

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 10, 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 9:15 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   , March 10, 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. DEFERRED FROM 1/14/92 AT PLANNING COMMISSION'S REQUEST)

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, introduced Marilyn Anderson to the Board of Zoning Appeals (BZA). She advised that Ms. Anderson would be working as Assistant Branch Chief with the Special Permit and Variance Evaluation Branch and appearing before the BZA in that capacity. The Board welcomed Ms. Anderson back.

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.

Greg Chase, Staff Coordinator, presented the staff report, stating that the property is located north of the intersection of Columbia Pike and Gallows Road in Annandale on Columbia Pike; is vacant; is zoned R-2, HC; is surrounded by single family residential development to the north, east and south; and the to west by the Timberman Masonic Temple. Staff noted that the publication of the staff report on February 26, 1991, recommended denial of this application. Mr. Chase said that, subsequent to the publication of the staff report, the applicant requested that the application be deferred, during which time changes to the application were made, addressing issues raised in the initial staff report: a revised church design and site layout, including reduction in the sanctuary seating from 200 to 160 seats, with a corresponding reduction in parking from 50 to 40 spaces, reduction to the building's square footage, height, and bulk, and added landscaping and transitional screening. Mr. Chase referred to the staff report addendum dated June 11, 1991, which recommended approval, based on the changes, if the Proposed Development Conditions attached to the addendum were implemented, which made the applicant, at a future date, close a proposed direct entrance to the site from Columbia Pike and extend the service drive along the property's frontage to the adjacent property to the west, and to construct a single access point aligning with the existent median break along Columbia Pike at Rose Lane to serve the subject property and the property to the west. Since that time, he said, the applicant had agreed to commit to the construction of the service drive, along the full frontage of the subject property and the adjacent property to the west, as well as to the construction of a single new off-site entrance aligning with the existing Columbia Pike median break at Rose Lane, prior to the issuance of a Non-Residential Use Permit. Mr. Chase said that the foregoing issues were addressed to the satisfaction of staff by Proposed Development Conditions dated March 5, 1992. He said that, on March 5, 1992, the Planning Commission conducted a public hearing on this case and recommended that the Board of Zoning Appeals approve the application. Mr. Chase said that staff concurred with that recommendation and finds the application in harmony with the Comprehensive Plan and in conformance with all applicable portions of the Zoning Ordinance. He said that staff recommended that SP 90-M-090 be approved subject to the Proposed Development Conditions dated March 5, 1992.

Mr. Hammack referred to a Buddhist Temple which had come before the BZA at one time and asked Mr. Chase if, through the review of the history of this site, he knew how many seats had been approved for the Temple and what the FAR was. Mr. Chase said that the seating on the Temple had been 80 and the FAR was not available.

Mrs. Harris said she noticed that a letter from the Columbia Pines Citizens Association spoke of the applicant entering into a shared parking agreement with the adjacent Masonic Lodge for overflow parking and she had not seen that mentioned in the Proposed Development Conditions. She inquired if there was an agreement between the Church and the Masonic Lodge which would allow the church to park on the Lodge property. Mr. Mittereder said that was no written agreement at that time, but that a verbal agreement had been made. Mr. Chase said that it was his understanding from talking with Mr. Mittereder that the applicant was currently negotiating with the Masonic Lodge concerning an agreement on shared parking. He said it was not put into the Development Conditions because staff was reluctant to do so. Mr. Chase said that the Development Conditions restricted parking off the Church site and on residential streets, specifically naming the streets.

Mrs. Thonen said that off-site parking could not be allowed under a special permit, unless approved by the Board of Supervisors and the BZA.

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Mark D. Mittereder, Architect and Agent for the applicant, 7360 McWharther Place, Annandale, Virginia, advised that the Church was predominantly a Korean-American congregation of about 180 members, including children; they have been in operation for about ten or twelve years; they are currently holding three services at a church on the corner of Braddock and Ravensworth Roads in Annandale: the first service has 30 or 40 attendees, the second service has about 40 to 50 attendees, and the third service has about 100 attendees. Mr. Mittereder said that the Church purchased the property in 1988 from another church that had prior special permit approval, which he believed was a contributing factor in their decision to purchase the property. He said that the basic design they were proposing followed the original design in that the building is located relatively toward the Columbia Pike side of the site; the parking is located toward the rear; and there is substantial screening and buffering along the residential areas which adjoin the site. He said that the building itself is about 7,000 square feet on two floors; the lower level would be half a story below grade to help keep the height of the building compatible with the existing residential uses; the upper floor would have a sanctuary with 160 seats, an office for the pastor, and a church office. The lower floor would accommodate a social hall, some Bible study meeting rooms, and some toilet and mechanical rooms. He said that one of the major issues throughout the project has been parking; they are proposing 44 spaces, of which 40 are required. Mr. Mittereder said that the citizens have shown concern about overflow parking, particularly on the neighborhood streets. He said he doubted that would be a problem because there are really no contiguous streets adjoining the property; the nearest street parking would be so far away that he doubted anyone would want to park there.

Mrs. Thonan asked Mr. Mittereder if he could accept the Condition concerning no off-site parking and he said that he had proposed that Condition for two reasons: to help satisfy the concerns of the citizens that there might be parking on neighborhood streets for reasons of safety, and to avoid the hazard of pedestrians crossing Columbia Pike. Mr. Mittereder said he proposed the Condition so that it could be enforced after the structure is built. Mr. Mittereder said he had discussed shared parking with the Masonic Lodge principals, who were very positive about the idea, and that there was a compatibility because the Masonic Lodge generally did not have large meetings on Sundays and the lot was only filled three or four times a year. He stressed that the applicant planned for on-site parking, but could use the shared parking if it became necessary; he also said that the Methodist Church, the next block over, also had a shared parking agreement with the Masonic Lodge. Mr. Mittereder said there could also be overflow parking in the service drive.

Mr. Mittereder said that the second problem was access to the site, which had originally been proposed directly from Columbia Pike, by having a median break on Columbia Pike. It later became clear that joint access with the Masonic Lodge was needed. He said that the existing cuts do not line up with the Rose Lane intersection; turns in and out of the Masonic Lodge are difficult; the applicant has made a tentative arrangement with the Masonic Lodge for the applicant to fund and extend full frontage improvements across both properties and share a joint access at an existing median break. Mrs. Harris asked Mr. Mittereder if this agreement was "signed and sealed" and he said that, while going through the Board of Zoning Appeals and Planning Commission hearings, it was premature to have a "signed and sealed" agreement. He said that both parties had agreed to the arrangement, which would be covered in the Proposed Development Conditions, and would go forth when the application was approved.

Mr. Mittereder said the applicant would provide a minimum of 35 feet of screening along the back and side of the property adjoining the residential homes and a minimum of 30 feet between the building and parking lot. An attempt to be creative with the landscaping will be made, along with providing more than is required. He said that the land use was appropriate for this area.

Mr. Hammack asked why a congregation of 180 needed a church with 160 seats and Mr. Mittereder said he believed that to be a reasonable number and the Church hoped to expand if they have a church of their own. Mr. Hammack asked if the Condition stating that all parking must be on site would be a problem and asked for assurance that the Condition will be complied with. Mr. Mittereder said that he had explained the Conditions in detail to the applicant, including the hours of operation and the restrictions, and they had agreed to the Development Conditions. He said they understood that future expansion would not necessarily be allowed at this site, and that the proposed plan meets the needs of the applicant with the 160 seats, even in the event of a special occasion. Mr. Hammack told Mr. Mittereder that the applicant should be made aware of the fact that they could not come back at some future time and request a child care center, only to be told by the BZA that it could not be approved because there is insufficient parking on site. Mr. Mittereder said that a day care center or a school would certainly not be appropriate at this site because there is not enough space, nor is there sufficient parking. He said he had discussed this with the applicant.

Mr. Pammel told Mr. Mittereder that the red maple tree planned for use in the applicant's landscaping plan was not a good tree to use in foundation landscaping because it is brittle and, although it grows fast, it can cause many problems later on.

Mrs. Harris asked if any type of pedestrian walkway was envisioned to reach the secondary parking site, since the auxiliary road was going to be an overflow parking area. Mr. Mittereder said that he could not foresee parking at the Methodist Church parking lot, since the applicant's parking accommodations were huge. Mrs. Harris said that she had been under the impression that there would be no parking on the service road. Mr. Mittereder said that, if the service road were to be used for parking, it would not restrict any emergency type

vehicles. He said there was a strip between the building and the driveway where a walkway could be put.

Ms. Kelsey said that staff could not support parking on the service drive and believed the applicant had been made aware of that; the object is to have all parking on site, but staff had no objection to a shared parking agreement with the site next door; however, staff could not support parking on the service drive, which is for public travel and not for parking. In addition, all parking should be located where it can be properly screened.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 90-M-090 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions revised on February 4, and further amended by Mr. Hammack, as reflected in the Resolution.

Mr. Hammack added that he believed the development plan and screening were well laid out and appropriate; however, the site contained the maximum amount of development.

Mrs. Thonen mentioned that the Columbia Pines Citizens Association had written a letter citing very definite things they would like to see in the development of the Church property. Mr. Hammack said that he would oppose that request and that he did not believe that neighborhoods should be telling churches how to develop their property; however, he did add an eleventh condition in line with the neighborhood's request, to the effect that the exterior facade of the proposed church shall be constructed of materials as depicted in the renderings of the Church, attached to the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-090 by THE WASHINGTON SAE HAN PRESBYTERIAN CHURCH, under Section 3-203 of the Zoning Ordinance to allow church and related facilities, on property located at 6901 Columbia Pike, Tax Map Reference 60-4((1))23, 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 10, 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, HC.
3. The area of the lot is 1.2264 acres.
4. The applicant has satisfied the standards, but this is as much use as can be on this site.

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 dated March 3, 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.

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- 5. The maximum seating capacity for the church sanctuary shall be limited to a total of 160 seats.
- 6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 40 spaces. All parking associated with this use shall be contained on site. No parking on adjacent residential streets shall be permitted at any time by church congregation members or other persons using the facility. (The applicant shall not be precluded from obtaining a shared parking agreement with the Masonic Temple or the adjacent property.)
- 7. Transitional screening and barriers shall be provided around the four sides of the subject property in the following manner, in general accordance with the Tree Preservation and Landscape Plan, dated February, 1991. All barriers shall be placed on the inside edge of the transitional screening yard or on or near the top of a berm if one is so indicated within the screen yard. Existing vegetation may be used to partially satisfy these transitional screening requirements provided it is supplemented to meet the zoning Ordinance requirements to the satisfaction of the County Urban Forester.

Southern lot line.

Transitional Screening 2 (35') and Barrier F (6 foot high wood fence) shall be provided along the southern lot line.

Eastern lot line.

Transitional screening varying from 30 feet to 35 feet in width and to an intensity comparable to Transitional Screening 2, as determined by the County Urban forester, and Barrier F (6 foot high wood fence) on an earthen berm shall be provided along the eastern lot line.

Northern lot line.

Transitional screening from varying from 50 feet to 80 feet in width and to an intensity comparable to Transitional Screening 3 (50'), as determined by the County Urban forester, and an earthen berm, with a minimum height of 4 feet, in lieu of the required Barrier, shall be provided along the northern lot line. This screening shall help preserve the residential character of the area as viewed from Columbia Pike and help minimize the visual impacts on the adjacent residential uses.

Western lot line.

Coniferous landscaping shall be provided along the western lot line to minimize views of the parking lot from the adjacent property, as approved by the County Urban forester.

- 8. Right-of-way to 85 feet from existing centerline of Columbia Pike necessary for future road improvements 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 access easements shall be provided to facilitate these improvements.
- 9. The applicant shall construct a service drive along the full frontage of the subject property and the adjacent property to the west (Tax Map Parcel 60-4 ((1)) 22). The design and construction of the service drive will include a single new off-site entrance aligning with an existing Columbia pike median break at Rose Lane. These aforementioned improvements will be constructed to Virginia Department of Transportation (VDOT) standards as determined by DEM prior to the issuance of a Non Residential Use Permit.
- 10. 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.
- 11. The exterior facade of the proposed church shall be constructed of materials depicted in the renderings of the church, attached to the staff report.

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.

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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 legally established by complying in these conditions and obtaining a Non-Residential Use Permit and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. 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 March 18, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 5, March 10, 1992, (Tape 1), Scheduled case of:

9:15 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. (DEF. FROM 1/14/92 TO ALLOW APPLICANT TIME TO REVISE PLAT)

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. Ritzert replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that the case was originally heard in January and deferred for approximately two months to give the applicant a chance to fully evaluate the various development options that might exist on the property. He said that the property is zoned R-1, is located adjacent to Old Keane Mill Road in the Springfield District; and the lot contains 36,015 square feet. Mr. Riegler said that the application reflects the applicants' proposal for a patio addition 6.3 feet from the side lot line. In the R-1 zoning district a minimum side yard of 20 feet is required; accordingly, they are requesting a variance of 13.7 feet. He said that this was the second application filed on this property in the past year; there was an application filed last summer which was a more expansive variance request, including an additional deck and a gazebo; what remains is the patio.

Gerald M. Ritzert, Esquire, 10149 Mosby Woods Drive, Fairfax, Virginia, came to the podium to represent the applicant. He said that this was the third time this matter had been before the Board; it was his second time before the Board. Mr. Ritzert said that the first presentation was in July of 1991; he listened to the tape of that hearing and tried to glean from it what the Board wished to see and he came back with a much pared down project; a large part of the patio extending along the back of the house, as well as a gazebo, were eliminated. Mr. Ritzert said they had also reduced the size of the proposed patio and reduced the variance by another foot at that point, coming to 6.3 feet of the side property line; the boundary between the lots at that point is fairly heavily wooded, creating a natural screen; the neighbors have no objection to the development; and crux of the problem is that this was a model home and was improperly placed on the lot by the developer, leaving it with no usable back yard. Mr. Ritzert referred to letters of support from Supervisor Alexander, Lee District, and the Architectural Review Board of the subdivision. He said that nothing had been changed because the project had already been pared down to the minimum, but there was not a full Board at the last hearing.

Mr. Hammack asked Mr. Ritzert why a solid four-foot high fence was needed around the patio. Mr. Ritzert said that the property drops off at the back and the applicant would build a brick retaining wall into the side of the hill to retain the soil and to support the structure.

Mike Patrick, 6509 Burke Woods Drive, Burke, Virginia, said his wife was a member of the Architectural Control Committee, and they own the home that shares the property line with the Pallones. Having seen both the architect's drawings and the current addition not involving the variance, he said he found them tasteful and logical extensions of the original home, obviously adding value, not only to their property, but to the neighborhood as a whole. Mr. Patrick said that the applicants had always kept the neighbors informed of their plans, from the very beginning, and they have always had their complete agreement.

Mr. Kelley made a motion to grant VC 91-S-121 for the reasons outlined in the Resolution, subject to the Proposed 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 91-8-121 by MICHAEL & ARMEDA S. PALLONE, under Section 18-401 of the Zoning Ordinance to allow addition 6.3 ft. from side lot line, on property located at 6511 Burke Woods Dr., Tax Map Reference 88-1((23))1, 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 10, 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-1.
3. The area of the lot is 36,015 square feet.
4. The lot has an exceptional shape and exceptional topographical conditions.
5. The placement of the dwelling on the lot is exceptional.
6. The applicant has gone a long way to finally come up with a plan that meets the concerns which the BZA had in its original denial.

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 Larry N. Scartz, Certified Land Surveyor, dated September 18, 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

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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 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 5-2. Mrs. Harris and Mr. Pammel voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 7, March 10, 1992, (Tape 1), Scheduled case of:

9:25 A.M. PURE PRESBYTERIAN CHURCH OF WASHINGTON, SP 91-Y-073, appl. under Sects. 3-103 and 8-915 of the Zoning Ordinance to allow church and related facilities and waiver of dustless surface requirement, on approx. 3.0416 acres located at 12818 Lee Hwy, zoned R-1, WS, Sully District (formerly Springfield), Tax Map 55-4((1))7A.

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 Chae replied that it was.

Greg Chase, Staff Coordinator, presented the staff report, stating that the subject property is located on the north side of Lee Highway, west of Willowmeade Drive; is surrounded to the east by lots in the Willowmeade Subdivision, zoned R-1 and developed with single family detached dwellings; to the north and west of the property are large tracts of land zoned R-1, which are either undeveloped or developed with single family detached dwellings; across Lee Highway, to the south, is a parcel zoned C-8 and developed with vehicle service use and a residential cluster. Mr. Chase said that the property is currently developed with a single family detached dwelling and the applicant proposes to build an addition which will serve as the church, with a total square footage of 2,433. He said that the applicant proposes to provide seating for 80 persons and to conduct two worship services on Sunday at 10:30 a.m. to 1:00 p.m. and from 5:00 p.m. to 6:00 p.m. and one service on Wednesday from 8:30 p.m. to 9:30 p.m. In addition to the church use, the facilities will serve as the residence for the pastor. Mr. Chase said that the applicant was also requesting a modification of the transitional screening requirement to allow the existing vegetation shown on the special permit plat to satisfy the requirement. He said, as noted in the staff report, numerous issues raised concerning the proposed use have not been addressed by the applicant: transportation issues such as relocation of site access from Lee Highway to Willowmeade Drive; provision of right-of-way dedication, which since the time of the application the applicant has indicated he is willing to provide improvements to Lee Highway and provision of right-of-way for a proposed connector road in lieu of a required service road for which the applicant has not provided dedication. The issues of the land use in accordance with the Comprehensive Plan have not been addressed, including inadequate screening and buffering of the proposed use to mitigate adverse impact to the residential character of the adjacent Willowmeade Subdivision to the east; environmental issues concerning the need for Best Management Practices (BMPs) and Stormwater Management on site, since the property is located in a Water Supply Protection Overlay District; the adequacy of the existing septic system on site to serve the use must be determined by the Health Department; and potential impacts from the proposed gravel parking lot and driveway. He said that the foregoing issues have not been addressed to the satisfaction of staff; based on the preceding analysis, staff believes that the application does not meet all the standards necessary for approval and, thus, recommends denial of SP 91-Y-073.

Mr. Chase said that, if the BZA chooses to grant this application, staff recommended the imposition of Proposed Development Conditions dated March 3, 1992, with the addition of one condition which was inadvertently left out, addressing the dedication of right-of-way 68 feet from the centerline of Lee Highway, which the applicant had indicated to Mr. Chase they are now willing to provide.

Mrs. Thonen questioned Condition 11 which stated that no more than four persons reside on the property and she had believed that only the Pastor or one janitorial person was allowed by the standard. Mr. Chase said that the pastor's family consisted of four people.

Hong Seok Chae, Pastor, 11145 Little Brook Lane, Fairfax, Virginia, represented the applicant and presented the statement of justification, requesting church and related facilities, waiver of dustless surface requirement, and education use; hours of operation each Sunday 11:00 a.m. to 12:30 p.m. and 5:00 p.m. to 6:00 p.m. and Wednesday 8:30 p.m. to 9:30 p.m., under the direction of the Pastor. Pastor Chae estimated the number of attendees to be 80; the proposed number of employees is two, Pastor and attendant; the estimated traffic impact is 20 cars for Sunday and Wednesday services; the vicinity of the general area served by the use is three miles; the building will be finished with siding and brick. The applicant requested modification of the landscaping and screening requirement to allow existing vegetation to remain as conforming to standards.

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Mr. Kelley referred to a letter from the Greater Willow Springs Civic Association, Item 3, and asked Pastor Chae to tell him where most of his congregation comes from. Pastor Chae said that most of the congregation comes from the Fairfax area and a few people come from Vienna.

Jackie Hammond, Secretary of the Greater Willow Springs Civic Association, and a resident of Willowmeade Subdivision, spoke in opposition to the application. She said the community welcomed the congregation as a church, but they had some definite concerns with regard to the tree buffer lines, and the actual driveway entrance onto Lee Highway being used for such high intensity traffic at specific times, which was much-discussed, Ms. Hammond said that, even on Sunday mornings, the traffic on Lee Highway is pretty fast and fairly dense, and might cause some danger. She also said that the left turns made by church traffic would cause a problem.

Pastor Chae said that he had directed the congregation to make no left turns and only make right turns, using the right lane exclusively.

Mr. Hammack asked where the congregation worshipped prior to obtaining the subject property. Pastor Chae said they used to rent space and worship at a church on Gallows Road in Tysons Corner.

Mrs. Harris asked where the overflow parking would go. Pastor Chae said he had asked the survey company to design a parking lot behind the church but they had recommended that it be put in front of the church. Pastor Chae said that they did not expect any overflow parking because many people in their congregation had returned to Korea and they did not expect any increase in the size of the congregation.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to deny SP 92-Y-073 for the reasons outlined in the Resolution. He said that the applicant had not met the standards prescribed by the Zoning Ordinance, particularly with respect to access, parking on-site, and the required screening. Mr. Pammel also made a motion to waive the twelve month rehearing limitation with the suggestion that the applicant retain an architect or person capable of looking at the site and submitting a proper design, within the requirements of the Zoning Ordinance, making it possible for the applicant to refile an application before the twelve month waiting period. Mrs. Harris seconded the motion to waive the twelve month rehearing limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-Y-073 by PURE PRESBYTERIAN CHURCH OF WASHINGTON, under Section 3-103 and 8-915 of the Zoning Ordinance to allow church and related facilities and waiver of dustless surface requirement, on property located at 12818 Lee Hwy, Tax Map Reference 55-4((1))7A, 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 10, 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-1, WS.
3. The area of the lot is 3.0416 acres.
4. The applicant has not met the standards required by the Zoning Ordinances as pointed out in the staff report, particularly with respect to access, parking on the site, required screening, adequacy of the septic field for an institutional use, and unresolved transportation issues.

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 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 6-1. Mr. Kelley voted nay.



009

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1992.

The Board passed a motion to waive the twelve-month waiting period for rehearing.

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Page 9, March 10, 1992, (Tape 1), Scheduled case of:

9:40 A.M. DIANNE H. TARKIR, VC 91-D-143, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 16.7 ft. from front lot line and 9.3 ft. from side lot line (30 ft. min. front yard and 10 ft. min. side yard required by Sect. 3-407), on approx. 13,019 s.f. located at 7414 Howard Ct., zoned R-4, HC, Dranesville District, Tax Map 40-1((6))(D)11.

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. Tarkir replied that it was.

Marilyn Anderson, Staff Coordinator, presented the staff report, stating that the subject property is located in the Pimmit Hills Subdivision, north of Pimmit Drive and east of Route 7; is zoned R-4, in the Highway Corridor area; is surrounded by other lots developed with single family detached dwellings. She said that a 30 foot minimum front yard and a 10 foot minimum side yard are required by the Zoning Ordinance; therefore, the applicant was requesting a variance of 13.3 feet from the front lot line and 0.7 feet from the side lot line.

The applicant, Dianne H. Tarkir, 1326 Stourhead Court, Herndon, Virginia, presented the statement of justification, stating that the lot contained a great many beautiful trees and, if they were to be left standing, there is no other place to put the addition because of the shape of the lot. She said that her doctor told her not to carry groceries, etc., very long distances, because of her physical limitations resulting from surgery on her feet and forthcoming surgery on her right shoulder, trying to wire it back together, and a problem with her left shoulder. Ms. Tarkir said that her doctor approved of the plan, which she said would allow her to live a more normal life. She said the contractor who would do the proposed work was present to answer technical questions.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 91-D-143 for the reasons outlined in the Resolution.

Mrs. Thonen also made a motion to waive the twelve month limitation on rehearing. Mr. Ribble seconded the motion.

Mrs. Tarkir raised some questions regarding the fact that the loan on the house was contingent upon the approval of the variance. Mrs. Thonen said that she could not discuss the case further because the hearing was closed.

Mrs. Harris added that the addition did not meet the requirements of the Zoning Ordinance and that a front yard variance was one of the most difficult to have approved because it had to be based upon hardship resulting from the fact that the addition could not be put anywhere else on the lot.

Mr. Kelley said that it appeared to him that the addition could be placed in the rear yard by right and would not affect the financing.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-043 by DIANNE H. TARKIR, under Section 18-401 of the Zoning Ordinance to allow addition 16.7 ft. from front lot line and 9.3 ft. from side lot line, on property located at 7414 Howard Ct., Tax Map Reference 40-1((6))(D)11, 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 March 10, 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-4, HC.
3. The area of the lot is 13,019 square feet.

010

4. There is sufficient room to allow the car to enter and there is sufficient room at the back to put the garage there, if the applicant so desires.
5. Because the addition is attached, its construction is held to higher standards than a detached accessory structure.
6. There is reluctance to locate a garage in front of a house.
7. Placing the garage in the back of the house would require a lesser side yard 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. 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 18, 1992.

The Board passed a motion to waive the twelve-month waiting period for rehearing.

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Page 10, March 10, 1992, (Tape 1), Scheduled case of:

9:50 A.M. MARTIN W. ROEBER, VC 92-M-001, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.6 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 21,345 s.f. located at 6811 Winter Ln., zoned R-2, Mason District, Tax Map 71-2((18))37.

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. Roeber said that it was.

Marilyn Anderson, Staff Coordinator, presented the staff report, stating that the subject property is located in the Tall Oaks Subdivision, east of Backlick Road and north of Braddock Road. She said that the applicant was requesting the variance to construct a room addition 5.6 feet from the side lot line; whereas, a minimum side yard of 15 feet is required in the zoning district; therefore the applicant was requesting a variance of 9.4 feet to the minimum side yard requirement.

The applicant, Martin W. Roeber, 6811 Winter Lane, Annandale, Virginia, stated that he had submitted a signed statement from his surrounding neighbors that he had shown them the plans and drawings for the addition and that they had no objections. He said he had looked at a

011

number of other possibilities but, because of the unusual triangular shape of the lot, there was no other alternative but to request a variance. Mr. Roeber said that the reasons for the addition ranged from creature comforts to adequate space. He said their parents were all in their mid-seventies and two of them live in the area and they anticipate that, in the years to come, one or the other of them will be coming to live with them, and they would like the additional room available, before it becomes a necessity. He said that the lot is heavily treed and even their closest next door neighbor has posed no objection; his neighbor said that, after the addition is built, they can get together and talk about what would be most pleasing to the neighbor and the applicant was willing to do whatever the neighbor wished.

Mrs. Harris asked if there was some way that the applicant could reduce the size of the addition so that it would be less than 38 feet long. Mr. Roeber said that the room addition was almost the same size as the house; from front to back it measures 30 feet. He said that changing that dimension would not affect the variance; that the width of the room is 15 feet to the outside wall, meaning that the width of the room inside is only about 14 feet, which is about the minimum which would be practical under the circumstances.

Mrs. Harris said that what she meant was that the applicant was asking for a variance for a very long distance and asked if he could not reduce the 602 square footage, being 15.7 feet wide by 37.8 feet long. Mr. Roeber said that the additional 7.8 feet was an extension of the balcony to make the addition appear congruent along the front of the house; the room addition is congruent with the house, which is 30 feet long. In answer to a question from Mrs. Harris, Mr. Roeber said downstairs would be a shed or utility room. Mrs. Harris asked if the applicant was going to have a garage door on it. Mr. Roeber said that his inclination would be not to do that, but to put a small window in it, to match the rest of the house.

Alexander Paz, 5008 Woodland Way, Annandale, Virginia, came forward to state that he had prepared the drawings for the addition and that he would like to answer Mrs. Harris' question. He said that the addition would measure 15 by 30 feet and was consistent with the existing architecture.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny VC 92-M-001. She said that she did believe that the subject property has unusual size, configuration and topographic features, and she said that she did not believe that the condition was so recurring in nature that it would need a regulation by the Board of Supervisors to amend the Ordinance; however, she said she did not believe that strict application of the Ordinance would produce undue hardship. She said she believed that the applicant would require some kind of variance to make an addition, but she believed that the extent of the variance for which the applicant was asking was more than she could go along with. Mrs. Harris said she believed it was close to approaching a special privilege or convenience, as opposed to relieving a demonstrable hardship. Mrs. Harris said she believed the addition could be pared down and should not extend the entire length of the house. She believed the next door neighbor's view would be impacted and that the addition was too close to the side lot line.

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

Mr. Pammel made a motion to grant VC 92-M-001 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 3, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-001 by MARTIN W. ROEBER, under Section 18-401 of the Zoning Ordinance to allow addition 5.6 ft. from side lot line, on property located at 6811 Winter La., Tax Map Reference 71-2(18)37, 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 10, 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 21,345 square feet.
4. The lot has exceptional narrowness, shape, and topographic conditions.
5. There is an extraordinary and exceptional condition on the subject property, in that there is no other location where such an addition can be placed.

012

- 6. The applicant has demonstrated a need for the addition.
- 7. Putting the addition in the front would require a variance to the front yard requirements.
- 8. The preferable place for the addition would be the side yard.

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 Dewberry and Davis, dated November 20, 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.

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 March 18, 1992. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:40 a.m. and reconvened at 10:50 a.m.

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10:15 A.M. HELEN R. AND JERRY HILL, VC 91-D-144, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure to remain 12.1 ft. from side lot line (controlled by 60 degree bulk plane, 17 ft. required by Sect. 3-A07), on approx. 36.103 acres located at 10500 Leesburg Pike, zoned R-A, Dranesville District, Tax Map 12-4(1)46. (CONCURRENT WITH SP 91-D-074 AND SE 91-D-035)

013

10:15 A.M. HELEN R. AND JERRY HILL, SP 91-D-074, appl. under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement, on approx. 36.103 acres located at 10500 Leesburg Pike, zoned R-A, Dranesville District, Tax Map 12-4(1)46. (CONCURRENT WITH VC 91-D-144 AND SE 91-D-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. Street said that it was.

Theresa Hooper, Staff Coordinator, presented the staff report, stating that she wished to point out an error in the staff report: Development Conditions of the special permit are contained in Appendix 1 and Development Conditions for the variance are contained in Appendix 1A. Ms. Hooper said that the subject property is known as Hill's Plant Nursery, which has been the subject of several applications: a rezoning application to the R-A District, which is the Rural Agricultural District; a special exception for a plant nursery; and, recently, an Agricultural and Forestry District. She said that approximately 18.5 acres is used for the nursery activity; 16 acres is forested and contains an extensive Environmental Quality Corridor (EQC); and the subject property is surrounded by low density residential uses zoned to the R-1 District. Ms. Hooper said that the applicants were requesting a special permit for a waiver of the dustless surface requirement and a variance of the minimum side yard requirement for an existing lath house which is located along the western property boundary, 12.1 feet from the western side lot line. Section 3-A07 of the Zoning Ordinance requires a minimum side yard of 17 feet, which is controlled by a 60 degree angle bulk plain. Ms. Hooper said that the modified special permit/variance plat depicts the existing retail plant nursery with several outbuildings on the property; a single family detached structure also occupies the site and access to the site is via Leesburg Pike. She said that staff had reviewed the applicant's request for a special permit for compliance with the applicable provisions of the Zoning Ordinance and for conformance with the Comprehensive Plan; staff believes that the use of a properly maintained gravel surface is in harmony with the Comprehensive Plan for the special permit and is in conformance with the applicable provisions of the Zoning Ordinance, provided the Proposed Development Conditions contained in Appendix 1 of the staff report are implemented.

