building would be a total of 40,000 square feet. He called the BZA's attention to the Generalized Development Plan, which had been designed by Greg Budnick, which had been submitted to the Board of Supervisors, in addition to an architectural rendering of the proposed building designed by David Lipp. Mr. Prichard said that both Mr. Budnick and Mr. Lipp were present as well the Reverend Harold Hicks, pastor of the church, and Bob Stitts, Chairman of the Building Committee.

Mr. Prichard addressed the Development Conditions and said they were acceptable to the applicant. He asked that Condition Number 13 be amended to allow the applicant to plant "flowering shrubs" as opposed to a flower bed due to the difficulty in maintaining a flower bed. Mr. Prichard explained that the proposed structure would be a two story building above a cellar, which would be compatible with the existing building and would be below the allowed height of 40 feet. He said the seating area of the sanctuary would not be increased but the parking would be increased to 201 spaces and asked that the condition addressing parking be amended to reflect the increase.

He said the church now has 1,320 members with two services on Sunday morning, a Sunday School membership of 230, and provides a meeting place for the community.

In response to a question from Mr. Hammack regarding the play area, Mr. Prichard replied the play area will be reshaped to provide adequate play room but will not impact the 25 foot transitional screening yard.

Mr. Ribble asked the speaker to elaborate on his comments regarding the parking. Mr. Prichard said there are 150 parking spaces required, the church currently has 185, and the church planned to restripe the parking area bringing the total number of parking spaces to 201.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply closed the public hearing.

Mr. Ribble made a motion to grant subject to the Development Conditions contained in the staff report dated January 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 83-C-068-2 by TRUSTEES OF THE PENDER UNITED METHODIST CHURCH, under Section 3-303 of the Zoning Ordinance to amend SP 83-C-068 for church and related facilities, child care center, and nursery school, to allow building additions based on R-3 zoning, increase in parking, modification of screening barrier requirements, and addition of phasing condition for acoustical barrier, on property located at 12500 Lee Jackson Memorial Highway, Tax Map Reference 45-4((1))8, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (formerly R-1), WS, HC.
3. The area of the lot is 4.48 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.*

2. This approval is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat submitted with this application (prepared by GJB Engineering, dated November 1, 1991 as revised through December 20, 1991) except as qualified by these development conditions.*

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*

4. This use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved special permit plat (prepared by GJB Engineering, dated November 1, 1991 as revised through December 20, 1991) and these development conditions.

5. The maximum number of seats in the main area of worship shall be 540 seats.*

6. The maximum daily enrollment for the child care center/nursery school shall be 75.*

7. The minimum number of parking spaces for the church and child care center/nursery school shall be 150. The maximum number of parking spaces on site shall be 201 as shown on the special permit plat. All parking for the uses shall be on-site and shall be provided in accordance with Article 11 of the Zoning Ordinance.*

8. The hours of operation for the child care center/nursery school shall be limited to 9:00 a.m. to 3:30 p.m., five days a week.*

9. There shall be a maximum of fourteen (14) employees for the child care center/nursery school on site at any one time.*

10. Transitional screening and barriers shall be provided and maintained as follows. The County Urban Forester shall review and approve all transitional screening and supplemental landscaping along all lot lines.

    - Northern Lot line - Transitional Screening I shall be provided and maintained.

    - Eastern Lot line - Transitional Screening I shall be provided and maintained along the eastern lot line but may be reduced in the area of the parking lot to fifteen (15) feet in width provided two (2) Canadian Hemlocks are provided and maintained as shown on the special permit plat and approved under Site Plan Waiver #011090. In addition, in the area along the eastern lot line south of the southern*most* entrance on Alder Woods Drive, the existing vegetation shall be deemed to satisfy the Transitional Screening I requirement.

    - Western Lot Line - Transitional Screening I shall be provided and maintained along the rear 350 feet of the western lot line. The remainder of the western lot line shall be supplemented with evergreen understory plantings. The species, location and number of the understory plantings shall be reviewed and approved by the County Urban Forester.

    - Southern Lot Line - The existing trees along the southern lot line shall be maintained or, if necessary due to construction, shall be relocated to another area along the southern lot line. Additional shade and flowering trees shall

be provided along the southern lot line in order to soften the visual impact of this Non-Residential Use along Rt. 50 and attain a coordinated design for the Rt. 50 frontage. The species, location and number of the trees along the southern lot line shall be reviewed and approved by the County Urban Forester.

- o The barrier requirement shall be waived along all lot lines.

11. Foundation plantings comparable to those which exist around the existing church buildings shall be provided around the proposed additions. The type, size and location of these plantings shall be reviewed and approved by the County Urban Forester.

12. Additional plantings shall be provided along the rear and two sides of the shed and shed addition to soften the impact of these building masses upon the adjacent residential use located to the north. The species, location, planted height and number of plantings shall be reviewed and approved by the County Urban Forester.*

13. A bed of flowering shrubs and/or perennials shall be provided and maintained along either side of the southernmost entrance drive as shown on the special permit plat.

14. The trailer shall be removed prior to the issuance of a Non-Residential Use Permit for either of the building additions.

15. Parking lot lights shall not exceed twelve (12) feet in height and shall be shielded to prevent any projection off the church property.*

16. The noise level in the play area shall be tested after the addition proposed between the play area and Rt. 50 is completed and prior to the issuance of a Non-Residential Use Permit for the addition to determine if the exterior noise level in any portion of the play area exceeds 65 dBA Ldn. If the noise level exceeds 65 dBA Ldn in any portion of the play area or if the addition is not constructed, noise attentuation measures such as acoustical fencing, walls, earthen berms, or a combination thereof, shall be provided for the play area. If acoustical fencing or walls are used, they shall be architecturally solid from the ground up with no gaps or openings. The noise attentuation measure must be of sufficient height to adequately shield the impacted area from the Rt. 50.

17. In order to achieve maximum interior noise levels of 45 dBA Ldn within the proposed addition along Rt. 50, the addition shall have the following acoustical attributes:

    - o Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45.

    - o Doors and windows shall have a laboratory STC rating of at least 37. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls.

    - o Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

18. The building additions shall be constructed in substantial conformance to the architectural plan prepared by Helbing Lipp Limited and dated October 9, 1991. The building materials shall be similar to those utilized in the existing sanctuary building.

19. Documentation shall be provided at the time of review pursuant to Condition 4 to the satisfaction of the Director, DEM to show that the stormwater management and BMP requirements for the site can be met off-site. If these requirements, as determined by the Director, DEM, cannot be met off-site, on-site stormwater management shall be provided or waived, as determined by the Director, DEM. If an on-site facility is required, it shall be located as shown on the special permit plat and shall not infringe into any of the transitional screening required in Condition 10.

20. The bus stop along the frontage of the site shall be maintained during construction.

21. Any trail or sidewalk constructed between the southernmost addition and the existing concrete sidewalk along the site's frontage shall not interfere with the provision of the required trees along the site's frontage and nor shall it result in the removal of any existing trees.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of

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Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 428, February 4, 1992, (Tapes 2-3), Scheduled case of:

11:00 A.M. GOODRIDGE DRIVE ASSOCIATES LIMITED PARTNERSHIP APPEAL, A 91-P-011, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the timing of construction of the third proposed office building is controlled by the approval of Special Exception SE 89-D-042, on approx. 8.32 acres, located at 1710, 1709, and 1705 Goodridge Drive, zoned C-4, SC, HC, Providence District (formerly Dranesville), Tax Map 29-3((15))4A, 4B, 4C. (DEFERRED FROM 10/29/91 AT APPLICANT'S REQUEST) (IF BZA APPROVES DEFERRAL FROM 11/26/91 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, attorney for the applicant, replied that it was.

William Shoup, Deputy Zoning Administrator, said the subject property is currently developed with two office buildings and a five level parking structure. He said at issue in the appeal was the Zoning Administrator's determination that the timing of construction of a proposed third office building was controlled by the approval of Special Exception, SE 89-D-042. Mr. Shoup outlined staff's position by stating SE 89-D-042 was approved by the Board of Supervisors on March 12, 1990, to authorize an increase in building height for an existing building. He said the approved Special Exception plat encompassed all three lots, which were the subject of the appeal, and by definition in the Zoning Ordinance is one lot. The plat depicted two existing buildings, one parking structure, the proposed third office building, and a proposed one story connector building, which would connect all three buildings. Mr. Shoup said the Special Exception was conditioned to apply to the structures that were indicated on the Special Exception plat and there were other conditions that specifically apply to landscaping and the height of all three office buildings. He said the third building is shown as being connected to the existing 156 foot building, which required the Special Exception for additional height. Mr. Shoup said it was staff's position that the Board of Supervisors reviewed the property as one unified development and the approval was for the entire site, including all the buildings on the site as shown. He said the additional building, by virtue of its connection to the existing 156 foot building, actually constitutes an expansion of the building that needed the Special Exception approval.

Mrs. Thonen asked if the connector which would tie all three buildings together would create an expansion. Mr. Shoup said that was staff's position. Chairman DiGiulian asked if all three buildings had been approved under the Special Exception and Mr. Shoup said that was staff's belief. Chairman DiGiulian asked if it was staff's position that construction must have commenced on all three buildings within that timeframe. Mr. Shoup said that the two existing buildings were already constructed at the time of the Special Exception. He said it was staff's position that the third building and the connector building would have had to be constructed in accordance with Sect. 9-015. Chairman DiGiulian asked what the Special Exception request had been. Mr. Shoup said it was to allow the building height of one of the existing building to be higher than that allowed by the Zoning Ordinance.

Mr. Shoup noted that since the Zoning Administrator's determination, the appellant has received approval from the Board of Supervisors for additional time to commence construction.

Mr. Hammack asked why the entire site was included in the Special Exception. Mr. Shoup said that the Special Exception plat showed the entire site and because the building was being tied to the existing building staff believed that it was necessary to include the proposed building. Mr. Hammack asked why the completion of the two existing buildings did not constitute the establishment of the use. Mr. Shoup said he believed the use would be established once the appellant obtains the Non-Residential Use Permits and satisfies all the conditions under the Special Exception approval for the existing buildings. Mr. Hammack asked if it was staff's position that all three buildings would have to have been constructed and or construction diligently prosecuted even though it is under one Special Exception. Mr. Shoup said that was correct. Mr. Hammack asked if staff would say the appellant had to come back for approval of that third building if there were had been no existing buildings and the appellant came in and obtained a Special Exception, and then built two of the buildings and waited to build the third one because of economic reasons. Mr. Shoup said he believed that the appellant had to diligently pursue construction of the third building.

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In response to a question from Mrs. Harris regarding the additional time request, Mr. Shoup replied the request was approved for three years and the applicant had requested an unlimited amount of time.

Mrs. Harris said the Special Exception was not in jeopardy and asked why the appeal was before the BZA. Mr. Pammel said one of the other issues to be decided by the BZA was the fact that the appellant had indicated that the existing zoning permits by right the third office building, thus the building was not under the provisions of the Special Exception.

Mr. Hammack asked if staff had issued the appellant a Notice of Violation, and if not, why not. Mr. Shoup said that he did not know if the appellant was under violation and added that the 156 foot building was originally shown on the site plan as 147 feet, and at the time the building was built the height limitation was 150 feet. He said staff was not sure why the building was now represented as 156 feet, but it was the applicant during the Special Exception process that came forward to obtain the approval for the additional height to bring the building into conformance. Mr. Hammack said the question was whether the Special Exception, which applies to all three buildings, was valid and allow the appellant to build the third building without an extension, which they obtained, or whether it is not. Mr. Shoup pointed out that he was not saying that the use was not valid. Mr. Hammack said that staff was saying that the use had not been established and two-thirds of the use exists.

It was the consensus of the BZA to forego further questions and hear from the appellant's agent.

Lynne Strobel, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., Thirteenth Floor, 2200 Clarendon Boulevard, Arlington, Virginia, came forward and stated the appellant filed for a Special Exception on the property in 1989, which was approved by the Board of Supervisors in March 1990. She said the Special Exception was filed solely to bring the nonconforming height of the existing building located at 1710 Goodridge Drive into conformance with the current Zoning Ordinance. Ms. Strobel said the existing 14 story building, which is 156 feet in height, was completed in 1980, which was then permissible in the C-4 District. She stated that the existing building height exceeds the current Zoning Ordinance height limitations in the C-4 District of 120 feet; therefore, the existing building became grandfathered as a nonconforming use. Ms. Strobel said the appellant originally filed the request to make the nonconforming building height a conforming use to satisfy financing requirements. She said at the request of the County all three buildings, two existing and one proposed on three separate parcels, were included in the Special Exception application to allow staff to evaluate the site as a whole. The Special Exception was filed only for building height and in the staff report description of the application the staff coordinator stated, "the applicant was requesting approval of the existing building height to allow additional financing for the project." The applicant did not ask for nor did the applicant receive approval to construct the third proposed building, as that approval was not required. The property is zoned C-4 by right and office uses are permitted by right.

Ms. Strobel focused on two Zoning Ordinance provisions, one being Sect. 15-101, which defines nonconforming use, and the use before the BZA was the building height. She said the construction of the third office building was not an expansion of a nonconforming use as the third building would be in compliance with the C-4 Zoning Ordinance requirements, including building height. The applicant was not asking for anything else for which a use permit was required; the potential nonconformity was simply building height. She said the use, which may be deemed nonconforming if the Special Exception expired, already exists, the building is built; therefore, the Special Exception should not expire, but remain valid. Ms. Strobel said the second Zoning Ordinance provision was Sect. 9-015, which was referenced in the Development Conditions. (She handed out copies of the Zoning Ordinance section to the BZA.) Ms. Strobel said the Zoning Ordinance stipulates that a Special Exception shall expire 18 months after approval unless the activity has been authorized or is diligently pursued. She said the activity authorized was for additional building height for an existing building and the building is already constructed and the height is already established. Mr. Strobel stated that the construction of the third proposed office building should not and is not controlled by the Special Exception and that was why the appellant was before the BZA. She said the construction of the third office building was not the activity authorized and the building should be constructed without being controlled by the Special Exception. The appellant was not requesting the Special Exception consideration for additional Floor Area Ratio (FAR), the type of use on the site, or any other aspect of the development. In addition, she said that the Zoning Administrator has determined that the three buildings should be considered as one because they are connected by a one story pedestrian walkway, but this does not create one building. Ms. Strobel said each building has a separate address, each building has a separate site plan, each building has been issued a separate Non-Residential Use Permit, and each is assessed separately by the County. She pointed out the issue of the walkway was not raised in the original ruling, which is the subject of the appeal. The Special Exception approved by the Board of Supervisors allowed an existing building to be conforming even if it exceeds the current Zoning Ordinance regulations. The appellant did not ask for permission to construct a third office building because he could do that by right. She said the use authorized by the Board of Supervisors, with their approval in March 1990, has been established and that Special Exception should not be allowed to expire.

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In response to a question from Mrs. Harris regarding the extension request, Ms. Strobel replied at that time the appellant was not sure whether or not the Special Exception would expire, thus a request for interpretation was submitted to the Zoning Administrator and an extension was requested. She said she was simply "covering all the bases."

Mrs. Harris said that she had stated that construction of the third building was not the action the Special Exception represented. Ms. Strobel stated that was correct, but it was her understanding that staff believed that construction of the third building is necessary or the Special Exception will expire, the tall building will become nonconforming again, and the appellant will be back to where he started. She said that she believed the Special Exception had been established and did not believe that the third building was controlled by the Special Exception. Mrs. Harris asked if the third building was shown on the Special Exception plat and Ms. Strobel replied that it was. Mrs. Harris asked if the parcel on which the third building would be constructed could be removed from the Special Exception. Ms. Strobel said when the Special Exception was initially filed it included only the building that exceeded the height limitation but the plat showed the entire site, but following discussions with staff the application was amended to include the other parcels. She said that she was not sure that staff would allow the removal of the other two parcels.

Mr. Hammack asked how the existing buildings could be occupied without Non-Residential Use Permits being obtained. She said permits were obtained for each of the buildings but the Zoning Administrator had stated that new Non-Residential Use Permits were required that referenced the new Special Exception.

Chairman DiGiulian called for speakers, either in support or in opposition, and hearing no reply closed the public hearing.

Mr. Hammack said after having read the staff report and having reviewed the Development Conditions, whether the appellant intended to come under a Special Exception and bring all the buildings under the Special Exception, all the buildings were included, and the Development Conditions discussed the Floor Area Ratio of the site. He said that in 1989 there was a valid Special Exception that covered all three buildings and he believed the unconstructed third building was a part of the Special Exception. Mr. Hammack added that he believed the use had been established on the site because there are two existing buildings, they are operating, and that he did not believe that the Special Exception could be "cut up into component parts." He said he believed the appellant has the right to construct the third building as was approved under the Special Exception as it is a valid, established use and construction has commenced. He made a motion to overrule the Zoning Administrator.

Mr. Ribble seconded the motion.

Mr. Pammel asked for a clarification that the motion did not support the appellant's contention that the C-4 zoning by right allows the use of the building. Mr. Hammack agreed. He added that once the proposed building was brought under the Special Exception it stays under the Special Exception.

Chairman DiGiulian stated that the intent of the motion was that the use has been established and the appellant can therefore go forward under the Special Exception and construct the third building and the link. Mr. Hammack said that was correct.

Mrs. Thonen agreed with the motion.

The motion passed by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1992. This date shall be deemed to be the final approval date of the BZA's action.