Mr. Pammel asked when the lath house was built and Ms. Hooper said that, from all indication, it appears from aerial photographs that the lath house was built in late 1981. She said that the background is contained in the staff report, as well as information on when the additional structures on the property were built. Mr. Pammel asked if that was after the application for a special exception was withdrawn, based on the determination that they could proceed because they were agricultural. Ms. Hooper said no, that in 1981 when the applicant filed a special exception application for a plant nursery to add additional structures to the property, they were never deemed by the Zoning Administrator as an agricultural use; they have always been deemed to be a plant nursery; subsequent to the Board of Supervisors public hearing, the applicant stated on the record that dedication was required along Leesburg Pike, and they were not in favor of the Development Conditions that were suggested or proposed by staff in 1981; therefore, the application was withdrawn. She said that, subsequent to the applicant withdrawing the application, aerial photographs show that that was when additional structures were built on the property; the applicant just recently received approval in October of 1991 for a plant nursery.

Mr. Ribble asked if the applicant obtained a permit to build the lath house and Ms. Hooper said that, from all indications, no building permits were ever granted for the structures.

Mr. Pammel made the point that, after the applicant received the determination that the use was not agricultural, he proceeded to construct the additions for which he is now seeking to obtain a variance. Ms. Hooper said that was correct.

The applicants' son-in-law, Gregory C. Streeter, 605 Utterback Store Road, Great Falls, Virginia, represented the applicant and said that the structure which is involved in the side yard variance request has been there since the late 1950's and is marked existing lath house; the structure that was proposed in 1981 still is marked proposed and was the one which was actually constructed in 1981. Mr. Streeter said that the nursery has been there since 1953. He said that the difference between 17 feet to conform to the 60 degree bulk plain versus 12 feet could be easily achieved in conformance by one of two actions: either lowering the height of the lath house or moving the poles back; the lath house consists of vertical poles that hold horizontal pieces of wood across and in turn hold what basically amounts to a snow fence to shade the plants underneath. He said that it is a very light weight structure. Mr. Streeter said that the request for the variance was to allow the applicant, over the course of approximately seven years, in the language of the application, to allow modification of the structure as it deteriorates and requires maintenance; as opposed to expending the funds, which in this case would cost a few thousand dollars, to tear down the last row of poles and modify them either by height or by offset, to conform to the Ordinance. He said that the variance would simply allow the structure to be brought into conformity as it deteriorates and requires maintenance.

014

Mr. Streeter said that the applicant accepted all of the Proposed Development Conditions concerning the waiver of the dustless surface requirement, and it was their intent to continue to upgrade and maintain the quality of the gravel and to use a grade of gravel that would not generate dust.

Richard Peters, Vice President of the Great Falls Citizens Association, appeared on behalf of the Association, to support the special permit and variance applications and to urge their approval.

Mr. Ribble asked staff to go over the chronology of the structures. Ms. Hooper said that staff looked at aerial photographs of the property; the residential structure was the only structure shown on the property prior to 1978; research of the 1981 tax maps and aerial photographs after the special exception application revealed that other structures had been constructed on the property; no building permits were found in the street files for any property except the residential structure.

Mr. Ribble made a motion to grant VC 91-D-144 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 3, 1992.

Mr. Ribble made a motion to grant SP 91-D-074 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 3, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-144 by HELEN R. AND JERRY HILL, under Section 18-401 of the Zoning Ordinance to allow existing structure to remain 12.1 ft. from side lot line, on property located at 10500 Leesburg Pike, Tax Map Reference 12-4(1)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 March 10, 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-A.
3. The area of the lot is 36.103 acres.
4. Unusual circumstances and unusual conditions exist.
5. It is not possible to determine whether the construction of the structure was before the Ordinance or after 1981 as had been suggested.
6. It is difficult to determine anything without seeing the aerial photos and the BZA did not have them.
7. Testimony from the applicant and those in support of the application indicate that the structure may have been in place before the 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

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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 existing lath house shown on the plat (prepared by Larry Scartz, dated December 11, 1991) submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the approval date\* of this application, unless the use has been established. 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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 18, 1992. This date shall be deemed to be the final approval date of this variance.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 91-D-074 by HELEN R. AND JERRY HILL, under Section 8-915 of the Zoning Ordinance to allow waiver of dustless surface requirement, on property located at 10500 Leesburg Pike, Tax Map Reference 120-4(1)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 March 10, 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-A.
3. The area of the lot is 36.103 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 of the Zoning Ordinance.

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

1. This approval is not transferable to other land and is for the location indicated on the application.
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 Larry N. Scartz, dated February 10, 1981, revised through December 11, 1990, 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 during the hours of operation of the permitted use.
4. The gravel surfaces shall be maintained in accordance with the standard practices approved by the Director of the Department of Environmental Management and shall include but not be limited to the following:
  - A. Speed limits shall be limited to ten (10) mph.
  - B. During dry periods, application of water shall be made in order to control dust.
  - C. Runoff shall be channelled away from and around driveway and parking areas.
  - D. The applicant shall perform periodic inspections to monitor the dust conditions, drainage functions and compaction of the stone surface.
  - E. Routine maintenance shall be performed to prevent surface unevenness and wear-through 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, thirty (30) months after the approval date\* of the Special Permit unless the gravel driveway and parking lot has been established in conformance with the development conditions, 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. 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 18, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 16, March 10, 1992, (Tape 2), Scheduled case of:

10:30 A.M. CALVARY BAPTIST CHURCH, SP 91-D-057, appl. under Sects. 3-203 and 8-915 of the Zoning Ordinance for a camp and recreation grounds to allow caretaker's quarters 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. (DEF. FROM 2/11/92 TO ALLOW APPLICANT TO AMEND APPLICATION)

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, reminded the Board of Zoning Appeals (BZA) that this application had been deferred this case to allow the applicant time to consider the relocation of the caretaker's dwelling and to consider not deleting the land area. She said it was her understanding, that the applicant had decided to relocate the caretaker's dwelling and not to delete the land area, so that they would be in conformance with the Zoning Ordinance; however, they had not submitted a plat, nor had they prepared the required notices for the readvertising of the application. Consequently, staff recommended, and the applicant concurred, that this application be deferred indefinitely because it was not known when the new plat could be submitted and the application will have to be readvertised and new notices done.

Mrs. Thonen made a motion to indefinitely defer SP 91-D-057 to give the applicant time to make changes to the application and the plat. Mr. Ribble seconded the motion.

Mr. Hammack asked why the applicant did not withdraw the application and Mrs. Thonen said she believed it was because the applicant did not want to start at the beginning of the process again. Ms. Kelsey said that it was at the suggestion of staff and the BZA at the original hearing that the applicant come back with a revised plat, showing the relocated dwelling.

Mr. Pammel said that he questioned why the application was being deferred indefinitely. Ms. Kelsey said that it would have to be advertised anyway, since the current description would not conform to the request, and the only reason for scheduling a hearing for a time and date certain was so that readvertising and renoticing would not need to be done.

The motion passed by a vote of 4-2. Mrs. Harris was not present for the vote; Mr. Pammel and Mr. Hammack voted nay.

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10:45 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) (DEF. FROM 2/4/92 TO ALLOW APPLICANT TO MEET WITH NEIGHBOR)

Clifton Barnes, 8380 Fern Leaf Court, Springfield, Virginia, represented the applicant and said that the applicant was requesting permission for three temporary trailers and asking that the Board of Zoning Appeals (BZA) not defer the hearing. To address the concerns of the opposition, he asked the BZA to consider the following: The relocation of trailer 3 to a position across from and facing trailer 2, identified as the trailer furthest from the Church. This is not where the Church prefers that trailer 3 be located because it reduces the current number of parking spaces by 8 spaces; but, since the neighbor would be willing to accept this alternative with prejudice, the applicant would be willing to accommodate him.

Karl Sakas, 8616 Selgar Drive, Springfield, Virginia, adjacent property owner, said that he previously spoke in opposition to the original application and now spoke in favor of the compromise just described by Mr. Barnes.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 87-S-078-1 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 3, 1992, with the addition of Condition 19.

19. Trailer 3, if required, will be located north of and parallel to trailer 2. A revised plat shall be submitted for approval by the BZA, showing the new proposed location of trailer 3.

A discussion ensued regarding a change in Condition 5 because of the loss of 8 parking spaces to which Mr. Barnes alluded earlier. Chairman DiGiulian asked staff for suggested wording. Mr. Barnes interjected the fact that they had counted the actual number of spaces on the plat and had come up with 245 spaces. He said they would lose 8 spaces, should they ever need trailer 3. He said that they would not see any problem in leaving the trailer in the originally proposed location.

Mr. Hammack said that the parking tabulation on the site plan showed 230 total parking spaces under Phase IV and suggested going back to the site plan to see what had been submitted.

Mrs. Thonen said that, since the BZA could not approve the Resolution until the new plat was submitted, the case could be deferred.

Ms. Kelsey said that the applicant had put in additional parking places in order to get up to the proposed number originally approved.

Bernadette Bettard, Staff Coordinator, said that the applicant had amended the application by letter and that the plat did show 245 spaces. Ms. Kelsey said that the tabulation might be incorrect, but that the number of parking spaces shown on the plat was 245, because staff had counted them. Ms. Kelsey said that staff would like to have a revised plat showing the correct tabulation.

Chairman DiGiulian asked Ms. Kelsey to inform the BZA of the correct parking requirement for the development, by Code. Ms. Kelsey said that the Condition could be worded to say that the applicant provide a minimum of 150 parking spaces and a maximum of 245 spaces, which would give the applicant a good deal of leeway.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-S-078-1 by SOUTH RUN BAPTIST CHURCH, under Section 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 property located at 8712 Selgar Drive, Tax Map Reference 89-3((3))2, 3, 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 10, 1992; and

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

1. The applicant is the owner of the land.

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2. The present zoning is R-1.
3. The area of the lot is 10.59 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 **GRAFTED** 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) for Phases 1 through 4 and the associated parking indicated on the special permit plat (prepared by Greenhorne and O'Mara) and dated July, 1988, and received in this office on August 5, 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 Greenhorne and O'Mara and dated July, 1988, and stamped received by the Zoning Evaluation Division on August 5, 1991.
5. The maximum number of seats in phases one (1) through four (4) shall be six hundred (600). A maximum of two hundred forty-five (245) parking spaces shall be provided for all four (4) phases with a minimum of one hundred fifty (150) spaces previously provided. All parking shall be on-site.
6. Transitional Screening 1 shall be maintained along the western property lines. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the Urban Forester. The existing Environmental Quality Corridor to the east and south of the buildings shall be considered sufficient to satisfy the transitional screening requirements along those lot lines provided it is left undisturbed in accordance with the following condition. Transitional Screening 1 along the northern lot line shall be waived.
7. Pursuant to the Virginia Code Sect. 10.1-1700 et seq, the applicant shall be at the time of site plan approval, record among the land records of Fairfax County, an Open Space easement to the Board of Supervisors. The easement shall include that land which is defined by the Comprehensive Plan as Environmental Quality Corridor (EQC). The exact location for the boundary shall be determined at the time of site plan review by the Office of Environmental Management. There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs and no grading with the exception of the improvements determined necessary by DEM for the road, and the stormwater detention area and sanitary sewer lines if the EQC is the only feasible area where these lines can be placed. Proposed grading for these features 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 structures located in the EQC area except for those mentioned in this condition.
8. Any paving which exists on site which is not used in the approved road access and is within the EQC should be removed and the area reconfigured to match the existing contours and reclaimed through the planting of native vegetation as determined by the Urban Forester.
9. The barrier requirement, a six foot board on board fence, shall be maintained along the western lot line in its current position interior to the transitional screening yard. The barrier requirement shall be waived in all other areas.
10. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.
11. The limits of clearing and grading shall be the delineation of the Environmental Quality Corridor as previously defined. However, minor alterations shall be permitted to accommodate engineering or other code required changes as specified in Condition Number 7 and as determined by the Urban Forester.

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12. 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.

13. The stormwater ponds shall be designed as Best Management Practices (BMP's) and shall achieve a 35 percent phosphorous removal efficiency ratio as determined by the Director, Department of Environmental Management.
14. The stormwater management facility shall be in the location shown on the plat in the area designated as Phase 4. It shall be constructed as determined by the Department of Public Works and Department of Environmental Management and maintained by the applicant. The applicant shall allow access and inspection by the appropriate County agencies. If a regional stormwater management facility is constructed, the facility shall be in the location shown on the plat and be maintained by the County. The facility shall accommodate all uncontrolled upstream drainage.
15. The Special Permit Plat shall be consistent with the Resource Protection Area (RPA) and the BMP phosphorous removal regulations of the County's proposed Chesapeake Bay Preservation Ordinance. Best Management Practices (BMP's) shall be provided to the satisfaction of the Director, Department of Environmental Management.
16. A wetlands study shall be conducted by the applicant and provided to the Director of DEM. The study shall determine the limits of any wetlands located on the site and determine how much if any will be disturbed by the access easement and the stormwater management pond. If required, the applicant shall obtain the appropriate Army corps of Engineer Permits prior to site plan approval. If the study reveals that a site redesign is necessary, a Special Permit Amendment shall be required prior to the approval of the site plan by DEM.
17. The temporary trailers shall be skirted and foundation plantings provided. These trailers shall be approved for a period of three (3) years only from the date of final approval of this Special Permit.
18. Signage or a pedestrian crosswalk shall be provided to clearly guide pedestrian traffic from the temporary church structure to the temporary trailers.
19. Trailer 3, if required, will be located north of and parallel to trailer 2. A revised plat shall be submitted for approval by the BZA, showing the new proposed location of trailer 3.

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.

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 shall become final on the date the revised plat is approved. That date shall be deemed to be the final approval date of this special permit.

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Page 19, March 10, 1992, (Tape 2), Action Item:

Approval of Resolutions from March 3, 1992 Hearing

Mr. Pammel referenced the Resolution for Carol Pettit, VC 91-L-141, and made a motion to make a minor modification under the findings of fact, number 6, to read as follows: "The property has exceptional depth; however, the narrow width precludes the ability to meet the side yard requirements." Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Mr. Kelley referenced Plymouth Haven Baptist Church, SP 91-V-091, and made a motion to change Development Condition 6 to read: "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." Mrs. Thonen seconded the motion, which carried by a vote of 7-0.

Mr. Hammack referenced application VC 91-V-063 by Patrick W. and Josephine H. Arnold, said that Development Condition 3 should be deleted. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

Mr. Ribble referenced Merchant's Inc., VC 91-V-127, and made a motion to eliminate Condition 3. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

Mr. Pammel moved to accept the Resolutions as amended. Mrs. Thonen seconded the motion, which carried by a vote of 7-0.

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Page 20, March 10, 1992, (Tape 2), Scheduled case of:

11:00 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,2,3,4,45. (CONCURRENT WITH SP 91-C-070) (DEF. FROM 2/11/92 AT APPLICANT'S REQUEST. DEF. FROM 3/3/92 BY THE BZA FOR DECISION ONLY, ONLY WRITTEN TESTIMONY ACCEPTED UNTIL THURSDAY, 3/5/92)

11:00 A.M. GOLF PARK, INC., SP 91-C-070, appl. under Sects. 3-B03 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,2,3,4,45. (CONCURRENT WITH VC 91-C-138) (DEF. FROM 2/11/92 AT APPLICANT'S REQUEST. DEF. FROM 3/3/92 BY THE BZA FOR DECISION ONLY, ONLY WRITTEN TESTIMONY ACCEPTED UNTIL THURSDAY, 3/5/92)

Chairman DiGiulian advised that these cases had been deferred from the previous week for written input through close of business on last Thursday, for the BZA to ask questions of the applicant or any of the people who presented testimony.

Mr. Pammel advised that he would not participate because of a business conflict.

Mrs. Thonen said that she had received the written information, but not in enough time to properly review it.

Chairman DiGiulian said that, if the BZA had no questions of the applicant or any of the people who presented testimony, he would close the public hearing.

A discussion ensued among the BZA members, revealing that the written information submitted had reached some of the members in a timely fashion and had not reached others early enough for proper review.

Mrs. Harris questioned the submission received that very day at the BZA meeting and said that they should not be entered into the record and that she would not read them.

Mrs. Thonen made a motion to defer the cases for decision only to March 31, 1992 at 9:00 a.m. Mrs. Harris asked for a confirmation that the BZA would not accept any information received after the previous Thursday. Mr. Hammack seconded the motion, which carried by a vote of 6-0-1. Mr. Pammel abstained.

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Page 20, March 10, 1992, (Tape 2), Policy/Action Item:

Request for Change of Permittee  
Good News Baptist Church  
F-21-78

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, referred to having advised the BZA a few weeks ago that the Good News Baptist Church was filing an application for a Change of Permittee. She had inquired as to whether or not the BZA might be interested in allowing a Change of Permittee as an Action Item as had previously been done. The Board said it would consider the action on a case-by-case basis; therefore, the applicant was making the request as an Action Item.

Mr. Hammack asked if the applicant was making changes in the hours of operation. Ms. Kelsey said the applicant had indicated that they would make no other changes but the Change of Permittee and that staff recommended approval.

Mrs. Harris asked if, in such a case, it was legal to ask the new permittee to write a letter saying that they accept the Conditions imposed in the special permit as a condition to granting the Change in Permittee. The BZA members concurred with Mrs. Harris.

Chairman DiGiulian said he believed that the foregoing should be a part of the motion, that the new permittee had to agree to abide by the conditions imposed on the original applicant in the Resolution, and that the Change of Permittee would not become effective until a letter of agreement had been received from the new permittee. Mr. Kelley made a motion to this effect and Mr. Ribble seconded it. The motion carried by a vote of 7-0.

Mr. Kelley made a motion to, henceforth, have staff prepare a letter in advance when they come to the BZA with a request of this nature. Mrs. Thonen seconded the motion, which carried by a vote of 7-0.

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Page 21, March 10, 1992, (Tape 2), Action Item:

Approval of Resolution and Revised Plat  
Yaseenullah Amin  
SP 91-M-069

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that this item had been prematurely added to the Action Items and asked that it be deferred until the following week.

Mrs. Harris made a motion to defer final approval of the Resolution and Revised Plat for SP 91-M-069 until the following week. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 21, March 10, 1992, (Tape 2), Action Item:

Intent to Defer  
Bowl America Appeal A 92-Y-002  
Special Permit SP 92-Y-013

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, referred to a conversation with Chairman DiGiulian about this item, stating that a special permit for Bowl America was scheduled for March 31, 1992. She said that the applicant had requested by letter that the Board of Zoning Appeals defer the appeal scheduled for following week until March 31, 1992, in order that the special permit could be heard first.

Mrs. Harris so moved. Mrs. Thonen seconded the motion, which carried by a vote of 7-0.

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Page 21, March 10, 1992, (Tape 2), Board Item:

Proposed Budget Cuts

Mrs. Harris said she would like to discuss the Proposed Budget Cuts and get the Board of Zoning Appeals (BZA) members' counseling on the public hearings scheduled to come before the Board of Supervisors (BOS). She said there would be a lot of people talking about their feelings about the budget cuts. She said she wondered whether the BZA thought it appropriate for one of the BZA members to attend and make their feeling known, not only from the perspective of staff's interaction with applicants, but from the perspective of all the work that they do trying to explain the BZA regulations so that, when an applicant comes before the BZA, they have some idea of what they will face. She said she was not sure that people know that and Mrs. Thonen said that she was not sure that the Supervisors knew what the BZA members do. Chairman DiGiulian said that he was not sure that the BOS had designated the cuts. He said he believed that was coming from the staff and he would like to wait until the following week when the BZA had heard from James P. Zook, Director, Office of Comprehensive Planning, so that they would be better informed.

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised the BZA that Mr. Zook and Barbara A. Byron, Director, Zoning Evaluation Division would be meeting with the BZA the following Tuesday evening.

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As there was no other business to come before the Board, the meeting was adjourned at 11:50 a.m.

022

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

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

SUBMITTED: May 26, 1992

APPROVED: June 2, 1992



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 17, 1992. 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 8:03 p.m. and Mr. Hammack gave the invocation. Mrs. Harris made a motion to go into Executive Session to discuss personnel matters. The BZA reconvened in the Board Room at 8:37 p.m.

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Page 23, March 17, 1992, (Tapes 2-3), Scheduled case of:

8:00 P.M. CARLOS A. REYES, VC 91-L-102, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.0 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 30% max. required rear yard coverage allowed 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 AND 2/11/92 - NOTICES NOT IN ORDER)

8:00 P.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 of 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 0.0 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 facility, (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 AND 2/11/92 - 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. Reyes replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report and stated that the property is generally located west of Richmond Highway and south of Kings Highway on the north side of Spring Drive and surrounded by lots that are zoned R-2 and are developed with single family detached dwellings. She stated the applicant was requesting approval of revised applications for a special permit amendment to amend SP 83-L-096 for an error in building location and a variance which comprise a total of 9 requests which were detailed on pages 1 through 3 of the Staff Report Addendum.

Ms. Dickey outlined the requests for the Special Permit Amendment as follows: 1) a change in use from a garage to a family room; 2) an open deck; 3) open stairs, a multi-level open deck and connecting open stairs; 4) an accessory shed/workshop structure; and 5) operation of a home child care facility for a maximum of 9 children.

She said there were two variance requests: one involved the construction of a second story addition to the existing garage, and the second was for a multi-level deck to cover more than 30% of the minimum required rear yard.

Ms. Dickey informed the BZA that Ron Derrickson, Planning Technician, had distributed a summary of the requested special permit amendment and variance requests for the BZA's convenience.

She summarized the Special Permit Amendment requests as follows: 1) to allow a change in use from a garage to a family room; 2) modification of 6.0 ft. to the side yard requirement for the original deck on the west lot line; 3) modification of 10.0 ft. to the side yard requirement for the open stairs on the west lot line; 4) modification of 13.0 ft. to the rear yard requirement for the multi-level deck; 5) modification of 15.0 ft. to the side yard requirement for the multi-level deck and connecting stairs on the west lot line, and 13.3 ft. to the side yard requirement for the multi-level deck and connecting stairs on the east lot line; 6) modification of 11.5 ft. to the side yard requirement for the accessory structure on the east lot line; 7) to permit operation of a home child care facility for a maximum of 9 children, ranging in age from birth to 12 years.

Ms. Dickey then outlined the Variance requests as follows: 1) 11.0 ft. to the side yard requirement for the second story addition on the west lot line; and, 2) the maximum rear yard coverage to allow an existing accessory structure, a multi-level deck, to cover more than the maximum allowed coverage of 30% of the area of the minimum required rear yard.

In regard to surrounding uses, a review of the files of the Zoning Administration Division revealed that the dwelling on adjacent Lot 79A to the west is located approximately 16 feet from the shared lot line, and the dwelling on adjacent Lot 77 to the east is located approximately 22.4 feet from the shared side lot line. She said it was staff's conclusion that the request to allow the operation of a home child care facility did not meet all of the standards for approval of a special permit and recommended that this portion of the application be denied as submitted.

The applicant, Carlos Reyes, 3208 Spring Drive, Alexandria, Virginia, came forward and said that the errors were made in good faith and none of the violations were done intentionally. He said that in 1989, his wife began to take care of children through the Office of Children, and because the rear of the lot is very steep he decided to purchase another house. Mr.

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Reyes said that his house was on the market for a year and did not sell; therefore, he decided to take the house off the market and try to make the back yard usable. In 1990, he obtained a building permit to convert the garage into a recreational room for the children, cleared the back yard, and obtained a building permit in order to construct a deck in the back yard. When that project was completed, he again obtained a building permit to enlarge the first deck. At the beginning of 1991, he hired Ignacio Borges, a licensed architect, to obtain a building permit for the second story addition over the converted recreational room. He said after working with the contractors it was decided that if the deck was 2 feet or less above ground level a building permit was not required. Based on that assumption, he proceeded to construct a second and third deck on the hill with an 800 square foot flower bed. Mr. Reyes said at the same time he proceeded to construct a storage shed where he could store his equipment and tools to prevent the children from being injured. He said that he now knew that the assumptions under which he had proceeded were incorrect and he accepted full responsibility.

With respect to the shed, Mr. Reyes said his assumption was partially correct since he had not been aware of the 8 1/2 foot height restriction. He said he had believed that a shed less than 200 square feet could be located anywhere in the back yard; but since the shed is located on a hill, the average height is 9 feet.

Mr. Reyes said he tried to obtain a building permit for the steps located on the west of his property and was told by the staff who issues the building permits that he did not need a permit because there was an access walkway to the back yard.

He said all the decks were constructed with the highest quality materials and there are no objections from any of the neighbors because they believe the decks enhance the neighborhood. Mr. Reyes said the exceptional shape of the property makes it extremely difficult to comply with the setback requirements, the strict application of the Ordinance would produce an unusual hardship on his family, and the shape and the closeness of the construction to the lot line has a very small impact on the neighbor, and the granting of the requests would not be detrimental to the neighborhood.

Mr. Reyes addressed the family day care facility. He said that Ms. Dickey had visited his property, looked at all the construction he had performed, and asked if he had a permit to care for the children and he told her that he did. In addition, Mr. Reyes said that two Zoning Inspectors also visited his property, Betty Hogue and Paul McAdam, and informed him that he must also obtain a County permit for the day care center. He said there have never been any complaints from the neighbors regarding noise or traffic generated by the day care center. He said seven of the nine children are from low income parents subsidized by the Office of Children Child Care Assistance Program, who use public transportation and walk to the day care center, and the other two car pool.

He said that he had planted trees to mitigate the impact, called the BZA's attention to the letters from his neighbors in support of the request, and asked the BZA to grant the request subject to the development conditions.

In response to a question from Mr. Hammack, Mr. Reyes said that one of the trees is on his property and six are on the neighbor's property.

Mrs. Harris said that the minutes from the May 14, 1985 public hearing indicate that his testimony was basically the same. She pointed out that it appeared that he was aware of the Zoning Ordinance requirements at that time. Mr. Reyes said that in 1985 he had hired a contractor to build the garage and the contractor had not obtained a building permit. He pointed out that he had obtained the necessary permits for the decks that he had constructed and the errors were not found until Mr. Borges tried to obtain a building permit for the second story addition.

A discussion took place between the BZA and the applicant regarding the 100% coverage of the back yard and why he had built so close to the lot line when the building permit stipulated any structure must not be constructed within 5 feet of the lot line.

Chairman DiGiulian called for speakers in support of the request.

John Huber, 7201 Parsons Court, Alexandria, Virginia, said his child attended the child care center and supported the applicant's request.

Ignacio Borges, the applicant's architect, 6006 Loretto Street, Springfield, Virginia, focused on the issue of the day care center and said that the applicant was only asking for two additional children, the neighbors are in support of the request, and asked the BZA to grant the request.

The applicant's wife, Veronica Reyes, said she was the day care provider for the children, was providing day care for low income children, two of the parents use public transportation, and that she would not want to give up two of the children.

There was no opposition to the request and Chairman DiGiulian closed the public hearing.

Mr. Hammack asked why staff had allowed 12 children on any given day in Development Condition Number 3. Ms. Dickey said staff was saying no more than 9 children at any one time but was trying to allow the applicant some flexibility. Mrs. Harris asked if it were true that the



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State only allows the applicant to have 9 children as opposed to 12. Jane Kelsey, Chief, Special Permit and Variance Branch, said the regulations speak only to how many children the applicant can have at any one time but not to the maximum.

Mr. Hammack said the applicant had been before the BZA before and had now covered virtually the entire back yard, lot line to lot line, and the stairs are on the neighbor's property.

He made a motion to grant the applicant's special permit amendment request for the child care center only and revised Development Condition Number 3 to reflect "9 children." Mr. Hammack said under the summary for the special permit amendment presented to the BZA by staff he would grant numbers 1 and 8, and deny numbers 2, 4, 5, 6, and 7.

Mrs. Harris seconded the motion.

Mr. Pammel said he was concerned with the coverage of the rear yard and the multi-level deck.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 83-L-096-1 by CARLOS A. REYES, under Section 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 of use from garage to family room, to allow multi-level decks and uncovered stairs to remain 0.0 feet and 1.7 feet from the side lot lines and 0.0 feet from the rear lot line, to permit accessory structure to remain 3.5 feet from the side lot line and to permit a home child care facility (THE BOARD ONLY GRANTED A CHANGE IN USE FROM GARAGE TO FAMILY ROOM AND OPERATION OF A HOME CHILD CARE FACILITY FOR A MAXIMUM OF 9 CHILDREN, RANGING IN AGE FROM BIRTH TO 12 YEARS), on property located at 3208 Spring Drive, Tax Map Reference 92-2((19))78, 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 17, 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-IN-PART, with the following development conditions:

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1. This special permit is approved for the location and the specified garage addition to be used as a family room 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 amendment plat prepared by Alexandria Surveys, Inc. and dated March 19, 1991 as revised through April 10, 1992, approved with this application, as qualified by these development conditions.
3. The maximum number of children, in addition to the property owners' children who reside on-site, permitted in the home child care facility at any one time shall not exceed nine (9) children and the maximum daily enrollment shall not exceed nine (9) children.
4. The hours of operation of the home child care facility shall be limited to 6:00 a.m. to 5:30 p.m., Monday through Friday.
5. Four (4) parking spaces, as shown on the plat, shall be provided on-site.
6. No more than two (2) employees shall be on the premises during the hours of operation of the home child care facility, and no persons in addition to the two (2) property owners shall be employed for the home child care facility.
7. Approval from the County Department of Health Services shall be obtained prior to the issuance of the Non-Residential Use Permit.
8. This special permit for a home child care facility shall be approved for a period of three (3) years from the final approval date of this Special Permit Amendment.

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, six (6) months after the date of approval\* unless the use has been legally established by obtaining a Building Permit, obtaining the necessary inspections and approval for the change in use from a garage to a family room and obtaining a Non-Residential Use Permit (Non-RUP) for the Home Child Care Facility. 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 6-0. 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 April 28, 1992. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant the variance request in part 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-L-102 by CARLOS A. REYES, under Section 18-401 of the Zoning Ordinance to allow addition 4.0 feet from side lot line and to allow accessory structure to cover more than 30% of the area of the minimum required rear yard, on property located at 3208 Spring Drive (THE BOARD GRANTED APPROVAL TO ALLOW ADDITION 4.0 FEET FROM SIDE LOT LINE), Tax Map Reference 92-2((19))78, 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 17, 1992; and

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

027

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,720 square feet.
4. There are topographic constraints on the property.
5. The Board allowed the garage addition to remain since it was the result of a variance that was granted by the Board in 1985.
6. The lot has a very unusual shape thereby restricting building of additions on the site other than that proposed 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:

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 Alexandria Surveys, Inc. and dated March 19, 1991 as revised through April 10, 1992, included with this application and is not transferable to other land.
2. A Building Permit shall be obtained for the second story addition to the dwelling prior to any construction and final inspections approval.
3. The second story addition to the dwelling 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\* for the second story addition unless construction has commenced and has 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. 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 April 28, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 28, March 17, 1992, (Tape 3), Scheduled case of:

8:00 P.M. BOWL AMERICA INC. APPEAL, A 92-Y-002, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that construction of the bowling alley authorized in Special Permit SP 89-S-031 did not commence prior to the expiration date, that such special permit was therefore expired and that new special permit approval was needed in order to establish the use, on approx. 3.0906 acres, located on Willard Rd., zoned I-5, Sully District, Tax Map 33-4((4))2A.

Chairman DiGiulian noted that the agenda indicated that the appellant was requesting a deferral in order for the Board of Zoning Appeals to hear a special permit for the same use on the same piece of property.

Jane Kelsey, Chief, Special Permit and Variance, replied that was correct. She said the appellant's special permit had been scheduled for March 31, 1992, at 10:55 a.m., with the appeal scheduled at 11:10 a.m.

Mr. Pammel so moved. Mr. Kelley seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

Mrs. Harris asked if the appellant would notify the surrounding property owners. Ms. Kelsey explained that because of the change in the meeting location, the Clerk had notified all property owners in all cases scheduled for March 31st.

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Page 28, March 17, 1992, (Tape 3), Action Item:

Approval of Resolutions for March 10, 1992

Mr. Pammel agreed that Finding of Fact Number 4 was made a part of the Resolution for SP 90-Y-073, Pure Presbyterian Church of Washington.

Mr. Ribble said that in the Helen R. and Jerry Hill case, VC 91-D-144, Finding Fact Number 6 should be changed to reflect that it is difficult to determine anything without seeing the aerial photos because the Board of Zoning Appeals did not have them when reviewing the case. He also noted that on the next page at the end of the first sentence should be added, "unless the use has been established."

Mr. Pammel moved approval of the Resolutions with the corrections as noted by the BZA. Mr. Hammack seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 28, March 17, 1992, (Tape 3), Action Item:

Approval of December 10, 1991 Minutes

Mr. Pammel noted that page 19 was not included in the copy he received and on the bottom of page 27 last the last paragraph the word "motion" should be submitted.

It was the consensus of the Board of Zoning Appeals to hold approval of the minutes until March 24, 1992.

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Page 28, March 17, 1992, (Tape 3), Action Item:

George Steven Hawkins, VC 89-L-062, and VC 89-L-063  
Additional Time

Mrs. Harris made a motion to grant the applicant's request making the new expiration date February 3, 1993. Mr. Pammel seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 29, March 17, 1992, (Tape 3), Action Item:

Turner and Elaine Rose, VC 89-D-147  
Additional Time

Mrs. Harris said she had reviewed the original request and the Board of Zoning Appeals was in receipt of a letter from a neighbor and noted that the letter did not deal with the additional time request. She noted that the applicant had the right to ask for additional time and made a motion to grant the applicant's request making the new expiration date April 11, 1993.

Mr. Ribble seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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028

Page 29, March 17, 1992, (Tape 3), Action Item:

Rita Finfrock, SP 91-D-045  
Intent to Defer

Mrs. Harris made a motion that the Board of Zoning Appeals issue an intent to defer SP 91-D-045. 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 29, March 17, 1992, (Tape 3), Action Item:

St. Mark's Catholic Church Appeal  
Intent to Defer

Mr. Pammel said the appeal had been on the agenda for quite awhile, had been deferred several times, and now the appellant was requesting an indefinite deferral. Jane Kelsey, Chief, Special Permit and Variance Branch, explained the appellant was trying to resolve an issue with the Virginia Department of Transportation. Mr. Pammel made a motion to issue an intent to defer the appellant for six months. 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 29, March 17, 1992, (Tape 3), Action Item:

Suzanne Marshall, VC 87-D-087-1  
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, said that following discussions with other County agencies she had determined that the applicant was experiencing a hardship and that staff would do whatever possible to accommodate the out of turn hearing. She recommended May 5, 1992.

Mrs. Harris made a motion to schedule the case for May 5, 1992. Mr. Pammel seconded the motion which passed by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 29, March 17, 1992, (Tape 3), Action Item:

Approval of Resolution and Revised Plat  
Yaseenullah Amin, SP 91-M-069

Mrs. Harris said the revised plat now reflected the "addition" rather than a screened porch and moved approval of the revised plat. Hearing no objection, the Chair so ordered.

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Page 29, March 17, 1992, (Tape 3), Action Item:

Carlos A. Reyes, VC 91-L-102, and SPA 83-L-096-1.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board of Zoning Appeals that the applicant heard earlier in the public hearing was requesting a reconsideration. She recommended that the resolution not become final until March 31st in order to give the applicant an opportunity to decide what the alternatives might be.

Mr. Hammack so moved. Mr. Pammel 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 9:43 p.m.

Betsy S. Hirtt  
Betsy S. Hirtt, Clerk  
Board of Zoning Appeals

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

SUBMITTED: May 24, 1992

APPROVED: June 2, 1992

029

S/ark

030



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 31, 1992. 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 9:25 a.m. and Mr. Pammel 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 31, March 31, 1992, (Tape 1), Scheduled case of:

- 9:00 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)
- 9:00 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 advised that the two applications had been deferred for decision only.

Mr. Ribble said that he would like to hear the cases but Mrs. Thonen had been called out of town, due to a death in the family, and she had a keen interest in the cases. He said, for that reason, he was making a motion to defer.

Mr. Kelley seconded the motion, stating that he also knew that Mrs. Thonen had been working on some development conditions in this regard, and that he would like to know what she had to contribute. Mr. Ribble said that did not mean that she would necessarily be in support of the application. The BZA agreed that no one knew what her position would be on the applications.

It was decided that the cases would be deferred to the following week, April 9, 1992, at 9:00 a.m. The motion carried by a vote of 5-0-1; Mr. Pammel abstained.

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Page 31, March 31, 1992, (Tape 1), Scheduled case of:

- 9:30 A.M. VICTORIA R. MYERS, VC 92-M-017, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 24.1 feet from street line of corner lot (30 ft. min. front yard required by Sect. 3-407) on approx. 7,364 s.f., located at 2845 Summerfield Rd., zoned R-4, Mason District, Tax Map 50-4(5)457.

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. Myers replied that it was.

Regina Murray, Staff Coordinator, presented the staff report.

The applicant's husband, Brian E. Myers, 2845 Summerfield Road, Falls Church, Virginia, presented the statement of justification, stating that some of the reasons for the variance request were that the parcel is a corner lot with two front yards, limiting them to a 30 foot minimum front yard instead of the standard 10 foot minimum side yard imposed on standard lots; they also had to dedicate some of their property to the County in order to round the curbs for Summerfield Road and Custis Parkway. He said they did not find this out until last October when they attempted to obtain plans for the addition. Mr. Myers submitted a letter from all of his neighbors in support of the application. Mr. Myers said they believed that strict application of the Ordinance would produce an undue hardship. He said that, when the dwelling was built in the 1940's, the minimum front yard requirement was 25 feet. He said that the proposed location of the addition was the only place that would allow reasonable access through the kitchen; the only other possible location would require access through a first-floor bedroom, which would become a thruway and no longer function as a bedroom, which defeats one of the main purposes of the proposed addition. He said that the proposed design of the addition would be compatible with the existing dwelling. Mr. Myers said that there already is a structure where the proposed addition will be located; however, it is not structurally sound enough to support a second story. He said that there is a sewer opening on the lot, located on Custis Parkway, causing severe rodent problems in the summer; the County agrees that the problem is serious, but putting chemicals in the sewers to alleviate the problem is prohibited. Mr. Myers said that the rodents, seeking warmth, have begun chewing through the wall into the existing room and actually have penetrated into the living space; they were advised by H & H Exterminators that the only way to rid themselves of the problem would be to place special wire within the walls and in the ground, which the rats could not penetrate. He said that they had installed the wire in the walls; however, rebuilding the room to improve the concrete foundation would certainly eliminate the problem. Mr. Myers said that the County was very responsive to their initial complaints and offered to send an inspector out to give them advice. Mr. Myers said that, for financial,

appearance, and practical purposes, the proposed design would be the best solution for them and for the neighborhood.

Chairman DiGiulian asked Mr. Myers if the proposed structure would come any closer to Custis Parkway than the existing structure, with the exception of the bay window, and Mr. Myers said that it would not.

Mrs. Harris said it appeared that there were two gravel entrances and asked if the one next to the proposed addition would be removed. Mr. Myers said it would not be removed because he has a commercial vehicle and parking it within his own property would not inconvenience the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 92-M-107 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 24, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-107 by VICTORIA R. MYERS, under Section 18-401 of the Zoning Ordinance to allow addition 24.1 feet from street line of corner lot, on property located at 2845 Summerfield Rd., Tax Map Reference 50-4(5)457, 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 31, 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 7,364 square feet.
4. The request is for a simple addition to an existing dwelling and it satisfies Sub-paragraph 2 of the Ordinance under any one of several categories..

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:

032



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 Dove & Associates dated January 29, 1992 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 construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. 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 April 8, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 33, March 31, 1992, (Tape 1), Scheduled case of:

9:40 A.M. ROBERT H. WETZEL, VC 92-D-018, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 19.7 feet from street line of corner lot (30 ft. min. front yard required by Sect. 3-307) on approx. 12,448 s.f., located at 1067 Carper St., zoned R-3, Dranesville District, Tax Map 21-3((9))96.

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. Wetzel replied that it was.

Lisa Feibelman, Staff Coordinator, presented the staff report.

The applicant, Robert H. Wetzel, 1067 Carper Street, McLean, Virginia, presented the statement of justification stating that, since the children in the neighborhood are now grown, there are more cars; cars are parked on both sides of the street, limiting the access to one car at a time and creating a safety hazard. Mr. Wetzel said that his property is a corner lot, requiring a 30 foot minimum front yard on two sides and he had selected the side of his home that has the longest distance between the house and the property line. He said that a 10 foot variance would be required, leaving a 19.7 foot clearance between the end of the garage and the property line, as well as a distance of 8 or 10 feet which he keeps mowed for the County on both sides of his property. Mr. Wetzel said that the proposed location is the only place where the garage could be built. He said the hardship is not generally shared by other property owners in the area and a number of neighbors have already built garages. Mr. Wetzel said that strict application of the Ordinance would effectively prohibit and unreasonably restrict the use of the property; the approval of this request would not be of substantial detriment to adjacent property owners as it is a corner lot and will have at least a 19.7 foot clearance, plus additional footage owned by the County.

Chairman DiGiulian asked Mr. Wetzel if the proposed garage would obstruct the view of a driver coming down the street. Mr. Wetzel said it would not, because of the position of the garage in relation to the stop sign and the fire hydrant.

Mrs. Harris said she was concerned about the length of 37.5 feet, which she said appeared to be considerably long for a garage. Mr. Wetzel said that he was not locked into that figure; he said that his neighbor had just built a garage the same length as the house and he told Mr. Wetzel that, if he had to do it again, he would make it longer. That is the reason why he chose that length, which he said would ultimately depend upon the architect, because the most important thing to him is the harmony of the house. Mr. Wetzel said that there is at least a 4 foot drop from street ground level. Mrs. Harris advised Mr. Wetzel that every foot the addition is moved back would require one foot less of a variance. Mr. Wetzel said that he would be willing to adjust the dimensions of the addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said that this was one of those unusual corner lot situations where the owners are stuck with front yard requirements on both streets, which invariably results in some degree of hardship in terms of what the owners could do with their property.

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Mr. Pammel made a motion to grant-in-part VC 92-D-018, as described in the Resolution, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 24, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-018 by ROBERT H. WETZEL, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 19.7 feet from street line of corner lot (THE BOARD RESTRICTED THE VARIANCE TO A CONFIGURATION THAT WOULD BE 22 FEET IN WIDTH AND 32.5 FEET IN DEPTH, SO THAT THE FRONT OF THE GARAGE WOULD BE IN LINE WITH THE FRONT LINE OF THE RESIDENTIAL STRUCTURE), on property located at 1067 Carper St., Tax Map Reference 21-3(9)96, 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 31, 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 12,448 square feet.
4. This is an example of one of those unusual situations of a corner lot where the owners are constrained by the County's interpretation of the front yard requirements applying to both streets, which invariably results in some degree of hardship in terms of what the individuals may do with their property.
5. The applicant has demonstrated to the Board that there is no other logical place for the proposed garage, other than where he proposes to place it.

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:

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1. This variance is approved for the location and the addition of a two car attached garage as shown on the plat (prepared by Payne Associates dated January 28, 1992, and revised plat received on April 23, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The two-car attached garage 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. Ribble 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 May 19, 1992, the date the revised plat was approved. This date shall be deemed to be the final approval date of this variance.

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Page 35, March 31, 1992, (Tape 1), Scheduled case of:

9:50 A.M. ALLEN D. AND CLAUDIA H. BUTLER, VC 92-B-008, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 22.47 ft. from front lot line of a corner lot (40 ft. min. front yard required by Sect. 3-107) on approx. 22,997 s.f., located at 4012 Guinea Rd., zoned R-1, Braddock District, Tax Map 58-4((8))15.

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. Butler replied that it was.

Lisa Feibelman, Staff Coordinator, presented the staff report.

The applicant, Claudia H. Butler, 4012 Guinea Road, Fairfax, Virginia, presented the statement of justification, stating that the request for the variance was to accommodate a 30 foot by 28 foot, two-story addition to the house, consisting of a ground level garage, upstairs master bedroom, an extension of the attic, and additional storage space. She said that the reasons for this request were that, because of the Cape Cod design of the house, the upstairs master bedroom loses useable space where the roof slopes down and needs to be expanded; the additional storage is needed above the garage and the garage would also be storage for the automobiles. Ms. Butler said that the proposed entrance and exit on Walker Street would be much safer than the existing exit for the one-car garage on Guinea Road. She said that expansion of the existing garage, with the entrance onto Guinea Road, is not an option as it would expand across and beyond the left side northern lot line, creating an infringement upon the property rights of the individual located at 4008 Guinea Road. Ms. Butler said that building the proposed addition at the back of the lot is not an option, as it would have to be detached to be accessible to a pedestrian entrance; it would destroy a major portion of the grass area in the back yard; it would require a much more extensive driveway to reach the garage; it would require removal of a minimum 6, but probably 8 trees; it would be prohibitively more expensive; and it would be aesthetically unappealing. Ms. Butler said that extending the current structure, as indicated on the plat, would allow the addition to the house and pedestrian access through an existing outside door; would leave the area of the back yard grass and trees undisturbed; would not require additional driveway; would require the removal of only 4 side yard trees; would be less expensive; and would be aesthetically more appealing. She said there would be no break in the line of the front of the house; the side of the house, which would then be the side of the garage as viewed from Walker Street, would also appear to have been stretched from the original structure. Ms. Butler said that the addition of the property allowed by the variance will be visually consistent with the existing structure, would infringe on no other property rights or limits, and would not be contrary to public interests. She said they had talked with several neighbors and none had objections and some encouraged them on this project.

Mr. Ribble asked Ms. Butler why the dimensions of 28 feet by 30 feet were needed. She said that it would accommodate three cars; they actually own four cars; the 28 foot by 30 foot addition would stretch the house along the front and the side porch, which appears to be covered, would have four feet blocked from view.

Mr. Hammack asked Ms. Butler if they intended to maintain the existing one-car garage as a garage and she said they did not. She said that, if finances would allow, they would convert it to a den/family room and remove the existing driveway.

Cathy Lake of Mt. Vernon Life and Realtors, a real estate agent, recommended the addition, stating that it would enhance the applicant's property, as well as neighboring property. She

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said that most of the homes in the area have additions, many of which are garages, and that shifting the entrance from Guinea Road to Walker Street would be an improvement.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said he noticed that the north side yard was only 10 feet, which he knew was not consistent with the R-1 District side yard requirements and asked if a variance had been previously granted. Chairman DiGiulian said the staff report indicated that a variance had been granted to 10.5 feet from the property line.

Mrs. Harris made a motion to grant-in-part VC 92-B-008 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 24, 1992.

Mrs. Harris said that one of the reasons why she was making the motion was that the access from Walker Road was significantly better than from Guinea Road, and that the access from Guinea Road should be removed. Mr. Hammack pointed out that the applicant said that the access from Guinea Road would be removed later and not as a part of the current project. He said that, under the circumstances, the BZA should not ask that it be removed until the existing garage is converted.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-008 by ALLEN D. AND CLAUDIA H. BUTLER, under Section 18-401 of the Zoning Ordinance to allow addition 22.47 feet from front lot line of corner lot (THE BOARD ALLOWED A STRUCTURE 22 FEET IN WIDTH AND 24 FEET IN LENGTH), on property located at 4012 Guinea Rd., Tax Map Reference 58-4((8))15, 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 31, 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-1.
3. The area of the lot is 22,997 square feet.
4. The fact that the property has two front yards creates an unusual situation,
5. The application meets most of the required standards and will not be of substantial detriment to adjacent property.
6. The addition will be in harmony with the intended spirit and 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.

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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 addition (attached garage with upstairs living space) to the dwelling shown on the plat prepared by James H. Gynn, dated \_\_\_\_\_ and included with this application, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and inspections shall be approved prior to issuance of a Residential Use Permit.

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 of the addition 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. Mrs. Thonen was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and shall become final upon submission of a revised plat within thirty (30) days, and approval of the revised plat by the BZA. The date of approval of the revised plat by the BZA shall be deemed to be the final approval date of this variance.

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Page 37, March 31, 1992, (Tape 1), Scheduled case of:

10:00 A.M. JOHN G. AND DONNA R. OSTHAUS, VC 92-S-015, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of carport 9.1 ft. from side lot line such that side yards total 16.9 ft. (20 ft. total min. side yards required by Sect. 3-307) on approx. 8,486 s.f., located at 8812 Arley Dr., zoned R-3 (cluster), Springfield District, Tax Map 88-4((3))127.

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. Osthaus replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report.

The applicant, John G. Osthaus, 8812 Arley Drive, Springfield, Virginia, presented the statement of justification, stating that he simply wished to convert an existing carport into a garage, located 9.1 feet from the side lot line, so that the total side yards would be 16.9 feet; whereas, the Zoning Ordinance required a minimum side yard of 8 feet and total minimum side yards of 20 feet. The existing dwelling is located 7.8 feet from the eastern lot line and, therefore, a variance of 3.1 feet would be required. Mr. Osthaus said that, on March 16, an administrative variance was granted to allow the location of the existing dwelling to remain at 7.8 feet from the eastern side lot line. He said the letter advising him of this was signed by Melinda M. Artman, Branch Chief, Zoning Administration Division. Mr. Osthaus said he believed that strict application of the Zoning Ordinance would produce an undue hardship because he could not maintain needed secure storage space for tools, implements, and other household items which he, his wife, and his family have accumulated over approximately fifteen years. He also said he believed the same hardship was not shared by other property owners in the area, since many of the neighbors on the same street have attached garages or a basement entrance, and he has neither. Mr. Osthaus stressed that he did not propose to extend the existing dwelling any closer to the lot line, he only wished to enclose the carport.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 92-D-015 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 24, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-015 by JOHN G. AND DONNA R. OSTHAUS, under Section 18-401 of the Zoning Ordinance to allow enclosure of carport 9.1 ft. from side lot line such that side yards total 16.9 ft., on property located at 8812 Arley Dr., Tax Map Reference 88-4((3))127, 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 31, 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 (cluster).
3. The area of the lot is 8,486 square feet.
4. The house was built 7.8 feet from the east lot line, creating an unusual situation on the lot.
5. The lot is narrow with converging lot lines toward the rear.

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 (attached garage with upstairs living space) to the dwelling shown on the plat prepared by Payne Associates, dated January 17, 1992 and included with this application, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and inspections shall be approved for the additions.

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

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construction of the addition 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. Kelley 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 April 8, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 39, March 31, 1992, (Tape 1), Scheduled case of:

10:10 A.M. THE WASHINGTON POST COMPANY AND ROBINSON TERMINAL WAREHOUSE CORPORATION, SP 92-B-002, appl. under Sects. 3-303 and 5-603 of the Zoning Ordinance to allow noise barrier, on approx. 5.47844 acres, located on Wimsatt Rd., zoned R-3, I-6, Braddock District, Tax Map 80-1(1)pt. 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. Reifsnnyder replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, Mr. Riegler ended by stating that, in accordance with an application for this use, a noise study was submitted and presented as an appendix to the staff report, documenting a need for noise mitigation on this property. He said that the existing trees on the site provided additional visual relief. Mr. Riegler said that the application has met the standards for approval, subject to the Proposed Development Conditions presented in the staff report.

Sarah H. Reifsnnyder, attorney with the law firm of Blankenship & Keith, 4020 University Drive, Fairfax, Virginia, presented the statement of justification, stating that the noise barrier extension being proposed grew out of a commitment that the Washington Post made to the citizens of the North Springfield neighborhood when the Post expanded its printing plant by right in 1990; because the property is zoned Industrial, the plant was permitted by right, but they had numerous meetings with the citizens and they wanted the fence to be longer and, in some places, higher. She said that a variance application had been submitted in the Spring of 1990 and it was put on hold with indications by the BZA staff that a variance would be difficult to obtain in this situation. Ms. Reifsnnyder said that, with a great deal of help from Supervisor Sharon Bulova, Braddock District, Section 8-919 of the Zoning Ordinance was adopted, which allows a noise barrier to be put in the Industrial and Commercial Districts through a special permit. She said that the polysonics report which was submitted with the application indicates that a noise barrier was needed that extends to the west all the way to the end of the Robinson Terminal Property, and to the east down the curve of Wimsatt Road. She said that the report also indicated that the barrier needed to be 10 feet above the grade of Wimsatt Road; the relationship between the grade of Wimsatt Road and its shoulder changes the height of the barrier, but it generally is about 10 feet. Ms. Reifsnnyder said that a large portion of the barrier would not have to be changed at all because it is already an appropriate height. She said that the applicant was not gaining anything by this move, except to create harmony with the adjoining neighborhood. Ms. Reifsnnyder requested a change in Conditions 4.

Lewis Wagner, Chairman of the Zoning Committee of North Springfield Civic Association, came forward to say that the group was not aware of any objections to the application from any of the 26 houses that border the Washington Post Robinson Terminal Warehouse property. He said that they believed the proposed barrier will help to reduce the noise level and improve the visual appearance of the site and recommended approval by the BZA.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 92-B-002 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 24, 1992, as amended. Mr. Kelley deleted the third line of Condition 4, so that it reads: "... In the event construction of the fence damages existing vegetation...."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-B-002 by THE WASHINGTON POST COMPANY AND ROBINSON TERMINAL WAREHOUSE CORPORATION, under Sections 3-303 and 5-603 of the Zoning Ordinance to allow noise barrier, on property located on Wimsatt Rd., Tax Map Reference 80-1(1)pt. 10, 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 31, 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, I-6.
3. The area of the lot is 5.47844 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 8-919 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 the specified noise barrier shown on the plat submitted with this application, prepared by LBA Associates dated November 11, 1991, 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, prepared by LBA Associates dated November 11, 1991, and as qualified by these development conditions.
3. 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 LBA Associates dated November 11, 1991, and these development conditions.
4. Screening and landscaping shall be provided as shown on the approved special permit plat. In the event construction of the fence damages existing vegetation on the site, replacement trees of an equivalent size and species shall be provided at a location to be determined by the Urban Forestry Branch, DEM.
5. The noise barrier shall be of solid construction, shall be constructed of wood, shall be stained to match the existing barrier and shall be kept in good repair.

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 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 6-0. 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 April 8, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 40, March 31, 1992, (Tape 1&2), Scheduled case of:

10:25 A.M. LUCK STONE CORP., SPA 81-S-064-4, appl. under Sect. 3-C03 of the Zoning Ordinance to amend S-81-S-064 for a stone quarry and accessory uses to allow renewal for new term, deletion of land area, building additions, and change to Development Conditions, on approx. 200.26 acres, located at 15950 Lee Hwy, zoned R-C, NR, WS, Sully District (formerly Springfield), Tax Map 64-1((4))7A, 64-1((1))1, 4, 13, 14, 15, 17, 38, and 39.

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. Spence replied that it was.

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Greg Riegler, Staff Coordinator, presented the staff report, and stated that the Proposed Development Conditions had been revised to accommodate transportation issues. Mr. Riegler said it was staff's position that, with the implementation of the revised Development Conditions, the application satisfied all of the applicable standards of the Zoning Ordinance and staff recommended approval, subject to those Conditions.

Royce A. Spence, Attorney, 7297-A Lee Highway, Falls Church, Virginia, represented the applicant, stating that the applicant had some reservations about Article 17 requirements of the Code, particularly the service drive and the highway lighting required by Department of Environmental Management (DEM) to be provided as a part of the Public Improvement Plan. He said he hoped that the BZA would add some language to Condition 4 that would direct DEM not to require either highway lighting or the service drive. He said he believed that the Office of Transportation had agreed to waive the service drive; he believed the requirement was a waste of funds. Mr. Spence said that one of the requests made in the original application was for water testing, and they accepted Condition 31 containing staff's suggestion that this be done. Mr. Spence said he did not have an explanation for the elevated Barium level, that it had always been below the water quality standards, and he did not know why, during this present annual review, it had jumped up over standard. He said that they took about 15 more samples of water, sent 5 to a new laboratory not previously used; those came back well below the standard factor. He said the same samples then went to their old laboratories, one to Richmond and one to Harrisonburg; the one that went to Harrisonburg showed sample levels below 1 part per million, well below the standard; the same sample, which went to Richmond, showed about double the standard. Mr. Spence said that he believed it was a lab error. He said they would continue to check samples, they had checked with all of their suppliers and subcontractors, to find out what materials they were bringing onto the sites which might be using Barium, etc. Mr. Spence again said that their recent samples were well below the standards. He said that staff had agreed to a request regarding Condition 20, that the blasting procedure be changed to allow them to maintain a distance of 400 feet from any residence or structure off the quarry and not exceed either 850 pounds per delay or a total of 15,000 pounds in any given shot; outside 400 feet, further from any houses, they may exceed those limits. Mr. Spence said he believed that access to their records had been "perceived" to be a problem, but he believed the problem had been solved and it is clear that the County has access to those records any time they wish to see them on site. He said that the reason they do not want the records to be taken off site is that there is some proprietary information contained in those records. Mr. Spence said the other condition they had a problem with was Condition 31 regarding an easement between Lots 21 and 38. He said they could grant an easement, but the property had been leased and the referenced lot owners may have a problem with the lessee. Mr. Kelley asked if Mr. Spence thought there might be some way to work out the interparcel access. Mr. Spence replied that it might be worked out down the road, but he could not say for certain.

In opposition, Deborah Leser, 6208 Hidden Canyon Road, Centreville, Virginia, said she was one of the Directors on the Board of Trustees of the Virginia Run Community Association, which is at the right upper corner of the Virginia Run Community. She said their primary concern with the hearing was that it was their first notification of it; she said she heard about it at 9:30 a.m. that morning. Ms. Leser said that Luck Stone had made no effort to contact the community to inform them of the changes or discuss with them their concerns, particularly about changing the method and extent of blasting, and they had some concerns in that area. Ms. Leser asked the BZA to defer any decision on the application until the WFCCA or the Sully District Council of Civic Associations could review it. She said they both have land use committees, neither of which have had an opportunity to review the application. Ms. Leser said the problem could be solved by the applicant simply meeting with them. She said that many of the community members travelled through and near the quarry and the existing screening does not minimize the feeling of being over a very large hole when crossing Route 29; she cited the heavy traffic as an issue, particularly the heavy truck traffic. Ms. Leser said that neighbors experienced items falling off their shelves as a result of blasting and, if they had heard about the hearing earlier, they probably would be present.

Mrs. Harris pointed out that there normally was a large sign displayed at the site, announcing the hearing. Ms. Leser acknowledged knowing about the sign but said no one was aware that the applicant was going to make any changes.

Mr. Kelley asked Ms. Leser if she did not believe that if the association had a problem, the normal place to discuss it would be at the annual review. She said that she had attempted to address it in the past, but she was told that there would be no modification to the operations in place; now that changes were being made, she asked if it would be a problem for Luck Stone to allow another month to give the neighborhood an opportunity to review the changes.

Mrs. Harris said that the issues Ms. Leser raised, such as deletion of screening, were not proposed.

Mr. Ribble asked if the legal notices were in order and Mr. Riegler replied that they were. He said that a minimum of ten neighbors and all contiguous property owners, if they numbered more than ten, would be notified, as well as having the application advertised in the newspapers and through Public Affairs. Ms. Leser asked if any civic associations had been notified and Chairman DiGiulian said that Mr. Spence could address that in his rebuttal.

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Mr. Pammel stressed how thoroughly the staff had reviewed the application and had suggested changes to which the applicant was agreeable. He submitted that the staff had done so with the Comprehensive Plan and all other plans and policies as a guide, because they certainly were interested in the concerns of the community and that they represent the concerns of the community.

Dean Jones, 15141 Weatherburn Drive, Centreville, Virginia, President of the Virginia Run Citizens Association, spoke in opposition, stating that the applicant last year had requested permission to improve the entrance to the quarry. He said that the Association got in touch with the applicant and was told that the only thing they wished to do was to improve the entrance and nothing else at that time or in the future, and that if they ever intended to make any more changes, they would contact the Association. Mr. Jones said that the applicant has never contacted his Association, nor any other community organization in the area. He said that was the reason why they did not pay any attention to the signs.