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Page 430, February 4, 1992, (Tape 2), Scheduled case of:

11:15 A.M. LUTHER B. LOCKHART, JR., VC 91-S-145, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 17.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-C07), on approx. 28,879 s.f. located at 5702 Patrick O'Roarke Ct., zoned R-C, WS, Springfield District, Tax Map 77-1((11))40.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lockhart replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report on behalf of the Staff Coordinator, Lori Greenlief. She said the subject property is a pipestem lot located in Fairfax Station subdivision and is abutted at the rear by homeowner's open space. The applicant was requesting a variance to the minimum rear yard requirement in order to construct an addition 17.0 feet from the rear lot line. Since the Zoning Ordinance requires a 25 foot rear yard, thus the applicant was requesting a variance of 8.0 feet. Ms. Kelsey said it was noted in the staff report that a variance was granted to the owners of Lot 5.

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The applicant, Luther B. Lockhart, 5702 Patrick O'Roarke Court, Fairfax Station, Virginia, came forward and explained that the main reason for constructing the addition was to allow more light to enter the house. He said the request has been approved by the neighborhood's Architectural Review Board and the common ground behind his property adds approximately 30 feet to the distance between his rear lot line and the nearest neighbor. Mr. Lockhart said there were no objections to his neighbors. (He submitted a rendering of the proposed addition to the BZA.) He pointed out that only one corner of the proposed addition was affected by the setback requirement.

Chairman DiGiulian called for speakers, either in support or in opposition to the request, and hearing no reply he closed the public hearing.

Mr. Pammel made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated January 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-S-145 by LUTHER B. LOCKHART, JR., under Section 18-401 of the Zoning Ordinance to allow addition 17.0 feet from rear lot line, on property located at 5702 Patrick O'Roarke Court, Tax Map Reference 77-1((11))40, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 4, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 28,879 square feet.
4. The applicant has satisfied the Board that he complies with the nine criteria for a variance, specifically the irregular shape of the parcel involved.
5. The lot is very wide but very narrow in depth.
6. The addition can only be placed in the area designated by the applicant.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

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THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Paciulli, Simmons & Associates dated September 10, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mrs. Thonen were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 12, 1992. This date shall be deemed to be the final approval date of this variance.

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Chairman DiGiulian asked staff the status of the Truong case passed over earlier in the public hearing. Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that the gentleman representing the applicant could not amend the affidavit. She suggested that the BZA defer the case to February 11, 1992, at the same time the Reyes case was being removed.

Mr. Hammack so moved. Mr. Pammel seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mrs. Thonen were not present for the vote.

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Page 432, February 4, 1992, (Tape 2), Action Item:

Approval of January 28, 1992, Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mrs. Thonen were not present for the vote.

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Page 432, February 4, 1992, (Tape 2), Action Item:

Scheduling of Classical Homes Appeal

Mr. Hammack made a motion to schedule the appeal on April 9, 1992, at 11:00 a.m. Mr. Pammel seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mrs. Thonen were not present for the vote.

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Page 432, February 4, 1992,, (Tape 2), Action Item:

Intent to Defer Golf Park, SPA 91-C-070 and VC 91-C-138

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that the applicant was present and the applicant had agreed with the deferral date and time of March 3, 1992, at 11:15 a.m.

Mr. Hammack made a motion to defer both cases to the date and time suggested by staff. Mr. Ribble seconded the motion which passed by a vote of 4-0-1 with Mr. Pammel abstaining. Mr. Kelley and Mrs. Thonen were not present for the vote.

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Request for Out-of-turn Hearing
Diane Tarkir, VC 91-D-143

Mrs. Harris said the applicant's request seemed to be valid and asked staff how early the request could be heard. Jane Kelsey, Chief, Special Permit and Variance Branch, said the earliest date would be March 3, 1992. Mr. Pammel asked when the case would normally be scheduled and Ms. Kelsey replied March 10th.

Mrs. Harris made a motion to deny the request. Mr. Ribble seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mrs. Thonen were not present for the vote.

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Mr. Ribble called the BZA's attention to the letter the Clerk had forwarded to Judge Richard Jamborsky notifying him of the expiration date of Chairman DiGiulian. Mr. Ribble made a motion that the BZA support Mr. DiGiulian's reappointment. Mr. Hammack seconded the motion which passed by a vote of 5-0 with Mr. Kelley and Mrs. Thonen were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:17 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: April 23, 1992

APPROVED: April 28, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 11, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 435, February 11, 1992, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE M. NEALL, II, TRUSTEE, SP 91-V-065, appl. under Sects. 3-103 and 8-915 of the Zoning Ordinance to allow outdoor recreational use (golf driving range, putting green, baseball batting cage, tennis club) and waiver of dustless surface requirement, on approx. 58.47 acres located on Lorton Rd., zoned R-1, Mt. Vernon District, Tax Map 107-3((1))3A. (DEFERRED FROM 2/4/92 FOR DECISION ONLY)

Chairman DiGiulian advised that this case was deferred from the previous week for decision only.

Mrs. Thonen said that the Conditions which she had received from the Association the previous week were more in line with what she believed and asked how that would be handled.

Mr. Hammack said he had taken some material from both sets of Conditions, but would use the revised Conditions which staff had distributed the previous week, and made a motion to grant SP 91-V-065 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions dated February 4, 1992, as amended, and also outlined in the Resolution.

Mr. Hammack made changes as follows:

Conditions 1 through 5 - shall remain the same as in staff's revised Proposed Development Conditions.

Condition 6 - the last sentence shall be changed to read: "The minimum required by the Zoning Ordinance shall be provided for each required use."

Condition 7 - shall remain the same.

Condition 8 - shall be revised as follows: "The Environmental Quality Corridor (EQC) shall be denoted as that area shown on the special permit plat. A maximum 80 foot wide clearing and grading envelope for the construction of the 24 foot drive may be allowed to encroach into the EQC. There shall be no clearing of any vegetation in the EQC, except for dead or dying trees or shrubs, as approved by the Urban Forester. there shall be no other grading in the EQC. There shall be no structures or uses located in the EQC area, except as approved on the approved special permit plat."

Condition 9 - shall remain the same, except for one change, starting with the second sentence: "...These BMPs may consist of, but not be limited to simple infiltration techniques, etc."

Condition 10 - shall be changed to read: "The hours of operation shall be limited from 8:00 a.m. until 9:00 p.m., Sunday through Thursday, and 8:00 a.m. until 10:00 p.m. on Friday and Saturday."

Condition 11 - shall be taken from the applicant's Proposed Development Conditions and staff's Proposed Condition 11 shall be deleted, as follows: "The lights illuminating the recreational facilities on the parking lot shall not exceed the following heights, respectively:

Golf Driving Range	45 feet
Tennis	22 feet
Putting Area	35 feet
Baseball Hitting Range	40 feet
Parking Lot	12 feet

The aforesaid lights shall be of a type and direction that prevent glare and nuisance light from negatively impacting adjacent residential uses. If the lights do not satisfactorily shield the adjacent residential uses as determined by the Zoning Enforcement Branch of the Zoning Administration Division, then the lights shall be redirected, reduced in height, or redesigned to ameliorate this impact, or the lights shall be removed. To minimize disturbance to the abutting uses to the south and the northwest, the aforesaid lights illuminating the recreational facilities shall be on an automatic timer to be turned off at 9:00 p.m. Sunday through Thursday and 10:00 p.m. Friday and Saturday; except from May 1 to October 1, when the lights shall be turned off at 10:00 p.m. and 11:00 p.m., respectively."

Condition 12 - shall be changed to read: "No loud speakers shall be used on the property, except for emergency purposes."

Condition 13 - shall be deleted in its entirety, as it is provided for elsewhere.

Condition 13 (14) - shall remain the same as in staff's Conditions.

Condition 14 (15)- shall be changed to read as follows: "Right-of-way to fifty-six (56) feet from the centerline of Lorton Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand at the time of site plan approval. An additional fifteen (15) foot wide ancillary easement shall be provided parallel to the requested right-of-way at the time of construction of the frontage improvements, if required."

Condition 15 (16) - staff's condition deleted.

Condition 15 (17)- shall remain the same.

Condition 16 (18) - shall be amended by adding to the end of the paragraph, with the last sentence reading: " ...If this cannot be demonstrated, then this special permit is null and void, unless served by public sewer or some alternative means approved by the Health Department."

Condition 17 (19) - shall be changed to: "This application shall be approved for a term of term of ten (10) years."

Condition 18 (20) - shall be amended as follows: "Existing vegetation on the site shall be preserved to the maximum extent possible. The clearing and grading envelope for the twenty-four (24) foot entrance drive shall be 80 feet in width to allow for minimal disturbance of the EQC, except that the 80 foot wide construction envelope many be enlarged to a width no greater than required to construct the entrance drive as permitted by DEM, based upon engineering requirements determined at the time of site plan approval for the ultimate completion of the industrial drive. The grading for the golf driving range shall not encroach above the 175 foot contour line onto the steep slopes in the southwestern corner of the property. The remainder of the paragraph shall be deleted."

Condition 19 (21) - second bullet - editorial change: "fines" changed to "fine."

Condition 20 (22) - shall be amended to read: "Any sales activity on the site shall be limited to ancillary selling of snacks and food related items and tennis, baseball, and golf related accessories."

Condition 21 (23) - shall be changed to show the plat revised as of January 27, 1992.

Condition 22 (24) - shall remain the same.

Condition 23 (25) - replaced by the applicant's proposed Condition 24: "Unless otherwise impacted by the entrance drive or clearing in conjunction therewith, existing building foundation near the northeastern corner of the site shall be removed and revegetated with plants similar to the existent vegetation. The type, size, and amount shall be as determined by the Urban Forester."

Condition 24 (26) - applicant's proposed Condition 29: "The facade of the Pro Shop and the Tennis Clubhouse shall be finished in a manner compatible with the overall residential character of the area."

Condition 25 (27) - applicant's proposed Condition 30: "The freestanding entrance sign shall be constructed of materials compatible with the overall residential character of the area and shall be illuminated by indirect light (such as, but not limited to, spotlights), and shall otherwise comply with the sign ordinance."

The next standard paragraph from the staff's Conditions is incorporated and the last paragraph picks up the applicant's Conditions with: "...unless the first (driving range, putting area, and/or batting cage) has been established or construction of the first phase or portion thereof has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required."

Mr. Hammack said that, having listened to the testimony and staff's presentation regarding the amendments to the Comprehensive Plan and Planning Commissioner Byers' explanation of testimony last week, as well as having read the staff report, he believed that the Lorton Recreational Complex is in an area which has been the subject of very intense and prolonged debate concerning what the future development of the area will be like. He said that it certainly is a unique area, because it is impacted by the Department of Corrections and the landfill at approximately Route 95. He noted that it is presently zoned R-1 and there is a 0.15 FAR allowed in the R-1 area; it's planned for I-4, Industrial Flex, which would allow a 0.35 FAR; there is also a proposed rezoning pending before the Board of Supervisors to rezone

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to the Industrial Zoning Category; the Plan shows a development plan with a 0.25 FAR, which would be the ultimate plan; the special permit proposal has a 0.21 FAR, at the time of the original application, before the elimination of two of the tennis courts and some of the other changes, and would probably be a little less than that now. Mr. Hammack said that Planning Commissioner Byers had made an impassioned plea for the BZA to defer any decision on this application, in order for the applicant to seek a plan amendment. He said that the only problem he had with doing that was that all of the special uses planned or proposed, which the BZA was acting upon, are allowed under the existing Zoning Ordinance, under the Residential category; he believed it was the duty of the BZA to review the plans and make a determination as to whether they are in compliance with the provisions that apply to granting special permits. Mr. Hammack said that the Code allows special permits such as the one under consideration and that it is the established policy in the area of Fairfax County. He said that he had gone back to the original staff report, the addendum to the staff report which was distributed at the previous hearing on February 4, 1992, and had gone through all of the objections that had been raised by staff in support of their recommendation. He stated that it appeared to him that a close look at the application indicated that the applicant had substantially satisfied virtually every one of the requirements or issues which staff had raised. He said that he could not say that the plan was perfect, but he believed that it satisfied the general standards for special permits and that it is an excellent use for this part of the County.

Mrs. Thonen said that she would second the motion for purposes of discussion but there were some conditions which she did not know if she agreed with. She mentioned Conditions 15 and 22 as among those which she was not sure about. Mr. Hammack acknowledged that it was difficult to go back and forth between staff's conditions and the applicant's conditions. He said that he recalled the applicant had stated that he did not intend to grade the southwestern corner of the driving range, and that it did not present a problem to them; the applicant was asked to relocate the driving range so that no part of it was in the EQC, and move it up to an area that was otherwise steep slopes. Mr. Hammack said that as he recalled the applicant's testimony, they did not intend to grade the corner, but intended to clear, reseed, and stabilize the steep slopes. Chairman DiGiulian asked Mr. Hammack if his motion had precluded grading and had not precluded clearing and Mr. Hammack said that was true.

Mr. Pammel said that he had also circled Condition 15 and said that he would like to delete the words, "...whichever occurs first..." Mr. Hammack said that he had no objection to doing that. Chairman DiGiulian referred to Conditions 8 and 20, stating he believed the applicant had testified that they would be agreeable to the way the amount of clearing and grading was determined for the ultimate industrial road section entering the property, so that they would not have to clear and grade twice and disturb the EQC. He asked that the Condition read: "...for the ultimate section of the industrial entrance road...," rather than just for the 24 foot drive. Chairman DiGiulian asked Mr. Hammack if he had deleted from Condition 20, the wording saying ..." no illumination of golf..." and Mr. Hammack said that was deleted.

Mr. Hammack advised that the closest lights are approximately 300 feet away from residential areas; the Condition says that, if there is negative ambient light that impacts on the neighborhoods, the Zoning Administrator can enforce the provision and the lights can ultimately be removed if they were really clearly not in compliance with the statute. He said that the other provision that ties in that, if the lights are turned off at 9:00 p.m., and 10:00 p.m. on Friday and Saturday, there will be no impacts late at night, and will keep the neighborhood more in harmony with the residential rather than purely commercial use.

Mrs. Thonen said that, if there any complaints received about the Conditions from either the applicant or the citizens, she would ask that they be reconsidered the next week.

Mrs. Harris said that she believed that the Development Conditions which Mr. Hammack proposed were very good and she believed the plan to be very good. She said that she was, unfortunately, not able to satisfy her concern about being in harmony with the adopted Comprehensive Plan; she said she believed that General Standard 2 was met, and that it is in harmony with the general purpose and intent of the applicable zoning district; she had talked to many people in her efforts and she still believed that the applicant could apply for a Comprehensive Plan amendment. She said that, even though she believed that the plan was extremely good for the small area, she did not believe that it was in harmony with the general standards and could not support the motion.

Chairman DiGiulian closed the public hearing.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

91 mcp 8/10/94

In Special Permit Application SP 92-V-065 by GEORGE M. NEALL, II, TRUSTEE, under Sections 3-103 and 8-915 of the Zoning Ordinance to allow outdoor recreational use (golf driving range, putting green, baseball batting cage, tennis club; and waiver of dustless surface requirement, on property located on Lorton Rd., Tax Map Reference 107-3((1))3A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1991; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 58.47 acres.
4. The area is unique because of the impacts of the Department of Corrections and the landfill on Route 95.
5. The property is zoned R-1, allowing a .15 FAR. The area is planned for I-4, which would allow a .35 FAR. There is also a proposal pending before the Board of Supervisors to rezone this area to the Industrial Zoning category.
7. The Plan shows a development plan with a .25 FAR, which would be the ultimate plan. The special permit proposal has a .21 FAR in the original application, before the elimination of two of the tennis courts and some of the other changes.
8. Planning Commissioner Byers made an impassioned plea for the BZA to defer any decision on this application, in order for the applicant to seek a plan amendment; however, all of the special uses proposed are allowed under the existing Zoning Ordinance in the residential category, and it is the duty of the BZA to review the plans and make a determination of whether the applicant is in compliance with the special permit provisions which apply to granting special permits.
9. The Code allows special permits such as this, according to the established policy in Fairfax County.
10. Careful examination if the application and the staff report indicates that the applicant has substantially satisfied virtually every one of the requirements or the issues raised by staff. The plan is not perfect, but it satisfies the general standards for a special permit.
11. The use is excellent for this area of the County and the request should be granted.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-503, 8-603, 8-604, 8-607, 8-903 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Gordon Associates and revised, January 27, 1992. and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum number of employees on the premises at any time shall be seven (7).

6. A maximum of one hundred forty five (145) parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be located on-site. This number may be reduced if one or more of the uses is deleted. The minimum required by the Zoning Ordinance shall be provided for each required use.

7. Transitional Screening 2 (35') shall be provided as depicted on the Special Permit Plat and adjacent to parcels 1 and 2 where there is no encroachment by the ingress/egress easement. Where encroachment by the easement exists, the required screening shall be provided east of the easement. The barrier shall be waived.

8. The Environmental Quality Corridor (EQC) shall be denoted as that area shown on the special permit plat. A maximum 80 foot wide clearing and grading envelope, for the construction of the twenty-four (24) foot drive may be allowed to encroach into the EQC. There shall be no clearing of any vegetation in the EQC area, except for dead or dying trees or shrubs as approved by the Urban Forestor. There shall be no other grading in the EQC area. There shall be no structures or uses located in the EQC area, except as approved on the approved special permit plat.

9. Stormwater Best Management Practices (BMP's) to Water Supply Protection Overlay District (WSPOD) standards shall be provided as determined by the Director of DEM and the Department of Public Works. These BMP's may consist of, but not be limited to, simple infiltration techniques, such as french drains around the tennis courts and dry wells or infiltration trenches around the clubhouse, in combination with a smaller BMP pond designed to serve the golf driving range. The smaller BMP pond shall be located within the portion of the EQC into which the driving range encroaches, as is depicted on the Special Permit Plat.