Mr. Spence said he had personally spoken with Mr. McDonald, President of the Western Fairfax Civic Association Land Use Subcommittee, about a week and a half or two weeks previous. He said Mr. McDonald indicated to him that he had no opposition to the application; Mr. McDonald also said that he had had contact with members of the staff. Mr. Spence said that he had scheduled a meeting with the Virginia Run Civic Association for April 8, 1992. He said that no significant changes had been made in the application except to make an improvement which they had tried to make several years ago, unsuccessfully. Mr. Spence reiterated his willingness to talk with anyone in the area who had any questions.

Mrs. Harris asked Mr. Spence to confirm that they were not changing the type of blasting being done and he did so, saying that the only change was a technical change and that every occasion of blasting was seismographed and recorded, to the satisfaction of the Office of Transportation.

Mr. Hammack asked Mr. Spence if the north pit was closer to the subdivision and he said that it was. He said that the portable plant could be quickly dismantled, moved, and abandoned.

Mr. Pammel asked about the reference to new structures. Mr. Spence said that only one was proposed for administrative purposes.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve SPA 81-S-064-4 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions dated March 30, 1992, as amended:

Condition 4 - Mr. Hammack added language at the end of the Condition to read: "...BZA recommends the fees associated with this submission should be waived."

Condition 14 - Mr. Hammack added language at the end of the Condition to read: "...Proprietary information shall be kept confidential by the County staff."

Condition 32, numbered incorrectly: Mr. Hammack deleted it entirely, and asked that the remaining conditions be renumbered.

Mr. Hammack said that he was sympathetic to the arguments of the opposition, but the review is made every year and the BZA's experience with the applicant had been very favorable in that they have complied with the laws and ordinances and have worked hard to keep work quality under control and in otherwise being a good corporate neighbor. He said he did not believe that a 30-day deferral would be of any benefit or improve anything at this point. Mr. Hammack reiterated that the review comes up every year and he realized that there may be citizens in the area who were not there a few years ago and that, in the future, they should be notified. He said that there have been changes made every year and that the Development Conditions were not static; the annual review has always brought about some changes in order to address issues such as water quality and, in this particular case, he believed that they had satisfied new conditions to the point of justifying the granting of the annual renewal.

Mr. Kelley seconded the motion and Chairman DiGiulian called for discussion.

Mrs. Harris said to Mr. Hammack that it was her understanding that, in addition to the request to waive the fees associated with a request by DEM, a request had also been made for a waiver of the extra highway lighting that might possibly be required. A discussion ensued during which Mr. Riegler said staff had been advised by DEM that compliance with Article 17 would not be required in conjunction with a Public Improvement Plan which was included specifically because it is a more narrowly defined piece of review for a specific improvement; restriping of the turn lanes and the other various things were couched under Condition 4, under a Public Improvement Plan. He said that compliance with Article 17, the site plan section, is not required in conjunction with the establishment of the use.

Mr. Hammack asked Mr. Riegler if the BZA should request and waiver of a lighting requirement under Condition 4. Mr. Kelley suggested adding a line stating that, "...Nothing in this Development Condition shall be construed as requiring highway lighting or service drives." Mr. Hammack said that he had no problem with that.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-S-064-4 by LUCK STONE CORP., under Section 3-C03 of the Zoning Ordinance to amend S-81-S-064 for a stone quarry and accessory uses to allow renewal for new term, deletion of land area, building additions, and change to Development Conditions, on property located at 15950 Lee Hwy, Tax Map Reference 64-1((4))7A; 64-1((1))1, 4, 13, 14, 15, 17, 38, and 39, 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 31, 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, NR, WS.
3. The area of the lot is 200.26 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 8-105 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 Patton Harris Rust and Associates and dated October 1991, 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. A Public Improvement Plan shall be submitted to the Department of Environmental Management for review and approval. This Plan shall accomplish the following:  
  
Re-stripe existing pavement to provide for interim right and left turn lanes for access from Lee Highway and an acceleration lane from the site entrance to eastbound Lee Highway.  
  
Ensure that the existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway is designed to Best Management Practice (BMP) standards as determined by the Director of the Department of Environmental Management.  
  
To accommodate the planned widening of Lee Highway, A total of 112 feet of right-of-way shall be conveyed to the Board of Supervisors and shall be dedicated in fee simple at such time as a road project requiring the right of way is designed and funded by the Virginia Department of Transportation (VDOT). Based on the proximity of the quarry pit to the southern right-of-way line of Lee Highway, all required right-of-way shall be dedicated along the north side of Lee Highway as may be acceptable to VDOT and DEM.  
  
The Board of Zoning Appeals recommends that the fees associated with this submission should be waived.  
  
Nothing in this condition shall be construed as requiring highway lighting or service drives.
5. This permit is granted for a period of five (5) years from the approval date of SPA 81-S-064-4 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.
6. All landscaping and screening required in previous approvals of this use shall be maintained as follows:

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Landscaping and screening shall be maintained in accordance with the landscape plan submitted to the County Arborist in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned, and used properties and Lee Highway.

The existing vegetation between the access road to the asphalt plant and the proposed maintenance building shall be maintained at the level of Transitional Screening 3.

7. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luck Stone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.
8. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC.
9. Berms shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains. The berms shall be landscaped with plantings in accordance with the landscape plan submitted and approved by the County Arborist in SPA 82-V-064-2.
10. The design of the berm along the northern lot line on the north side of Rt. 29 shall be maintained so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site.
11. There will be no excavation access to and from the north excavation other than by the tunnel under Route 29-211.
12. A bond of \$2,000 per acre to ensure restoration of the property shall be continued for the duration of this mining operation.
13. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.
14. Millisecond delay caps or their equivalent shall be used in all blasting operations, with no blast to exceed 10,000 pounds. No single millisecond delay charge shall be loaded in excess of 1,000 pounds. That blasts not exceeding 15,000 pound with a single millisecond delay charge of 1,500 pounds may be permitted in specific areas of the site when in compliance with the standard operating procedure submitted as a part of this application. Records of all blasting activity kept by the quarry shall be made available to County staff.  
  
Proprietary information shall be kept confidential by the County staff.
15. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.
16. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.
17. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.
18. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.
19. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.
20. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.
21. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.
22. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday only.

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23. All blasting material shall be handled and stored in accordance with standards and regulations established by the Mining Safety and Health Administration or other appropriate agencies.
24. There shall be no work performed other than sales of materials or maintenance activities on facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m. There shall be no work on Sundays.
25. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.
26. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.
27. Traffic control practices shall be detailed and rigidly enforced to ensure that public roads in the immediate vicinity of the quarry are closed to all traffic during blasting activities.
28. The Zoning Administrator or designated agent, shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.
29. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing may be used to fulfill this requirement.
30. Water quality monitoring reports shall be provided by the applicant on an annual basis to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients, and alkalinity.

Based on the elevated levels of Barium, water quality monitoring reports for metals shall be provided on a quarterly basis to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. In the event the level of Barium remains elevated for a period of time exceeding six (6) months from the approval date of this special permit, in order to reduce the level of Barium, a corrective action plan which may include re engineering of the siltation ponds on the site shall be designed and submitted to the Environmental and Heritage Resources Branch OCP for review and approval. In the event that water quality standards are met, then annual reports shall be required thereafter.

31. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.
32. Notwithstanding the approved special permit plat, the structure proposed to be constructed south of the existing shop building shall be located a minimum of 100 feet from the right-of-way line of Lee Highway.

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.

Mr. Kelley 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 April 8, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 46, March 31, 1992, (Tape 2), Scheduled case of:

10:40 A.M. VAN PHUOC BUDDHIST CONGREGATION, INC., SP 92-M-001, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to allow place of worship in existing dwelling and waiver of dustless surface requirement, on approx. 20,271 s.f. located at 6347 Landess St., zoned R-3, Mason District, Tax Map 72-1((8))26.

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Chairman DiGiulian advised that he had a note stating that a request had been made to withdraw the application. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that a letter from the applicant to that effect was being distributed to the Board of Zoning Appeals (BZA).

Mr. Ribble made a motion that the applicant be allowed to withdraw SP 92-M-001, Mrs. Harris seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained and Mrs. Thonen was absent from the meeting.

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The BZA recessed at 11:15 a.m. and reconvened at 11:40 a.m.

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Page 46, March 31, 1992, (Tape 2), Scheduled case of:

11:20 A.M. PULTE APPEAL, A 89-D-017, (Appeal of determination by the Director of Environmental Management disapproving a preliminary plat with the notation that a special exception is required pursuant to Part 9 of Article 2, Floodplain Regulations), this hearing is to consider matters that were remanded to the Board of Zoning Appeals, including evidence and argument of the parties, pursuant to a Decree of the 19th Judicial Circuit Court of Virginia in the case of Birmingham, et al. v. Fairfax County Board of Zoning Appeals, et al., In Chancery No. 115934, entered December 20, 1991. This Decree can be reviewed at 4050 Legato Road, Fairfax, Virginia, between 8:00 a.m. and 4:30 p.m., Monday through Friday, 246-1280.

Mrs. Harris made a motion to defer A 89-D-017 for a month on the basis that two of the members who had been present at the original hearing, and had expressed a great deal of interest in hearing this appeal, were not present: Mrs. Thonen and Mr. Kelley.

Mr. Ribble seconded the motion.

Chairman DiGiulian asked Jerry K. Emrich, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., if he concurred with the motion to defer for thirty days so that the two missing members who were at the original hearing could be present. Mr. Emrich said that he did concur.

The motion carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote. The new hearing date was set for April 23, 1992 at 10:45 a.m.

Mrs. Harris requested that the BZA agree that the deferral should not be construed as an opportunity to submit any further paperwork, and they did agree. Chairman DiGiulian reiterated the BZA's previous motion to limit testimony to 15 minutes from each side when the appeal was to be heard.

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Page 46, March 31, 1992, (Tape 2), Scheduled case of:

10:55 A.M. BOWL AMERICA INCORPORATED, SP 92-Y-013, appl. under Sect. 5-503 of the Zoning Ordinance to allow Bowling Center on approx. 3.09 acs. located at 4525 Stonecroft Blvd, zoned I-5, AN, WS, Sully District, Tax Map 33-4((4))2A.

11:10 A.M. BOWL AMERICA INC. APPEAL, A 92-Y-002, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that construction of the bowling alley authorized in Special permit SP 89-S-031 did not commence prior to the expiration date, that such special permit was therefore expired and that new special permit approval was needed in order to establish the use, on approx. 3.0906 acres, located on Willard Rd., zoned I-5, Sully District, Tax Map 33-4((4))2A.

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. Hobson replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that, as indicated in the staff report, this use and the accompanying development was previously reviewed and approved by the BZA as SP 89-S-031 in September of 1989. The Zoning Administrator determined that the use expired prior to the commencement of construction; however, a building permit was issued in error and the structure and the parking areas have been constructed. The current application was being filed to permit the bowling center to be legally established. Mr. Riegler said that the proposed development and operation of the proposed bowling center is identical to that reviewed and approved in 1989. He said it was staff's judgement that, with the implementation of the Proposed Development Conditions dated March 30, 1992, distributed that morning, the use is in harmony with the Plan and the Zoning Ordinance and meets all applicable standards. Mr. Riegler said that the property is zoned I-5 and could be developed by right with uses far more intense than the proposed bowling center. He said that the site

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plan and the building permits previously approved and issued for the use were still valid and, if this application is approved, the applicant will only need to get a Non-Residential Use Permit to establish the use. Mr. Riegler said that, concerning the revised Proposed Development Conditions, the only changes are really cosmetic; the names on a couple of the streets were changed to reflect their current names; and the number of parking spaces was changed to modify what is on the plat. Other than that, the Conditions are the same as those imposed by the BZA in 1989.

Mr. Pammel advised that he would abstain from participating because of a business arrangement with the attorney of the applicant.

Richard R. G. Hobson, attorney with the law firm of McGuire, Woods, Battle & Boothe, represented the applicant and stated that he agreed with everything staff said, that he had been told by the Clerk that the notices were in order, that he had filed a copy of the Resolution granting the 1989 application, and he had filed photographs showing that the building is nearing completion, pursuant to the building permit and site plan issued. Mr. Hobson advised that, since the application had been approved, the applicant had purchased Parcels 2A and 2B and dedicated 3.4 acres of land in Parcel 2B to the Fairfax County Park Authority, pursuant to the proffers on the property and pursuant to previous approval. Mr. Hobson said that, in January of 1992, when the center was about 75% to 95% completed, a question was raised as to whether or not construction had begun before the expiration of the two-year period requirement in the special permit. The applicant filed an appeal, A 92-Y-002, scheduled for presentation following the special permit. Mr. Hobson reiterated many of the facts which Mr. Riegler had already stated, and requested that the statement of intent be included in the Resolution.

Mr. Hobson requested that the BZA make a decision to grant the special permit before then, and to make it effective upon its adoption, at which time he would ask the BZA to defer the appeal for more than thirty days and, if no other appeal resulted from that action, the applicant's appeal would be withdrawn.

Mr. Hammack asked Mr. Hobson if he concurred with the Proposed Development Conditions distributed that morning and he said that he did.

Mr. Hobson distributed a statement of intent and requested that it be included in the Resolution.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 92-Y-013 for the reasons outlined in the Resolutions, subject to the amended Proposed Development Conditions dated March 30, 1992, with the insertion of the following statement of intent at the end of the Development Conditions.

It is the intent of the Board in adopting this Resolution not to address the merits of the pending appeal application, A 92-Y-002, but to remedy the consequences which may have resulted from the alleged expiration of SP 89-S-031 so that the use authorized by that permit and County actions taken in reliance thereon shall be deemed to be ratified and approved and that, accordingly, there shall be no need for further County administrative action, other than the issuance of a Non-Residential Use Permit, because of the alleged permit expiration, as long as any County and owner actions taken and improvements made on the subject property are in conformance with this Resolution. Accordingly, the Board, by this Resolution, waives the requirement for delay in the effective date hereof and this Resolution shall be effective upon its adoption.

The BZA agreed that a waiver of the eight day limitation should be granted.

Mr. Hobson requested that appeal A 92-Y-002 be deferred for 45 days.

Mr. Hammack made a motion to defer A 92-Y-002 to May 19, 1992 at 9:00 a.m. Mrs. Harris seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained, Mrs. Thonen was absent from the meeting, and Mr. Kelley was not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-013 by BOWL AMERICA INCORPORATED, under Section 5-503 of the Zoning Ordinance to allow Bowling Center, on property located at 4525 Stonecroft Blvd., Tax Map Reference 33-4((4))2A, 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 31, 1992; and

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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, AM, WS.
3. The area of the lot is 3.09 acres.
4. The application is in conformance with the Comprehensive Plan.
5. The application is within the traffic generation limits in the area.
6. The recreational activity is much needed in the area.
7. The application is more in compliance today that it was when it was initially heard.
8. None of the Development Conditions have changed.
9. The structure is almost ready to be opened.

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 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 Rinker Detwiler and Associates and received by the Office of Comprehensive Planning revised through March 27, 1992 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. Provided there are no conditions or restrictions imposed beyond those required in SP 89-S-031, Site Plan #6877SP05 approved on July 1, 1991, with amendments approved by DEM, shall be deemed to be the approved site plan for this application.
5. These development conditions shall be in addition to and shall not supercede the proffers adopted by the Board of Supervisors in conjunction with the approval of PCA 81 S-079-1 which remains in full force and effect.
6. For purposes of calculating required parking, the number of employees shall be limited to a total of 24 employees with a maximum of 6 employees on site at any one time.
7. The number of parking spaces provided shall not exceed 198 including three handicapped spaces as shown on the special permit plat. All parking shall be on site.
8. Interparcel access with a public access easement shall be provided on the eastern boundary of the subject property for future access to the adjacent parcel to the east and Willard Road.
9. In accordance with the proffers governing this site, stormwater management may be located on or off site. However, in order to address the environmental concerns specifically associated with the proposed use, the following guidelines shall be implemented when designing stormwater management systems which will serve the proposed use:

For any stormwater management pond located on or off site, the stormwater inlets and associated stormwater drainage systems shall be designed to direct the surface water flows from the entire parking lot and entrance road area to the detention pond or ponds. To protect surface and groundwater resources from oil, petroleum, hydrocarbons and grease, all runoff from the impervious surfaces on the subject property shall be conveyed through an oil skimmer or an oil/grit separator provided by the applicant as part of the stormwater management pond or ponds. It shall be proven to the satisfaction of DEM that the grading designs and gravity flows are sufficient to address the distribution of all surface water runoff from the parking lot and entrance road area of this property into the stormwater management pond or ponds.

OR, in the alternative, runoff from the impervious surfaces on the subject property shall be conveyed through an oil/grit separator to be located on the property prior to the discharge of all runoff from impervious surfaces into Schneider Branch. The oil/grit separator shall also include a level spreader to minimize erosion at the outflow.



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Where oil/grit separators are provided, they shall be designed in substantial conformance with the methods recommended in Chapter 8 of the Metropolitan Washington Council of Governments (COG) document entitled Controlling Urban Runoff or with other methods approved by DEM. The oil/grit separators shall be cleaned via vacuum pumping at least four times per year. The qualifications of the maintenance operator shall be reviewed and approved by the appropriate Fairfax County Agency as determined by DEM. Oil/grit separator maintenance records shall be kept on-site and shall be made available to County officials upon request.

10. A minimum buffer of 10 feet of undisturbed land area shall be provided between the building and the rear property line in order to minimize impact on the drip lines of existing trees and vegetation within the EQC except within the area up to 40 feet from the Stonecroft Road entrance. The applicant shall provide tree replacement to the satisfaction of the County Arborist within the disturbance area at the entrance at Stonecroft Road. A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site, particularly in the buffer area along the northern property boundary line.
11. In order to protect nearby streams and storm sewers from excessive erosion and sedimentation, sediment detention basins or redundant and/or 100% oversized siltation fencing shall be provided during grading and construction activities. Such measures shall achieve sediment trapping efficiencies of at least 80% and shall be designed in substantial accordance with the methods recommended by the Virginia Erosion and Sediment Control Handbook. All such activities shall be coordinated with DEM.
12. All signs shall conform to Article 12 of the Zoning Ordinance.
13. In order to achieve a maximum interior noise level of 50 dBA Ldn, the proposed building shall be constructed in accordance with the following Guidelines for the Acoustical Treatment of Commercial Building Structures:

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 function as walls (as determined by DEM), they shall have the same laboratory rating as walls.

Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

It is the intent of the Board in adopting this Resolution not to address the merits of the pending appeal application, A 92-Y-002, but to remedy the consequences which may have resulted from the alleged expiration of SP 89-S-031 so that the use authorized by that permit and County actions taken in reliance thereon shall be deemed to be ratified and approved and that, accordingly, there shall be no need for further County administrative action, other than the issuance of a Non-Residential Use Permit, because of the alleged permit expiration, as long as any County and owner actions taken and improvements made on the subject property are in conformance with this Resolution. Accordingly, the Board, by this Resolution, waives the requirement for delay in the effective date hereof and this Resolution shall be effective upon its adoption.

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. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained because of a business relationship with the attorney representing the applicant. 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 March 31, 1992, as the Board made a motion to waive the eight-day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 50, March 31, 1992, (Tape 2), Action Item:

Approval of Minutes from January 14, 1992 Hearing

Mr. Pammel referred to page 27, the middle of the page, and made a motion to correct the narrative as follows: "...Mr. Pammel said that Belva J. Warner, VC 91-D-101, had submitted a letter to the (BZA)..." He then moved to approve the minutes as corrected. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote.

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Page 50, March 31, 1992, (Tape 2), Action Item:

Approval of Minutes from December 10, 1991, pages 19 and 27

Mr. Pammel made a motion to approve the minutes, with the minor corrections, as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote.

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Page 50, March 31, 1992, (Tape 2), Action Item:

Request for Intent to Defer  
Virginia Run Community Association  
SP 87-S-045

Mr. Hammack made a motion to grant an Intent to Defer. Mrs. Harris seconded the motion which carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote.

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Page 50, March 31, 1992, (Tape 2), Action Item:

Request for Waiver of Twelve-Month Limitation  
Belva J. Warner  
VC 92-D-101

Mrs. Harris cited a procedural issue, advising that the application had been granted in part. She was not sure that the twelve-month limitation could be waived in such a case. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant was filing for the BZA to grant the portion that had been denied. Ms. Kelsey said the Ordinance states that an applicant cannot file an application on the same subject or the same property which was previously denied; since a portion was denied, it does need a motion to approve refiling of an application for the same property. She referred the BZA members to a copy of the Resolution which was in their package, describing their previous actions.

Mr. Ribble made a motion to deny the request. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote.

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Page 50, March 31, 1992, (Tape 2), Action Item:

Additional pages regarding Pulte Appeal  
from Randy Greehan, County Attorney's Office

The BZA acknowledged receiving the material.

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Page 50, March 31, 1992, (Tape 2), Action Item:

Request for Reconsideration  
Carlos A. Reyes  
SPA 83-L-096-1 and VC 91-L-102

Mrs. Harris advised that a letter was received from the applicant request that, if the BZA denied the request for reconsideration, they grant a waiver of the twelve-month waiting period on rehearing.

The BZA reviewed its previous action on this application and referred to the Resolution.

Mr. Hammack made a motion to deny the request. He said he had no objection to the request to waive the twelve-month limitation. Mrs. Harris seconded the motion to deny the request for reconsideration, which carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote.

Page 51, March 31, 1992, (Tape 2), CARLOS A. REYES, SPA 83-L-096-1 and VC 91-L-102,  
continued from Page 50 )

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Mr. Hammack made a motion to grant a waiver of the twelve-month limitation. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote.

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Page 51, March 31, 1992, (Tape 2), Action Item:

Approval of Resolutions for Carlos A. Reyes  
SPA 83-L-096-1 and VC 91-L-102

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that approval would have to be deferred until the applicant submitted revised plats; however, now that the BZA granted a waiver of the twelve-month limitation, it would appear not to be appropriate to furnish revised plats.

Chairman DiGiulian said that approval would hinge on whether the applicant did or did not submit revised plats. Ms. Kelsey asked if the BZA could defer approval of the Resolution for a week, until she had time to consider the issue. The Chairman so ordered.

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Page 51, March 31, 1992, (Tape 2), Action Item:

Request for Out-of-Turn Hearing  
Chesterbrook Swim & Tennis Club  
SPA 79-D-054-1  
Scheduled for June 9, 1992

Mrs. Harris asked if there was some overriding circumstance in favor of granting this request. Jane C. Kelsey, Chief, Special Permit and Variance Branch said that, to her knowledge, there was not, and that staff did not recommend granting this request due to the fact that the case would have to be restaffed. She said there were many citizens' complaints when this was heard before, and it was the subject of a court case. Mrs. Harris pointed out that the arrival of spring was not an unforeseen circumstance.

Mr. Hammack made a motion to deny the request for an out-of-turn hearing. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mrs. Thonen was absent from the meeting and Mr. Kelley was not present for the vote.

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Page 51, March 31, 1992, (Tape 2), Action Item:

Letter from Fred M. Minix, Jr., Pastor  
Good News Baptist Church, S-21-78  
Requirement for Change of Permittee

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the BZA had previously approved the change of permittee, conditioned upon a letter from the new permittee indicating that they would abide by the Conditions previously imposed on the special permit. The letter was now before the BZA. The BZA agreed that the new permittee, Good News Baptist Church, had met the requirement.

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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 P. DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: June 9, 1992

APPROVED: June 16, 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 April 2, 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.

Vice Chairman Ribble called the meeting to order at 9:35 a.m. Mr. Pammel 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 53, April 2, 1992, (Tape 1), Scheduled case of:

9:00 A.M. RITA FINPROCK, 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. (DEF. FROM 11/12/91 AT APPLICANT'S REQUEST - NOTICES. DEF. FROM 1/28/92 AT APPLICANT'S REQUEST - NOTICES)

Jane Kelsey, Chief, Special Permit and Variance Branch, said the Board of Zoning Appeals (BZA) had issued an intent to defer the case at its March 31, 1992 meeting. She noted that the BZA had suggested a deferral date and time of May 5, 1992, at 10:35 a.m. Ms. Kelsey said the applicant's attorney had a conflict since the meeting had to be rescheduled from March 24, 1992, to April 2, 1992.

Mr. Pammel so moved. Mrs. Harris seconded the motion which passed by a vote of 5-0. Chairman John DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

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Page 53, April 2, 1992, (Tape 1), Scheduled case of:

9:15 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. (DEF. FROM 2/4/92 AT APPLICANT'S REQUEST)

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. Loushine replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report on behalf of Carol Dickey, Staff Coordinator. She said the property is located on Kingstream Drive in an area north of the Town of Herndon Corporate Line, east of Dranesville Road, and surrounded by lots zoned R-3 which are developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings. The variance request is for approval to construct uncovered stairs 3 feet from the front lot line. A minimum front yard of 15 feet is required by the Zoning Ordinance on an R-3 lot, but uncovered stairs are permitted to extend 5 feet into the minimum required front yard, but not closed than 5 feet to the front lot line. Accordingly, the applicant is requesting a variance of 7 feet to the minimum front yard requirement.

A review of the files in the Zoning Administration Division revealed that the dwelling on adjacent Lot 229 to the north is located approximately 8.9 feet from the shared side lot line. The dwelling on adjacent Lot 348 to the south is approximately 29.5 feet from the shared lot line.

The applicant, Michael J. Loushine, 1482 Kingstream Drive, Herndon, Virginia, asked the BZA to grant the variance request for safety purposes since the front yard of the lot is fairly steep and is fairly difficult to get up in inclement weather. He pointed out the Kingstream Community Council has approved the plans.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant the request for reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 28, 1992.

The BZA also waived the eight waiting period.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-131 by MICHAEL J. LOUSHINE, under Section 18-401 of the Zoning Ordinance to allow uncovered stairs 3.0 feet from front lot line, on property located at 1482 Kingstream Drive, Tax Map Reference 11-1((4))347, 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 April 2, 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 10,194 square feet.
4. The subject property has exceptional topography.
5. The front of the lot necessitates the stairs for safety purposes.

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 uncovered stairs shown on the plat (prepared by Alexandria Surveys, Inc., dated March 1, 1991 as revised through October 23, 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. Harris seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

Mr. Pammel then made a motion to waive the 8-day time limitation. 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 April 2, 1992. This date shall be deemed to be the final approval date of this variance.

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9:25 A.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(11)5. (DEF. FROM 12/17/91 AND 2/18/92 AT APPLICANT'S REQUEST)

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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 attorney, Bernard Pagelson, Pagelson, Schonberger, Payne & Deichmeister, P.O. Box 297, 401 Wythe Street, Alexandria, Virginia, replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He pointed out the area to the south of the property is vacant but has been approved for development under the cluster subdivision in conjunction with R-2 zoning. Mr. Riegler explained that the request before the BZA involved two lots, each have a proposed width of 12 feet. The Zoning Ordinance requires a minimum lot width of 100 feet in the R-2 District, accordingly the applicant was requesting variances of 88 feet. He pointed out the applicant had submitted a revised plat which reflected a slight reduction in the size of the building footprint of the house and committed to a significant revitalization plan along the Potomac River to reclaim an area of the site which is currently devoid of any vegetation. The dwelling on Lot 1 is a significant intrusion into the Environmental Quality Corridor (EQC). Mr. Riegler said, accordingly, the location of the dwelling on the lot closest to the river is not in the conformance or in harmony with the environmental recommendations contained in the Comprehensive Plan. He said the development conditions stipulated that all construction on the lot be located outside the EQC. The applicant has presented an argument that there are geotechnical implications that necessitate that the EQC be disturbed; however, staff noted that the Plan states that problem soil shall be avoided in construction, thus there is further justification for locating the dwelling outside the EQC. Mr. Riegler said staff did not believe the application met Standards 2, 5, and 6, since Lot 14A to the north has similar shape and size. Secondly, the staff could not conclude that all reasonable use would be prohibited since the lot is a buildable lot irrespective of the requested variance.

Mr. Pagelson said the first thing an applicant must do is prove to the BZA that there are various topographical problems that create a hardship and this particular piece of land obviously falls within that category. He said the application involved a very complicated engineering problem that goes beyond the ordinary concepts of just topographical difficulties, boundary, or irregularly shaped lots and goes almost to the point to what is the proper obligation of the owner, the County to see to the best use of the property, and the BZA. Mr. Pagelson said that no matter how carefully drafted a Zoning Ordinance is, and no matter how dedicated and sincere the application of that Ordinance by staff, there are times when for one reason or another something falls between the cracks. He said the applicant's request is one of those cases and that is why the applicant was before the BZA. Mr. Pagelson said that the architect would address the BZA to explain the technical aspects.

Paul R. Jeannin, Jr., 10827 Campaign Court, Manassas, Virginia, a certified landscape architect, used the viewgraph to show how the property existed in 1954. He said in 1983 a major slope failure occurred and a retaining wall was built very close to the house for stabilization, but that failed the following winter and subsequently the house was removed in 1989. Mr. Jeannin said the applicant purchased the property with the intention of building a house for himself and his brother. He said that originally the applicant had not given any EQC or made any commitments to the slopes other than stabilizing his property and stabilizing the soil with grass, but the floodplain is preserved. Mr. Jeannin said the rear of the house is also with a retaining wall, which was reviewed as part of a geotechnical report submitted to Special Projects, Department of Environmental Management, and determined where the retaining wall would be located, so far as stabilizing the slope. Mr. Jeannin used the viewgraph to show the BZA what the applicant proposed to do and explained that the size of the house had been reduced to a point that both the square footage of both houses would equal that of the single large house which will originally proposed. He said staff was concerned that the applicant did not meet the EQC requirements and that was done for a good reason, that reason being was that the retaining wall is properly positioned on the slope. As the wall moves slowly up the slope, Mr. Jeannin said there is more potential for slope failure and then the EQC will not effectively be preserved. Mr. Jeannin said staff had suggested that the applicant planted 25 trees to provide stabilization and the applicant went one step further and provided 240 tree seedlings and to provide immediate benefit 10 different trees and shrubs were planted. He said he believed the applicant had maintained the connection between the two properties, which is important for wildlife habitat and by not disturbing the EQC have provided for an effective storm water management system through an effective open space conservation easement which would meet BMP requirements. Mr. Jeannin added that he believed the applicant had tried to meet the proposal as staff requested.