10. The hours of operation shall be limited to 8:00 a.m. until 9:00 p.m., Sunday through Thursday and 8:00 a.m. until 10:00 p.m. on Friday and Saturday; except from May 1 to October 1, when the closing hours shall be 10:00 p.m. and 11:00 p.m., respectively.

    (This Development Condition was revised later in the public hearing.)

11. The lights illuminating the recreational facilities and parking lot shall not exceed the following heights, respectively:

Golf Driving Range	45 feet
Tennis	22 feet
Putting Area	35 feet
Baseball Hitting Range	40 feet
Parking Lot	12 feet

    The aforesaid lights shall be of a type and direction that prevent glare and nuisance light from negatively impacting adjacent residential uses. If the lights do not satisfactorily shield the adjacent residential uses as determined by the Zoning Enforcement Branch of the Zoning Administration Division, then the lights shall be redirected, reduced in height, or redesigned to ameliorate this impact, or the lights shall be removed. To minimize disturbance to the abutting residential uses to the south and the northwest, the aforesaid lights illuminating the recreational facilities shall be on an automatic timer to be turned off at 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday.

12. No loudspeakers shall be used on the property, except for emergency purposes.

13. Parking lot landscaping shall be provided in accordance with the Zoning Ordinance and the Public Facilities Manual as determined by the Department of Environmental Management (DEM). Foundation plantings shall be provided around the proposed tennis club and the pro shop/control building to help preserve the wooded appearance of the area. The type, size, amount and location of these plantings shall be approved by the Urban Forestor.

14. Right-of-way to fifty-six (56) feet from the centerline of Lorton Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand at the time of site plan approval. An additional fifteen (15) foot wide ancillary easement should be provided parallel to the requested right-of-way at the time of construction of the frontage improvements, if required.

15. Pedestrian walkways shall be provided between the parking and recreation areas. Handicapped parking spaces shall be located in the closest proximity to the entrances of the buildings and shall be designed so that pedestrians do not have to cross a travel aisle.

16. The applicant shall demonstrate to the Health Department that the septic system can adequately serve the use prior to the approval of a site plan. If this cannot be demonstrated, then this special permit is null and void, unless served by public sewer or some alternative means approved by the Health Department.

17. This application shall be approved for a term of ten (10) years from the date of the issuance of the Non-Residential Use Permit.

18. Existing vegetation on the site shall be preserved to the maximum extent possible. The clearing and grading envelope for the twenty-four (24) foot entrance drive shall be 80 feet in width to allow for minimal disturbance to the EQC, except that the 80 foot wide construction envelope may be enlarged to width no greater than required to construct the entrance drive as permitted by DEM, based upon engineering requirements determined at the time of site plan approval with the ultimate completion of the industrial drive. The grading for the golf driving range shall not encroach above the 175 foot contour line onto the steep slopes in the southwestern corner of the property.

19. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The term of the waiver of the dustless surface shall be in accordance with the provisions of the Zoning Ordinance.

    Speed limits shall be kept low, generally 10 mph or less.

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The areas shall be constructed with clean stone with as little fine material as possible.

The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

Runoff shall be channeled away from and around driveway and parking areas.

Periodic inspections shall be performed to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

There shall be pavement to a point twenty-five (25) feet into the entrance drive from the existing edge of pavement of Lorton Road to inhibit the transfer of gravel off-site.

20. Any sales activity on the site shall be limited to ancillary selling of snacks and food related items and tennis, baseball, and golf related accessories.

21. Notes #9, #11 and #20, which are reflected on the Special Permit Plat dated revised January 27, 1992, shall be eliminated so as to prevent any modifications to the limits of clearing and grading, and the location of the building areas and dimensions as they are shown on this plat. Note #24 shall be revised to remove the word "proximate."

22. A fertilizer, herbicide, and pesticide management program shall be implemented for these uses. This program shall be coordinated with the Department of Extension and Continuing Education and shall be designed to prevent excessive application of fertilizer, herbicide and other chemicals to protect water quality. This program shall be submitted to the Department of Environmental Management at the time of site plan review.

23. Unless otherwise impacted by the entrance drive or clearing in conjunction therewith, the existing building foundation near the northeastern corner of the site shall be removed and revegetated with plants similar to the existing vegetation. The type, size, and amount shall be as determined by the Urban Forester.

24. The facade of the Pro Shop and the Tennis Clubhouse shall be finished in a manner compatible with the overall residential character of the area.

25. The freestanding entrance sign shall be constructed of materials compatible to the overall residential character of the area and shall be illuminated by indirect light (such as, but not limited to, spotlights), and shall otherwise comply with the sign ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the first phase (driving range, putting area, and/or batting cage) has been established or construction of the first phase or portion thereof has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

(See continuation of this case later in the public hearing.)

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Page 440, February 11, 1992, (Tape 1), Action Item:

Request for Intent to Defer
Gunston Corner Appeal, A 92-V-001

Francis A. McDermott, Hunton & Williams, 3050 Chain Bridge Road, Fairfax, Virginia, represented the applicant and said that the applicant was requesting a deferral because he understood that there was an upcoming Zoning Ordinance Amendment which might reflect upon this application.

Page 441, February 11, 1992, (Tape 1), GUNSTON CORNER APPEAL, A 92-V-001, continued from Page 440)

Mrs. Thonen made a motion for an Intent to Defer this appeal which is scheduled to be heard on March 3, 1992. The new hearing date is April 14 1992.

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 441, February 11, 1992, (Tape 1), Scheduled case of:

9:00 A.M. CALVARY BAPTIST CHURCH, SP 91-D-057, appl. under Sects. 3-E03 and 8-915 of the Zoning Ordinance for a camp and recreation grounds to allow deletion of land area and waiver of dustless surface requirement on approx. 43.623 acres located at 101 Springvale Rd., zoned R-E, Dranesville District, Tax Map 3-2((1))3. (DEFERRED FROM 12/10/91 AT APPLICANT'S REQUEST)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant had amended the application by letter, which would require readvertisement and new posting. Ms. Kelsey suggested March 10, 1992, at 10:30 a.m. to allow enough time for readvertising. She said that the Board had suggested that they not delete the additional land area and that the find a place to put the caretaker's quarters on the special permit property; they have indicated that they were in the process of doing so, but they need to have a plat which shows how they will do it.

Mrs. Harris made a motion to defer this application until March 10, 1992, at 10:30 a.m. Mr. Kelley seconded the motion, which carried by a vote of 5-0; Mrs. Thonen and Mr. Ribble were not present for the vote.

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Page 441, February 11, 1992, (Tape 1), Scheduled case of:

9:15 A.M. ST. LOUIS CATHOLIC PARISH, SPA 82-V-059-1, appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 82-V-059 for church and related facilities to allow addition (garage) and bell tower, on approx. 15.72 acres located at 2901 Popkins La., zoned R-2, Mt. Vernon District, Tax Map 93-1((1))6. (CONCURRENT WITH SE 91-V-047)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Enderle replied that it was.

Regina Murray, Staff Coordinator, presented the staff report, stating that the subject property is located on the east side of Richmond Highway, between Popkins Lane and Grandview Drive; the Memorial Heights subdivision is located to the north of the site: a stable, residential neighborhood, zoned R-3; the Bryant Education Center, a Fairfax County School Board Special Education Center is located to the east of the church property and is zoned R-1; the Cherry Arms Apartment Complex is located south of the church property. The applicant was requesting approval by the BZA of a special permit amendment application for the addition of a four-car garage, adjacent to the rectory and the addition of a bell tower. Ms. Murray said that a concurrent special exception application for an increase in enrollment at the existing school of general education would be heard by the Planning Commission on March 25, 1992, and by the Board of Supervisors on April 6, 1992. She said that this application includes a request for approval by the Board of Supervisors and the Board of Zoning Appeals of a modification of the transitional screening requirement to that currently existing on site, a modification of the barrier requirement to that shown on the SE/SPA plat; the application also requests approval by the Board of Supervisors of a waiver of the interior parking lot landscaping requirement, and a waiver of the service drive requirement along Richmond Highway. Ms. Murray said that, with the SPA conditions dated February 4, 1992, and the addition of a ninth condition regarding lighting in the parking area is the same language contained in the SE Conditions dated February 11, 1992, and distributed this day. Ms. Murray said that staff believes there are no outstanding land use, environmental, or transportation issues associated with the proposed application.

Mrs. Harris asked if there were noise impacts from the bell tower. Ms. Murray said that the applicant could address this, but she did not believed this was the typical bell tower, with a large bell; it can be controlled manually from inside the church. Mrs. Harris asked Ms. Murray if there were any limits placed on noise emanating from the bell tower. Ms. Murray said that there are specific conditions addressing the noise, and the applicant would be required to meet the performance standards for noise, as outlined in the Code; and the bell tower was restricted in the hours during which it could ring, referring to Condition 8 of the SPA.

William P. Enderle, 200 N. Glebe Road, #904, Alexandria, Virginia, represented the applicant, stating that the request was simple and straightforward, to provide security and comfort to the priests at the church in the form of a new garage. He said they had experienced considerable vandalism in the area, which is the reason for the proposed garage. He said that the priest kept odd hours because of hospital duties and such, and they needed some protection. Mr. Enderle said that the bell tower had been donated by a member of the

parish. He said that he was very familiar with the noise limitations and that the use of it would be restricted insofar as decibels were concerned; beyond that he had no problems with the Conditions as put forth by staff.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SPA 82-V-059-1 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions as amended, dated February 11, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-V-059-1 by ST. LOUIS CATHOLIC PARISH, under Section 3-203 of the Zoning Ordinance to amend SP 82-V-059 for church and related facilities to allow addition (garage)and bell tower, on property located at 2901 Popkins La., Tax Map Reference 93-1((1))6, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15.72 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approved for the location and specified additions as shown on the plat approved in conjunction with SPA 82-V-059 prepared by Ruprai & Associates as received by the Office of Comprehensive Planning September 23, 1991 and is not transferable to other land.

2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat approved with this application, as qualified by these development conditions.

3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available during the hours of operation of the permitted use.

4. The design and construction materials for the proposed garage addition shall be compatible with and consistent with the existing church and rectory structures as determined by DEM at the time of building permit review.

5. Foundation plantings shall be provided around the garage addition and the bell tower structure in order to enhance the visual aesthetics and to supplement screening on site as shown on the landscaping schematics dated January 23, 1992 in consultation with the Urban Forestry Branch, DEM.

6. The maximum number of seats in the church shall be limited to one thousand (1,000).

7. The maximum number of parking spaces on site shall be 351, including four (4) garage spaces.

8. Ringing of the bell on site shall be limited to 9:00 a.m. Monday through Friday; 9:00 a.m. and 5:30 p.m. on Saturday; and 9:00 a.m., 10:30 a.m., 12:00 p.m., and 5:00 p.m. on Sunday.

9. Any proposed lighting of the parking areas shall be in accordance with the following:

   The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

The lights shall focus directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 443, February 11, 1992, (Tape 1), Scheduled case of:

9:30 A.M. SUNSHINE DEVELOPMENT CO., INC., FOR ARNOLD J. & SHARON P. ROSENBLATT, VC 91-V-140, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 16.8 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207), on approx. 17,497 s.f. located at 1917 Windmill La., zoned R-2, Mt. Vernon District, Tax Map 93-3((27))40.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Knapp replied that it was.

Gregory Chase, Staff Coordinator, presented the staff report, stating that the property is located west of the intersection of Windmill Lane and Hollinwood Drive; the surrounding lots in the Mason Hill subdivision are zoned R-2 and are developed with single family detached dwellings, as is the subject property. He said that the applicant was requesting a variance to the minimum rear yard requirement for an addition 16.8 feet from the rear lot line; Section 3-207 of the Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, the applicants were requesting a variance of 8.2 feet from the minimum rear yard requirement. Mr. Chase said that a review of the files of the Zoning Administration Office revealed that the dwelling on adjacent Lot 42 to the south, at the rear of the property, is located approximately 25 feet from the shared lot line.

Jefferson C. Knapp, 1905 Westmoreland Street, McLean, Virginia, represented the applicant and presented supportive letters from the neighbors. He said that the reason for the siting of the property, and the fact that it is pushed back so far, is that it is the only location for the addition, while still leaving open space for play areas, etc., for the children in the family. Mr. Knapp said that an effort was made to keep the addition as small as possible in order to keep the variance to a minimum.

Mrs. Harris asked Mr. Knapp if there was a basement access at the east corner of the existing house. He replied that there was a basement exit which would be eliminated by the addition. Mrs. Harris asked Mr. Knapp if there was some way the addition could be added to the eastern portion of the existing dwelling. He said that they tried to avoid doing that, because there are two side yards which are the only real flat, grassy areas; he referred her to the photographs which showed that the swing set was in the eastern portion of the yard. He said that the rear area is basically hilly and not really usable for recreation purposes.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 91-V-140 for the reasons outlined in the Resolution, subject to the Conditions contained in the staff report dated February 4, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-140 by SUNSHINE DEVELOPMENT CO., INC., FOR ARNOLD J. & SHARON P. ROSENBLATT, under Section 18-401 of the Zoning Ordinance to allow addition 16.8 ft. from rear lot line, on property located at 1917 Windmill La., Tax Map Reference 93-3((27))40, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land..
2. The present zoning is R-2.
3. The area of the lot is 17,497 square feet.
4. The lot is irregular in shape, and shallow.
5. The location and position of the dwelling precludes building elsewhere on the property.
6. Granting this application will not impose a hardship on surrounding property owners.
7. Strict application of the Zoning Ordinance would impose an unreasonable hardship on the applicant.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific room addition shown on the plat prepared by Cook & Miller, Ltd., dated November 5, 1991, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The exterior materials and color of the room addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1992. This date shall be deemed to be the final approval date of this variance.

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9:40 A.M. LOUIS DESSER, VC 91-D-137, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 10,851 s.f. located at 1909 Rhode Island Ave., zoned R-2, Dranesville District, Tax Map 41-1((13))(7)17A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Desser replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject property is located west of Old Dominion Drive, at the southeast corner of Rhode Island and Rockingham Drive; is surrounded by other lots in the Franklin Park Subdivision that are zoned R-2 and developed with single family detached dwellings. She said that the applicant was proposing an addition to be located 10.0 feet from the side lot line; Section 3-207 of the Zoning Ordinance requires a minimum side yard of 15.0 feet; therefore, the applicant is requesting a variance of 5.0 feet from the minimum side yard requirement. Ms. Bettard said that staff would like to note that, on April 4, 1978, the BZA voted to deny a special permit for a wooden deck to remain on both sides of the property, and required that the structure be removed the property within thirty days and it was subsequently removed by previous owner. She said that research of the records in the Zoning Administration Office revealed that variances have been approved and denied in the area and that the dwelling on Lot 1A is currently located approximately 18 feet from the shared lot line. Ms. Bettard noted that Franklin Park consists of lots which were subdivided prior to the adoption of the 1978 Ordinance, and many of the dwellings in the area are built in compliance with earlier Zoning Ordinance requirements.

The applicant, Louis Desser, 1909 Rhode Island Avenue, McLean, Virginia, presented the statement of justification, stating that the application requested enclosing a screened-in porch which is only 10.0 feet deep and 15.0 feet wide and would be 10.0 feet from the property line, requiring a variance of 5.0 feet. He said that the porch is surrounded by tall bamboo and other vegetation and is virtually invisible from the street and from the two adjacent lots. Mr. Desser said that the finished structure would be attractive and would not detract from the neighborhood;. He pointed out that the lot is very shallow, causing an undue hardship on the applicant, not shared by other lots in the area. He said that other property owners in the neighborhood could add rooms to the rear of their homes without obtaining a variance. Mr. Desser said that he had received no calls or comments from neighbors he had notified of his proposed addition.

Mrs. Harris asked what material the applicant would use to enclose the structure and he said it would be mainly glass, with some wood. He said it essentially would be a sunroom. Mrs. Harris asked the applicant to confirm that he would be using the same roof line, putting glass where the screening is now; he said that was correct, and that the existing shingled roof would remain.

Mr. Ribble referred to the mention in the statement of justification that the addition would not be of substantial detriment to adjacent property and asked the applicant what detriment, if any, there would be. Mr. Desser said the structure would not be detrimental in any way.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 91-D-137 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-137 by LOUIS DESSER, under Section 18-401 of the Zoning Ordinance to allow addition 10.0 ft. from side lot line, on property located at 1909 Rhode Island Ave., Tax Map Reference 41-1((13))(7)17A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,851 square feet.
4. The lot has an unusual shape and the position of the house on the lot is also unusual, probably due to the fact that the property was subdivided many years ago.
5. There is no location on the lot to place the addition without requiring a variance.
6. Strict application of the Ordinance would produce an undue hardship.
7. The applicant only wishes to enclose an already existing screened in porch, using the foundations and the roof which already exist, visually producing the same effect and not impacting the neighbors.
8. There is an adequate amount of vegetation and screening around the site.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the specific addition to the dwelling shown on the plat prepared by Runyon, Dudley, Anderson Associates, Inc. dated October 16, 1991 and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became

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final on February 19, 1992. This date shall be deemed to be the final approval date of this variance.