In response to questions from the BZA, Mr. Jeannin said the bomb shelter, concrete pad, and tool shed were not slated for removal but he was certain that they would be removed at some point. He explained that if the house on Lot 2 is moved back it would impact the second retaining wall.

Vice Chairman Ribble called for speakers.

Boyce Campbell, 3803 Washington Woods Drive, Alexandria, Virginia, said he has known the applicant for about a year and had a vested interest in Lot 1. He said he requested that the applicant construct a smaller house on Lot 1 in order to support the architecture of the house to be constructed on Lot 2. Mr. Campbell said he and his wife have lived in Mount Vernon for 25 years, have been a member of the community for 3 years, and would like to build a house on the river.

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There were no further speakers in support of the request and Vice Chairman Ribbie called for speakers in opposition.

Mike Hummell, 8253J Backlick Road, Lorton, Virginia, represented Thomas P. Mains, Trustee, owner and developer of the property immediately to the south of the subject property. He said he had many concerns with the application, those were: 1) the slopes of the Potomac River need to be preserved for historical and environmental reasons; 2) approval of the variance would create a pipestem lot and set an undesirable precedence; 3) the variance is too large; 4) the applicant has not shown a hardship; and, 5) the application did not meet the standards required for a variance.

Other speakers in opposition to the variance request for the same reasons as noted by Mr. Hummell were William S. Tennant, 905 Ludgate Drive, Alexandria, Virginia; Steve Hartwell, 9307 Ludgate Drive, Alexandria, Virginia; and, Barbara Demerse, 9321 Ludgate Drive, Alexandria, Virginia.

In rebuttal, Mr. Fagelson said that the important issue concerns the general benefits of picking up and correcting a "crack" in the Zoning Ordinance. He said the chief objection appeared to be the tremendous impact on the neighborhood of an additional house, but he did not agree. Mr. Fagelson pointed out that the original subdivision, from which some of the houses came in the neighborhood, showed lots that had less than the legal frontage. He said that there will be three trees removed in order to construct the second house but the applicant will replace those by a larger number. Mr. Fagelson said the two houses proposed by the applicant will have less square footage than the one house that is permitted, the EQC will certainly be better, the conversation easement, the protection of the wildlife habitat will be better, there will be no more people, and no more Floor Area Ratio (FAR). He quoted, "The last temptation is the greater treason to do the right thing for the wrong reason."

In response to a question from Mrs. Harris as to why the applicant was not willing to take measures without the variance being granted, Mr. Fagelson replied that the retaining wall the applicant was proposing would be very costly to build. He said there is only one place to build the wall to prevent future slope failure. Mr. Fagelson agreed that economics were a factor but not the major factor.

There was no further discussion and Vice Chairman Ribbie closed the public hearing.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution.

Mr. Kelley seconded the motion and agreed with Mrs. Harris' comments.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-V-116 by SEYED M. FALSAFI, under Section 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 feet, on property located on Ludgate Drive, Tax Map Reference 110-4(1)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 April 2, 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 2.22 acres.
4. The property does have unusual topography but that is where it stops meeting the Ordinance.
5. This property can be developed by right with one house and under the Ordinance the Board of Zoning Appeals has to be shown there is a hardship approaching confiscation of property in order to grant a variance.
6. The property has demonstrated the Environmental Quality Corridor requirements need to be met because of previous slope failure and because there are problem soils on the site.
7. Reasonable use of the property can be achieved without a variance.
8. Although substantial planning would occur under the variance request, that is not reason enough to grant a variance on the property.
9. There would be substantial detriment to the adjoining property owners and to future property owners.
10. A bad precedent would be set by allowing a variance when no hardship has been demonstrated.



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11. The applicant's agent testified that the overwhelming concern was an additional house.
12. The only hardship that was brought up by the applicant's agent was the financial hardship, and that cannot be classed as a hardship.

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 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 April 10, 1992.

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Page 57, April 2, 1992, (Tape 1), Scheduled case of:

9:45 A.M. DONALD L. AND ELIZABETH H. LOWDERMILK, VC 92-L-003, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed lot 2 having lot width of 20.58 ft. (80 ft. min. lot width required by Sect. 3-306) on approx. 1.24 acres, located at 4505 Elmwood Dr., zoned R-3, Lee District, Tax Map 82-1(4)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. Lawrence A. McDermott, with the firm of Dewberry and Davis, 8401 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. The property is currently developed with an existing single family detached dwelling and an unoccupied dwelling/garage. The applicants were requesting approval of a variance to the minimum lot width requirement in order to subdivide the one lot into two lots, with proposed Lot 2 having a lot width of 20.58 feet on Elmwood Drive. The Zoning Ordinance requires a minimum lot width of 80.0 feet in the R-3 District. Thus, the applicants were requesting a variance of 59.42 feet to the minimum lot width requirement for Proposed Lot 2. Ms. Bettard said it was staff's judgment that the applicant had not met the standards requirement for a variance, specifically the applicants have reasonable use of the property without the Variance and the fact that they have constructed another dwelling on the lot did not satisfy the hardship criteria as described in the Zoning Ordinance. She said that while there is another pipestem in the area which was approved prior to the current Zoning Ordinance, this should not be used as a precedent for approving this case.

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The applicant's agent, Mr. McDermott came forward and said it was a series of miscommunications and misunderstandings beginning back in 1986 which brought the applicants before the BZA. He said the approval of the variance would alleviate the applicant's hardship by allowing them to subdivide their property. Mr. McDermott referenced the background and statement of justification contained in the staff report. He said it was the applicant's understanding that when they turned 62 years of age they could occupy the apartment above the garage as an accessory dwelling unit. When the applicants tried to obtain a Non-Residential Use Permit in 1990, they were denied and a Notice of Violation was issued and the applicants were cited for having two dwelling units on one lot. Mr. McDermott said it is an imperfect world and people do make mistakes, the applicants relied upon information given to them by County staff, and the applicants expended an incredible amount of money to construct the apartment. He said there will be no environmental impact, no significant visual impact, and there will be no transportation impact. Mr. McDermott submitted a petition into the record signed by nine of the surrounding neighbors in support of the request.

Mrs. Harris asked why the applicants had noted a "garage/workshop" on the building permit if they had always intended the structure to be a secondary dwelling. Mr. McDermott said he had no idea and assured the BZA that had been the applicants intent.

In responses to questions from the BZA, Mr. Lowdermilk came forward and said when he went to obtain a building permit he discussed the plans with an engineer and when asked if there would be living quarters above the garage he said "yes". He said the structure was completed in 1987.

Mr. Pammel said that it was possible that the applicants may be exempt since the structure existed five years ago. Mr. McDermott said it was his understanding that a lot must contain 2 acres to have a detached accessory dwelling unit.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant the request as he believed the applicant had met the standards for a Variance particularly that they relied on information and approvals in the County to build the structure and has gone to great expense to construct the structure as a garage and residence above.

Mr. Kelley seconded the motion.

Mrs. Harris said there is enough properties in the neighborhood with a similar configuration not to warrant setting a questionable precedence by pipesteming the property. She said if the BZA denied the request, the structure could remain, and could be used as an accessory dwelling units under forthcoming actions by the Board of Supervisors. Mrs. Harris made a motion to defer decision to allow the BZA to review the proposed and standard provisions for accessory dwelling units.

Mr. Kelley withdrawal his second of the original motion and seconded Mrs. Harris' motion for deferral and asked how long a deferral would be appropriate.

Vice Chairman Ribble asked Mr. McDermott for comments. Mr. McDermott understood the BZA's view and asked that the deferral be for less than two months. Ms. Bettard said staff would suggest a indefinite deferral.

Following further discussion, staff suggested June 2, 1992, at 9:00 a.m. Mrs. Harris so moved. Mr. Kelley seconded the motion which passed by a vote of 4-0. Chairman John DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

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Page 59, April 2, 1992, (Tapes 1-2), Scheduled case of:

9:55 A.M. HACOR, INCORPORATED, SP 91-Y-028, appl. under Sect. 3-C03 of the Zoning Ordinance to allow commercial golf course and driving range on approx. 347.38 acres located on Pleasant Valley Rd., zoned R-C, WS, Sully District (Springfield), Tax Map 43-3((3))pt. A,B, 27-29, pt. 30-35, pt. 46; 53-1((5))pt. C,D, 36-40, 48-50, pt. 6, 47, 51-52, 89-90, [formerly 53-1((1))pt. 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. Carson Lee Fifer, Jr., McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She said the application property is approximately 1.8 miles north of Lee Highway (Route 29), is heavily wooded and generally consists of gently sloping topography with some existing steep slopes, and is surrounded by other properties that are zoned R-C and WS and are primarily vacant. To the west and south of Golf Course A are five acre lots that are currently owned by the applicant and are proposed to be developed with single family detached dwellings. Golf Course A is

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located west of Pleasant Valley Road and Golf Course B is located east of Pleasant Valley Road. The Cub Run Stream Valley is located to the east of the subject site.

She said the applicant was requesting approval of a Special Permit to allow an outdoor recreation facility with two 18 hole public commercial golf courses and a golf driving range. The commercial golf uses will be located on either side of Pleasant Valley Road and the golf driving range with 20 tees, putting tees, and a putting green are also proposed on the east side of Pleasant Valley Road. Several structures will be constructed, and the primary structure will be a clubhouse, which will include a pro shop, a manager's office, golf cart storage area, locker facilities and an area for refreshment sales. Golf Course A will be served by a private on-site septic system. Golf Course B will be served by an extension of public sewer.

Ms. Bettard said the outdoor recreational facility is proposed to be generally operated from 6:30 a.m. until 9:00 p.m. daily. The maximum number of employees present at any one time will not exceed 30 for each course. The applicant estimated that maximum utilization of each golf course will be 216 golfers per day each and that the maximum number of golfers using the driving range will be 30 per day. Five hundred (500) parking spaces are proposed to serve this use.

The applicant requested a waiver of the barrier requirements along all lot lines and a modification of the transitional screening requirement in all areas, except around the structures on the site.

Ms. Bettard explained that the Plan recommends that the very low density residential use which characterizes this area remain intact to protect the natural wildlife and water quality. In addition, the purpose and intent of the R-C District is to protect the water quality, stream valleys, forest cover in the watershed and rare ecological areas, and to minimize impervious surfaces and to promote open rural areas and low density residential uses. The Special Permit Plat, along with the Conservation Plan dated January 31, 1992 and the Revised Proposed Development Conditions, have provided sufficient mitigative measures for the protection of the BQC and valuable animal and plant habitats, the water quality of the area and existing trees in the area. The golf driving range, parking and structures is relocated away from areas in close proximity to the abutting residential areas and Pleasant Valley Road. Staff recommended approval of SP 91-Y-028, subject to the Revised Proposed Development Conditions.

In closing, Ms. Bettard said the applicant agreed with all Development Conditions with the exception of Number 25 which proposed to limit the amount of lighting in a low density residential area.

Mr. Fifer thanked staff for their patience during all the process and believed that many of staff's suggestions helped make the application better. He introduced two of the principals, E. H. Park, Director, Overseas Operations, Haniel Development Company Limited, C. Y. Cho, General Manager, Hacor, Inc., and Frank Swope, Director, Board of Directors, Hacor, Inc.

He said the golf course design had been labeled "illustrative" because the final architect was not yet on board to do the final design. Mr. Fifer said there will be some fine tuning based on suggestions by both staff and citizens. The two specific standards for golf courses require 15 acres of land, the subject application has 347 acres with no structure within 50 of any lot line. He said he believed the application was in compliance with all the General Standards for a special permit. Because it is a beautiful wooded and the applicant owns the majority of the surrounding five acre lots, Mr. Fifer said a lot of effort was put into the environmental sensitivity aspect. He said trees were identified for preservation prior to any excavation taking place, there is an integrated pest management program, the ponds are all BMP ponds and many qualify as regional ponds, an extensive wildlife habitat has been provided, specialized turf grass selection and installation as a part of the program, and absolute control programs for any chemical, storage or spill.

With respect to the Development Conditions, Mr. Fifer commented on Condition 5 and noted that it was his understanding that caddies were not included in the maximum number of employees on site at any one time. He said the golf course hoped to employ children living in Virginia Run, Pleasant Valley, and Pleasant Hills. Mr. Fifer said he would encourage the BZA to retain the trail referenced in Condition 15 as many parents in Virginia Run pointed out the need for a trail on the west side of Pleasant Valley Road which would alleviate the children having to cross Pleasant Valley twice to get to the community facility. He said he disagreed with a part of Condition 24 which addressed golf cart crossing and asked that the speed limit be increased to "15" rather than 10. Mr. Fifer said the applicant was willing to erect signs and paint the cross areas, but believed the speed bumps were "over kill" and called the BZA's attention to a memorandum listing 21 golf courses that sometimes cross public roads and do not have speed bumps. He asked that Condition 26 be modified to allow the signs into the golf course to be illuminated to provide clear directions for golfers arriving at the course early.

The applicant's engineer, Tom Rust, with the firm of Patton, Harris, Rust & Associates, P.C., 3998 Fair Ridge Drive, Fairfax, Virginia, explained the design to the BZA. On Course B, he said there would be a club house, a parking area for 275 vehicles, putting green, driving range, and a 18 hole golf course which is 6,300 yards in length with the front 9

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approximately 3,000 and the back 9 approximately 3,300 yards in length. He said the Par 3 holes are in the range of 140 yards, the Par 5 holes are in the range of 185 yards, making the course a 72 par course. Mr. Rust said Course A will also be par 72, 6,600 yards in length, with a parking lot, a starter building with a small snack bar, and restroom facilities, and a 18 hole course. He said the consultants have done extensive environmental work on the site, and have allocated areas that needed to be saved, and in working closely with the staff major portions of the courses will be saved in their essentially undisturbed area. Mr. Rust said they believed the course will fit the ground nicely, with a rolling terrain, and will be a challenging course with a very mature natural look. He said there will be one water feature on the east course and three water features on the west course with lots of bunkers and traps.

In response to questions from Mr. Kelley, Mr. Fifer replied there will be separate golf cart rental areas for each course, therefore no one will be allowed to cross Pleasant Valley Road in a golf cart. He said the applicant is looking into the facility being used for charitable matches. Mr. Fifer agreed with Condition Number 12 as worded.

Mrs. Harris complimented the engineering firm on how they had presented their response to staff's concerns.

In response to a question from Mr. Pammel, Mr. Fifer replied that the request had been coordinated with the residents of Virginia Run.

Vice Chairman DiGiulian called for speakers in support of the request.

Dean Jones, President, Board of Trustees for Virginia Run, 15141 Wetherburn Drive, Centreville, Virginia, said the applicant had worked closely with Virginia Run and encouraged the BZA to leave the trail in the development conditions for the safety of the children.

Mr. Kelley asked the speaker if he believed the speed bumps were necessary and Mr. Jones said that he did not.

There were no speakers in opposition to the request and Vice Chairman Ribble closed the public hearing.

Mr. Kelley made to grant the request subject to the revised development conditions dated April 2, 1992, with the following changes:

5. . . . This limitation shall not include caddies or daily employees utilized in connection with charitable or other special events.
12. . . . These areas shall be signed as "no play or entrance to this area permitted".
16. . . . An easement shall be provided to connect to the trail along Pleasant Valley Road as determined by DEM.
24. Change 10 mph to "15 mph" and remove the reference to speed bumps.
26. There shall be no illumination of any signs with the exception of directional signs at the entrances of the golf course.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-Y-028 by HACOR, INCORPORATED, under Section 3-C03 of the Zoning Ordinance to allow commercial golf course and driving range, on property located on Pleasant Valley Road, Tax Map References 43-3((3))pt. A, B, 27-29, pt. 30-35, pt. 46; 53-1((5))pt. C, D, 36-40, 48-50, pt. 6, 47, 51-52, 89-90 (formerly 53-1((1))pt. 1), 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 April 10, 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 347.38 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 8-603, 8-606, and 8-607 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 Patton, Harris, Rust and Associates, P.C., and revised, March 10, 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 thirty (30) per course. This limitation shall not include caddies or daily employees utilized in connection with charitable or other special events.
6. A maximum of five hundred parking spaces shall be provided as shown on the Special Permit Plat on both golf courses. All parking shall be located on-site and shall be provided in parking areas on both sides of Pleasant Valley Road as reflected on the Special Permit Plat. A minimum of 92 parking spaces shall be provided for Golf Course A in the area shown on the special permit plat and a minimum of 150 shall be provided for Golf Course B in the area shown on the special permit plat. A modification to the dustless surface requirement may be sought for the remaining spaces.
7. Transitional Screening 2 (35') shall be provided along the perimeter of the entire application property as reflected on the Special Permit Plat dated March 10, 1992. The existing vegetation may be used to satisfy the requirement as determined by DEM. In areas between the structures, parking and the adjacent lot lines and between the golf driving range and Pleasant Valley Road, existing vegetation shall be supplemented to meet the requirements of Transitional Screening 2, as determined by DEM. In addition, fifteen (15) feet of evergreen plantings shall be provided between the clubhouse, and parking spaces and the 35 feet of transitional screening yard on Golf Course B and between the starter building, parking areas and residential lots on Golf Course A so that the adjacent single family areas to the south are protected from any adverse impacts. The nature, height and type of these plantings shall be provided as determined by the Urban Forestry Branch of DEM. The dumpsters shall be enclosed by a brick wall toward the residential lots and shall be screened so that they are not visible from the adjacent lots or the road.
8. The barrier shall be waived along all lot lines, provided the above referenced plantings provide a visual screen of the structures and parking from the residential lots as determined by the Department of Environmental (DEM).
9. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Zoning Ordinance.
10. Pursuant to the Virginia Code Sect. 10.1-1708 et seq, the applicant shall, at the time of site plan approval, record among the land records of Fairfax County, an Open Space Easement to the Board of Supervisors for land which is shown on the Special Permit plat as Environmental Quality Corridor (EQC). The exact boundaries shall be determined at the time of site plan review by DEM. In the area subject to the Open Space Easement, there shall be no clearing of any vegetation, except for the following:
  - o dead or dying trees or noxious shrubs or plants which are determined to be hazardous by the Urban Forestry Branch, Design Review, DEM;
  - o improvements for the private road to the minimum extent necessary as determined by DEM;
  - o trees within the golf crossing areas as shown on the special permit plat may be reduced in height but only to the minimum degree necessary to permit the wood walkways/golf cart crossings shown on the plat and to permit golf play through these crossing areas. All stumps shall remain.

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There shall be no grading except the minimum amount determined necessary by DEM to construct the private road and trails as adopted in the Fairfax County Trails Plan. There shall be no structures located in the EQC/Open Space Easement area, except the wooded golf cart crossings indicated on the Special Permit Plat dated March 10, 1992 within the "Shrub and Ground Cover Preservation Areas" shown on the special permit plat.

11. The limits of clearing and grading and tree preservation areas located both within and outside of the Environmental Quality Corridor (EQC) shall be provided as shown on the Special Permit Plat and the General Land Use Plan dated March 10, 1992. Additional groups of trees and/or individual specimen trees shall be selected for preservation on both golf courses to the maximum extent feasible, as approved by the Fairfax County Urban Forestry Branch of DEM prior to site plan approval.
12. "A Conservation Plan for Developing Two Golf Courses on the Hacor Property," prepared by Edward Milhouse and Keith W. Cline and dated January 31, 1992, attached, shall be complied with in order that the ecological value of the subject site is preserved and protected. In order to conserve and enhance the high quality habitat of the Elklick Run EQC, particularly in those areas where there are EQC crossings, all areas designated on the Special Permit Plat dated March 10, 1992, as "Shrub and Ground Cover Preservation Areas" shall be designed and maintained as "Golf Course Hazard Areas". Within these "Golf Course Hazard Areas", no play of golf balls shall be allowed. If balls are hit into these areas, they shall be "out of bounds or hazard areas". These areas shall be signed as "no play or entrance to this area permitted". The vegetation in all "Shrub and Ground Cover Preservation Areas" within the EQC shall be retained as described in Condition #11 and shall be supplemented with additional shrubs and herbaceous species which are consistent with species that are currently found on the site and with species such as silky dogwood and highbush blueberry identified in the Conservation Plan to provide a minimum of 25% of canopy coverage of the total area cleared for each golf cart crossing of the EQC, as determined by the Fairfax County Urban Forestry Branch, of DEM.
13. In order to further conserve and enhance the high quality habitat of the Elklick Run EQC, a transitional habitat, which provides an open area between the maintained golf course and the natural open space areas and aids in the survival of wildlife shall be provided. These transitional habitat areas shall be provided between all of the golf greens, tees and fairways and the limits of the EQC in all areas adjacent to the EQC where no additional tree save is shown on the special permit plat. These areas shall be as follows:
  - o approximately 35 feet wide;
  - o consist of approximately 10 foot wide shrub/seedling area mixed with a sapling/pole stand next to the limits of the EQC followed by approximately 25 foot wide herbaceous/meadow area will be preserved or;
  - o revegetated at the time the greens, tees and fairways are established, and
  - o vary in width, if necessary, so that the design of the golf greens, tees and fairways is not limited or impacted.

The shrub/seedling, sapling/pole and herbaceous grass areas shall utilize several of the native species proposed in the above mentioned Conservation Plan using two year old stock, at a density that conforms to County regulation as determined by the County's Urban Forestry Branch of DEM.

14. In order to prevent groundwater contamination, all surfaces used for chemical, machine, vehicle storage or cleaning and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile liner designed to remove contaminants and pollutants. A maintenance plan for the system shall be designed. The catchment system design and the maintenance plan for this system shall be approved by the Department of Environmental Management (DEM). In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premise. The emergency spill response plan and the Addendum to Hacor Conservation Plan dated March 9, 1992 (attached) shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.
15. An escrow fund shall be established by Fairfax County in lieu of the provision of two (2) equestrian trail segments as adopted in the Fairfax County Trails Plan. This escrow fund shall consist of an amount of money equivalent to the cost of two equestrian trails, as determined by DEM, and shall be used exclusively for the creation of a trail on the west side of Pleasant Valley Road from generally south of the application property, to the existing community center at the intersection of Route 29 and Pleasant Valley Road. This escrow fund shall be a minimum of Forty-Five Thousand Dollars (\$45,000.00). These funds shall be posted at the time of site plan approval for the first golf course to be undertaken on the application property. This payment shall fully satisfy any requirement for equestrian trail(s) on the application property.

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16. An eight (8) foot public trail, in a twenty (20) foot wide public easement, within the Elk Lick Run Flood Plain and EQC area shall be constructed in accordance with the Comprehensive Plan requirements as determined by the Fairfax County Park Authority. An easement shall be provided to connect to the trail along Pleasant Valley Road as determined by DEM. This connection may be on the golf course property or may be located on adjacent property. The final alignment and construction techniques of that trail shall be presented to the Fairfax County Park Authority for review and approval.
17. A six (6) foot wide asphalt trail shall be provided along the east side of Pleasant Valley Road within a public access easement, twelve (12) feet wide, if the trail cannot be accommodated within the State right-of-way. This trail shall be provided according to the Fairfax County Trails Plan and shall connect with other trails which are located to the north and south of the subject site and are shown on the County Trails Plan.
18. Stormwater Best Management Practices (BMP's) which satisfy Water Supply Protection Overlay District (WSPOD) standards shall be provided as determined by the Director of DEM.
19. The Integrated Pest Management Plan (IMP) which is included in the Conservation Plan shall be provided to DEM prior to site plan approval and implemented, as required by DEM, so that adverse impacts to water quality from increased levels of fertilizers, herbicides and pesticides can be prevented to the maximum extent feasible. This Plan shall include an on-going monitoring and reporting method to DEM prior to site plan approval. The monitoring and reporting method for the Integrated Pest Management Plan shall be used to document the intent and success of the Integrated Pest Management program and shall be made available to the Office of Comprehensive Planning (OCP), if requested.
20. The applicant shall demonstrate to the Health Department that any proposed septic system or public sewer will adequately serve the use prior to the approval of a site plan. If this cannot be demonstrated for one or the other of the golf courses, then this Special Permit for that golf course shall be null and void.
21. The hours of operation shall be limited to 6:30 a.m. until 9:00 p.m., except for golf related special events in the clubhouse which may extend until 11:00 p.m.
22. Right-of-way shall be provided as shown on the Special Permit Plat dated March 10, 1992. The amount of right-of-way to be dedicated shall consist of sixty (60) feet from the centerline in all areas, except where there are right and left turn lanes. Right-of-way to sixty-eight (68) feet from the centerline shall be dedicated in these areas. This is to include right-of-way sufficient for 955 feet radius for the future relocation of Pleasant Valley Road. 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 access easements shall be provided to facilitate the road improvements as determined by DEM.
23. Right and left turn lanes shall be provided at both the entrances to the site as reflected on the Special Permit Plat to the satisfaction of the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT).
24. Signage shall be placed along the 50 foot private road that clearly identifies the golf cart crossings and that limits the speed on this road to 15 miles per hour.
25. There shall be no illumination of the golf driving range or golf course. Any lighting of the buildings on the site shall be the minimum required for security and shall of a type or design that does not project beyond the site. No lights other than security lights shall be provided between the rear of the clubhouse and the adjacent residential lots. The height of any parking lot lights shall not exceed 12 feet and the lights shall be directed onto the site. All lighting shall be directed on site to prevent spillage of light or glare onto the adjacent residential properties.
26. There shall be no illumination of any signs with the exception of directional signs at the entrances of the golf course.
27. Any sales activity on the site shall be limited to the ancillary selling of beverages and snacks at a snack bar or from machines and golf-related accessories.

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.

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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 construction of the outdoor recreation use 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. 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 April 10, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 64, April 2, 1992, (Tape 2), Scheduled case of:

10:10 A.M. DAVID S. HOAG, TRUSTEE, VC 92-M-016, appl. under Sect. 18-401 of the Zoning Ordinance to allow structure to remain 22.0 feet from one street line of corner lot and 17.0 feet from other street line of corner lot (35 ft. min. front yard required by Sect. 3-207) on approx. 41,793 s.f., located at 6800 Little River Turnpike, zoned R-2, Mason District, Tax Map 71-2(5)9,10,11,12,13,14,15.

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. Jack Connor, attorney for the applicant, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He said the subject property is made up of seven lots comprising 41,793 square feet, zoned R-2, and located at the intersection of Little River Turnpike and Roberts Place. Mr. Riegle said the applicant was requesting approval of a variance to allow an existing building to remain 22 feet from one front lot line and 17 feet from the other front lot line. There are structural changes planned for the dwelling, the building was constructed in 1937, and has been used as an office intermittently since 1976. On October 14, 1991, the Board of Supervisors approved a special exception to again permit the property to be used as an office with a stipulation that the applicant obtain a variance from the BZA to allow the building to remain in its current location.

John B. Connor, Vernet, Lipfert, Bernhard, McPherson, & Hand, Chartered, 8280 Greensboro Drive, Sixth Floor, McLean, Virginia, said he believed the application and staff report were straightforward and would be happy to respond to any questions the BZA might have.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated March 17, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-016 by DAVID S. HOAG, TRUSTEE, under Section 18-401 of the Zoning Ordinance to allow structure to remain 22.0 feet from one street line of corner lot and 17.0 feet from other street line of corner lot, on property located at 6800 Little River Turnpike, Tax Map Reference 71-2(5)9, 10, 11, 12, 13, 14, 15, 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 April 10, 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 41,793 square feet.
4. The building is an existing structure that was built many, many years ago.
5. It would be a hardship to require the removal or relocation of the structure in accordance with the requirements of the Ordinance.



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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 specific addition and dormer shown on the plat prepared by Alexandria Surveys, Inc. dated December 30, 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 construction has commenced and has 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 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 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 April 10, 1992. This date shall be deemed to be the final approval date of this variance.

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10:20 A.M. JAMES RANDALL AND ANN BARLOW DIMON, VC 92-V-004, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 26.6 ft. from front lot line of a corner lot and to allow another addition (dormer) 24.7 ft. from one front lot line and 26.8 ft. from the other front lot line (30 ft. min. front yard required by Sect. 3-407) on approx. 9,423 s.f., located at 2104 Woodmont Rd., zoned R-4, Mt. Vernon District, Tax Map 83-3((14))(15)9.

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. Ann Dimon replied that it was.

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Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance to the front yard requirement in order to construct two additions. One addition will replace an existing screened porch on the west side of the existing dwelling and will be located 26.6 feet from the front lot line which required a variance of 3.4 feet. The second addition is a dormer window which will be added on an existing portion of the dwelling located 26.8 feet from the front lot line abutting Woodmont Road and 24.7 feet from the front lot line abutting Fort Willard Circle. The applicant was requesting variances of 3.2 feet and 5.3 feet, respectively.

Ann Barlow Dimon, 2104 Woodmont Road, Alexandria, Virginia, said the house was built in 1941 and the addition would not be any closer to the lot lines than the existing dwelling. She said that they would like to keep the addition in character with the other houses in the Belle Haven area. Ms. Dimon said the additions would alleviate an internal design problem.

There were no speakers to address the request and Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant the request subject to the development conditions contained in the staff report dated March 17, 1992, with one additional condition.

The BZA also waived the eight waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-004 by JAMES RANDALL AND ANN BARLOW DIMON, under Section 18-401 of the Zoning Ordinance to allow addition 26.6 feet from front lot line of a corner lot and to allow another addition (dormer) 24.7 feet from one front lot line and 26.8 feet from the other front lot line, on property located at 2104 Woodmont Road, Tax Map Reference 83-3((14))(15)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 April 2, 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-4.
3. The area of the lot is 9,423 square feet.

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 addition and dormer shown on the plat prepared by Alexandria Surveys, Inc. dated December 30, 1991, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction.
3. The color and materials used for the addition shall 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 construction has commenced and has 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 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 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Hammack were absent from the meeting.

Mrs. Harris then made a motion to waive the 8-day time limitation. 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.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 2, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 67, April 2, 1992, (Tape 2), Action Item:

Approval of Minutes for December 17, 1991

Mr. Pammel made a motion to approve the Minutes as submitted. 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.