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9:50 A.M. GEORGE E. WIRTH, VC 91-V-133, appl. under Sect. 18-401 of the Zoning Ordinance to allow accessory structure 5.1 ft. from side lot line (15 ft. min. side yard required by Sects. 3-207 and 10-104), on approx. 29,528 s.f. located at 4217 Adrienne Dr., zoned R-2, Mt. Vernon District, Tax Map 110-1((11))46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Wirth replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the subject property is located south of Old Mill Road on the east side of Adrienne Drive; the surrounding lots in the Sulgrave Manor Subdivision are also zoned R-2 and developed with single family detached dwellings. She said that the applicant was requesting a variance to allow an accessory structure which is an existing, freestanding carport, to be enclosed and converted to a garage, 5.1 feet from the side lot line; Section 3-307 of the Zoning Ordinance requires a minimum side yard of 10.0 feet; Section 10-104 of the Zoning Ordinance prohibits the location of an accessory structure exceeding 7.0 feet in height to be located in any minimum side yard; the garage is to be 18.0 feet high and, therefore, the applicant was requesting a variance of 4.9 feet. A review of the files in the Zoning Administration Division (ZAD) indicate that a building permit was approved on November 22, 1966, for the same building, an existing freestanding carport 4.0 feet from the property line; that permit was issued prior to the adoption of the current Zoning Ordinance in 1978. Ms. Bettard said that the ZAD files also indicate that the dwelling on Lot 45 is located approximately 28 feet from the shared lot line.

The applicant, George E. Wirth, 4217 Adrienne Drive, Alexandria, Virginia, said that he had received permission to build the carport in 1966. He was now requesting permission to enclose the carport and make it a garage. His reasons for doing so were to get his automobiles out of the weather and preserve their condition. Mr. Wirth said that the existing carport only needs to be enclosed on three sides, with two windows on each side and two doors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 91-V-133 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1992.

Mrs. Harris asked Mr. Ribble if it did not look like the plat reflected a 25 foot width and a 20 foot depth and asked him if the photographs did not look like the depth was 25 feet instead of 20 feet. Mrs. Harris asked Mr. Wirth if the carport was not longer than it was wide, and he said that it was. She asked him if the garage should not be turned. Mr. Wirth said that there was a storage shed behind the carport, but that the placement was correct and Mrs. Harris was shown another view which was clearer.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-133 by GEORGE E. WIRTH, under Section 18-401 of the Zoning Ordinance to allow accessory structure 5.1 ft. from side lot line, on property located at 4217 Adrienne Dr., Tax Map Reference 110-1((11))46, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 29,528 square feet.
4. The property and building represent an extraordinary situation because of the location and the fact that construction occurred in 1966, prior to coverage by the Ordinance in that location.
5. The applicant proposes to enclose an existing carport.

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This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the accessory structure shown on the plat prepared by Alexandria Surveys, Inc., dated September 17, 1991 and included with this application, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1992. This date shall be deemed to be the final approval date of this variance.

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The BZA recessed at 10:20 a.m. and reconvened at 10:45 a.m.

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Page 448, February 11, 1992, (Tape 1), Scheduled cases of:

10:00 A.M. CARLOS A. REYES, VC 91-L-102, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 3.9 ft. from side lot line and to allow accessory structure to cover more than 30% of the area of the minimum required rear yard (15 ft. min. side yard required by Sect. 3-207 and min. required rear yard required by Sect. 10-103) on approx. 10,720 s.f. located at 3208 Spring Dr., zoned R-2, Lee District, Tax Map 92-2((19))78. (CONCURRENT WITH SPA 83-L-096-1. (DEFERRED FROM 11/26/91 - NOTICES NOT IN ORDER DEFERRED FROM 2/11/92 - NOTICES NOT IN ORDER. HAS BEEN READVERTISED FOR 3/17/92)

Page 449, February 11, 1992, (Tape 1), CARLOS A. REYES, VC 91-L-102, and SPA 83-L-096-1, continued from Page 448)

CARLOS A. REYES, SPA 83-L-096-1, appl. under Sect. 8-914 of the Zoning Ordinance to amend SP 83-L-096 for reduction to minimum yard requirements based on error in building location to permit change in use from garage to family room, to allow multi-level decks and uncovered stairs to remain 0.0 ft. and 1.7 ft. from the side lot lines and 9.0 ft. from the rear lot line, to permit accessory structure to remain 3.5 ft. from the side lot line and to permit a home child care center (10 ft. min. side yard for deck and uncovered stairs, 5 ft. min. rear yard for deck and 15 ft. min. side yard for accessory structure required by Sects. 3-207 and 2-412) on approx. 10,720 s.f. located at 3208 Spring Dr., zoned R-2, Lee District, Tax Map 92-2((19))78. (CONCURRENT WITH VC 91-L-102) (DEFERRED FROM 11/26/91 - NOTICES NOT IN ORDER) (DEFERRED FROM 2/11/92 - NOTICES NOT IN ORDER. HAS BEEN READVERTISED FOR 3/17/92)

Chairman DiGiulian advised that the BZA had previously issued an Intent to Defer these two cases until March 17, 1992.

Mrs. Harris made a motion for deferral of these cases until March 17, 1992, at 8:00 p.m.

Mrs. Thonen seconded the motion, which carried by a vote of 7-0.

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Page 449, February 11, 1992, (Tape 1), Scheduled case of:

10:00 A.M. ANNA MARIE TRUONG, SP 91-M-068, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location, to allow accessory structure (shed/workshop) to remain 2.1 ft. from rear lot line and 0.9 ft. from side lot line (11.8 ft. min. rear yard and 12 ft. min. side yard required by Sects. 3-307 and 10-104), on approx. 10,537 s.f. located at 4205 Muir Pl., zoned R-3, Mason District, Tax Map 72-2((3))(Q)14. (DEF. FROM 2/4/92 TO ALLOW APPLICANT TO BE PRESENT)

Chairman DiGiulian noted that the application had been deferred from February 4, 1992, to allow the applicant to be present.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. La replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, stating that the property is located in the Parklawn Subdivision, which is generally west of Rolling Road and east of Pohick Creek; surrounding properties are zoned R-3 and are developed with single family detached dwellings; the applicant is requesting approval of a special permit for modification to the minimum side and rear yard requirements, based on an error in building location, to allow the existing accessory structure to remain 0.9 feet from the side lot line and 2.1 feet from the rear lot line; the height of the shed is 11.0 feet; the minimum required rear yard is 11.0 feet and the minimum side yard for this district is 12.0 feet; modifications if 8.9 feet to the minimum rear yard requirement and 11.1 feet from the minimum side yard required are requested. Ms. Kelsey referred to the staff report which was prepared by Greg Riegle, Staff Coordinator, stating that the structure had been erected without a building permit; the applicant's statement indicated that the contractor had been hired to perform the construction and was given the responsibility of obtaining the building permit; staff could not substantiate how the contractor made the error or why he did not get the building permit. Ms. Kelsey said that, perhaps, the applicant could shed some light on those issues.

Dewey D. La, 6764 Bison Street, Springfield, Virginia, represented the applicant and reaffirmed the new affidavit, stating that the applicant does not speak English, so she depended on B&C Construction Company to obtain all the permits because she had no idea what the requirements were. He said that the contractor went ahead without obtaining a permit; the applicant had no knowledge of the requirement until she was notified by the County Inspector.

Mr. Hammack asked Mr. La when the construction had been done. Mr. La said that it done sometime in October of 1991. Mr. Hammack asked of B&C Construction was located in Fairfax. Mr. La said that it is a company run by Vietnamese people, which was the reason the applicant chose them, as she could not communicate with an English speaking contractor. Mr. La said he also believed that the applicant knew the contractor because he had done some minor work for her within the house. Mr. La said the contractor told the applicant that the building permit had been applied for and was in process. Mr. Hammack asked if the construction company was still in business and Mr. La said that he believed that he was.

Mr. Hammack said that, previously the BZA had asked contractors to come in to explain why they had not obtained the necessary permits. Mrs. Thonen said that she believed that the contractor could not speak English, but Mr. Hammack said he believed it was only the applicant who could not speak English. Mr. La also said that he believed the contractor could speak English and also that he had taken advantage of the applicant and her inability to speak or read English, and had lied to the applicant when he said that the permit was applied for and in process.

Mr. Ribble asked if staff had suggested to the applicant that the contractor come in. Ms. Kelsey said that Mr. Riegle had prepared the case and she did not know the answer, but would call Mr. Riegle and ask him. Ms. Kelsey said that she always instructed staff to contact the construction company, if known; or to ask the applicant to furnish the name to staff. Ms. Kelsey asked if the BZA would like her to try to call and contact them.

Mr. Kelley asked Mr. La if he had any contracts between his client and B&C Construction Company, and he said that he did not. Mr. La said that the applicant had told him that it was a verbal agreement. Mr. Kelley asked Mr. La if the applicant had any receipts or cancelled checks and he said he did not know, maybe she did.

Mrs. Harris asked Mr. La if the shed was built on a concrete slab and he replied that it was. She asked if that concrete slab was put in at the same time that all the other walkways were put in and he said yes, they were all done by the same contractor.

Mr. La said that the reduction in the minimum yard requirement would not impair the purpose or the intent of the Ordinance and would be detrimental to the use and enjoyment of the other property owners, because the shed is located within the fenced in property line. He said that the reason the alleged violation was brought to the attention of the County was that the previous next-door neighbor complained that the shed was too close to the property line. He said that the new owner has no objection to the location of the shed.

Mr. Kelley made a motion to continue this case and ask staff to contact B&C Construction Company and ask them to appear before the BZA. He also wished to see their licenses and find out B&C has a license to operate in Fairfax.. Mr. Kelley further asked Mr. La to bring in any documentary evidence that he might have of the deal that the applicant struck with the contractor, any kind of a receipt, cancelled check, etc., for doing such work. Mr. La said that, at the present time, the applicant and her family were in Hong Kong and would not return until the end of the month.

Ms. Kelsey said that the BZA calendar was very full for March. She also said that she had contacted Mr. Riegle who said that he had spoken with the applicant just before she left for Hong Kong, but he did not realize until she had gone that he would need to have the address and/or phone number of someone who could contact the contractor. Ms. Kelsey said she believed that staff would need to work with Mr. La. Mrs. Thonen said that they should be listed in the phone book. Chairman DiGiulian said he believed that the agent should try to bring the contractor in with him when he comes back. Mr. Hammack said that he would also like the applicant to be there.

Chairman DiGiulian asked if there was anyone present who wished to address this application and there was no response.

Mr. Kelley made a motion that the hearing be continued until April 14, 1992, at 9:00 a.m. Mrs. Thonen seconded the motion, which carried by a vote of 7-0. Mr. Kelley reiterated that the BZA was requesting the presence of the applicant, her agent, and the contractor, along with any pertinent documentation, including, but not limited to, licenses, contracts and/or cancelled checks, receipts, etc. Mr. Kelley said that, should the contractor be reluctant to appear, he should know that the BZA has the right to issue a subpoena for his appearance.

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Page 450, February 11, 1992, (Tape 1), Scheduled case of:

10:15 A.M. HOSSEIN VAHDATI, SP 91-L-067, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow dwelling to remain 8.3 ft. from one side lot line and 13.3 ft. from other side lot line and 30.8 ft. from front lot line and to allow uncovered stairs 27.0 ft. from front lot line (15 ft. min. side yard and 35 ft. min. front yard required by Sect. 3-207; 30 ft. min. front yard required by Sects. 3-207 and 2-412 for the uncovered stairs), on approx. 6,750 s.f. located at 3310 Groveton St., zoned R-2, Lee District, Tax Map 92-2((17))7. (CONCURRENT WITH VC 91-L-132)

10:15 A.M. HOSSEIN VAHDATI, VC 91-L-132, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8.3 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 6,750 s.f. located at 3310 Groveton St., zoned R-2, Lee District, Tax Map 92-2((17))7. (CONCURRENT WITH SP 91-L-067)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Vahdati replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located on the north side of Groveton Street in the Groveton Heights Subdivision; the lots is surrounded by other lots which are also zoned R-2 and are developed with single family detached dwellings. Ms. Greenlief said that the applicant was requesting approval of a special permit for modification to the minimum yard requirements based on error in building location, because the existing dwelling, which was constructed prior to the current Zoning Ordinance, does not meet the current Zoning Ordinance requirements with respect to the side and front lot lines; page 1 of the the staff report details the amount of modification

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requested in each area. Ms. Greenlief said that the applicant was also requesting a variance to the minimum side yard requirement to allow an addition 8.3 feet from the western side lot line; the Zoning Ordinance requires a minimum side yard of 15.0 feet; therefore, the applicant was requesting a variance of 6.7 feet to the minimum side yard requirement.

The applicant, Hossein Vahdati, 3310 Groveton Street, Alexandria, Virginia, said that the house was built 35 years ago; he bought the house in 1987 and was unaware of any existing error in building. Mr. Vahdati said that, before he went ahead with the proposed addition, he spoke with his adjacent neighbor at 3308 and they had no objection to the construction. He submitted letters for neighbors on each side of his property. Mr. Vahdati said that the proposed addition would be compatible with the existing dwelling. In answer to a question from Chairman DiGiulian, Mr. Vahdati said that the addition to the dwelling would be no closer to the lot line than the existing dwelling.

Mrs. Thonen said that the property owners in this area were encumbered by the R-2 zoning because the lots were not 1/2 acre lots.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 91-L-067, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1992.

Me. Hammack made a motion to grant VC 91-L-132 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 4, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-L-067 by HOSSEIN VAHDATI, under Section 8-914 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow dwelling to remain 8.3 ft. from one side lot line and 13.3 ft. from other side lot line and 30.8 ft. from front lot line and to allow uncovered stairs 27.0 ft. from front lot line, on property located at 3310 Groveton St., Tax Map Reference 92-2((17))7, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

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2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat, prepared by Alexandria Surveys, Inc. and dated August 14, 1991, and approved with this application, as qualified by these development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1992. This date shall be deemed to be the final approval date of this special permit.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-132 by HOSSEIN VAHDATI, under Section 18-401 of the Zoning Ordinance to allow addition 8.3 ft. from side lot line, on property located at 3310 Groveton St., Tax Map Reference 91-2((17))7, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 6,750 square feet.
4. The is a particularly narrow, substandard lot, 50 ft. in width, and the proposal is merely to allow an extension of the existing dwelling which was constructed 35 years ago.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship

approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Alexandria Surveys, Inc. and dated August 14, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 19, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 453, February 11, 1992, (Tape 1), Scheduled case of:

10:30 A.M. GOLF PARK, INC., VC 91-C-138, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure and proposed light standards within 100 ft. of property lines (100 ft. min. distance from any lot line required by Sect. 8-607), on approx. 48.66 acres located on Dulles Toll Rd., zoned R-E, Centreville District, Tax Map 18-4((1))22,23,26; 18-4((8))A,1A,2,3,4,&5. (CONCURRENT WITH SP 91-C-070) (2/4/92 INTENT TO DEF. FROM 2/11/92 AT APPLICANT'S REQUEST TO 3/3/92)

10:30 A.M. GOLF PARK, INC., SP 91-C-070, appl. under Sects. 3-E03 and 8-915 of the Zoning Ordinance to allow outdoor recreational use (baseball batting cage, golf course, golf driving range) and waiver of dustless of surface requirement, on approx. 48.66 acres located on Dulles Toll Rd., zoned R-E, Centreville District, Tax Map 18-4((1))22,23,26; 18-4((8))A,1A,2,3,4,&5. (CONCURRENT WITH VC 91-C-138) (2/4/92 INTENT TO DEF. FROM 2/11/92 AT APPLICANT'S REQUEST TO 3/3/92)

Chairman DiGiulian advised that the BZA had issued an Intent to Defer on February 4, 1992, in order to allow time for plat revisions.

Mr. Ribble made a motion to defer VC 91-C-138 and SP 91-C-070 to March 3, 1992, at 11:15 a.m. Mrs. Thonen seconded the motion, which carried by a vote of 6-0; Mrs. Harris was not present for the vote.

Mr. Hammack requested, if there was any supplementary material to be submitted, that it be submitted in sufficient time for the BZA to properly review it.

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Page 453, February 11, 1992, (Tape 1&2), Scheduled case of:

10:45 AM. KEVIN M. COLE, VC 91-Y-124, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 24,750 s.f. located at 4726 Village Dr., zoned R-C, WS, Sully District (formerly Springfield), Tax Map 56-4((4))65. (DEF. FROM 1/14/92 TO ALLOW APPLICANT TIME TO REVISE PLAT. DEF. FROM 1/28/92 FOR SUBMISSION OF REVISED PLAT)

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Chairman DiGiulian asked if the applicant was present and ready and Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that he was. Ms. Kelsey said that the applicant had submitted a revised plat for the BZA's review. The plat was also shown on the viewgraph for the BZA's review.

Mrs. Thonen said that she believed that the applicant had done what the BZA had asked him to do.

Mr. Kelley made a motion to grant-in-part VC 91-Y-124 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 7, 1992.

Mr. Kelley made a motion to waive the eight-day requirement. Mr. Ribble seconded the motion, which carried by a vote of 5-0; Mrs. Harris and Mr. Hammack were not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-124 by KEVIN M. COLE, under Section 18-401 of the Zoning Ordinance to allow addition 7.5 ft. from side lot line **(THE BOARD LIMITED THE LENGTH OF THE GARAGE TO 28.7 FEET)**, on property located at 4726 Village Dr., Tax Map Reference 56-4((4))65, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 11, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C, WS.
3. The area of the lot is 24,750 square feet.
4. The applicant has agreed to cut the length of the lot.
5. The lot is very narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by David M. Furstenau, Land Surveyor, sealed and dated October 16, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 11, 1992, as the BZA voted to waive the eight day limitation.. This date shall be deemed to be the final approval date of this variance.

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Page 455, February 11, 1992, (Tape 2), Action Item:

Resolutions from February 4, 1992 Meeting
with the exception of SP 91-M-069, Yaseenullah Amin

Mr. Pammel made a motion to approve the Resolutions from the February 4, 1992, meeting, with the exception of SP 91-M-069, Yaseenullah Amin.

Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Page 455, February 11, 1992, (Tape 2), Action Item:

Request for Additional Time
B & E, Inc., VC 89-P-152

Mr. Ribble made a motion to grant this request. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote. The new expiration date is February 21, 1993.

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Page 455, February 11, 1992, (Tape 2), Action Item:

Approval of Minutes from November 7, 1991

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Page 455, February 11, 1992, (Tape 2), Action Item:

Request for Intent to Defer
Seyed M. Falsafi, VC 91-V-116

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that she had a note on her agenda stating that the applicant would be available for March 24, 1992. Mrs. Thonen made a motion to issue an Intent to Defer this case until March 24, 1992, at 9:25 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Arthur F. Lorentzen, Jr., VC 92-Y-007

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that this case was scheduled for April 9, 1992 and, since the agendas were so full, scheduling the case earlier would be very difficult. In answer to a question from Mrs. Thonen, Ms. Kelsey advised that the reason for the request was that the applicant would be out of town. Mrs. Thonen made a motion to reschedule this case on April 14, 1992, subject to the applicant's concurrence, and the out-of-turn hearing was denied. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Request for Out-of-Turn Hearing
David Hoag, VC 92-M-016

Mr. Ribble made a motion to move this case from March 31, 1992 to March 24 1992. Mr. Ribble said that he was familiar with this case. He said the applicant was granted a variance for a special exception and the variance expired. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the applicant had continued to operate, so there was no hardship involved. Mr. Ribble said that he believed there was a contract being negotiated. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Discussion Regarding Change of Permittee

Jane C. Kelsey, Chief, Special Permit and Variance Branch, referred to a similar situation several weeks previous, wherein the applicant needed to change the permittee because of the sale of property in a shopping center. She said that, at that time there was quite a bit of discussion about what should be done in the future. Ms. Kelsey said that there presently was an application from a church, wherein the only change would be the permittee. Ms. Kelsey said that, before accepting and processing the application, if the BZA was inclined to accept the change of permittee, staff would so advise the applicant. Ms. Kelsey said that this case a case of one Baptist Church changing to another Baptist Church.

Mr. Ribble said that in this case it would not make much of a difference, but in a case of a Baptist Church changing the permittee to a Synagogue or anything other than a Baptist Church, the situation would reflect many more significant changes.

Mr. Ribble made a motion to have this case come before the BZA for a change of permittee. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Mr. Kelley said that he would like staff to come up with an additional meeting date because the schedules were becoming very full. A discussion ensued during which the BZA Members agreed that the schedules were, indeed, becoming very long. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that there were no cases scheduled for March 24, 1992, as that date was being held for deferral, and that date was now filled with deferrals. Chairman DiGiulian asked staff submit some dates to the BZA at the next meeting.

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GEORGE M. NEALL, II, TRUSTEE, SP 91-V-065

(Continued from earlier in the public hearing)

Francis A. McDermott, with the law firm of Hunton & Williams, 3050 Chain Bridge Road, Fairfax, Virginia, asked the BZA to reopen this case to discussion regarding Condition 10, stating:

> 10. The hours of operation shall be limited from 8:00 a.m. until 9:00 p.m., Sunday through Thursday, and 8:00 a.m. until 10:00 p.m. on Friday and Saturday.

Mr. McDermott asked the BZA to modify the hours during the period from May 1 through October 1, allowing operation one hour longer during the week and one the week ends, because that is the time when the trees are in full bloom and the days are longer. Mr. McDermott asked that they be allowed to operate during that period until 10:00 p.m. and 11:00 p.m., respectively.

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Mr. McDermott said that the letters which the BZA had from the citizens groups were for the longer hours and requested that Condition 10 be changed to read:

10. The hours of operation shall be limited to 8:00 a.m. until 9:00 p.m., Sunday through Thursday and 8:00 a.m. until 10:00 p.m. on Friday and Saturday; except from May 1 to October 1, when the closing hours shall be 10:00 p.m. and 11:00 p.m., respectively.

(This change is reflected in the Resolution earlier in the public hearing.)

Mrs. Thonen made a motion for reconsideration of Development Conditions in SP 91-V-065. Mr. Hammack seconded the motion.

Mr. Hammack said that the applicant had originally proposed the later hours all year long and he had believed his modification to be a compromise.

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As there was no other business to come before the Board, the meeting was adjourned at 12:05 p.m.

Geri B. Bepko
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: April 28, 1992

APPROVED: May 5, 1992

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 18, 1992. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:00 p.m. and Mrs. Thonen gave the invocation. Vice Chairman Ribble called for Board Matters.

Mrs. Thonen made a motion to go into executive session. She noted that the Board or Zoning Appeal would discuss a legal matter concerning the consent order on David C. Buckis. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Pammel not present for the vote. Chairman DiGiulian was absent from the meeting.

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The BZA recessed at 8:01 p.m. and reconvened at 8:05 p.m.

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Mrs. Harris moved that the BZA members certify, that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirement, described by the Virginia Freedom of Information Act and only matters identified in the motion to convene executive session were heard, discussed, or considered by the BZA during executive session.

Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Pammel not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 459, February 18, 1992, (Tape 1), Scheduled case of:

8:00 P.M. GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-1, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to amend SP 73-L-152 for church and related facilities to allow child care center, waiver of dustless surface requirement, and addition of land area on approx. 4.3555 acres located at 7434 Bath St., zoned R-3, Lee District, Tax Map 80-3((2))(54)9 and 80-3((1))1D. (DEFERRED FROM 10/29/91 FOR ADDITIONAL INFORMATION) (DEFERRED FROM 12/3/91 AT APPLICANT'S REQUEST, TO RESOLVE ISSUES)

Vice Chairman Ribble stated that the Board of Zoning Appeals (BZA) had requested that the applicant meet with the neighbors to resolve matters of concern. He said that the BZA had determined that written submission would be accepted and that the applicant and the concerned neighbors would each be allowed five minutes of testimony.

Vice Chairman Ribble called for speakers in opposition and the following citizens came forward.

Ina Sadler, 7435 Bath Street, Springfield, Virginia, presented pictures of the area and a set of proposed development conditions to the BZA. She stated that she had researched the matter thoroughly and had arrived at the conclusion that the special permit amendment would be detrimental to the community. She presented two plats of the property and pointed out discrepancies between the plats.

Mrs. Jimmie S. Wolfe, 7427 Bath Street, Springfield, Virginia, addressed the BZA and stated that she was in opposition to the child care center. She explained that she was a senior citizen and had lived in her house for 28 years. She stated that she was against the application because of the noise, traffic congestion, general inconvenience, and danger the proposed child care center would generate.

Jane Wallentiny, 7431 Bath Street, Springfield, Virginia, addressed the BZA. She stated that the noise and traffic that would be generated by the child day care center would be detrimental to the neighborhood and detrimental to the property value of the homes in the area.

Vice Chairman Ribble called for the applicant's representative to speak to the issue.

The applicant's agent, William B. Lawson, Jr., an attorney with the law firm of Lawson and Frank, 4141 North Henderson Road, Plaza Suite 5, Arlington, Virginia, addressed the BZA. He stated that the applicant had met with the concerned neighbors and the Springfield Civic Association and although the Springfield Civic Association had expressed their support, the concerned neighbors had not. He explained that he had revised the proposed development condition to alleviate the concerns expressed by the neighbors and stated that the applicant would be willing to conduct monthly meetings with the neighbors to address any concerns or problems that may arise in the future.

Mr. Lawson said that the need for good child care in the area was severe. He expressed his belief that the day care centers would increase, not lower, the property values of the neighborhood. Mr. Lawson explained that although there would be two day care centers, they would be at separate ends of the church building and because of the distance between the centers, the children would be picked-up at separate entrances. In conclusion, Mr. Lawson stated that good child care centers are vital to the community; that the church provides many beneficial services for the area; and asked the BZA to grant the request.

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Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to deny SPA 73-L-152-1 for the reasons reflected in the resolution.

Mr. Hammack seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Hammack stated that one of the standards the BZA must address when considering an application was the creation of undesirable traffic, noise, and other impacts on the surrounding community. He further stated that one of the objectives under the Comprehensive Plan says that Fairfax County should encourage a land use pattern that protects, enhances, or maintains stability in a residential neighborhood and expressed his belief that the use would have a detrimental impact on the area. Mr. Hammack said that the application should be granted-in-part to allow the addition of land use area.

Mrs. Thonen stated that she disagreed with the motion. She said that she had personally talked to approximately 120 members of the community who, along with the Springfield Civic Association, had expressed support of the application. She stated that the applicant had shown good faith in fulfilling the directives issued by the BZA and it was not fair to ask an applicant to compromise with the community and when they do as they are asked, deny their request.

Mrs. Harris made a substitute motion to grant-in-part SPA 73-L-152-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 22, 1991.

Mr. Hammack seconded the motion.

Vice Chairman Ribble stated that although the applicant had met with the concerned neighbors to resolve problems, they had not succeeded. He noted that there were existing problems and any increase in use would only add to the neighbors' burden.

Mrs. Thonen expressed her belief that no one could appease the three neighbors in opposition. She noted that although one of the neighbors in opposition owned the property, she did not live there. She stated that she had thoroughly researched the issue by calling neighbors, by going to the area and talking to neighbors, and by checking with both the Springfield Civic Association and Supervisors Alexander's Office, before forming her conclusions.

Mr. Hammack stated that because the present day care center had an enrollment of 50 students, the increase from 75 to 99 students would actually be a doubling of the present usage. He expressed his belief that the use, in its present capacity, had a detrimental impact on the immediate neighbors. Mr. Hammack said that the proposed development conditions submitted by Mr. Lawson were complicated, and if an application had such a great impact on the community as to require such detailed and stringent development conditions, then the BZA should not grant the special permit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 73-L-152-1 by GRACE PRESBYTERIAN CHURCH, under Section 3-303 and 8-915 of the Zoning Ordinance to amend SP 73-L-152 for church and related facilities to allow child care center, waiver of dustless surface requirement, and addition of land area **(BZA GRANTED WAIVER OF DUSTLESS SURFACE REQUIREMENT AND ADDITION OF LAND AREA)**, on property located at 7434 Bath Street, Tax Map Reference 80-3((2))(54)9 and 80-3((1))1D, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 18, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 4.3555 acres.
4. The general standards are very specific in that the use should be in harmony with the surrounding neighborhood, should not impact on either vehicular or pedestrian traffic, and should be in harmony with the existing and projected growth.
5. While there have been many letters of support, the contiguous neighbors that would be directly affected were rather unanimous in their opinion that "enough was enough."

6. The church currently has numerous activities that impact on the environment of the surrounding residences.
7. The additional impact of the School Age Child Care Program (SACC) would not be in keeping with the quiet residential neighborhood.
8. All avenues leading into and exiting from the church are quiet residential streets.
9. The church parking lot is usually busy and the additional burden would possibly spill over onto the streets.
10. The intensity of use would not be in harmony with the surrounding neighborhood.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-305 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat stamped and sealed by William D. Peake, and dated July 7, 1991 (revised), approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. Site Plan, Site Plan waiver or other appropriate submission shall be required as determined necessary by DEM.

5. The maximum number of seats in the main area of worship shall be 396. Ninety-nine (99) on site parking spaces shall be provided for the church use.

6. The maximum daily enrollment for the child care facilities shall be 76. (Approved by SP 73-L-152.)

7. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The term of the waiver of the dustless surface shall in accordance with the provisions of the Zoning Ordinance.

   Speed limits shall be kept low, generally 10 mph or less.

   The area shall be constructed with clean stone with as little fines material as possible.

   The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

   Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

   Runoff shall be channeled away from and around driveway and parking areas.

   Periodic inspections shall be performed to monitor dust conditions, drainage function and compaction-migration of the stone surface.

   There shall be pavement to a point twenty-five (25) feet into the parking area to inhibit the transfer of gravel to the paved portion of the existing parking area.

8. All existing vegetation shall be preserved.

9. All parking for church and related facilities shall be on site except for the handicap parking which has been approved on the street.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has

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been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 4-1-1. Vice Chairman Ribble, Mrs. Harris, Mr. Hammack, Mr. Kelley voted aye; Mrs. Thonen voted nay; and Mr. Pammel abstained from the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 26, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 462, February 18, 1992, (Tape 1), Board Matters:

Mrs. Harris made a motion that the Board of Zoning Appeals approve the resolution of the Buckis litigation in accordance with the terms outlined in executive session.

Mr. Hammack seconded the motion with carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 462, February 18, 1992, (Tape 1), Scheduled case of:

8:00 P.M. SEYED M. FALSAFI, VC 91-V-116, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lots 1 and 2 having lot widths of 12.0 ft. (100 ft. min. lot width required by Sect. 3-206) on approx. 2.22 acres, located on Ludgate Dr., zoned R-2, Mount Vernon District, Tax Map 110-4((1))5. (DEFERRED FROM 12/17/91 AT APPLICANT'S REQUEST)

Vice Chairman Ribble stated that an intent to defer VC 91-V-116 to March 24, 1992, had been issued on February 11, 1992.

Mrs. Thonen made a motion to defer VC 91-V-116 to March 24, 1992 at 9:00 a.m.

Mr. Pammel seconded the motion.

After a brief discussion, it was the consensus of the Board of Zoning Appeal that no more deferrals would be granted to the applicant.

The Chair so ordered.

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Page 462, February 18, 1992, (Tapes 1 and 2), Scheduled case of:

8:00 P.M. ROBERT S. BAER APPEAL, A 91-D-023, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Deputy Zoning Administrator's determination that the southern lot line of proposed Lot 2, as shown on Subdivision Plan #7850-SD-01-3, is a rear lot line and as a result the proposed dwelling on Lot 2 does not satisfy the 25 foot minimum rear yard requirement, on approx. 1.023 acres, zoned R-3, Dranesville District, Tax Map 40-4((1))3B (formerly 3, 3A). (DEF. FROM 1/28/92 AT NEIGHBOR'S REQUEST.)

Vice Chairman Ribble called for the location of the property and for a staff report.

The Zoning Administrator's representative, William Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and stated that the property is located at 2126 Reynolds Street, on 1.023 acres of land, zoned R-3, Tax Map Reference 40-4((1))3b. He stated that staff's position was set forth in the staff report dated January 21, 1992, and a memorandum of correction dated February 10, 1992.

Mr. Shoup stated that the appellant was proposing a 2 lot subdivision. He noted that the development was the subject of a rezoning, RZ 88-D-050, and was proffered. He said that the proffer and the proffered Generalized Development Plan (GDP) was presented as Attachment 4 of the staff report.

Mr. Shoup stated that the issue of the appeal was the designation of the southern boundary of proposed Lot 2, and the resulting yard designation. He used the viewgraph to depict the area and said that based on the definitions in the Zoning Ordinance, the rear lot line designation is based on its orientation to the front lot line or the front street line. The rear lot line definition, in-part, states that the rear lot line is that lot line that is most distant from and most nearly parallel with the front lot line. Mr. Shoup stated that because the

appellant was required to provide a cul-de-sac in the proposed subdivision, proposed Lot 2 has an extremely unusual configuration and wrapped three-quarters around the cul-de-sac. He noted that both the eastern and southern lot lines were opposite the front lot line and no one lot line stood out as being most nearly parallel with the front lot line. However, the lot seems to front predominately on the south side and the southern lot line is more distant from the front lot line. Mr. Shoup stated that it was his position that the southern lot line most closely satisfied the criteria set forth in the definition, therefore, was the rear lot line on proposed Lot 2. He explained that the 25 foot minimum rear yard must be satisfied from the southern lot line.

Mr. Shoup stated that although the rezoning plan depicted the suggested dwelling on proposed Lot 2, no distances were shown. He noted that the appellant contended that staff had represented that the southern lot line was a side lot line during the rezoning process and again in a letter from Mr. Edward Jankiewicz, Director, Division of Design Review, DEM. Mr. Shoup stated that the research conducted by staff, such as the review of the Planning Commission and the tapes of the Board of Supervisors rezoning hearing, there had been no indication that staff made a representation that the southern lot line was a side lot line. He noted that the discussion during the Board of Supervisors' hearing on the rezoning centered on the southern lot line as being a rear lot line and a rear yard.

Mr. Shoup stated that Donna McNeally, Branch Chief, Zoning Evaluation Division, OCP, was present to answer any questions the BZA might have regarding the rezoning application. He noted that the video tapes of both the Planning Commission and the Board of Supervisors hearings, were available should the BZA wish to hear the actual testimony. He stated that staff did not make a determination that the southern lot line was a side lot line as suggested by the appellant. In conclusion, Mr. Shoup stated that he did not agree with the appellant's suggestion that the lot came to a point in the rear, and noted that the special provisions in the Zoning Ordinance apply to pie shaped lots.

In response to Mr. Hammack's question as to what significance the plat presented to the Board of Supervisors had on the appellant's position, Mr. Shoup said that the plat showed a suggested dwelling. He explained that there had been no yard dimensions shown on the GDP that was proffered. He stated that although the applicable Zoning Ordinance provisions were noted on the plat, they had no relationship to the GDP with regards to the yard dimensions. Mr. Shoup stated that it was staff's position that the GDP was viewed for conceptual purposes only.