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Page 47, April 2, 1992, (Tape 2), Action Item:

Intent to Defer  
Lynn Kahler Berg, VC 91-V-077

Mr. Pammel made a motion to issue an intent to defer VC 91-V-077. 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 67, April 2, 1992, (Tape 2), Action Item:

Intent to Defer  
Dung Thi Young, SP 92-L-004

Mrs. Harris made a motion to issue an intent to defer SP 92-L-004 to allow the applicant an opportunity to meet with the Springfield Civic Association. Mr. Pammel 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 68, April 2, 1992, (Tape 2), Action Item:

Intent to Defer  
Charles Wesley United Methodist Church, SPA 77-D-047-1

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Mr. Pammel made a motion to issue an intent to defer SPA 77-D-047-1. 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 68, April 2, 1992, (Tape 2), Action Item:

10:30 A.M. DISCUSSION BETWEEN THE BOARD OF ZONING APPEALS AND JANE GWINN, ZONING ADMINISTRATOR, AND WILLIAM SHOUP, DEPUTY ZONING ADMINISTRATOR - RE: ACCESSORY DWELLING UNITS

It was the consensus of the Board of Zoning Appeals to pass over this item until all Board members were present.

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As there was no other business to come before the Board, the meeting was adjourned at 12:02 p.m.

Betsy S. Huxtt  
Betsy S. Huxtt, Clerk  
Board of Zoning Appeals

John Ribble  
John Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: June 2, 1992

APPROVED: June 9, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 9, 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 9:23 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 69, April 9, 1992, (Tape 1), Scheduled case of:

- 9:00 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. BZA DEF. FROM 3/31/92)
- 9:00 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. BZA DEF. FROM 3/31/92)

Chairman DiGiulian noted that these cases were before the Board of Zoning Appeals for decision only. Mr. Pammel said he would abstain from the deliberations due to a business conflict.

Mr. Kelley made a motion to approve SP 91-C-070 subject to the development conditions outlined in the Planning Commission's Development Conditions dated February 27, 1992, with the following modifications:

9. . . . there shall be no lighting of the driving range.
18. . . . The clubhouse shall not exceed 2,500 square feet within the area shown on the special permit plat for the clubhouse. In addition, architectural elevations of the clubhouse, including building materials, shall be compatible with the character of the residential neighborhood architecture. Said clubhouse may be established in a temporary structure provided that the temporary structure is located within 50 feet of the building footprint of the permanent structure and further provided that any temporary structure shall not exceed 2,500 square feet in size, shall not exceed one story in height and shall be limited to a period of five years from the time of the issuance of the Non-Residential Use Permit.
20. . . . the proposed use shall be served only by public water located in a 24-inch water main in Hunter Mill Road and not by a private well.
23. . . . the accessory activities and operations in the clubhouse/maintenance facility shall be limited to the following: golf equipment rental, administrative office use, maintenance of equipment directly related to the driving range facility, the sale of vending machine and snack bar concessions, and the sale of golf-related accessories that are directly related to the driving range. There shall be no food preparation on the site. Food sales shall be limited to vending machines and snack bar concessions.

Mr. Kelley said he had been prepared to vote against the application because of the well water and the size of the club house, but believed the use would be compatible with the area based on the revisions to the development conditions.

Mrs. Thonen seconded the motion for purposes for discussion. She asked if the parking could be reduced to 63 spaces, if the starting time could be changed to 7:00 a.m., and if additional screening could be provided on the northern and southern lot lines.

Greg Riegle, Staff Coordinator, said the minimum requirement for the proposed use would be 63 spaces and noted that, through negotiations, the parking has been reduced in addition to other changes to the request.

Mrs. Thonen asked who would monitor the herbicides used on the site and the impact on the surrounding wells. Mr. Riegle said both staff and the Planning Commission have proposed a development condition that requires the establishment of a pesticide management program. He said the BZA could require that the applicant submit data to the Environmental Resources Branch, Office of Comprehensive Planning. Mrs. Thonen agreed with staff's recommendation. She asked what the temporary structure would be. Mr. Riegle said that it was his understanding that it would be a skirted modular structure. Mrs. Thonen asked what the minimum number of employees would be and Mr. Riegle said there was not a set number but staff had allocated 12 parking spaces for employees.

Mrs. Harris agreed with Mrs. Thonen's comments and added that she was uncomfortable voting on something based on last minute negotiations by the applicant. She said the public hearing

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had been held on a different plat and would like the opportunity to look at the revised plat and also allow the citizens time to review the plat.

Mr. Kelley said he would like to defer decision for two weeks to give the BZA an opportunity to review the revisions and to allow staff time to incorporate the development conditions both he and Mrs. Thonen had discussed into the application.

Following a discussion as to whether or not it was basically a new application based on the revisions made by the applicant, it was the consensus of the BZA that it was not radically changed and there was no need to reopen the public hearing. The BZA said it would allow additional written comments.

Mr. Ribble commented on a letter received from a citizen referencing Dan Smith, past Chairman of the BZA, who recently passed away. He said it was personally reprehensible and repugnant to him to receive a letter like that. Mrs. Thonen agreed.

Mrs. Thonen made a motion to defer the decision for two weeks. Mr. Kelley seconded the motion.

Mr. Riegler noted that perhaps the BZA would like to defer decision to April 28th since the meeting location had been changed to the Judicial Center and the recording equipment was not adequate. Chairman DiGiulian said there was no guarantee that the location of the meeting would not be changed again.

Mr. Riegler suggested April 23, 1992, at 9:00 a.m. The motion passed by a vote of 6-0-1. Mr. Pammel abstained.

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The BZA recessed at 9:50 a.m. and reconvened at 10:04 a.m.

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Page 70, April 9, 1992, (Tape 1), Scheduled case of:

9:00 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. (DEFERRED FROM 11/12/91 AT APPLICANT'S REQUEST. DEFERRED FROM 1/14/92 AT APPLICANT'S REQUEST)

Chairman DiGiulian said the BZA had issued an intent to defer VC 91-V-077 at its April 2nd meeting. Mr. Kelley asked staff for a date and time. Marilyn Anderson, Assistant Branch Chief, suggested September 8, 1992, at 9:00 a.m.

Mr. Kelley so moved. 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 70, April 9, 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, Sulley 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. DEFERRED FROM 1/14/92 AT APPLICANT'S REQUEST)

Chairman DiGiulian said the appellant was requesting a deferral. Marilyn Anderson, Assistant Branch Chief, suggested June 30, 1992, at 9:00 a.m. Mr. Ribble so moved. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mrs. Harris was not present for the vote.

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Page 70, April 9, 1992, (Tape 1), Scheduled case of:

9:30 A.M. ANDREW C. DUNCAN, VC 92-S-005, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of carport 9.5 ft. from side lot line such that side yards total 19.5 ft. (24 ft. total min. side yards required by Sect. 3-207) on approx. 11,900 s.f., located at 9021 Ashmeade Dr., zoned R-2 (cluster), Braddock District, Tax Map 69-2((16))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. Mr. Duncan replied that it was.

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Marilyn Anderson, Assistant Branch Chief, presented the staff report prepared by Greg Riegle. She said the applicant was requesting approval of a variance to permit the enclosure of an existing carport 9.5 feet from the western side lot line, thus the applicant was requesting a variance of 4.5 feet to the total minimum side yard requirement.

Andrew Duncan, 9021 Ashmeade Drive, Fairfax, Virginia, said he would like to enclose an existing structure, which measures 19 feet x 20.3 feet, and added that the total area occupied by the structure will remain the same. He said the property was acquired in good faith on May 26, 1988, the style of his house is wider than others in the neighborhood, and most of the neighbors have double garages.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the application for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 31, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-005 by ANDREW C. DUNCAN, under Section 18-401 of the Zoning Ordinance to allow enclosure of carport 9.5 feet from side lot line such that side yards total 19.5 feet, on property located at 9021 Ashmeade Drive, Tax Map Reference 69-2((16))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 April 9, 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 (cluster).
3. The area of the lot is 11,900 square feet.
4. The applicant has satisfied the nine (9) required requirements for a variance application, in particular the BZA was persuaded by the applicant's testimony that the width of the dwelling is wider than most of the dwellings in the neighborhood and the lots are narrow, measuring only 95 feet.
5. The applicant is only enclosing an existing carport with no additional setbacks required and under the circumstances the applicant meets the requirements of the 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.

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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 Rice Associates, dated November 27, 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 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. Pammel and Mr. Ribble 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 April 17, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 12, April 9, 1992, (Tape 1), Scheduled case of:

9:40 A.M. NORBERT D. AND MARY C. MICHAUD, VC 92-B-006, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 27.5 ft. from front lot line (30 ft. min. front yard required by Sect. 3-307) on approx. 10,770 s.f., located at 11038 Del Rio Dr., zoned R-3, Braddock District, Tax Map 57-3((7))263.

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. Michaud replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report prepared by Bernadette Bettard. She said the applicants were requesting variance approval to permit the construction of a room addition 27.5 feet from the front lot line, thus they were requesting a variance of 2.5 feet.

Mary C. Michaud, 11038 Del Rio Drive, Fairfax, Virginia, said they would like to construct a two car garage underneath the existing structure and it will only be the second story structure that will impact the setback.

In response to questions from the BZA, Mrs. Michaud replied the driveway to the left will be removed. She said there is no way to construct a garage in the rear of the lot because there is no way to get around the house to the rear lot.

Mr. Pammel asked the applicant if she would object to a development condition which would require the removal of the existing driveway and the reseeding of the area. Mrs. Michaud agreed.

There were no speakers 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 noted in the staff report dated March 31, 1992, with one addition.

3. The existing concrete drive on the north side of the property shall be eliminated and replaced with sod and/or grass seed at such time the new addition is completed and the garage is operational.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-006 by NORBERT D. AND MARY C. MICHAUD, under Section 18-401 of the Zoning Ordinance to allow addition 27.5 feet from front lot line, on property located at 11038 Del Rio Drive, Tax Map Reference 57-3((7))263, Mr. Pammel 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 April 9, 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 10,770 square feet.
4. The applicant has satisfied the requirements for a variance as set forth in the Ordinance. Specifically, the lot tapers toward the rear of the property to a width that is narrower than in the front, thus precluding the ability to construct an addition to the rear of the property without requiring a variance to the side yard requirements.
5. The variance to the front is for the second story only and is very minimal, only 2 1/2 feet.

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 Delashmatt Associates, dated December 16, 1991 and revised by Gilbert M. Glaubinger, Architects on January 17, 1992, 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 existing concrete drive on the north side of the property shall be eliminated and replaced with sod and/or grass seed at such time the new addition is completed and the garage is operational.

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 for the addition 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 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 April 17, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 14, April 9, 1992, (Tape 1), Scheduled case of:

9:50 A.M. ARTHUR F. LORENTZEN, JR., VC 92-Y-007, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 14.6 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 31,142 s.f., located at 15428 Smithaven Pl., zoned R-C, WS, AN, Sully District, Tax Map 53-1((3))(5)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. Lorentzen replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance to permit construction of a 20 x 34.6 foot addition, which would be a third bay to an existing garage, and would be located 14.6 feet from the northern side lot line. Since the Zoning Ordinance requires a minimum side yard of 20 feet in this zoning district, the applicant was requesting a variance of 5.4 feet.

Arthur F. Lorentzen, Jr., 15428 Smithaven Place, Centreville, Virginia, said he would like to construct a garage that would be more functional than the existing.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny the applicant's request for the reasons noted in the Resolution.

Mr. Ribble supported the motion because he believed a four car garage was too much.

Chairman DiGiulian supported the motion and noted that the applicant could construct by right a garage large enough to house another vehicle.

Mr. Hammack agreed with other members' comments and pointed out that the granting of the variance would be a convenience.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-007 by ARTHUR F. LORENTZEN, under Section 18-401 of the Zoning Ordinance to allow addition 14.6 feet from side lot line, on property located at 15428 Smithaven Place, Tax Map Reference 53-1((3))(5)35, 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 April 9, 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, AN.
3. The area of the lot is 31,142 square feet.
4. The applicant has not met the nine standards for a variance.
5. The granting of a variance to allow the applicant to add a two car garage making a four car garage on the front would impact the neighborhood.
6. There is sufficient space in the rear of the lot to add a 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;

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- 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 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 April 17, 1992.

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Page <sup>15</sup> 75, April 9, 1992, (Tape 1), Scheduled case of:

10:00 A.M. CHARLES WESLEY UNITED METHODIST CHURCH/NORTHERN VIRGINIA CHRISTIAN CHILD CARE CENTER, INC., SPA 77-D-047-1, 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. (DEF. FROM 3/3/92 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian said the BZA had issued an intent to defer this application at its April 2, 1992, public hearing. Marilyn Anderson, Assistant Branch Chief, suggested June 9, 1992, at 9:00 a.m. Mr. Ribble so moved. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mrs. Harris was not present for the public hearing.

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Page <sup>15</sup> 76, April 9, 1992, (Tape 1), Scheduled case of:

10:15 A.M. JAMES M. OLSON, VC 92-Y-002, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (sunroom) 3.6 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07), on approx. 20,850 s.f. located at 5131 Pheasant Ridge Rd., zoned R-C, WS, Sully District, Tax Map 56-3(9)61A.

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. Olson replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance of 16.4 feet in order to construct an addition 3.6 feet from the side lot line.

James M. Olson, 5131 Pleasant Ridge Road, Fairfax, Virginia, said the lot is extremely narrow, the house is sited at an angle on the lot, the proposed location is the only feasible place to construct the sunroom, and the adjacent neighbor has no objections.

In response to questions from the BZA, Mr. Olson replied the proposed location is the only exit from the back of the house. He said the existing deck will be removed and the sunroom constructed in its place.

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There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble 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 March 31, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-002 by JAMES M. OLSON, under Section 18-401 of the Zoning Ordinance to allow addition (sunroom) 3.6 feet from side lot line, on property located at 5131 Pheasant Ridge Road, Tax Map Reference 56-3(9)61A, 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 April 9, 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 20,850 square feet.
4. The applicant has met the nine (9) standards required for a variance, in particular there is an extraordinary situation as to the placement of the house on the lot.
5. The proposed location is the only location to construct the sunroom.
6. Albeit it is close to the lot line, it is where applicant exits the house and the sunroom will replace the existing deck.
7. The applicant has testified that the adjoining lot owner's house sets back approximately 40 feet away from the shared lot line.

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 location and the specific addition shown on the plat prepared by Alexandria Surveys, Inc. dated October 28, 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 construction has commenced and has 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 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 5-1 with Mr. Hammack voting nay. 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 April 17, 1992. This date shall be deemed to be the final approval date of this variance.

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The BZA recessed at 10:38 a.m. and reconvened at 10:47 a.m.

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Page 77, April 9, 1992, (Tapes 1-2), Scheduled case of:

10:30 A.M. CLASSICAL HOMES APPEAL, A 92-D-003, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Department of Environmental Management's issuance of a Residential Use Permit (RUP) for the dwelling located at 1008 Bellview Rd. without addressing appellant's concerns about the effect of drainage from the site on the appellant's property located at 8531 Old Dominion Dr. Dwelling at 1008 Bellview Rd., located on approx. 5.0 acs., zoned R-E, Dranesville District, Tax Map 20-1((1))61.

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 appellant's agent, Tom Bryan, Route 626, Castleton, Virginia, replied that it was.

Paul Lynch, Chief, Combination Inspection Branch, Department of Environmental Management (DEM), presented staff's position.

In response to a question from Mr. Hammack regarding the Notice of Violation mentioned on page 12 of the staff report, Mr. Lynch replied that a violation had been issued to the owner of 1008 Bellview Road for noncompliance with the site plan. He explained that the Residential Use Permit (RUP) was issued following an investigation initiated by the Classical Homes, who at that time owned 8531 Old Dominion Drive. Mr. Lynch said it was the inspector's determination, after walking the site, that the culvert that had been installed equalled the requirements of the approved site plan. He said the inspector who conducted the investigation had come from the Public Utilities Branch and had dealt with the same type of problem throughout his career.

Chairman DiGiulian asked if it was not DEM's policy that before issuing a RUP, the construction be in compliance with the approved site plan, or an amended site plan be submitted and approved. Mr. Lynch said that was correct. Chairman DiGiulian said that it seemed strange that staff would defend the issuance of the RUP and then cite the owner with a violation under a different code.

Mrs. Thonen said she believed that if DEM made an error it was DEM's responsibility to correct the error. Mr. Lynch said the Virginia Uniform Statewide Building Code recognizes that people make mistakes and has provisions to allow for corrections, including a statute of limitations which stipulates that if a violation is discovered within the first year of occupancy any official can issue a violation to have the problem corrected. He said that was what happened in this case. Mr. Lynch agreed that the RUP should not have been issued but the issue now is to correct the site problem by restoring the swale as noted on the original site plan. Mrs. Thonen said she did not know which calculations to trust.

Chairman DiGiulian said it was his experience that a RUP is not issued until the construction complies with the approved site plan and expressed concern as to when a citizen could rely on the County's actions.

In response to questions from the BZA, Mr. Lynch used the viewgraph to show the location of the property owner who had filed the complaint. He pointed out the location of the culvert pipe on Lot 61 and the location of a natural drainage swale which directs all the stormwater runoff. Mr. Lynch explained there was an existing house on the site and it was raised by the development of the property. He said the house on the site now is larger with a larger roof area; therefore, there is more impervious surface on the lot. Lot 70 is and will always

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continue to be wet in the back. Mr. Lynch said that on Lot 70C there is the beginnings of a tributary and stormwater management stipulates that a property cannot be developed and impact neighboring properties more than prior to the development. He said the roof surface is larger on Lot 61 and that water is going to have to be kept on Lot 61 or arrangements made to improve the drainage way on Lot 70. Mr. Lynch said the culvert pipe was installed in place of the swale and was not indicated on the site plan. He explained that a swale would have impervious surface for additional drainage and with the pipe there is not and the water goes onto the neighboring property.

The appellant's agent, Mr. Bryan, came forward and submitted photographs to the BZA showing the erosion that has taken place in the rear of the property. He said the complaint was filed on December 20, 1991, stating that more than the natural occurrence crossing the property at 1008 Bellview was reaching 8531 Old Dominion Drive. Mr. Bryan said when a culvert is attached from a water runoff spot all the way across the property and 8 feet onto the next property that allows 100 percent of the water. He said staff testified that by increasing the roof line and the driveway the water flow onto the next property was increased. Mr. Bryan said the owner of 1008 Bellview has been issued two complaints and has not responded and noted that the owner lived in the house for 18 months without a RUP.

Chairman DiGiulian asked what the two complaints were for and Mr. Bryan said that County regulations forbade him from obtaining copies of the violations while the process was ongoing.

Chairman DiGiulian asked staff about the violations. Mr. Lynch said one complaint dealt with the drainage and the other dealt with the existing retaining wall which had not been issued permits, but had no impact on the drainage problem per se.

Mr. Bryan contended that the revocation of the RUP would possibly force the landowner into cooperating with the County and bring the site into compliance.

Joseph H. Davoli, attorney with Clayton, Wilcox, Vergara & Dellinger, 8996 Burke Lake Road, Burke, Virginia, represented the landowners of 1008 Bellview. He raised a question as to whether or not the property had been properly posted.

Following a discussion among the BZA members, the Chair ruled that any issue could be raised by a speaker and that the issue regarding the time of 11 o'clock was moot since the hearing had not commenced prior to that time.

Mr. Davoli said that the appellant had not received a copy of the staff report. Mrs. Thonen agreed that the landowner should have received a copy of the staff report.

He agreed with DEM's position and found it to be absolutely on point that the minimum requirements for a RUP were in fact satisfied including the review of the drain pipe going down the front lawn of 1008 Bellview Road. He urged the BZA to uphold staff's position.

In response to questions from the BZA, Mr. Davoli replied that he could not respond to questions as to who obtained the building permits, nor who authorized the installation of the galvanized pipe as opposed to the swale.

Mr. Davoli said the landowner is in the process of trying to correct the problem by resubmitting the site plan to the County.

Chairman DiGiulian said the Deputy Zoning Administrator, William Shoup, had informed him that the landowner of 1008 Bellview Road had not been notified of the appeal in accordance with the Zoning Ordinance requirements; therefore, the notices were not in order and case had to be deferred. He asked staff for a date and time.

Marilyn Anderson, Assistant Branch Chief, suggested May 26, 1992, at 10:00 a.m.

Hearing no objection, the Chair so ordered.

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Approval of April 2, 1992 Resolutions

Mr. Pammel made a motion to approve the resolutions as submitted. Mr. Hammack seconded the motion.

Mr. Kelley noted a correction to HACOR, Inc., Development Condition Number 12 be revised to read: ". . . out of bounds or hazard areas."

The motion passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 79, April 9, 1992, (Tape 2), Action Item:

Additional Time  
Groveton Baptist Church, SP 88-V-079

Mr. Pammel made a motion to grant the applicant additional time. Mr. Ribble seconded the motion which passed by a vote of 6-0 with Mrs. Harris not present for the vote. The new expiration date will be September 30, 1993.

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Page 79, April 9, 1992, (Tape 2), Action Item:

Intent to Defer  
Electronic Data Systems Corporation Appeal, A 91-C-022

Mr. Pammel made a motion to issue an intent to defer A 91-C-022. Mr. Kelley seconded the motion which passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 79, April 9, 1992, (Tape 2), Action Item:

Intent to Defer  
Silverbrook Consortium Limited Partnership Appeal, A 92-V-001

Mr. Pammel made a motion to issue an intent to defer A 92-V-001. Mr. Hammack seconded the motion which passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 79, April 9, 1992, (Tape 2), Action Item:

Request to Schedule  
Ruth S. Baker, Trustee, & Emmanuel A. Baker, Jr., Trustee,  
Co-Trustees of the Emmanuel A. Baker, Sr. Residuary Trust and  
Fairfax Radiological Consultants, P.C.

William Shoup, Deputy Zoning Administrator, said that staff was recommending that the appeal not be scheduled and noted that the appellant's agent was present. He said that the appellant was appealing the Zoning Administrator's rejection of a first parking tabulation submission and staff did not believe there had been any rejection. Mr. Shoup explained that the appellant submitted a parking tabulation and then after discussions with staff, the appellant submitted a second tabulation which was then approved by the Department of Environmental Management (DEM), but there was never any formal rejection of the first tabulation.

Mr. Kelley said the County acknowledged that Melinda Artman, Deputy Zoning Administrator, had indicated to the appellant that the first parking tabulation was going to be rejected. He said the County also contended that Ms. Artman did not have the authority to make that decision. Mr. Kelley then made a motion to schedule the appeal for June 9, 1992, at 10:00 a.m. Mr. Ribble seconded the motion. The motion passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 79, April 9, 1992, (Tape 2), Action Item:

Request to Schedule  
Expressions of McLean, Inc.

Mr. Pammel made a motion to schedule the appeal on June 23, 1992, at 10:00 a.m. Mr. Hammack seconded the motion which passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 79, April 9, 1992, (Tape 2), Action Item:

Anna Marie Truong, SP 91-M-068

Chairman DiGiulian called the BZA's attention to a memorandum from Jane Kelsey, Chief, Special Permit and Variance Branch, regarding SP 91-M-068. Mr. Pammel made a motion to issue a subpoena for the contractor to appear before the BZA to respond to questions regarding the case.

Mrs. Thonen made a motion to defer SP 91-M-068 until June 30, 1992. Mr. Ribble seconded the motion which passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 80, April 9, 1992, (Tape 2), Action Item:

Carlos A. Reyes, SPA 83-L-096-1 and VC 91-L-102

Marilyn Anderson, Assistant Branch Chief, informed the BZA that staff had not yet received the revised plat and suggested that the approval of the resolution be deferred for thirty days.

Mr. Hammack so moved. Mr. Ribble seconded the motion which passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 80, April 9, 1992, (Tape 2), Action Item:

Elijah and Erlene Kirkland, VC 92-M-031  
Out of Turn Hearing

Mrs. Thonen made a motion to schedule VC 92-M-031 for June 23, 1992. Mr. Pammel seconded the motion which passed by a vote of 6-0 with Mrs. Harris not present for the vote.

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Page 80, April 9, 1992,, (Tape 2), Action Item:

Earl Holsinger, VC 92-D-032 and SP 92-D-018  
Out of Turn Hearing

Mrs. Thonen made a motion to schedule VC 92-D-032 and SP 92-D-018 for June 23, 1992. Mr. Pammel seconded the motion which passed by a vote of 6-0 with Mrs. Harris 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 11:33 a.m.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

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

SUBMITTED: June 2, 1992

APPROVED: June 9, 1992



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 14, 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.

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Vice Chairman Ribble called the meeting to order at 9:10 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 81, April 14, 1992, (Tape 1), Scheduled case of:

9:00 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. DEF. FROM 2/11/92 FOR APPLICANT AND BUILDER TO BE PRESENT AND FOR ADDITIONAL DOCUMENTATION FROM BUILDER)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and stated staff had requested deferral so that the County Attorney's office could prepare and serve a subpoena to the contractor to testify before the BZA at the public hearing.

Mrs. Thonen made a motion to defer SP 91-M-068 to June 30, 1992 at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote 6-0 with Chairman DiGiulian absent from the meeting.

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Page 81, April 14, 1992, (Tape 1), Information Item:

Approval of Resolutions from April 9, 1992

Mr. Kelley made a motion to approve the resolutions as submitted. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 81, April 14, 1992, (Tape 1), Information Item:

Discussion of April 14, 1992 Resolution

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and stated that unless the BZA delays the date of final approval, the April 14, 1992 Resolutions, would become final before the next public hearing.

Mrs. Thonen made a motion that all April 14, 1992, Resolutions become final on April 24, 1992. Mr. Kelley seconded the motion which carried by 6-0 with Chairman DiGiulian absent from the meeting.

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Page 81, April 14, 1992, (Tape 1), Information Item:

Request for Additional Time  
George Nixon Summers, VC 86-C-061  
1020 Millwood Road  
Tax Map Reference 13-3((5))C1

Mr. Pammel made a motion to grant the additional time request. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting. The new expiration date will be April 19, 1994.

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Page 81, April 14, 1992, (Tape 1), Information Item:

Approval of January 21, 1992, Minutes

Mr. Pammel stated that the word "substitute" should be deleted from the first paragraph on Page 16. He explained that the motion was not a substitute motion but a full motion. He further stated that on Page 17, the word "substitute", which referred to the motion, should also be removed.

Mr. Pammel made a motion to approve the minutes with the corrections as noted. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 82, April 14, 1992, (Tape 1), Information Item:

Request for Additional Time  
Belle Haven Country Club, Inc., SPA 82-V-093-3  
6023 Fort Hunt Road  
Tax Map Reference 83-4((1))5

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Mr. Hammack stated that he believed the applicant could have proceeded in a more deliberate fashion.

Vice Chairman Ribble stated that while he would be abstaining from the vote, he too believed that the applicant did not proceed rapidly and suggested that the BZA grant 24 months additional time.

Mrs. Thonen made a motion to grant 24 months additional time. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting. The new expiration date will be August 1, 1994.

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Page 82, April 14, 1992, (Tape 1), Information Item:

Request for Reconsideration  
Claudia and Allen Butler, VC 92-B-008

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals. She stated that the case had been heard on March 31, 1992; therefore, the eight day time had expired and the decision had become final. Ms. Kelsey said that she had explained the situation to Ms. Butler. She stated that Ms. Butler would like a waiver of the 12 month time limitation for refiling an application.

Mr. Pammel expressed concern regarding the applicants' letter dated April 3, 1992 and received by staff on April 9, 1992. He stated that the applicant had diligently filed their request for reconsideration within the eight day time limitation.

The BZA had a brief discussion with Ms. Kelsey regarding the reconsideration process.

Ms. Kelsey stated that the application had been granted-in-part and the Resolution would not be final until a new plat was submitted to the BZA.

Mr. Kelley made a motion to defer decision on the reconsideration to April 23, 1992, at 9:00 a.m. 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 82, April 14, 1992, (Tape 1), Scheduled case of:

9:15 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. (RESCHEDULED FROM 3/3/92 AT APPELLANT'S REQUEST)

Vice Chairman Ribble stated that an intent to defer had been issued on April 9, 1992.

Mr. Hammack made a motion to defer A 92-V-001 until May 26, 1992 at 9:45 a.m. He stated that a letter had been received from Frank McDermott, the appellant's attorney, requesting deferral because an amendment to the County's Subdivision Ordinance would probably resolve all the issues.

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 82, April 14, 1992, (Tape 1), Scheduled case of:

9:30 A.M. MYRON G. KOTYK, VC 92-P-009, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.5 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407) on approx. 15,653 s.f., located at 2635 West St., zoned R-4, Providence District, Tax Map 50-1((7))73, pt. 74.

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. Kotyk replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a variance to permit the construction of an addition 6.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, the applicant was requesting a variance of 3.5 feet to the minimum side yard requirement.

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Mr. Riegler noted that the plat submitted to the BZA was slightly different from the staff report plat. He explained that while the variance would be the same, the addition has been expanded.

The applicant, Myron G. Kotyk, 2635 West Street, Falls Church, Virginia, addressed the BZA. He stated that the unusual placement of the house on the property had caused the need for the variance. He expressed his belief that the addition would be aesthetically pleasing, would conform to other structures in the area, and would not cause any detrimental impact on the neighborhood. In conclusion, Mr. Kotyk said he had the neighbors' support and asked the BZA to grant the request.

In response to Mrs. Harris' question as to the location of the kitchen, Mr. Kotyk stated that the kitchen was in the left corner of the addition. He confirmed that the back wall of the existing kitchen would be removed and the kitchen would be extended.

In response to Mr. Hammack's question as to whether the addition would be a one story structure, Mr. Kotyk said that the addition would be a two story structure with a bedroom and bath on the second level.

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

Mr. Hammack made a motion to grant VC 92-P-009 for the reasons reflected in the Resolution and subject to the revised development conditions as reflected in Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-009 by MYRON G. KOTYK, under Section 18-401 of the Zoning Ordinance to allow addition 6.5 feet from side lot line, on property located at 2635 West Street, Tax Map Reference 50-1((7))73, pt. 74, 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 April 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-4.
3. The area of the lot is 15,653 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The placement of the house on the lot imposes a constraint as to where the addition could be added to the existing structure.
6. The addition is for the extension of the kitchen; therefore, must be placed at that side of the existing structure.
7. The variance is minimal.

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 addition shown on the plat prepared by Walter L. Phillips and revised by Robert Beach, dated December 11, 1991, is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 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. Pammel seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 24, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 84, April 14, 1992, (Tape 1), Scheduled case of:

9:40 A.M. FRANCIS A. GIORDANO, VC 92-S-011, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6 ft. high fence to remain in front yard (4 ft. max. hgt. allowed by Sect. 10-104) on approx. 11,806 s.f., located at 7213 Willow Oak Pl., zoned R-3 (cluster), Springfield District, Tax Map 89-3((8))64.