The appellant, Robert S. Baer, 6809 Crutchfield Street, Falls Church, Virginia, addressed the BZA. He stated that when he purchased the land in February 1988, he had planned to divide the property into 2 lots. He said that although he had wanted to build a house on one of the lots, he was not a land speculator or land developer. Mr. Baer stated that he had worked with staff and had received approval by the Planning Commission and the Board of Supervisors for the GDP. He explained that he had received assurance from staff that the southern lot line was considered to be a side lot line. Mr. Baer contented that these assurances gave him reason to proceed with the development and noted that the plat had been a scaled engineering plat. He stated that at the March 6, 1989 Board of Supervisor's hearing, the rear lot line issue was raised. Mr. Baer said that at the hearing, Donna McNeally, in direct response to the Supervisors' questions, stated that the house on Lot 2 met the minimum required Zoning Ordinance setbacks requirements from the southern lot line which was shown as 12 feet. He stated that the information was also reflected in the January 3, 1989 staff report under Zoning Ordinance provisions.

Mr. Baer stated that when he submitted his subdivision plat, and for three years after that the County operated on the fact that the southern lot line was a side yard lot line. He stated that it was only when he received notification from his engineer that the Zoning Administrator, had overturned the three year precedent and decided that the southern lot line was a rear lot line, that he realized there was a problem.

Mrs. Harris asked Mr. Baer what he would consider the rear lot line to be. He stated that he considered the point at the rear of the yard to be the rear lot line.

In response to Mrs. Thonen's question as to the determination of the rear lot line, Mr. Shoup stated that the orientation of the house on the lot does not dictate the front or rear lot lines.

In response to Mr. Hammack's question as how the determination is made if a the lot comes to a point, Mr. Shoup stated that the judgement is made based on the street orientation.

The BZA had a brief discussion on the criteria involved in the determination of rear lot lines.

Chairman Ribble asked Mr. Shoup if the appellant had been told at the hearing on March 6, 1989, that the southern lot line was a side lot line. Mr. Shoup stated that he had not. He noted that the video of the Board of Supervisors hearing would support staff's position on this matter.

Vice Chairman Ribble called for speakers in support and the following citizens came forward.

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Dr. Peter Ekles, 2120 Veranda Court, Falls Church, Virginia, addressed the BZA. He stated that the appellant had been a member of the community for many years and would merely like to build a home for his family and asked the BZA to grant the request.

Kay Ekles, 2120 Veranda Court, Falls Church, Virginia addressed the BZA. She stated that the appellant had acted in good faith, had incurred many expenses, and should be allowed to construct the house.

There being no further speakers in support, Vice Chairman Ribble called for citizens in opposition.

Mark Bender, 6860 Grande Lane, Falls Church, Virginia, addressed the BZA. He stated that if the appellant was allowed to build the structure 12 feet from the property line, it would have a detrimental impact on his property. Mr. Bender asked the BZA to deny the appeal.

Barry Mallor, 6858 Grande Lane, Falls Church, Virginia, addressed the BZA. He stated that his lot bordered the Baer's southern lot line. He stated that the BZA should preserve, enhance, and protect existing residential areas and contended that if the appellant were allowed to construct his house so close to the property line, it would have a detrimental impact on his privacy. Mr. Mallor noted that Mr. Baer is a realtor and was knowledgeable. He noted that the Department of Environmental Management's (DEM) approval had a notation that a rear yard setback off the southern lot line was required. Mr. Mallor asked the BZA to deny the appeal.

There being no further speakers, Vice Chairman Ribble called for rebuttal.

The appellant's attorney, J. Randall Minchew, with the law firm of Hazel and Thomas, P.C., 44084 Riverside Parkway, Suite 300, Leesburg, Virginia, addressed the BZA. He stated that the notation on the plat had been in error. He said that after the preliminary plan was approved and the appeal was filed, a County official wrote an undated notation onto it. Mr. Minchew stated that in criminal law it would be called manufacturing evidence after the fact. He said that Mr. Shoup had corrected the error in the staff report addendum.

Mr. Minchew noted that the Board of Supervisors had approved the GDP. He stated that if the Board of Supervisors had considered the issue as controversial, they would not have approved the rezoning. He stated the Board of Supervisors' video tape validates that a question was asked, "Does this plan, as it is, conform to the Fairfax County Zoning Ordinance", and the answer was "yes." He admitted that the question did not specifically asked if the southern lot line was the side yard lot line. Mr. Minchew noted that the video tape would also validate that the plat was to scale. He stated that it was the appellant's position, in regard to the review that was made, that it was an interpretation of a question that had been asked and answered on three different occasions.

Mr. Minchew noted that although Mr. Shoup had the right and ability to correct an error, the interpretation had been a judgment call. He explained that it was important to have finality in answers so that issues such as the appellant's do not surface at the eleventh hour. In conclusion, Mr. Minchew referred to his statement of justification and stated the Deputy Zoning Administrator's determination should be overturned.

Vice Chairman Ribble called for rebuttal.

Mr. Shoup stated that he had never intended to suggest that the appellant did not proceed in good faith. He said that it was the appellant contention that after pursuing the matter for 3 years, the staff's positions has changed. He explained that during the 3 year process, different plans had been submitted and used the viewgraph to illustrate Attachment 6. He explained that the first subdivision plan submitted had a very different lot configuration than what was shown in the GDP. Again, Mr. Shoup referred to the Board of Supervisors hearing and said that at the hearing staff had identified the southern lot line as a rear yard lot line. He explained that since they did not have a scale, they could only surmise that it might satisfy the rear yard requirement. Mr. Shoup noted that staff had made a statement that although it appeared to satisfy the requirment, the final determination would have to be made at the time the subdivision plat is processed and adjustments made.

Mr. Shoup said that in order to be fair to an applicant in the rezoning process, flexibility has to be granted. He noted that at the time of rezoning, all plans are considered to be conceptual. He expressed his belief that no determinations had ever been made that identified the southern lot line as a side yard lot line.

Mr. Hammack referred to the June 20, 1990 letter, and asked if there was flexibility why, when the applicant made a minor change in lot lines, staff determined that it was not in conformance with the GDP and the application would have to be reviewed by the Board of Supervisors. Mr. Shoup explained that interpretation took into account the fact that the lot reconfiguration, the change in lot size, and the tree preservation proffers. He noted that staff did not consider such changes to be minor.

Vice Chairman Ribble closed the public hearing.

Page 465, February 18, 1992, (Tapes 1 and 2), ROBERT S. BAER APPEAL, A 91-D-023, continued from Page 464)

Mr. Hammack moved that in Appeal, A 91-D-023, the BZA OVERTURN the Deputy Zoning Administrator's determination that the southern lot line of proposed Lot 2, as shown on Subdivision Plan #7850-SD-01-3, is a rear lot line and as a result the proposed dwelling on Lot 2 does not satisfy the 25 foot minimum rear yard requirement. He stated that he had thoroughly reviewed the case and the definitions regarding the rear lot lines could be applied to the appellant's property.

Mr. Pammel seconded the motion which carried by a vote 5-1 with Mrs. Harris voting nay. Chairman DiGiulian was absent from the meeting.

(A VERBATIM TRANSCRIPT IS CONTAINED IN THE FILE.)

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Page 465, February 18, 1992, (Tape 2), Information Item:

Approval of Resolutions from February 11, 1992

Mrs. Thonen made a motion to approve the Resolutions with the exception of George Neal, II, Trustee, SP 91-V-065. The approval of the resolution was deferred for further review. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 465, February 18, 1992, (Tape 2), Information Item:

Request to Reschedule
Helen Creed, SP 91-P-063

After a brief discussion regarding the reason for the need to reschedule the case, it was the consensus of the BZA that the applicant be prepared to present the case as no more deferrals would be issued.

Mrs. Thonen made a motion to reschedule the application to April 28, 1992 at 8:00 p.m. The Chair so ordered.

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Page 465, February 18, 1992, (Tape 2), Information Item:

Request for Waiver of the 12 Month Limitation
Frederick and Kathleen Smith, VC 91-S-126

Mrs. Thonen made a motion to deny the request. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 465, February 18, 1992, (Tape 2), Information Item:

Request for Intent to Defer
Shiloh Baptist Church, VC 91-D-118, SP 91-D-064

Mrs. Thonen made a motion to issue an intent to defer the applications which are scheduled to be heard at the March 3, 1992 hearing. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 465, February 18, 1992, (Tape 2), Scheduled case of:

8:00 P.M. GRACE PRESBYTERIAN CHURCH, SPA 73-L-152-1, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to amend SP 73-L-152 for church and related facilities to allow child care center, waiver of dustless surface requirement, and addition of land area on approx. 4.3555 acres located at 7434 Bath St., zoned R-3, Lee District, Tax Map 80-3((2))(54)9 and 80-3((1))1D. (DEFERRED FROM 10/29/91 FOR ADDITIONAL INFORMATION) (DEFERRED FROM 12/3/91 AT APPLICANT'S REQUEST, TO RESOLVE ISSUES)

Mrs. Harris made a motion to reconsider the public hearing on Special Permit Amendment Application, SPA 73-L-152-1, Grace Presbyterian Church.

Mrs. Thonen seconded the motion.

Mrs. Harris made a motion to grant-in-part SPA 73-L-152-1, to deny the special permit to allow the child care center, but to approve the waiver of the dustless surface requirement and the addition of land area. She stated that Development Conditions 1 through 5 would

remain the same; Development Conditions 6, 7, and 8 were to be deleted; Development Conditions 9 and 10 would remain the same; and the following additional development condition added, "All parking for church and related facilities shall be on site except for the handicap parking which has been approved on the street.

Mrs. Thonen seconded the motion and stated that all special permit require parking on site and no one could object to the new development conditions. Mrs. Harris explained that the Virginia Department of Transportation (VDOT) had approved handicapped parking on the street in front of the church.

The motion carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:30 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: May 19, 1992 APPROVED: May 26, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 3, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:12 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 467, March 3, 1992, (Tape 1), Scheduled case of:

9:00 A.M. SURINDER KHANNA APPEAL, A 91-D-017, appl. under Sect. 18-301 of the Zoning Ordinance to appeal determination by the Director of Environmental Management that a proposed subdivision, which includes a portion of Lot 1 of the Meadow Run subdivision, cannot be approved until a special exception for a cluster subdivision is approved by the Board of Supervisors to allow that portion of Lot 1 to be deleted from the Meadow Run subdivision, on approx. 6.238 acres, located on outlot road off of Spring Hill Rd., zoned R-1, Dranesville District, Tax Map 20-4((13))1; 20-4((1))15. (DEFERRED FROM 12/17/91 AT APPLICANT'S REQUEST)

Chairman DiGiulian stated that the Board of Zoning Appeals (BZA) had received a letter requesting withdrawal.

Mrs. Thonen made a motion to withdraw A 91-D-017. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 467, March 3, 1992, (Tape 1), Information Item:

Approval of Minutes from November 26, 1991 Hearing

Mr. Pammel made a motion to approve the Minutes as submitted. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 467, March 3, 1992, (Tape 1), Information Item:

Request for Additional Time
Edward G. Ingalls, VC 90-C-001
3403 Vale Wood Road
Tax Map Reference 46-1((8))93

Mr. Pammel made a motion to grant the additional time. Mrs. Harris seconded the motion which carried by a vote of 7-0. The new expiration date will be September 30, 1992.

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Page 467, March 3, 1992, (Tape 1), Information Item:

Request for Out-of-Turn Hearing
Robert Kozan, VC 92-P-012

Mrs. Thonen made a motion to grant the out-of-turn hearing. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 467, March 3, 1992, (Tape 1), Information Item:

Request for Out-of-Turn Hearing
Fairfax 4-H Therapeutic Riding Program, SP 92-S-011

Mrs. Harris made a motion to grant the out-of-turn hearing. She stated that at the September 23, 1991 Board of Supervisors hearing, Supervisor McConnell had requested that the Board of Zoning Appeals expedite the hearing. Mr. Hammack seconded the motion which carried by a vote of 7-0.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a date of May 5, 1992. She explained that staff would need time to prepare the case and noted that the applicant would not be inconvenienced because the riding stable would continue to operate. Mr. Pammel stated that he believed staff could accommodate the applicant at an earlier date.

Mr. Pammel made a motion to grant and out-of-turn hearing for April 23, 1992. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Approval of Resolution
George M. Neall, II, Trustee, SP 91-V-065

Mr. Hammack made a motion to approve the Resolution with the modifications as reflected in the Resolution. Mr. Hammack stated that the approval of the Resolution had been deferred so that the Board of Zoning Appeals could review the material.

Mrs. Thonen seconded the motion which carriad by a vote of 7-0.

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9:15 A.M. CAROL PETTIT, VC 91-L-141, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.1 ft. from side lot line such that side yards total 15.0 ft. (8 ft. min. side lot line and 20 ft. total min. side yards required by Sect. 3-307), on approx. 8,450 s.f. located at 4329 Rock Creek Rd., zoned R-3 (developed cluster), Lee District, Tax Map 92-1((10))8067.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Pettit replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicant was requesting a variance to the minimum side yard requirement to permit construction of a one story garage addition by enclosing the existing garage. The Zoning Ordinance requires a minimum side yard of 8 feet and a total minimum of 20 feet; therefore, the applicant was requesting a variance of 0.9 feet to the minimum side yard and a variance of 5.0 feet to the total minimum side yard.

The applicant, Carol Pettit, 4329 Rock Creek Road, Alexandria, Virginia, addressed the BZA. She stated that she wished to enclose the existing carport. She explained that the exceptional narrowness and the topographic conditions on the lot had caused the need for the variance.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 91-L-141 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 25, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-L-141 by CAROL PETTIT, under Section 18-401 of the Zoning Ordinance to allow addition 7.1 feet from side lot line such that side yards total 15.0 feet, on property located at 4329 Rock Creek Road, Tax Map Reference 92-1((10))8067, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 (cluster).
3. The area of the lot is 8,450 square feet.
4. The encroachment would not extend any further into the side yard than the existing structure.
5. The application meets the necessary standards for the granting of a variance.
6. The property has exceptional depth.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable

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the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Robert S. Schwenger of Dewberry & Davis, dated November 19, 1991, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. The garage addition shall be constructed of similar architecture and using materials and colors that match the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 469, March 3, 1992, (Tape 1), Scheduled case of:

9:25 A.M. JOHN J. MAGILL, SP 91-M-072, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow detached structure (garage/workshop) to remain 2.1 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407), on approx. 9,123 s.f. located at 6934 Westlawn Dr., zoned R-4, Mason District, Tax Map 50-4((17))337.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. McGill replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit based on an error in building location to allow a reduction to the minimum yard requirements to allow a two-story detached structure (garage/workshop) to remain 2.1 feet from the side lot line. The Zoning Ordinance requires a 10 foot minimum side yard; therefore, the applicant was requesting a modification of 7.9 feet to the minimum side yard requirement.

The applicant, John J. Magill, 6934 Westlawn Drive, Falls Church, Virginia, addressed the BZA. He stated that he would like to correct the error by receiving a special permit. Mr. Magill stated that his structure would be compatible with other structures in the area.

In response to Mr. Hammack's question as to whether the roof on the dwelling would be raised, Mr. McGill said that it would. He explained that William Shoup, Deputy Zoning Administrator, had informed him that the raising of the roof would be a feasible way in which to correct the problem. He stated that his former contractor, Rick Turner, could not be located.

Mr. McGill explained that he had hired Mr. Turner when he came through the neighborhood looking for work. He stated that although he did not check it's authenticity, a building permit had been posted on the second story addition. Mr. Turner explained that it was only after Art Singer, Senior Zoning Inspector, Zoning Enforcement Division, OCP, had investigated the matter and said that the permit displayed was not the appropriate permit did he realize that a problem existed.

In response to Mr. Hammack's question as to whether staff was aware that a permit had been posted, Ms. Dickey stated that she had no knowledge of the matter. She noted that the research of the records indicated that no building permit had been issued.

Mr. Pammel stated that the BZA had received a letter of support from a neighbor and asked Mr. McGill if the abutting property owner at 6936 Westlawn Drive had expressed support of the special permit. Mr. McGill stated that he did not know if that particular owner supported the request.

In response to questions from the BZA, Mr. McGill stated that Mr. and Mrs. Beal lived on Weston Road which is behind Westlawn Drive. He stated that they did not live at 6937 Westlawn Drive and explained that due to the death of the owner, Hortence Major, the property was in probate court. He noted that prior to her death, Ms. Major had supported the request.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Carl D. Steadman, 6800 Westlawn Drive, Falls Church, Virginia; Harry R. Foxwell, 6932 Westmoreland Road, Falls Church, Virginia; and Richard W. Bumgardner, 6939 Westmoreland Road, Falls Church, Virginia, addressed the BZA. They stated that the applicant had been a life-long resident of the neighborhood and was an asset to the community. They expressed their belief that the structure was both architecturally and aesthetically compatible to the area and asked the BZA to grant the request.

There being no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Kelley requested that the viewgraph be used to identify the Beal's residence. Mr. McGill pointed out the Beal's residence at 6928 Weston Road and the property in probate at 6937 Westlawn Drive.

Mrs. Harris made a motion to grant SP 91-M-072 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 25, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-M-072 by JOHN J. MAGILL, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow detached structure (garage/workshop) to remain 2.1 feet from side lot line, on property located at 6934 Westlawn Drive, Tax Map Reference 50)4((17))337, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses; and as set forth in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

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F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The application meeting the necessary standards for the granting of a special permit.

I. This is an unusual case due to the height of the structure and the closeness to the side lot line. The applicant and the neighbors have testified that there would be no detrimental impact on the area.

J. The topographic conditions on the property preclude placing the structure anywhere else on the lot.

K. The applicant has agreed to raise the roof of his house in order to make the detached structure an accessory to the primary dwelling unit.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and the specified detached structure shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Dewberry and Davis dated January 15, 1991) approved with this application, as qualified by these development conditions.

3. One (1) Building Permit shall be obtained and final inspections approved for the garage/workshop and the addition to the dwelling in order that the addition to the dwelling will be completed and will be the primary structure.

4. This special permit shall not become effective until after completion of the proposed second story addition to the existing dwelling, as detailed in the September 23, 1991 Deputy Zoning Administrator's letter to the applicant. The September 23, 1991 letter is attached to these Development Conditions as Attachment 1.

5. The two-car garage shall be used to house only private residential vehicles normally associated with a residential use.

6. The workshop shall not be used to operate a commercial business or as an additional dwelling unit without approval by the Board of Zoning Appeals.

7. The hours of use of the detached workshop shall be limited to 9:00 a.m. to 9:00 p.m. in order to mitigate the potential effects of noise on surrounding residential lots.

8. All outside lighting of the detached structure shall be directed away from all surrounding residential lots and shall be equipped with shields to mitigate the potential effects of glare onto those surrounding lots.

9. The detached structure shall be architecturally compatible with the existing dwelling, including building materials and colors.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval* unless a building permit has been obtained and final inspections approved. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-1 with Mr. Hammack voting nay.

Mrs. Harris made a motion to grant a waiver of the eight-day waiting period. Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1992. This date shall be deemed to be the final approval date of this special permit.

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9:40 A.M. CHARLES WESLEY UNITED METHODIST CHURCH/NORTHERN VIRGINIA CHRISTIAN CHILD CARE CENTER, INC., SPA 92-M-017-1, appl. under Sect. 3-303 of the Zoning Ordinance amend S-47-77 for church and related facilities and amend SP 83-D-083 for child care center to allow additional parking, on approx. 3.0 acres located at 6817 Dean Dr., zoned R-3, Dranesville District, Tax Map 30-4((1))26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Balavage replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit amendment to amend S-47-77 for an existing church and related facilities and to amend SP 83-D-083 for a child care center in order to allow fifteen recently constructed asphalt parking spaces to remain in their present location at the rear of the subject lot at a distance approximately 10.1 feet from the rear lot line and 15 feet from the side lot line. Ms. Dickey said that no new construction or alteration of the existing site was proposed and noted that no changes to the operation of the church or child care center were proposed. She further noted that there would be no joint use of the facility by the church and the child care center during the days the child care center was in operation. She stated that the floor area ratio (FAR) would remain 0.13.

Ms. Dickey stated that the applicant had requested a modification of the transitional screening requirements and a waiver of the barrier requirements in favor of the existing vegetation shown on the special permit plat submitted with the application.

She stated that it was staff's conclusion that with the implementation of the proposed development conditions, the addition of the parking spaces to the church and child care center uses would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the general standards for all Group 3 uses. Ms. Dickey said that staff recommended approval of the request.

The applicant's agent, A. Albert Balavage, 10523-A West Drive, Fairfax, Virginia, addressed the BZA and asked that the BZA approve the application. Mr. Balavage stated that he would like Mr. Nelson to speak to the request.

Chairman of the Administrative Counsel, Art Nelson, 1733 Fairview Avenue, McLean, Virginia, addressed the BZA. He complimented staff, especially Virginia Ruffner Planner II, Zoning Evaluation Division, OCP, and Carol Dickey for their assistance, and noted that the staff report was very well done. Mr. Nelson addressed Development Condition 13, and stated that although the applicant had no objection to the installation of a fence, they would like to modify the design of the fence.

Mrs. Harris referred to the August 2, 1991 letter to Mr. Vitalo which stated that the church would need a special permit to install the parking lot, and asked why the church committee had allowed the continuation of construction. Mr. Nelson stated that the committee believed that since the grading had been done and a contractor hired, it would be environmentally preferable to continue with the operation. He could not explain why a special permit had not been obtained.

Mr. Balavage returned to the podium and explained that the church committee did not realize that a special permit would be needed before any additional construction could take place.

The BZA had a brief discussion regarding problems with the application with Mr. Balavage and Mr. Nelson.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Roger James Radley, 1815 Opalacka Drive, McLean, Virginia, addressed the BZA and expressed his opposition to the application. He stated that the children attending the day care were not well supervised and played in the parking lot. He explained that the applicant had not been responsive to the neighbors' concerns and asked the BZA to deny the request.

George Eichlinger, 1821 Opalocka Drive, McLean, Virginia, addressed the BZA. He stated that he was very concerned that the contractor had proceeded with the project without ensuring that a permit had been obtained. He stated that the contour of the property had been changed and that drainage has become a problem. Mr. Eichlinger explained that the additional parking has caused car lights to shine into his home and asked the BZA to deny the application.

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Page 473, March 3, 1992, CHARLES WESLEY UNITED METHODIST CHURCH/NORTHERN VIRGINIA CHRISTIAN CHILD CARE CENTER, INC., SPA 92-M-017-1, continued from Page 472)

Ralph Vitalo, 1816 Panorama Court, McLean Virginia, addressed the BZA and stated that his property had been adversely impacted by the parking lot. He said that he opposed the lot because of runoff, pollution, noise, lights, and security. He confirmed the allegation that the children were not well supervised and used the parking lot as a playground.

Chairman DiGiulian called Mr. Balavage to the podium for rebuttal.

Mr. Balavage stated he was totally unaware of the problems voiced by the neighbors and assured the BZA that the church members would diligently work to resolve any concerns the neighbors may have.

In response to Mrs. Harris' question as to whether Reverend Wade had informed Mr. Vitalo that it was the church's intent to have the parking lot in place within three days and the neighbors would just have to adjust to it rather than object to it, Reverend Wade stated he had not. He said that he had expressed his belief that the construction was within the law.

Mrs. Thonen made a motion to defer SPA 77-D-047-1 for decision only to April 9, 1992 at 10:00 a.m. She instructed staff to contact the Department of Environmental Management (DEM) and other appropriate County officials, as well as the Virginia Department of Transportation, for additional information as mandated by the BZA. She also requested that the applicant investigate and resolve the outstanding issues and submit professional recommendations on how all outstanding matters could be resolved. She instructed staff to present a list of the additional required information to the applicant and noted that the information should be submitted to staff no later than March 30, 1992, at noon.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 473, March 3, 1992, (Tapes 1 and 2), Scheduled case of:

9:50 A.M. MERCHANT'S, INC., VC 91-Y-127, appl. under Sect. 18-401 of the Zoning Ordinance to allow building 17.0 ft. from front lot line of corner lot, 5.0 ft. from front lot line of corner lot, and 29.0 ft. from front lot line of corner lot (40 ft. min. front yard required by Sect. 4-807), on approx. 35,020 s.f. located at 13900 Lee Hwy. and 13911, 13915 Braddock Rd., zoned C-8, HC, SC, WS, Sully District (formerly Springfield), Tax Map 54-4((1))pt. 50, pt. 51A, 53, pt. 55. (CONCURRENT WITH SE 87-S-035)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Grimsley replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to the minimum front yard requirement to allow construction of a 3,990 square foot vehicle light service establishment on a corner lot with three front yards to a distance of 17 feet from the front lot line that abuts Lee Highway, to 5 feet from the front lot line that will abut Braddock Road, and to 29 feet from the front lot line that abuts the proposed realigned Braddock Road right-of-way. A minimum front yard of 40 feet is required by the Zoning Ordinance; therefore, variances of 23 feet, 35 feet, and 11 feet, respectively, from the minimum front yard were requested.

Ms. Dickey stated that a variance application, VC 92-Y-020, for the applicant to allow the proposed structure to be constructed 4 feet from the rear lot line was scheduled for public hearing for May 5, 1992.

John W. Grimsley, 9073 Euclid Avenue, Manassas, Virginia, addressed the BZA. He stated that the staff report accurately reflected the applicant's wishes. He noted that the process had started five years ago; a special exception had been approved; the Western Fairfax County Civic Association had expressed their support; the Planning Commission had expressed their support; and asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Dick Frank, President of the Western Fairfax County Civic Association, 6720 White Post Road, Centreville, Virginia, addressed the BZA. He stated that the application would help to relieve traffic problems in the area. He noted that the applicant had worked with community and County officials to help to improve the area and asked the BZA to grant the request.

There being further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 91-Y-127 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 25, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-Y-127 by MERCHANT'S, INC., under Section 18-401 of the Zoning Ordinance to allow building 17.0 feet from front lot line of corner lot, 5.0 feet from front lot line of corner lot, and 29.0 feet from front lot line of corner lot, on property located at 13900 Lee Highway and 13911, 13915 Braddock Road, Tax Map Reference 54-4((1))pt. 50, pt. 51A, 53, pt. 55, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee.
2. The present zoning is C-8, HC, SC, WS.
3. The area of the lot is 35,020 square feet.
4. The testimony indicated that there will be a realignment of Braddock Road through the property. This process will create an extraordinary situation in that the lot will have three front yards and be triangular in shape.
5. The application will improve the traffic network in the area.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific structure shown on the plat (prepared by Dewberry and Davis, datad May 17, 1991 as revised through September 16, 1991) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

3. All development conditions imposed upon the subject property pursuant to SE 87-Y-035 shall be incorporated into this variance approval and are attached as Attachment 1.

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Page 475, March 3, 1992, (Tapes 1 and 2), MERCHANT'S, INC., VC 91-Y-127, continued from Page 474)

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1992. This date shall be deemed to be the final approval date of this variance.

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The Board of Zoning Appeals recessed at 10:45 a.m. and reconvened at 11:05 a.m.

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Page 475, March 3, 1992, (Tape 2), Scheduled case of:

10:00 A.M. SHILOH BAPTIST CHURCH, VC 91-D-118, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing church to remain 33.0 ft. from front lot line and parking to remain 5.0 ft. from front lot line (40 ft. min. front yard required by Sect. 3-107; 10 ft. min. distance from front lot line required for parking by Sect. 11-102) on approx. 2.24 acres located at 1331 Spring Hill Rd., zoned R-1, Dranesville District, Tax Map 29-1((1))58, 58A. (CONCURRENT WITH SP 91-D-064. DEF. FROM 2/18/92 AT APPLICANT'S REQUEST)

10:00 A.M. SHILOH BAPTIST CHURCH, SP 91-D-064, appl. under Sects. 3-104 and 8-915 of the Zoning Ordinance to allow existing church and related facilities, building addition, additional seating and parking, and waiver of dustless surface, on approx. 2.24 acres located at 1331 Spring Hill Rd., zoned R-1, Dranesville District, Tax Map 29-1((1))58, 58A. (CONCURRENT WITH VC 91-D-118. DEF. FROM 2/18/92 AT APPLICANT'S REQUEST)

Chairman DiGiulian stated that the Board of Zoning appeals had issued an intent to defer on February 18, 1992.

Mrs. Thonen made a motion defer VC 91-D-118 and SP 91-D-064 to April 28, 1992, at 8:15 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 475, March 3, 1992, (Tape 2), Scheduled case of:

10:10 A.M. PLYMOUTH HAVEN BAPTIST CHURCH, SP 91-V-071, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to allow existing church and related facilities, addition (portico), accessory structure (shed), and waiver of dustless surface requirement, on approx. 6.25 acres located at 8523 Fort Hunt Rd., zoned R-3, Mt. Vernon District, Tax Map 102-4((2))A,600,601,601A; 102-4((3))A2.

10:10 A.M. PLYMOUTH HAVEN BAPTIST CHURCH, VC 91-V-142, appl. under Sect. 18-401 of the Zoning Ordinance to allow parking to remain 5.0 ft. and 2.0 ft. from front lot line (10 ft. min. front yard required by Sect. 11-102), on approx. 6.25 acres located at 8523 Fort Hunt Rd., zoned R-3, Mt. Vernon District, Tax Map 102-4((2))A,601,601,601A; 102-4((3))A2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a Special Permit for a church and related facilities to allow the construction of an addition (portico), accessory structure (storage shed) and a waiver of a dustless surface. She noted that the addition (portico) would consist of approximately 1,100 square feet and be constructed at the northern entrance of the education building. Ms. Bettard stated that the 12 foot high accessory structure (shed) would consist of 392 square feet. She further stated that the structures would add an additional 1,492 square feet to the site for a total of 22,949 square feet with a Floor Area Ratio (FAR) of 0.08. She noted that the waiver of the dustless surface would be for the existing gravel drives, the larger of which provides access to the property from Fort Hunt Road. Ms. Bettard said that the church was constructed prior to the Zoning Ordinance amendment which required special permit approval for a church and related uses and noted that approval of the subject application would bring the church under Special Permit.

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Ms. Bettard stated that the applicant was concurrently requesting approval of a variance to allow parking to remain 2 and 5 feet from the front lot line along Fort Hunt Road and 3, 5, and 8 from the front lot line along Plymouth Road. Paragraph 9 of Section 11-102 of the Zoning Ordinance requires that off-street parking located on the ground be a minimum of 10 feet from the front lot line, therefore variances of 5, 7, and 8 feet were requested along Fort Hunt Road, and variances of 2, 3, and 5 feet were requested along Plymouth Road.

Ms. Bettard stated it was staff's belief that the application met the recommendations of the Comprehensive Plan and recommended approval subject to the development conditions contained in the staff report.

In response to Mr. Pammel's question as to when the church was built, Ms. Bettard stated that it was built before 1978.

The applicant's agent, Mr. Crumplar, 1057 Dalebrook Drive, addressed the BZA. He noted that the church was established in 1952 and had constructed the education building in 1963. He stated that for forty years the church has served the community and has had a beneficial influence on the area. He noted that the church had strived to keep a well maintained property and would continue to do so.

Mr. Crumplar stated that the application was before the BZA because when they applied for a building permit to construct a portico in memory of a deceased church member, they were told a special permit would be needed. He noted that the structure would be 12 feet by 10 feet for a total of 120 square feet and asked the BZA for approval.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Les Gilbert, 8420 Sulky Court, Alexandria, Virginia, addressed the BZA and stated that he was a member of the church. He presented an artist sketch to the BZA and expressed his belief that the portico would be aesthetically pleasing and asked the BZA to grant the request.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following speaker came forward.

Joyce Detwielder, 8625 Plymouth Road, Alexandria, Virginia, addressed the BZA and stated that she had no problems with the portico, but did have a problem with the parking and the drainage.

John Rogers, trustee with the church, 6050 Chicony Place, Alexandria, addressed the BZA. He said that the church had agreed to restripe the parking lot and noted that in the past 38 years there have been no accidents caused by church members entering or leaving the premises.

In response to Mrs. Harris question as to how long the parking places have existed, Mr. Rogers stated that they have been in existence since 1963.

Mr. Kelley made a motion to grant SP 91-V-071 with the modifications as reflected in the Resolution and subject to the development conditions dated February 25, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-V-071 by PLYMOUTH HAVEN BAPTIST CHURCH, under Sections 3-303 and 8-915 of the Zoning Ordinance to allow existing church and related facilities, addition (portico), accessory structure (shed), and waiver of dustless surface requirements, on property located at 8523 Fort Hunt Road, Tax Map Reference 102-4((2))A,600,601,601A; 102-4((3))A2, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 6.25 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303, 8-903 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Alexandria Surveys, revised February 5, 1992) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Plat by Alexandria Surveys, revised February 5, 1992.

5. The maximum number of seats in the main area of worship shall remain at three hundred seven (307). A corresponding minimum of seventy seven (77) parking spaces shall be provided. All parking for the church shall be on site. The twenty three (23) parking spaces near the corner of Fort Hunt and Plymouth Road shall be redesigned so as to reduce interference with the existing traffic flow along Plymouth Road. This may be accomplished by restriping or elimination of the parking areas and signage, or with the use of additional landscaping which would prevent cars from backing out onto the public street. If the variance is not approved, two of the handicapped parking spaces adjacent to Fort Hunt Road shall be relocated in accordance with the Public Facilities Manual (PFM).

6. Transitional Screening 1 and the barrier requirement along the western, southwestern, southern and eastern lot lines shall be modified to allow the existing vegetation and fences to fulfill the requirements.

7. The existing bus stop sign located on Fort Hunt Road shall be retained or replaced if disturbed by future construction traffic or any improvements of the road.

8. All signs on the property shall conform to the provisions of Chapter 12.

9. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The term of the waiver of the dustless surface shall be in accordance with the provisions of the Zoning Ordinance.

   Speed limits shall be kept low, generally 10 mph or less.

   The areas shall be constructed with clean stone with as little fines material as possible.

   The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.

   Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.

   Runoff shall be channeled away from and around driveway and parking areas.

   Periodic inspections shall be performed to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

   There shall be pavement to a point twenty-five (25) feet into the entrance drive from the existing edge of pavement of Fort Hunt Road to inhibit the transfer of gravel off-site.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, forty-eight (48) months after the date of approval* unless construction of the addition (portico) has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0-1 with Mr. Hammack abstaining from the vote.

Mr. Kelley made a motion to waive the eight-day waiting period. Mrs. Thonen seconded the motion which carried by vote of 6-0-1 with Mr. Hammack abstaining from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1992. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley made a motion to grant VC 91-V-142 for the reasons reflected in the Resolutions and subject to the development conditions contained in the staff report dated February 29, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-142 by PLYMOUTH HAVEN BAPTIST CHURCH, under Section 18-401 of the Zoning Ordinance to allow parking to remain 5.0 feet and 2.0 feet from front lot line, on property located at 8523 Fort Hunt Road, Tax Map Reference 102-4((2))A,600,601,601A; 102-4((3))A2, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 6.25 acres.
4. The applications meets the necessary standards for the granting of a variance.
5. There will be a reconfiguration and striping of the parking lot.
6. The parking lot has been in existence for many years and will not present a hazardous situation.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

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THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the parking spaces a distance of 2.0, and 5.0 feet along Fort Hunt Road and a distance of 3.0, 5.0 8.0 feet along Plymouth Road, as shown on the plat revised February 5, 1992 and prepared by Alexandria Surveys and included with this application, and is not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 6-0-1 with Mr. Hammack abstaining from the vote.