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. Giordano replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a variance to permit an existing board on board fence, 6 feet in height, to remain in the front yard formed by the street line of Woodview Drive. The Zoning Ordinance establishes a maximum height of four (4) feet for a fence or wall located in a front yard; therefore, the applicant was requesting a variance of 2.0 feet to the maximum permitted height for fences established by Sect. 10-104.

The applicant, Francis A. Giordano, 7213 Willow Oak Place, Springfield, Virginia, addressed the BZA. He said that the fence had been constructed in good faith and explained he had not been aware of the front yard requirement. He noted the exceptional topographic conditions and said that the yard slopes downward from the sidewalk to the house. Mr. Giordano said that the fence is well screened and is only visible from the front on Willow Oak Place. In conclusion, he stated that the fence did not obstruct motorists' view, the fence provided security for his family, the neighbors support the request, and asked the BZA to approve the application.

Mrs. Thonen noted that the BZA had received a letter of opposition from the abutting neighbors on Lot 66, Marie and Renato Susenna, 7220 Ashview Drive, Springfield, Virginia. Mr. Giordano used the viewgraph to point out the Susenna's lot to the BZA.

In response to Mr. Hammack's question as to who had constructed the fence, Mr. Giordano stated that he had.

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

Mrs. Harris said that she would like to ask the applicant a question and Vice Chairman Ribble reopened the public hearing.

Mrs. Harris stated that she agreed that the topography was unusual and asked if Lot 66 was lower than the applicant's property. Mr. Giordano stated that it was higher than his lot.

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In response to Mr. Hammack's question as to whether the fence would be if it met the Zoning Ordinance requirements, Mr. Riegler noted that the fence in the front yard would have to be 4 feet or less in height and used the viewgraph to depict the area of land that was considered to be part of the front yard.

Mr. Pammel made a motion to grant VC 92-S-011 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 9, 1992.

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FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-011 by FRANCIS A. GIORDANO, under Section 18-401 of the Zoning Ordinance to allow 6 feet high fence to remain in front yard, on property located at 7213 Willow Oak Place, Tax Map Reference 89-3((8))64, 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 April 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.
3. The area of the lot is 11,806 square feet.
4. Compliance with the Zoning Ordinance would restrict the use of the front yard.
5. Compliance with the Zoning Ordinance would substantially restrict the area that could be enclosed with a six (6) foot high fence.
6. The fence is needed for security reasons.
7. The lot has exceptional topographic conditions.

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 location and the specific fence shown on the plat prepared by Nova Associates, dated August 28, 1991, and is not transferable to other land.
2. The fence shall be kept in good repair.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 24, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 86, April 14, 1992, (Tape 1), Scheduled case of:

9:50 A.M. DUNG THI YOUNG, SP 92-L-004, appl. under Sect. 4-603 of the zoning Ordinance to allow a billiard hall, on approx. 2,464 s.f. of 11.80 acres, located at 7064 Spring Garden Dr., zoned C-6, Lee District, Tax Map 90-2((1))17; 90-2((2))1.

Vice Chairman Ribble noted that a letter requesting a deferral had been received from Mr. Thomas.

The applicant's attorney, William C. Thomas, Jr., with the law firm of Fagelson, Schonberger, Payne, and Deichmeister, 1733 King Street, Suite 300, Alexandria, Virginia, addressed the BZA and requested a deferral.

In response to a question from Mrs. Thonen as to the location of the property, Mr. Thomas stated that the property was located in the Brookfield Plaza.

Jane Kelsey, Chief, Special Permit and Variance Branch, along with Mr. Thomas and the BZA discussed deferral dates.

Mrs. Thonen made a motion to defer SP 92-L-004 to May 12, 1992 at 9:00 a.m. 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 86, April 14, 1992, (Tape 1), Scheduled case of:

10:00 A.M. VIRGINIA RUN COMMUNITY ASSOCIATION, SPA 87-S-045-1, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 87-S-045 for community swimming pool, tennis courts, and community center, to expand hours of operation, and amend conditions 10 and 11 regarding annual number of events and occupancy load, on approx. 5.22 acres, located at 15300, 15308 Lee Highway and 15355 Wetherburn Court, zoned R-C and WS, Sully District, Tax Map 64-2((3))4,5; 64-2((6))M. (NOTICES AND STAFF REPORT NEED TO BE DONE)

Vice Chairman Ribble noted that the Board of Zoning Appeals had issued an intent to defer on March 31, 1992.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and explained that the applicant needed the deferral in order to address staff concerns.

Mrs. Thonen made a motion to defer SPA 87-S-045-1 to May 26, 1992 at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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The BZA recessed at 10:05 a.m. and reconvened at 10:15 a.m.

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Page 86, April 14, 1992, (Tapes 1 and 2), Scheduled case of:

10:15 A.M. TYSONS-BRIAR, INC., SPA 82-C-025-2, appl. under 3-103 of the Zoning Ordinance to amend SP 82-C-025 for community swim and tennis club to allow lighting of two existing tennis courts, construction of walkway decks, and additions, and reduction in land area, on approx. 6.696 acres, located at 9117 Westerholme Way, zoned R-1, Centreville District, Tax Map 28-4((1))45A, 47.

Vice Chairman Ribble 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. Donnelly replied that it was.

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Lori Greenleaf, Staff Coordinator presented the staff report. She stated that the applicant was requesting approval of an amendment to the existing special permit to allow the lighting of two existing tennis courts, the addition of a snack bar with surrounding deck, the expansion of an existing covered deck in the area of the tennis courts, the remodeling of the bath house, the addition of a deck near the pool and the deletion of a portion of Lot 47. Ms. Greenleaf said that it was staff's position that the changes are in keeping with the Comprehensive Plan recommendation for the area but believed that additional screening is necessary.

Ms. Greenleaf stated that the swim club is heavily developed and currently there is very little vegetation along the southern lot line adjacent to the tennis course. She noted that given the fact that the snack bar and the extension of the covered deck would occur in that area, staff had recommended that Transitional Screening 1 be provided in the area. Ms. Greenleaf said that in response to another of staff's concerns, the applicant had committed to preserving the trees. She noted that although there would be Transitional Screening 1 along the eastern lot line, the applicant's proposal would place the required barrier along the lot line rather than inside the screening. Ms. Greenleaf stated it was staff's belief that the fence should be located inside the screening yard so that the adjacent neighbors would have the benefit of the screening. She noted that revised development conditions had been submitted to the BZA. In conclusion, Ms. Greenleaf stated that with the implementation of the revised development conditions, staff recommended approval.

In response to Mrs. Harris' question regarding the access to Wexford Drive, Ms. Greenleaf stated that the access had not been implemented and before it could be, the applicant would have to come back to the BZA for approval. She stated that the adjoining homeowners had not yet contracted to purchase the property scheduled for deletion. Ms. Greenleaf noted that the 40 foot strip of land would only be deleted if all three property owners agreed to purchase the property.

The applicant's agent, William E. Donnelly, II, with the law firm of Hazel and Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, addressed the BZA. He stated that Ms. Greenleaf had given a thorough review of the application. Mr. Donnelly referenced the letter of opposition and stated that the applicant would work diligently to ensure that the conditions imposed on the tennis court hours and lights, as well as all other conditions, were complied with.

In response to Mr. Hammack's question regarding the deletion of land area, Mr. Donnelly explained that an approximately 40 foot wide strip was proposed to be deleted and a 30 foot wide strip would be reserved for potential future access. He stated that the three abutting neighbors had shown interest in the purchase of the 40 foot strip.

Mr. Donnelly noted that if the neighbors do not acquire the 40 foot strip, the existing fence would be moved to the easternmost property line and the transitional screening installed inside the fence. He stated that because of problems with security and encroachment by the neighbors, the applicant would ask the BZA to make an exception and allow the fence to be installed on the outside of the screening.

Mr. Donnelly noted that staff had proposed Transitional Screening 1 along the southern property line and asked that the BZA to waive the screening requirement because no significant changes would be made in that area.

Mr. Donnelly stated that the applicant wished to keep the area clear so that the maintenance crews would have access to the tennis court. He asked the BZA to modify Development Condition 16 to reflect the applicant's proposals.

Mrs. Thonen expressed concern with the applicant's proposal regarding the screening. Mr. Donnelly stated that the applicant would prefer to keep that area open for access reasons and again noted that no changes were being made to the area.

Mrs. Harris asked what the purpose of the expanded deck would be. Mr. Donnelly stated that it would be used as a shaded area for the players.

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

Mark C. Moulton, 1754 Wexford Way, Vienna, Virginia; Patrick Lanpher, 1752 Wexford Way, Vienna, Virginia; and Sarah S. Willen 1750 Wexford Way, Vienna, Virginia; addressed the BZA and expressed their concerns with the request for a waiver of transitional screening. They asked the BZA to ensure that the transitional screening requirements were met and the fence be placed inside the transitional screening. They asked that the hours of operation be strictly adhered to and the lighting problems be resolved.

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

Mr. Donnelly stated that with the exception of the eastern lot line, the applicant would be willing to compromise and install the fence inside the transitional screening yard along part of the property line. He said that the applicant would ensure that the lighting problems were resolved.

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William M. Bellinger, CHSRC Board Member, 9110 Westerholme Way, Vienna, Virginia, addressed the BZA. He stated that security guards patrol the grounds and the lights are left on for security reason. He explained that these measures were taken to ensure that people would not use the pool after hours.

Mrs. Harris asked that the applicant use the viewgraph to depict the lights which are left on all night. She noted that there was no reference to the lights either in the applicant's statements or on the plat. Mr. Bellinger stated that the lights could be compared to a porch light and noted that the only function of the lights was for security reasons.

Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to defer SPA 82-C-025-2 to May 12, 1992 at 9:15 a.m. so that the applicant could resolve outstanding issues and submit a new plat. She noted that additional testimony would be taken.

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

In response to Mrs. Harris' question as to whether the applicant would agree to the deferral date, Mr. Donnelly stated that it was agreeable.

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Page 88, April 14, 1992, (Tape 2), Scheduled case of:

10:30 A.M. ST. MARK'S APPEAL, A-91-C-021, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed termination of Gerken Avenue with a cul-de-sac on the appellant's property is not in conformance with the development conditions imposed by the BZA in the approval of SPA 81-C-081-3, on approx. 19.5154 acres located at 9970 Vale road, zoned R-1, Centreville District, Tax Map 37-4((1))42.

Vice Chairman Ribble stated that an intent to defer had been issued on March 17, 1992.

Mrs. Thonen made a motion to defer A 91-C-021 to September 15, 1992 at 9:00 a.m.

Mrs. Harris and Mr. Hammack seconded the motion which 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 11:10 a.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

John DiGiulian  
John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: June 9, 1992

APPROVED: June 16, 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 April 23, 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 9:15 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 89, April 23, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ALLEN D. AND CLAUDIA H. BUTLER, VC 92-B-008, RECONSIDERATION

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that the Board of Zoning Appeals (BZA) had deferred making a decision the previous week. She said that the applicants were requesting that the BZA reconsider its action to grant in part this variance application. The BZA's decision will not be final until a revised plat has been submitted to the Board, which had not as yet been done. Ms. Kelsey said that, because the revised plat had not yet been submitted, the resolution was not final and the BZA could reconsider, if they so desired.

The applicant, Claudia H. Butler, 4012 Guinea Road, Fairfax, Virginia, stated that, before addressing the reconsideration of the previous hearing, she would like to clear up an apparent misunderstanding that had developed. As mentioned in her letter of April 3, 1992, to the BZA, she and her husband had never sought any type of permit or variance in the past, having been United States-military service-attached and moving around a great deal. Mrs. Butler said that, however poorly she may have presented their case, she did not intentionally try to insult or deride the BZA, but only to address the request for a variance.

Chairman DiGiulian advised Mrs. Butler that she must address the reconsideration and not the variance.

Mrs. Butler said she would like to clear up what she believed to have been misconceptions that resulted in the decision to grant a smaller garage and additional upper story structure, because she did not know how to present the facts correctly. She asked the BZA to consider her inexperience and let her know if she went about the task properly.

Mrs. Butler said that attaching a 30 foot by 28 foot addition to the south side of their house, which most closely borders Walker Street, makes the most sense environmentally; only four trees would be removed. She said that she believed that Mr. Pammel pointed out a hardwood tree which would be lost under any type of construction. She said that ten new trees had already been purchased to replace any trees which might be lost. Mrs. Butler talked about the safety hazard of having the current driveway off Guinea Road, especially during rush hours. Mrs. Butler continued by addressing the traffic pattern and the size of the structure and reiterating points from her letter of April 3, 1992. She said that the 32 foot wide structure would be 22.47 feet from the lot line; however, its closeness would not be detrimental to traffic, County maintenance, appearance of the overall structure and layout, nor environmental and topographical considerations of the yard. She said that choosing the 30 foot wide structure was not a capricious act, nor undertaken without thinking, measuring, consulting two different builders, and walking it off. Mrs. Butler said that the style of the house is Old Cape Cod, and the slope of the roof line is extreme, causing them to lose an estimated 7 feet in depth because of the low ceiling height. Mrs. Butler went on to describe the lack of adequate storage.

Chairman DiGiulian advised Mrs. Butler that she was re-arguing the variance application and not speaking to the request for reconsideration. He asked if there was some information which had not been presented at the previous hearing. Mrs. Butler said that she and her husband believed that the information presented at the original hearing either was not complete or was not presented in a manner to show how important the 30 foot by 28 foot size of the structure was.

Chairman DiGiulian asked Mrs. Butler if she could briefly summarize any new information, so that the BZA could decide whether or not they believed their decision should be reconsidered.

Mrs. Butler said that the three points on the size of the structure are the need for storage space, the need for expansion of the master bedroom, and the need for space to store their cars, so that they can protect them and work on them without making the side yard and driveway look junky.

Mrs. Harris advised Mrs. Butler that there are standards for variances, which she believed Mrs. Butler had no doubt seen, which the BZA was required to observe to determine whether the applicant's request should be granted or denied. Mrs. Harris advised Mrs. Butler that she needed to address the issues of hardship approaching confiscation, as opposed to just a convenience. She said that more storage space is definitely a convenience, as opposed to a topographical hardship which could be overcome by a variance. Mrs. Harris said that if there is any new information pertaining to those relevant issues, they should be revealed to the BZA.

Ms. Kelsey asked the BZA if she could clarify the procedures of the BZA for reconsideration. She said that, if the BZA decided to reconsider the decision, they could not conduct the

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reconsideration hearing on the same day. The reconsideration would need to be advertised before Mrs. Butler could be allowed to argue the case as she was now doing. Ms. Kelsey said that the BZA first needed to decide whether they wished to have a reconsideration hearing before they considered the merits of the case.

Mrs. Thonen said that Mrs. Butler had adequately described the request, but that the standards had not been met. She told Mrs. Butler that it had nothing to do with the quality of her presentation.

Mrs. Butler did go on to reiterate what she had already covered earlier.

Mr. Pammel made a motion to reconsider, stating that he believed there was additional information presented. He said he did not recall the discussion regarding the difficulties they would encounter with the construction. He said he believed there was merit to the argument presented by Mrs. Butler.

Mr. Pammel's motion failed for lack of a second and the reconsideration was denied.

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Page 90, April 23, 1992, (Tape 1), Scheduled case of:

9:00 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. BZA DEF. FROM 3/31/92. BZA DEF. FROM 4/9/92)

9:00 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. BZA DEF. FROM 3/31/92. BZA DEF. FROM 4/9/92)

Chairman DiGiulian advised that these two applications had been deferred for decision only.

Mr. Kelley made a motion to grant in part SP 91-C-070 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions dated April 10, 1992. Mr. Kelley pointed out that the Conditions reflected the comments made by the Board at the meeting on April 9, 1992. Mr. Kelley said that he was able to make the motion because he believed that the original application had been scaled down significantly, because of the willingness of the applicant to compromise after taking the time to listen to citizen input, and because of the many hours which were spent by staff.

In seconding the motion, Mrs. Thonen said that all of the things she had added to the Conditions were recommended by the citizens.

Mr. Riegle asked to make a comment about the Conditions before the BZA went any further. First, he said that the Conditions were dated April 9, 1992 and the memo was dated April 10, 1992; second, he assumed that the decision would be based upon the revised plat which the applicant had submitted the previous week; if so, the Conditions restricted the size of the building to 2,500 square feet. He said that they may have noticed that the plan submitted had a small accessory structure intended for maintenance purposes. Mr. Riegle said that the square footage on the revised plat was slightly different from the Conditions which the BZA had before them; they also had the applicant's letter explaining what had been done. Mr. Riegle said that the difference occurred because the Conditions had been prepared before the revised plat was submitted.

Mr. Kelley said that his inclination was to leave the limitation as is. He said that the limitation had been agreed to reluctantly and if the applicant needs another maintenance building, they may come back before the BZA and justify the need on its own. A revised plat would be required, without the maintenance building.

Mrs. Harris said that she had reviewed the application and revised plat very carefully and she found that no where in their presentation did the applicant address the standards. She said that the letter from Dewberry & Davis by Mr. Yates, suggesting changes to the draft, said that they were straightforward and self-explanatory and did not need to be justified; whereas, she believed that they did need to be justified. Mrs. Harris said that, when the BZA had received the original plat, the project was extremely large; on the secondary plat, it was much smaller and the final plat is smaller still. She said that one of the issues that never was addressed was the Comprehensive Plan prohibiting commercial development in the area. She said that the Plan stated emphatically that commercial uses should be limited only to existing commercial areas by Walker Road and Route 123. Mrs. Harris said that she did not believe that issue had been discussed. She said that she believed the Board of Supervisors

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had counted on the Plan to offer protection against commercial uses in the area and are still counting on the Plan to do that. Mrs. Harris said she believed the area was planned to be residential and of low density and, in doing research, she had found that, when the Comprehensive Plan addresses an issue, either including or excluding something, it can be used as a legally defensible reason for incorporating the Comprehensive Plan into the decision. Mrs. Harris said that she would like the maker of the motion to address how he believes that it fits the Comprehensive Plan; second, the traffic generated by the use, in an already congested intersection, would add to an already dangerous situation near the Dulles Access Road, Sunset Hills and Hunter Mill. She said that the roadways in the area were not intended to handle the kind of traffic now existing, which will be exacerbated by the applicant's use, as well as setting a bad precedent by adding such an intense use.

Mrs. Thonen, as the seconder of the motion, asked to address Mrs. Harris' opposition. Mrs. Thonen said that she had reviewed the Comprehensive Plan in great depth and the golf course is one of the uses allowed in a residential area by special permit; she reviewed the calculations for single family homes, most of which have four cars per household; she considered what could be built on the subject property, and said that there was discussion that an R-4 or R-5 Cluster development might be built on the property. Mrs. Thonen said that, if single family homes were built on the land, with four cars per household, she did not believe it would result in much less traffic. She said she considered impact on the neighbors, which she believed should be avoided. Mrs. Thonen said that she had believed the original building to be much too big and would have impacted on the neighborhood; but, when it was cut in half, it came closer to meeting the standards and being more palatable to the community. She said that she believed they had worked on every issue that was raised in the public hearings and she personally did not see how any more could be done. Mrs. Harris' said that it was a commercial venture. Chairman DiGiulian said that it was not a commercial venture as defined in the Zoning Ordinance; that a special permit use is not defined as a commercial venture. Mr. Hammack said that they did need to obtain a business license and it is a permitted use, but that didn't mean that it was not commercial. Mr. Kelley said that even a day care center was a commercial enterprise. Mr. Hammack said that was why it was a special use, because the BZA was allowing it to be in a residential area. Chairman DiGiulian said that each of the BZA members had to read the Ordinance and decide for themselves if the use was of the type permitted in a residential area under special permit. He said that the application, as set forth with the Conditions by Mr. Kelley, meets the Zoning Ordinance and the Comprehensive Plan.

Mr. Hammack said the he, too, had given the decision a great deal of thought and was going to oppose the motion. He said that he supported the statements made by Mrs. Harris but, in addition, he had been out to look at the property twice and he had observed traffic; more specifically, he said that he was not satisfied that the traffic generated by the use could be accommodated adequately by the road system. He said the requirement that would be imposed on the applicant as part of the Development Conditions that they have two lanes, a left and right turn lane, was an admission that there would be a significant amount of additional traffic generated into and out of the facility. Mr. Hammack said that he had stopped and watched the turning movements at the three-way stop at the intersection at Crowell Road and had watched movements down at the Dulles Access Road and the overpass; he believed there were significant traffic problems in that section and he was not satisfied that the problems had been addressed satisfactorily; in any event, the zoning is R-E and the use would generate substantial traffic beyond that which would be generated by an R-E development. Mr. Hammack emphasized the size of the parcel, 44.0 acres, and two other parcels in the immediate vicinity of equal size, all of which have been revisited recently, and all have been reaffirmed to be zoned residential and to stay residential; he believed that the citizens had tried to participate in the review process; he said there had been substantial opposition, which did not necessarily sway his vote, but still is an indication that the surrounding residential communities would be impacted. Mr. Hammack said that the subject property has a high topographical profile and would significantly impact the surrounding neighborhoods. Even though transitional screening is required under the Ordinance, he did not believe the houses on Crowell Road, which face the site, are adequately shielded from the use; there are two other special permit uses immediately across the street; and he said he was disappointed that the applicant would come in at the last minute with substantial changes to the original application; there was no hearing on the revised proposed plan; he believed it should be heard since the applicant wanted to come in what a 2,500 square foot building when the original application was 25,000 square feet; it has been scaled down significantly and there never really was a hearing on what was finally proposed; he did not believe that it was appropriate that the BZA dictate terms to the extent they were doing in this case; he would rather it be reheard.

Chairman DiGiulian said that applications were frequently granted in part and, time after time, based on comments from the BZA, the applicant agreed to scale down the proposed plan; the BZA has the authority to grant the total applicant or any part of it; he did not believe that this was a new submission or a new proposal; he considered it to be an attempt by the applicant to respond to comments made by the BZA; if it was a new submission, it would need to be advertised and have a new hearing. Mr. Hammack agreed that it was not a new submission, but a last minute attempt to get an approval for a use which the applicant was almost conceding originally did not meet the standards. Mr. Kelley pointed out that the application had been scaled down from a nine hole golf course to a driving range; he believed that the BZA and everyone else has gone out of their way to try to make the application palatable to all concerned; he believed the BZA was well within its authority to grant in part

and referred to the Butler case which had been granted in part just before this case came up on the agenda; he did understand why this case should be any different. Chairman DiGiulian said that the changes had been discussed at the last public hearing and, even during the discussion, they were changed; he said that every member of the BZA was sent a copy of the changes, which Mr. Hammack acknowledged was true, but Mr. Hammack still believed that the public should be allowed to consider the revised proposal because it covers a very large parcel of 50 acres and could significantly impact the area.

Mr. Kelley said that he had a modification to make to Development Condition 23, in the first sentence, inserting, "...shall be limited to the following: child care center as qualified by Condition 25,..."

In response to Mr. Hammack's comments, Mrs. Harris said that the BZA had received two letters of opposition from citizens' groups in response to the new version of the application which was considerably scaled down, saying they still did not believe that it met the standards, was not within the standards of the Comprehensive Plan, and that it would impact their homes and the traffic situation.

The motion carried by vote of 4-2-1; Mrs. Harris and Mr. Hammack voted nay; Mr. Pammel abstained. The application was granted in part, but would not be final until revised plats had been received and approved by the BZA.

Mr. Kelley said that the variance application was not required because of the revisions made to the plat. Mr. Riegle said that the applicant would submit an written request to withdraw VC 91-C-138.

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**COUNTY OF FAIRFAX, VIRGINIA  
SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 91-C-070 by GOLF PARK, INC., under Section 3-203 AND 8-915 of the Zoning Ordinance to allow outdoor recreational use (baseball batting cage, golf course, golf driving range) and waiver of dustless surface requirement, on property located on Dulles Toll Rd., Tax Map Reference 18-4(1)22,23,26; 18-4(8)A,1A,2,3,4,45, 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 April 23, 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-E.
3. The area of the lot is 48.66 acres.
4. The original application has been scaled down significantly.
5. The applicant showed willingness to compromise after hearing input from citizens and staff.

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, 8-604, 8-607, and 8-606 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.
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.

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5. Prior to the issuance of any Non-Residential Use Permit, right and left turn lanes shall be provided into the proposed site entrance on Hunter Mill Road. These turn lanes shall be constructed to a standard as required by VDOT.
6. A pro-rata contribution toward the installation of a traffic signal at the intersection of Sunset Hills Road and Hunter Mill Road as determined by DEM shall be provided if determined to be warranted by VDOT and DEM at the time of site plan review.
7. A maximum of 75 parking spaces shall be provided. All parking for patrons, employees, owners, and other persons entering the property shall be located on-site in designated parking spaces.
8. There shall be no lighting of the parking area, and of the exterior of the clubhouse unless, required by DEM at the time of site plan review in which case such lighting shall be the minimum required.
9. There shall be no lighting of the driving range.
10. The hours of operation for the driving range shall not exceed 8:00 a.m. until sunset seven days a week year around. The hours of operation for the clubhouse facilities shall not exceed 8:00 a.m. until one half hour after sunset, seven days a week year around. Activities on the site, including, but not limited to, maintenance of vehicles and equipment, ball collection, mowing operations, and deliveries shall begin no earlier than the beginning of the above stated hours of operation and all activities shall cease one half hour after sunset year around seven days a week.
11. The vegetation shown on the plat along the northern and southern lot lines shall be deemed to fulfill the requirement for Transitional Screening 2 as may be deemed appropriate by the Urban Forestry Branch, DEM. Along the eastern lot line, the vegetation shown on the special permit plat shall be supplemented to the equivalent of Transitional Screening 2. Species of trees used to fulfill this requirement shall be as determined by the Urban Forestry Branch at the time of site plan review.

Along the western lot line, between the parking area and Hunter Mill Road, the berm shown on the special permit plat shall be provided. The western lot line shall be planted with the number and species of plantings equivalent to that required in accordance with Transitional Screening 2 as determined feasible by the Urban Forestry Branch at the time of site plan review.

In the area of the site where the special permit property abuts the 2 acre residential lot located at the intersection of Crowell Road and Hunter Mill Road, the existing vegetation shall be supplemented to a level equivalent to the requirement for Transitional Screening 2 as determined feasible by the Urban Forestry Branch at the time of site plan review.

For the purposes of implementing this condition, trees labeled on the plat or referred to as large deciduous trees shall have a caliper of at least 3 1/2 inches at planting, trees labeled or referred to as large evergreen trees shall have a minimum planted height of eight (8) feet, trees labeled or referred to as medium evergreen trees shall have a minimum planted height of four (4) feet as may be acceptable to the Urban Forestry Branch. All species of trees shall be subject to approval by the Urban Forestry Branch. In keeping with sound horticultural practices, as may be determined necessary by the Urban Forestry Branch, the installation of evergreen trees may be delayed until the appropriate planting season. However such delay in planting required evergreen trees shall not exceed four (4) months from the issuance of a Non-Residential Use Permit as may be deemed appropriate by the Urban Forestry Branch. Any delayed plantings shall be bonded prior to the issuance of a non-residential use permit.

12. The barrier requirement shall be waived.
13. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval. This plan shall emphasize the preserving of the existing vegetation in the northwestern and southeastern corners of the site. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to locate utility lines, or trails that cannot be located elsewhere, 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).
14. The three (3) structural detention ponds generally shown on the special permit plat shall be constructed as BMP's to WSPOD standards as determined by DEM at site plan review.

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15. An integrated fertilizer, herbicide, and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the Difficult Run watershed shall be implemented for this use. 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. The design of this program and all monitored parameters shall be reviewed and approved by the Northern Virginia Soil & Water Conservation District of the Department of Extension and Continuing Education, the State Water Quality Control Board, the Environmental and Heritage Resources Branch, OCP and DEM prior to site plan approval. Following site plan review, a copy of the approved pesticide management program shall be kept on site at all times. Records of all applications of pesticides and herbicides shall be kept, shall be made available to county staff on demand, and shall be reviewed annually by the Environmental and Heritage Resources Branch, OCP. To provide added protection for the Difficult Run Watershed, the structural detention ponds required by Development Condition Number 14 shall be designed and engineered to provide a length of detention and type of filtration necessary to remove pollutants which may be generated by turfgrass management, as determined by DEM at site plan review.
16. 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.
17. All signs shall comply with Article 12, Signs. To preserve the residential character of the area no backlighted signs, no illuminated signs, and no roof signs shall be installed.
18. The clubhouse shall not exceed 2,500 square feet within the area shown on the special permit plat for the clubhouse. In addition, architectural elevations of the clubhouse, including building materials, shall be compatible with the character of the residential neighborhood architecture. Said clubhouse may be established in a temporary structure provided that the temporary structure is located within 50 feet of the building footprint of the permanent structure and is not any closer to the front lot line than the permanent structure shown on the special permit plat, and further provided that any temporary structure shall not exceed 2,500 square feet in size, shall not exceed one story in height and shall be limited to a period of five years from the time of the issuance of the Non-Residential Use Permit.
19. Pursuant to the agreement outlined in the letter from the owner of the property known as Tax Map 18-4 ((1)) 22, dated February 12, 1992, a covenant shall be placed on the 2.0 acre property known as Tax Map 18-4 ((1)) 22 which is located at the intersection of Crowell Road and Hunter Mill Road. This covenant shall stipulate that so long as the 46 acre parcel located at Tax Map 18-4 ((1)) 23, 26; 18-4 ((8))A, 1A, 2, 3, 4&5 is operated as golf driving range in accordance with the terms and conditions of the approval, no land use application shall be filed relating only to this 2.0 acre parcel. This covenant shall run to Fairfax County and shall be recorded in the Land Records of Fairfax County prior to the issuance of a non-residential use permit in a form approved by the County Attorney. Nothing in this covenant shall preclude the future inclusion of the subject 2.0 acres into SP 91-C-070. The covenant shall become null and void, and the land released thereof at the time of any such inclusion with SP 91-C-070.
20. Notwithstanding any notes on the approved plat, the proposed use shall be served only by public water located in a 24-inch water main in Hunter Mill Road and not by a private well.
21. The applicant shall complete all trails indicated on the property in the adopted Comprehensive Plan.
22. There shall be no use of loudspeakers on the property.
23. Notwithstanding any notes on the approved plat, the accessory activities and operations in the clubhouse/maintenance facility shall be limited to the following: child care center as qualified by Condition 25, golf equipment rental, administrative office use, maintenance of equipment directly related to the driving

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range facility, the sale of vending machine and snack bar concessions, and the sale of golf-related accessories that are directly related to the driving range. There shall be no food preparation on the site. Food sales shall be limited to vending machines and snack bar concessions.