Mr. Kelley made a motion to waive the eight-day waiting period. Mrs. Thonen secondad the motion which carried by vote of 6-0-1 with Mr. Hammack abstaining from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 479, March 3, 1992, (Tape 2), Scheduled case of:

10:20 A.M. PATRICK W. & JOSEPHINE H. ARNOLD, VC 91-V-063, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 8.0 ft. from side lot line and 12.0 ft. from front lot line of corner lot (12 ft. min. side yard required and 30 ft. min. front yard required by Sect. 3-307) on approx. 7,375 s.f. located at corner of H and 10th Sts., zoned R-3, Mt. Vernon District, Tax Map 83-4((2))(43)1, 2. (CONCURRENT WITH SE 91-V-020)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Arnold Jr. replied that it was.

Theresa Hooper, Staff Coordinator, with the Rezoning and Special Exception Branch, presented the staff report. She stated that the applicants were requesting a variance of both the minimum side yard and front yard requirements to permit a proposed single family detached dwelling, approximately 3,000 square feet in size, to be located 8 feet from the side lot line and 12 feet from the "H" Street front lot line. The Zoning Ordinance requires a minimum side yard of 12 feet and a minimum front yard of 30 feet; therefore, the applicants were requesting a variance of 4 feet from the side lot line and 18 feet from the front lot line.

Ms. Hooper stated that the applicants are the owners of Lots 1, 2, 3, 4, and 5. She explained that a single-family detached dwelling exists on Lots 4, 5, and part of Lot 3. She said that the applicants were proposing to construct an approximately 3,000 square foot structure onto the lots. Ms. Hooper noted that the subdivision had originally been platted over 100 years ago and has gradually been developed with single-family detached houses.

The applicants' son, Patrick W. Arnold Jr., 6506 Boulevard View #B2, Alexandria, Virginia, addressed the BZA. He stated that the applicants have owned the property since 1970 and would like to construct a new home on Lots 1 and 2. He said that the Board of Supervisors had approved a special exception on January 27, 1992. Mr. Arnold stated that the exceptional narrowness of the lots precluded the building of a house without a variance. He said that the structure would be in conformance with the neighborhood, the request had the support of the community, and asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Julie Martin, Co-President of the River View Homeowners Association, addressed the BZA and stated the neighbors, as well as the Association, supported the request.

Robert Franca, land surveyor, 8789 Village Green Court, Alexandria, Virginia, addressed the BZA and stated that the size and the location of the house would have no detrimental impact on the area.

Will Harston, a neighbor, addressed the BZA and expressed his support for the application.

There being no further speakers in support, and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 91-V-063 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 25, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-063 by PATRICK W. AND JOSEPHINE H. ARNOLD, under Section 18-401 of the Zoning Ordinance to allow dwelling 8.0 feet from side lot line and 12.0 feet from front lot line of corner lot, on property located at corner of H and 10th Streets, Tax Map Reference 83)4((2))(43)1,2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 7,375 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The lot certainly had the exceptional narrowness at the time of the effective date of the Zoning Ordinance.
6. The lot was subdivided approximately 100 years ago.
7. The proposed development would be in harmony with the zoning district.
8. The project would be a nice addition to the community.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location shown on the plat prepared by Robert Franca, Licensed Land Surveyor, dated July 1990 as revised through October 28, 1991 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

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3. All development conditions imposed upon the subject property pursuant to SE 91-V-020 shall be incorporated into this variance approval and are attached as Attachment 1.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date* if the use has not been established or construction has not commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional timed requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 481, March 3, 1992, (Tape 2), Scheduled case of:

10:30 A.M. SHIRLEY L. SHENKER, SPR 81-V-087-2, appl. under Sect. 8-907 of the Zoning Ordinance to renew SPR 81-V-087-1 to allow home professional office, on approx. 18,704 s.f. located at 7210 Beechwood Rd., zoned R-2, Mt. Vernon District, Tax Map 93-3((4))219.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Shenker replied that it was.

Greg Chase, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. He stated that the applicant was requesting approval of the renewal of a special permit in order to continue operation of a home professional office in the existing dwelling on the subject property. He noted that the home professional office was used by the applicant for counseling sessions in her practice as a psychologist. Mr. Chase said that the office hours are Monday through Friday from 8:00 a.m. to 8:00 p.m. with sessions lasting approximately 50 minutes in length and are scheduled no closer than 30 minutes apart. Mr. Chase stated that there would be approximately 15 visitors per week and no other employees will be located on the site. He noted that there are 3 parking spaces provided on the property. Mr. Chase stated that due to the low intensity of the use, no employees and few clients utilizing the site, it was staff's belief that the use is in harmony with the Comprehensive Plan and staff recommended approval.

The applicant's husband, Henry Shenker, 7210 Beechwood Road, Alexandria, Virginia, addressed the BZA. He stated that the office has been in operation for almost 11 years and has had no adverse impact on the community. He said that there would be no changes to the operation. He noted that clients would be seen by appointment only and all parking would be on site. Mr. Shenker stated the only change on the structure was a fire door between the addition and the original structure.

Mr. Pammel made a motion to grant SPR 81-V-087-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 25, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 81-V-087-2 by SHIRLEY L. SHENKER, under Section 8-907 of the Zoning Ordinance to renew SPR 81-V-087-1 to allow home professional office, on property located at 7210 Beechwood Road, Tax Map Reference 93-3((4))219, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 3, 1992; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 18,704 square feet.
4. The applicant has presented testimony that the requirements of the Zoning Ordinance for the use have been meet.
5. This is an existing use which has been in operation approximately eleven years.
6. There has been no testimony in opposition to the application.

Page 482, March 3, 1992, (Tape 2), SHIRLEY L. SHENKER, SPR 81-V-087-2, continued from Page 481)

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-907 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is limited to the location indicated on the application as the special permit area of 310 sq. ft. of the existing dwelling located at 7210 Beechwood Drive, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Wesley H. Ridgeway, dated January 14, 1953, revised by Casper S. Neer, dated August 23, 1955 and H. Graus, dated August 6, 1980 and May 14, 1981) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. Since no building permit is necessary for the continued operation of this use, no site plan approval is required.

5. The number of patients shall average no more than 15 per week with a minimum interval of 30 minutes between patients.

6. The maximum number of hours of operation shall be from 8:00 a.m. to 8:00 p.m., Monday through Friday.

7. In order to control parking, patients shall be seen by appointment only.

8. All parking for this use shall be on site.

9. There shall be no exterior alterations to the residence which would change the residential appearance of the property and there shall be no signs associated with the home professional office use.

10. There shall be no employee other than the applicant associated with the use.

11. This special permit is granted for a period of ten years.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 6-1 with Mrs. Thonen voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 11, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 482, March 3, 1992, (Tape 2), Scheduled case of:

11:00 A.M. SILVERBROOK CONSORTIUM LIMITED PARTNERSHIP, A 92-V-001, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of the Department of Environmental Management's decision that the appellant's project, known as Gunston Corner, is not exempt under the provisions of Par. 5 of Sect. 2-803 of the Zoning Ordinance from having to comply with the requirements of the Affordable Dwelling Unit Program, on approx. 31 acres, located at 8206, 8208, 8210 Lorton Rd., zoned R-20, Mt. Vernon District, Tax Map 107-4((1))1; 107-4((9))1, 2.

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Chairman DiGiulian stated that the Board of Zoning Appeals (BZA) had issued an intent to defer.

Mr. Pammel made a motion to defer A 92-V-001 to April 14, 1992 at 9:15 a.m. The chair so moved.

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The Board of Zoning Appeals recessed at 11:50 a.m. and reconvened at 12:00 noon.

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Page 483, March 3, 1992, (Tapes 2, 3, and 4) Scheduled case of:

11:15 A.M. GOLF PARK, INC., VC 91-C-138, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure and proposed light to within 100 ft. of property lines (100 ft. min. distance from any lot line required by Sect. 8-607), on approx. 48.66 acres located on Dulles Toll Rd., zoned R-E, Centreville District, Tax Map 18-4((1))22,23,26; 18-4((8))A,1A,2,3,4,&5. (CONCURRENT WITH SP 91-C-070) (DEF. FROM 2/11/92 AT APPLICANT'S REQUEST)

11:15 A.M. GOLF PARK, INC., SP 91-C-070, appl. under Sects. 3-E03 and 8-915 of the Zoning Ordinance to allow outdoor recreational use (baseball batting cage, golf course, golf driving range) and waiver of dustless of surface requirement, on approx. 48.66 acres located on Dulles Toll Rd., zoned R-E, Centreville District, Tax Map 18-4((1))22,23,26; 18-4((8))A,1A,2,3,4,&5. (CONCURRENT WITH VC 91-C-138) (DEF. FROM 2/11/92 AT APPLICANT'S REQUEST)

Chairman DiGiulian announced that the applicant would be granted 10 minutes and all speakers would be granted 3 minutes for testimony. He said that the applicant would also be granted 5 minutes for rebuttal

Mr. Kelley made a motion to conduct the public hearing but to defer decision on the case. He explained that the Planning Commission's transcript, as well as the volume of information that had been submitted to the BZA at the public hearing could not be given the proper attention without a deferral.

Mrs. Thonen seconded the motion.

Mr. Pammel stated that he would not participate in the hearing as he had a professional relationship with the applicant.

Mr. Kelley made a motion to defer decision on SP 91-C-070 and VC 91-C-138 to March 10, 1992 at 11:00 a.m.

Mr. Ribble seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Shumate replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant originally had requested approval of a special permit to establish outdoor recreation uses including: a golf course, a baseball hitting range, and a driving range. He noted that the applicant had amended the application to request approval of a golf driving range consisting of 100 tees. Mr. Riegle stated that the structure would include a two story club house which would contain approximately 20,000 square feet. He noted that the structure would house a tot lot, a snack bar, a pro shop, locker rooms, and instructional facilities. He further noted that there would be 142 parking space in the area between the club house and Hunter Mill Road. Mr. Riegle stated that since 64 of the 100 tees would be covered, it would add approximately 20,000 square feet of additional development. He said that collectively the gross floor area would be approximately 45,000 square feet with a corresponding floor area ratio (FAR) of 0.1023. He stated that the hours of operation would be 7:00 a.m. to 7:30 p.m. during the winter months and from 7:00 a.m. to 9:30 p.m. during the summer months.

Mr. Riegle said that the driving range would be lighted with 10, 40 foot overhead light poles and 10 ground mounted bunker lights. Mr. Riegle stated that 4 to 8 foot high berms are proposed along the northern, southern, and western lot line. He noted that 35 to 100 feet of transitional screening is proposed to be around the berms. Mr. Riegle further stated that along the eastern lot line there would be no berms. He explained that existing vegetation would be preserved and supplemental planting to Transitional Screening 2 added.

Mr. Riegle stated that the proposed development conditions contained in the staff report addendum reflect the applicant's commitments to provide turn lanes; to provide a future contribution toward the signalization of Hunter Mill Road and Sunset Hills Road; and to construct the storm management ponds to BMP standards. In conclusion, Mr. Riegle stated that it was staff's belief the applicant's commitments have resolved the outstanding environmental and transportation issues associated with the application. He noted that the visual impacts of the proposed development could be mitigated to a level which would be in harmony with the Comprehensive Plan. He stated that staff recommended approval of the application subject to the proposed development conditions in the staff report addendum dated February 12, 1992.

The applicant's attorney, Charles L. Shumate, 2 Pidgeon Hill Drive, Suite 340, Sterling, Virginia, addressed the BZA. He stated that the applicant has worked very diligently to resolve all outstanding problems and noted the differences between the original application and the application before the BZA. He said that the staff report conclusion that there were no unresolved issues gave credence to his team of experts. He noted that these experts were present to answer any questions the BZA may have. Mr. Shumate submitted photographs, an aerial vicinity map, a special permit plat, and revised development conditions to the BZA and asked that they review them during their deliberation.

Mrs. Harris expressed concern regarding traffic and noted that the traffic study presented to the BZA stated that Hunter Mill and Sunset Hills Road continue to operate at capacity. He replied that she was correct and explained that a signal light would be installed to help alleviate any problems.

Mr. Hammack referred to the site plan dated February 12, 1992, and asked if clubhouse uses as listed on the site plan were correct. Mr. Shumate stated that the uses were considered to be accessory uses to the primary use. He noted that in addition to the accessory uses, all maintenance and storage would be housed within the confines of the clubhouse. Mr. Shumate said that the applicant had attempted to put together an upscale clubhouse which would be acceptable to the community.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Tom McClurg, a lighting consultant with Golf Trust Inc., 1351 Markham Woods Road, Longwood, Florida, addressed the BZA and submitted a lighting impact study. Mr. McClurg stated that the applicant would use "state of the art" lighting and expressed his belief that the use would reduce the existing light impact from Dulles Toll Road. He noted that the lighting system which was designed for sensitive light situations near high impact residential area. Mr. McClurg explained how the lighting system would minimize the lighting impact on the area.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Jack Gwinn, President of the Reston Citizen Association, 1601 Washington Plaza, Reston, Virginia; David, F. Keene, 1516 Victoria Farms Lane, Vienna, Virginia; Jeannette Twomey, representing the Hunter Mill Defense League, 1504 Brookmead Place, Vienna, Virginia; Ron Stanton, 10309 Browns Mill Road, Vienna, Virginia; Al Wilson, 1538 Crowell Road, Vienna, Virginia; Dr. Ho Chung, 1624 Crowell Road, Vienna, Virginia; Sandy Clark, 1801 Clover Meadow, Vienna, Virginia; Jeffrey Kidwell, representing the Wayside Community Association, 1805 Horse Back Trail, Vienna, Virginia; Ellen Mayo Zehl, 10113 Windy Knoll Lane, Vienna, Virginia; Donna Schuster, 1620 Crowell Road, Vienna, Virginia; Rubin Cook, representing the Tamarack Civic Association, 10106 Tamarack Drive, Vienna, Virginia; Richard Bush, 1436 Crowell Road, Vienna, Virginia; Joe Donohoe, 1435 Hunter Mill Road, Vienna, Virginia; Karl Yordy, Equestrian Park Home Owners Association, Reston, Virginia; Helen Alapa, 1502 Brookmead Place, Vienna, Virginia; Paul Corrie, 1520 Victoria Farms Lane, Vienna, Virginia; John Alapa, 1502 Brookmead Place, Vienna, Virginia.

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The BZA recessed at 1:40 p.m. and reconvened at 1:58 p.m.

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Chairman DiGiulian called for any further speakers of opposition and the following citizens came forward.

John Dowd, 1529 Crowell Road, Vienna, Virginia; Tom Vier, 1831 Post Oak Trail, Reston, Virginia; John Kerins, 10303 Tamarack Drive, Vienna, Virginia; addressed the BZA. These citizens, as well as those who spoke before the recess expressed their opposition to the application. They noted that the area was zoned residential and asked the BZA not to allow the commercial venture to be installed in the community. The citizens expressed their concerns regarding detrimental impacts on the property values, traffic, safety conditions, and the precedent for future development. The citizens also expressed their belief that the application was not in conformance with the Comprehensive Plan and asked the BZA to deny the request.

Due to confusion regarding the order of speakers, Chairman DiGiulian ruled that the BZA would hear speakers in support and the following citizens spoke in support of the request.

March Bell, 4617 Columbia Road, Annandale, Virginia; Timothy Rivetti, 100 N. Vermont, Arlington, Virginia; expressed support of the application and explained that golf driving ranges and other recreational facilities are needed in the area.

Chairman DiGiulian called for rebuttal.

Mr. Shumate addressed the BZA and stated that the case was a very important and sensitive case for the applicant. He expressed his belief that Golf Park would be an asset to the community. He stated that staff and his own team of experts had put together a good plan and have resolved all outstanding issues. In conclusion, Mr. Shumate said that the use would be in harmony with the Comprehensive Plan.

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Page 485, March 3, 1992, (Tapes 2, 3, and 4) GOLF PARK, INC., VC 91-C-138 and SP 91-C-070, continued from Page 484)

Although Mrs. Thonen agreed that the case was sensitive, she stated that she voted on the issues and not on who the applicant may be.

Mrs. Harris asked if the proposed use was a commercial venture and if Mr. Shumate contended that there would be no ambiguity of the Comprehensive Plan in the application. Mr. Shumate stated that although it was a for-profit enterprise, it was not a commercial use as envisioned by the Comprehensive Plan. He quoted the Comprehensive Plan text and explained his stand on the issue.

Chairman DiGiulian closed the public hearing.

It was the consensus of the BZA that the deferral would be for decision only and that additional written testimony, if received by the close of business on March 5, 1992, would be accepted.

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Page 485, March 3, 1992, (Tape 4), Information Item:

Request for Reconsideration
Grace Presbyterian Church, SPA 73-L-152-1

Chairman DiGiulian noted that the time limit for reconsideration had expired.

Mrs. Harris stated that she had been the maker of the motion on the special permit amendment and had inadvertently deleted a development condition. Mrs. Harris explained that she had not intended to stop the usage of the church for the 76 children attending the day care center but to simply grant-in-part the applicant. She noted that there would be no additional programs, such as the School Age Child Care (SACC), conducted on the site.

Mrs. Harris made a motion to change Development Condition 6 to read "76 children" so that the development condition would reflect the intent of the motion.

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Pammel absent from the meeting.

Chairman DiGiulian ruled that the BZA would not have to waive the 12 month limitation for the filing of a new application because the application had been granted-in-part.

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Page 485, March 3, 1992, (Tape 4) ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 2:15 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: June 9, 1992

APPROVED: June 16, 1992