24. There shall be no arcade games, video games, juke boxes operating or present on the property.
25. Any child care center operating as an accessory use on the site shall only be used by patrons of the driving range.

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 and Note 9 on the approved special permit plat, 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 4-2-1; Mrs. Harris and Mr. Hammack voted nay and Mr. Pammel abstained.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 12, 1992, the date on which the revised plat was approved by the Board of Zoning Appeals. That date shall be deemed to be the final approval date of this special permit.

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Page 95, April 23, 1992, (Tape 1), Scheduled case of:

9:00 A.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. Bl, pt. T; Tax Map 25-3((10))pt. C, pt. Cl containing approx. 181,500 sq. ft. of land, zoned R-3, PDR-3, Centreville District. (DEF. FROM 1/21/92 AT APPLICANT'S REQUEST)

Chairman DiGiulian advised that the Board of Zoning Appeals (BZA) had previously issued an Intent to Defer. Mrs. Harris remarked that the appellant had requested a deferral of 120 days. Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, consulted the agendas and recommended the date of September 15, 1992, after the BZA's summer recess. The BZA so ruled.

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The Board of Zoning Appeals recessed at 10:00 a.m. and reconvened at 10:25 a.m.

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Page 95, April 23, 1992, (Tape 1), Scheduled case of:

9:15 A.M. HORACE L. BALDREE, JR., VC 92-B-019, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached structure (garage) 5.0 ft. from side lot line and 5.0 ft. from rear lot line (12 ft. min. side yard required, 12.5 ft. min. rear yard required by Sects. 3-307 and 10-104) on approx. 10,500 s.f. located at 7502 Gresham St., zoned R-3, Braddock District, Tax Map 71-3((4))(41)3.

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. Baldree replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Horace L. Baldree, Jr., 7502 Gresham Street, Springfield, Virginia, presented the statement of justification, stating that, as shown on the plat, without the variance it would be very difficult to maneuver in and out of the garage and would also result in the removal of two trees. He said that the roof line would be maintained.

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Mrs. Thonen asked if the applicant meant that, if he moved the structure towards the porch, he could not accomplish the same thing. Mr. Baldree said that approach would make it very difficult to enter the structure by coming around the corner and backing in and out; it also would make the removal of the trees necessary. Mrs. Thonen advised Mr. Baldree that the size of his proposed structure exceeded what the BZA usually approved for a two-car garage; the BZA usually approved 24 x 24 x 12.5 high. Mrs. Harris said that, in reviewing the photographs, it appeared that there are no other garages located in similar locations nearby. Mr. Baldree said that there were four other similar structures in the area, although they are not on his street; one is two streets over and across Hemming, two are on Jarvis Street, and one is on Ravensworth. He did not know if variances were obtained, but he said that they were close to the property lines.

Mr. Ribble asked if staff had a record of any other variances in the area. Ms. Greenlief said they had a record of carport enclosures in the North Springfield Subdivision.

Mr. Pammel asked, with respect to the concrete driveway, if it led to a garage. Mr. Baldree said that it did lead to an existing garage. Mr. Pammel asked what he proposed to do with the existing garage. Mr. Baldree said that he proposed to convert it into a room.

Mr. Hammack asked how far away from the property line the adjacent residence was located. Ms. Greenlief stated that the dwelling on Lot 18 is about 60 feet away and the dwelling on Lot 17 is about 45 feet away, generally the same as the subject dwelling.

Mr. Pammel asked what type of room Mr. Baldree planned to convert the existing garage into. Mr. Baldree replied that he planned to extend the recreation room, which is very small, and to include a laundry room, to accommodate a growing family.

Speaking in opposition, was Jeanne Netherton, 7505 Hogarth Street, Springfield, Virginia, who submitted a statement and a petition to the BZA that was signed by several of the neighbors. She said that she had been asked by several of her neighbors to speak against the proposed variance. Ms. Netherton said the applicant's house and lot were identical to most of the houses in the neighborhood; of the 18 houses on the block, 13 are identical split-levels that are identically situated on lots with identical dimensions. Ms. Netherton said that any hardship the applicant might believe he had suffered was shared by all of his neighbors. She said that Mr. Baldree did not plan to park cars in his garage, but planned to use the space to work on cars; she said that he works as a mechanic and had even agreed to repair the speaker's cars whenever anything went wrong; the noise associated with such activity would not be very appealing, since one corner of the garage would be closer to her house, on Lot 17, than to the applicant's house. Ms. Netherton said the neighbors did not see why Mr. Baldree needed another garage, when he already had a garage. She said that the subdivision covenants stated that each plot would have no more than a single family dwelling and a private garage and it was a contractual agreement for Mr. Baldree not to build another garage. Ms. Netherton said that, in order to use the proposed garage, the applicant would have to build a driveway within three or four feet of Mr. Fulva's front yard, on Lot 4, since there is only 17 feet between Mr. Baldree's house and the common property line; another concern was that Mr. Baldree would use the proposed structure to work on cars and odd pieces of cars, such as transmissions and tires, would collect in the area and impact neighboring properties.

Mr. Baldree came back to the podium for rebuttal. He said that some of the things Ms. Netherton said were true; he is a mechanic; Ms. Netherton had one time asked him to look at her car and he said he would do it as a good neighbor. As for transmissions and tires collecting in the area, he said that his yard presently was neater than Ms. Netherton's yard; he said that Mr. Fulva helped him draw up his plans; he said that he spoke with each neighbor before starting his project and had a document which had been signed by them, approving of his plans. He said he did not understand how they approved of it previously and now were in opposition.

Mr. Hammack asked Mr. Baldree if he intended to use the garage as a workshop and he said he did not; he would use the garage of the company that employed him as a mechanic; he would use his own garage to work on his own cars.

Mr. Hammack observed that Ms. Netherton's husband had signed the original application, saying that he did not oppose the project and asked what had caused him to change his mind. Ms. Netherton pointed out that the original application was dated January 2, 1990; she did not agree with the decision at the time her husband signed it; one of the neighbors who signed approval is no longer living in the neighborhood. Ms. Netherton said that the neighbors reconsidered and decided they would not be happy with the applicant's proposal.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack said that he had some sympathy for what the applicant was trying to do; however, based upon the testimony, the presentation, and the evidence, it appeared to him that the applicant could build an oversized one-car garage without a variance; or he could extend the house for additional living space and not have to build another garage at all, also without a variance. Mr. Hammack agreed with Ms. Netherton that all the houses and lots in the area were of equal size and identical, and it was not a hardship to require the applicant to comply with the Ordinance.



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Mr. Hammack made a motion to deny VC 92-B-019 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 92-B-019 by HORACE L. BALDREE, JR., under Section 18-401 of the Zoning Ordinance to allow detached structure (garage) 5.0 ft. from side lot line and 5.0 ft. from rear lot line, on property located at 7502 Gresham St., Tax Map Reference 71-3((4))(41)3, 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 April 23, 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 10,500 square feet.
4. The testimony and presentation indicates that the applicant could build an oversized one-car garage without a variance.
5. The applicant could extend the house for additional living space without requiring a variance and would not have to build another garage at all.
6. What the applicant is requesting is a convenience.
7. All of the houses in this neighborhood are of equal size and are virtually identical; it not a hardship to require the applicant to comply with the Zoning Ordinance.

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 5-1; Chairman DiGiulian voted nay and Mr. Kelley was not present for the vote.

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This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 1992.

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Page 98, April 23, 1992, (Tape 1), Scheduled case of:

9:25 A.M. DR. MOTOAKI SATO AND NICHOLAS NICOSIA, VC 92-D-014, 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. hgt. allowed by Sect. 10-104), on approx. 13,690 s.f., located at 1872 Kirby Road, zoned R-3, Dranesville District, Tax Map 41-1((4))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. Nicosia replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that on June 25, 1992, the BZA denied variance application VC 91-D-004 by the same applicants, to allow a 6 foot high fence to remain in the front yards of the property. The BZA waived the twelve-month waiting period for rehearing and the applicants filed the current application on January 27, 1992.

The applicant, Nicholas Nicosia, 1872 Kirby Road, McLean, Virginia, presented the statement of justification, stating that he would first submit a report signed by all concerned neighbors on Kirby Road, Birch Road, and Chesterfield Avenue, who are in the sight line of the subject property, as evidence that there is community support for his application. He said that the fence was on the property when it was purchased two and a half years ago; since the last hearing, he noted that three of his neighbors had constructed fences around the sides and backs of their properties to protect their privacy and keep their pets contained; however, they are not on a corner lot, so they did not run into any zoning violations. Mr. Nicosia stressed that the request was not for convenience; one reason not cited in the staff report is that the yard comes across from the sides of the house and then begins to slope down about 2.5 feet until it meets the road, creating extraordinary topography that is not evident in the staff report or the photos; a new zoning amendment offers no relief because Kirby Road, while very busy, is not considered a major thoroughfare. The applicants resubmitted, responding to each question. Mr. Nicosia stressed the enormous hardship that denial would place on him and his family, making continued living in the house an impossibility if they have to lower the fence. He said that the purchased the property with the existing fence in good faith; the property provided more than a modicum of security for them to put their disabled child out in the back yard with his dog, without any fear of danger to the child.

Mrs. Harris referred to Mr. Nicosia's statement that changing the fence height would prohibit him from living in the house and he said that was correct. He said that he likes to leave his disabled child in the yard by himself, but the property is in close proximity to the two streets, with heavy traffic going by; there are too many people going by the house and could go right over a 4-foot fence; because of the way the yard slopes down toward the road, people going by would have direct vision over a four foot fence and could jump over the fence; the dog would definitely not be able to go out into the yard with the child; the disabled child is not able to run and will ultimately be in a wheelchair, prior to his death; and Mr. Nicosia could not have the child out in a yard so exposed.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen pointed out that the petition from the neighbors would be filed as part of the record.

Mr. Pammel stated his concern for applications where property owners are restricted because of a standard in the Zoning Ordinance requiring front yards on both side of a corner lot, thereby causing the property owner a loss of at least a portion of the yard which otherwise could be used. He further stated that the applicant had made a very compelling argument in favor of granting the variance; he read the staff report thoroughly and was very sympathetic to the applicant's concern about a child who is terminally ill.

Mr. Pammel made a motion to grant VC 92-D-014 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 16, 1992.

A discussion among the BZA members ensued and it was agreed that, because of the topography, the 2 foot variance did not extend the entire length of the fence, but varied and dipped along substantial portions of the fence.

Mr. Hammack said that he would support the motion because the fence is inside the property lines, there is a 10 foot easement for street purposes on one side and the fence is inside of that; it does not require a variance all the way around, plus he agreed with Mr. Ribble in that the situation is extraordinary. He also pointed out that the fence does not interfere with sight distances or turning movements.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-014 by DR. MOTOAKI SATO AND NICHOLAS NICOSIA, under Section 18-401 of the Zoning Ordinance to allow 6.0 ft. high fence to remain in front yard of corner lot, on property located at 1872 Kirby Road, Tax Map Reference 41-1((4))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 April 23, 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 13,690 square feet.
4. The applicants are restricted by the Zoning Ordinance because the lot has two front yards, which causes the loss of use of a portion of the yard.
5. There are extraordinary topographical conditions.
6. The applicant made a compelling argument in favor of the variance being granted.
7. The fact that the applicant's child is terminally ill is a significant point and the Board should be responsive to the issue; there is a necessity for extraordinary security.

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 fence shown on the plat (prepared by Coldwell, Sikes and Associates, dated April 10, 1991) submitted with this application and is not transferable to other land. This fence shall not be greater than six (6.0) feet in height.

2. The fence shall be kept in good repair.

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 May 1, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 100, April 23, 1992, (Tape 1), Scheduled case of:

9:35 A.M. AHMAD ALI HASHEMI, SP 92-S-005, appl. under 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow detached structure (shed/workshop) to remain 0.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 5.36 acres, located at 10808 Shadow Lane, zoned R-C, WS, Springfield District, Tax Map 96-3(5)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. Hashemi replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, noting that approximately 53 square feet of the detached structure extends across the western lot line onto abutting Lot 3; the applicant had proposed to remove the portion of the structure that extends into the abutting lot. Regarding surrounding uses, a review of the files in the Zoning Administration Division revealed that the dwelling on adjacent Lot 3 to the west is located approximately 105 feet from the shared side lot line; the dwelling on Lot 1 to the east is located approximately 62.2 feet from the shared side lot line.

Mr. Ribble asked Ms. Dickey if he understood correctly that the applicant's structure was on someone else's property and she replied that a portion of it was. A discussion between Mr. Ribble and Ms. Dickey determined that, even if the applicant removed the portion of his structure extending into his neighbors property, he would still be in violation, since the minimum side yard requirement is 20 feet.

The applicant, Ahmad Ali Hashemi, 10808 Shadow Lane, Fairfax Station, Virginia, came to the podium and stated that the structure in question had been built by a gentlemen who took his money and ran away. He said that he was in the hospital at the time and his wife was not aware that there was a problem. When Mr. Hashemi found out about the error, he said he went directly to his neighbor, who said he did not mind having the structure on his property; the structure is in a wooded area and the parcel is approximately 5.0 acres; the structure cannot be seen by any of the neighbors.

Mr. Ribble advised that the survey showed that the structure extended over 7 feet onto the neighbor's property. Mr. Hashemi said he had already talked to someone about removing the portion of the structure which extends onto the neighbor's property. Mr. Ribble asked the applicant why he did not just tear the structure down and build somewhere else. The applicant said that he had paid quite a bit of money for the structure; it was built of cinder block and it would be costly to dismantle and remove. Mr. Hammack asked the applicant if he had attempted to purchase any land from the neighbor in question and he said that he had not. The applicant said that the property line could be changed, whereby he would get a portion of his neighbor's land and the neighbor would get a like portion of the applicant's land. The applicant believed that the easiest solution would be to remove the portion of the structure which extended onto the neighbor's land.

Mr. Pammel asked the applicant if he had obtained a building permit for the structure and the applicant said that he did not know that a building permit was required.

Speaking in support of the applicant was Paul Petty, 10812 Shadow Lane, Fairfax Station, Virginia, who said that he owned Lot 3, which is the lot next door, onto which the subject structure extended. Mr. Petty said that he was in the process of retiring, his house was up for sale, and he wanted to insure that he could transfer his house and property without any encumbrance due to having the structure extending onto his property. Mr. Petty said that he did not care about the extension of the structure, he only wished to be able to sell his property without a problem.

A discussion ensued between BZA members regarding the extension of the applicant's structure onto the the neighbor's property, and the potential for a problem to develop if the neighbor attempted to sell his property.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny SP 92-D-005 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 92-S-005 by AHMAD ALI HASHEMI, 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 (shed/workshop) to remain 0.0 ft. from side lot line, on property located at 10808 Shadow Lane, Tax Map Reference 96-3((5))2, 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 April 23, 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 5.36 acres.
4. There is a question of legality because the applicant's structure encroaches onto his neighbor's property.
5. There is no provision in the Zoning Ordinance for approval to be granted in this type of situation.
6. The structure was built without a building permit and does not meet the standards under the mistake section of the Zoning Ordinance.

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 8-914 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 5-0; Mrs. Harris 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 May 1, 1992.

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Page 101, April 23, 1992, (Tape 1), Scheduled case of:

9:50 A.M. ST. AIDAN'S EPISCOPAL CHURCH, SP 92-V-003, appl. under Sect. 3-303 of the Zoning Ordinance to allow addition to existing church and related facilities and nursery school, on approx. 7.4777 acres, located at 8531 Riverside Rd., zoned R-3, Mt. Vernon District, Tax Map 102-3((1))33.

Carol Dickey, Staff Coordinator, stated that staff had discovered that morning that the plat was incorrect along the northern lot line. She had discussed the necessary revisions with the applicant and they had agreed to defer the public hearing to May 26, 1992, at 9:15 a.m. Mrs. Thonen so moved and Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 101, April 23, 1992, (Tape 1&2), Scheduled case of:

10:05 A.M. ROBERT G. KOZAN, VC 92-P-012, appl. under Sect. 18-401 of the Zoning Ordinance to allow 8 ft. high fence in front, side and rear yards (4 ft. max. hgt. allowed in front yard, 7 ft. max. hgt. allowed in side and rear yard by Sect. 10-104) on approx. 13,625 s.f., located at 2968 Hibbard St., zoned R-2, Providence District, Tax Map 47-2((7))6A. (OTH GRANTED 3/3/92)

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. Kozan replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report, stating that the application did not comply with any of the Ordinance provisions that allow an 8-foot high fence in a front yard; Section 10-104 of the Zoning Ordinance allows a 7-foot high fence or wall in any side or rear yard on any lot; on that basis, the applicants were requesting a variance of 4.0 feet to the requirement of Section 10-104, regulating front yards, which would allow an 8-foot high fence within a portion of the front yard adjacent to Blake Lane; also a 1.0 foot variance to the requirements of Section 10-104 regulating side and rear yards to allow an 8-foot high fence within the side and rear yards between the subject lot 6A and a portion of Lot 6 on the north and 6B on the west.

The applicant, Robert G. Kozan, 2968 Hibbard Street, Oakton, Virginia, presented the statement of justification, stating that the front of his house is parallel to Hibbard Street, which is at an angle of approximately 52° to Blake Lane; prior to the widening of Blake Lane from two-lanes to a four-lane divided highway, his property adjacent to Blake Lane was fully tree lined, providing both a visual and partial sound barrier from traffic on Blake Lane, as well as noise from the County recycling lot across Blake Lane from his house; he had been awakened many Saturday and Sunday mornings to the sounds of Fairfax County trucks picking up and unloading metal containers from the recycling center; in 1988 the County's Land Acquisition Department contacted him to purchase and/or condemn a large portion of his property, approximately 7,400 square feet of his 20,000 square foot total, for dedication to public street purposes both on Blake Lane and Hibbard Street. Mr. Kozan said that, during negotiations with the County, he had attempted to have a similar barrier installed, either trees planted and/or a fence constructed to provide the same level of protection; he was told that the County could not do that, but that he would be able to do either one after construction had been completed. In May of 1991, after the construction of Blake Lane had been finished, he had several fence contractors give him proposals to build an 8-foot high fence from the southwest corner of his house toward Blake Lane, then turn and run approximately 95 feet semi parallel to Blake, then turn north and run until it joined with his next-door neighbor's fence at the northwest corner of his property; a contractor was selected and was in touch with Fairfax County Zoning for a permit; the County told him he could not build a fence, which was why he said he was appealing to the Board of Zoning Appeals for a variance.

Mr. Kozan said that, upon reading the proposed Zoning Ordinance Amendment for Section 10-104, location regulation for fences and walls on corner lots, it appeared that his property did not fall into this category because his lot is contiguous to a lot which has its only driveway entrance from the major thoroughfare of Blake Lane; with regard to the proposed amendment that was passed on July 22, 1991, his property is not included because of the potential safety hazard of reducing sight distance for the adjoining properties' ingress/egress onto the major thoroughfare. He said that, upon examination of the diagram, it was his contention that his neighbors' sight distance was not reduced or impaired. He said that the fence is not exactly parallel with Blake Lane because the land rises as it goes towards the back and becomes 15 feet away from the front edge of the curb at the back adjacent to 6B. Mr. Kozan said that, on July 22, 1991, he went before the Board of Supervisors (BOS) and was granted a waiver of the variance fee and promised a speedy review by the BZA. Since then, he said that he had completed applications for waiver of the variance fee, waiver of a formal plat, which the County would not provide after acquisition of his property for the Blake Lane project.

Mr. Kozan said that, prior to the widening of Blake Lane, he had some feeling of privacy at his residence; he has been stripped of his privacy by the project; anyone driving eastbound on Blake Lane, walking on the sidewalk, or dumping recyclable material across Blake Lane can look right into the sliding glass doors at the back of his house and into his bedroom windows. He said that he feels like he is living in a glass fishbowl and has been told that he can do nothing about it; he already had a \$450 lawnmower stolen from his back yard porch during the construction of the project, trash was thrown into his yard from vehicles driving by, and one vehicle straddled the sidewalk from Hibbard Street for a distance of about 100 feet, creating ruts 12 inches deep on either side of the sidewalk. Mr. Kozan said that he was pleading with the BZA to allow him to build his proposed privacy fence; it was the culmination of extensive effort on his part to build a fence on his own property.

Mr. Hammack said that the BZA had not been allowing many 8-foot high fences, although it appeared that Mr. Kozan had some rather unusual circumstances. Mr. Kozan said that part of the problem was that his lot sloped back toward Lot 6B and if a 7-foot fence were used there, people could still look into his house and his master bedroom is located in that area.

Mr. Kozan advised that he had a letter of support from Katherine K. Hanley, Supervisor, Providence District.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant in part VC 92-P-012 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 14, 1992.

Mr. Pammel and Chairman DiGiulian said that they would prefer to see the applicant get permission for an 8-foot fence. Mr. Hammack said he believed the 7-foot fence was appropriate because 8 feet is very high. He said that the applicant could do some planting and other things to give some privacy.

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, asked Chairman DiGiulian whether revised plats were required and the BZA members agreed with Chairman DiGiulian that the correction could be made in red on the existing plats.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-012 by ROBERT G. KOZAN, under Section 18-401 of the Zoning Ordinance to allow 8 ft. fence (THE BOARD ALLOWED A 7 FT. FENCE) in front, side and rear yards, on property located at 2968 Hibbard St., Tax Map Reference 47-2((7))6A, 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 April 23, 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 13,625 square feet.
4. There was a sufficient buffer between the applicant's property and Blake Lane before it was widened.
5. The widening of Blake Lane created an extraordinary condition and restricts the use of the property.
6. Strict application of the Ordinance would produce undue hardship as there is no privacy afforded the applicant's side yard, back yard, and front yard.
7. Granting of this request would be in harmony with the intended spirit and purpose of the Ordinance.
8. Since a 7 foot high fence is allowed in the side and rear yards, having a 7 foot high fence in the front yard would afford the privacy that Mr. Kozan requests from the cars on Blake and Hibbard Lanes, and from people walking on the sidewalk.

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 the specific fence shown on the plat (dated April 1, 1986), prepared by John T. Monaghan and revised by V. A. Yedigarian,

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included with this application, and is not transferable to other land. This fence shall not be greater than seven (7.0) feet in height on Blake Lane and between the subject property and adjacent Lots 6 and 6B.

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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 of the 8.0 fence 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 May 1, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 104, April 23, 1992, (Tape 2), Scheduled case of:

10:25 A.M. FAIRFAX 4-H THERAPEUTIC RIDING PROGRAM, SP 92-S-011, appl. under Sect. 3-C03 and 8-915 of the Zoning Ordinance to allow riding and boarding stable and waiver of dustless surface requirement, on approx. 5.0 acs., located at 6301 Newman Rd., zoned R-C, WS, Springfield District, Tax Map 76-1((1))pt. IV and pt. 1Z. (OTH GRANTED 3/3/92)

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. Christensen replied that it was.

Lorrie Kirst, Staff Coordinator, presented the staff report, stating staff concluded that the application was in harmony with the Comprehensive Plan and satisfied the applicable Zoning Ordinance provisions if the Proposed Development Conditions were imposed.

Mrs. Harris asked Ms. Kirst if staff had something in writing from the owners of the property that they are in accord with this use of the property by the applicant/lessee and Ms. Kirst replied that there was something in the file covering that issue.

John E. Christensen, 12212 Yellow Brick Road, Fairfax, Virginia, represented the applicant, stating that he was the organization leader for the applicant which is totally volunteer-supported, not tax funded, seeks no public funds, is associated with the 4-H organization, and is accredited by the North American Riding for the Handicapped Association. He said that, even though the Zoning Ordinance relates to a riding and boarding stable, they did not intend to construct a stable, nor will they board any horses, they will conduct therapeutic riding lessons for disabled children from throughout the County. Mr. Christensen said that he lives in the neighborhood of the subject property. He said that, at the Board of Supervisor's (BOS) hearing, when they waived their fee for the application, and at the Planning Commission hearing, when they renewed the Hampshire's Agriculture and Forestal District designation, both parties indicated that this was a very appropriate use for the land.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 92-S-011 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 9, 1992.

Mrs. Harris stated that she believed this to be a very appropriate use of the land.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-S-011 by FAIRFAX 4-H THERAPEUTIC RIDING PROGRAM, under Section 3-C03 and 8-915 of the Zoning Ordinance to allow riding and boarding stable and waiver of dustless surface requirement, on property located at 6301 Newman Rd., Tax Map Reference 76-1((1))pt. IV and pt. 1Z, 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 April 23, 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, WS.
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 Sections 8-609 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, entitled "Fairfax 4-H Therapeutic Riding Program Special Permit Plat" prepared by Patton Harris Rust & Associates and dated January 1992, 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 hours of operation shall be limited to between the hours of 8:30 am and 11:00 am for eight Saturdays in April through June and eight Saturdays in September through November. In addition, a maximum of ten individual lessons and diagnostic evaluations may be conducted throughout the year.
5. No more than four students shall be present at any one time for the Saturday morning sessions and no more than one student shall attend an individual lesson and diagnostic evaluation.
6. There shall be no more than one instructor and six volunteers at any one time on the premises. No horses used in the equestrian sessions shall be boarded on-site.
7. If water and/or septic facilities are required by the Fairfax County Health Department, these facilities shall meet Health Department standards. If the Health Department requires the use of portable toilet facilities, any such facility may be located on the site without the need for a special permit amendment. Any such facility shall be located no closer than 100 feet to any property line.
8. A minimum of seven parking spaces shall be provided. All parking shall be located a minimum of 50 feet from all property lines.
9. The parking area, driveway, and entrance onto Newman Road shall be constructed, graveled and maintained in good condition at all times as approved by the Director of the Department of Environmental Management. The minimum amount of gravel as determined necessary by DEM shall be required.
10. The Waiver of the Dustless Surface Requirement shall expire five years after the final approval date, in accordance with Par. 4 of Sect. 8-915 which requires that no special permit shall be approved for a period to exceed five years; provided, however, that such permit may be renewed in accordance with the provisions of Sect. 8-013 for additional five year periods.

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. Pammel 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 May 1, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 106, April 23, 1992, (Tape 2), Scheduled case of:

10:25 A.M. COUNTRY CLUB OF FAIRFAX, SPA 82-S-102-2, appl. under Sect. 3-C03 of the Zoning Ordinance to amend S-82-S-102 for country club to permit additional parking, on approx. 150.9 acres, located at 5110 Ox Rd., zoned R-C, WS, Springfield District, Tax Map 68-1((1))17, 18, 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. McDonald replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that there is a fairly lengthy history of Zoning BZA actions on the site; with the implementation of the Proposed Development Conditions, it is staff's opinion that the general standards for special permit approval have been met, and that the use is in harmony with the Comprehensive Plan and the applicable provisions of the Zoning Ordinance. He said that staff, therefore, recommended approval of this application.

Mrs. Harris asked if there was adequate buffering between the additional parking spaces and the adjoining lots and Mr. Riegler said that there are hundreds of feet between the parking area and Route 123, including berms and a row of evergreen plantings.

Robert H. McDonald, P.E., 6110 Mountain Springs Lane, Clifton, Virginia, represented the applicant; stating that he believed staff had covered the issues fairly well; the application is to gain approval for the siting of the additional parking; that they are still under the limit of parking permitted in the previous special permit application; they were seeking approval of the location; they had worked with staff; they gained concurrent processing approval from the Board of Supervisors (BOS) for the site plan.

Mr. Hammack asked if the Development Conditions contained in the staff report were the same as the previous Development Conditions and if they were acceptable to the applicant. Mr. McDonald said that many of them were the same, the ones that were marked with an asterisk, and all of the Conditions were acceptable.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 82-S-102-2 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 14, 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-S-102-2 by COUNTRY CLUB OF FAIRFAX, under Section 3-C03 of the Zoning Ordinance to amend S-82-S-102 for country club to permit additional parking, on property located at 5110 Ox Rd., Tax Map Reference 68-1((1))17, 18, 20, 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 April 23, 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 150.9 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.

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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) indicated on the special permit plat approved with this application, (prepared by Gordon and Associates and dated December 6, 1991) 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.
5. The hours of operation shall be as follows:  
  
Use of the clubhouse shall be limited to 7:00 A.M. to 10:30 P.M., Sunday through Thursday, and 7:00 A.M. to 1:00 A.M. Friday and Saturday; occasional exceptions to these hours of operation shall be allowed to accommodate special functions, these functions shall not include the use of the lighted tennis courts and they shall conclude by 1:30 A.M.  
  
Use of the seasonally enclosed tennis courts shall be limited to 7 a.m. to 12 midnight, seven days a week.  
  
Use of the lighted outdoor tennis courts shall be limited to 7 a.m. to 10 p.m., seven days a week.  
  
Use of the swimming pool and all golf course facilities shall be limited to hours between sunrise and sunset seven days a week.
6. All lighting and noise shall be confined to the site.
7. There shall be a maximum of 329 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements as determined by DEM. All parking shall be on site.
8. The total membership shall not exceed 900 members unless an amendment to the special permit allowing an increase in membership has been approved by the BZA.
9. A fertilizer, herbicide, and pesticide management program shall be maintained for the 18 hole golf course in conjunction with the Department of Extension and Continuing Education. This program shall be designed to prevent excessive application of fertilizer, herbicide and other chemicals to protect water quality in the Popes Head Creek watershed.
10. Best Management Practices (BMP's) shall be provided for the additional parking area the satisfaction of DEM in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance. The existing stormwater management ponds shall be deemed to fulfill this requirement as may be acceptable to DEM.
11. Existing vegetation along all lot lines shall be maintained and shall be deemed to fulfill the requirements for Transitional Screening and the Barrier requirement shall be waived as may be acceptable to the Director, DEM.
12. Any proposed new lighting of the parking areas shall be in accordance with the following:
  - o The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - o The lights shall focus directly on the subject property.
  - o Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.

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 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 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 May 1, 1992. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:40 a.m. and reconvened at 11:50 a.m.

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Page 108, April 23, 1992, (Tape 2&3), Scheduled case of:

10:45 A.M. PULTE APPEAL, A 89-D-017, (Appeal of determination by the Director of Environmental Management disapproving a preliminary plat with the notation that a special exception is required pursuant to Part 9 of Article 2, Floodplain Regulations), this hearing is to consider matters that were remanded to the Board of Zoning Appeals, including evidence and argument of the parties, pursuant to a Decree of the 19th Judicial Circuit Court of Virginia in the case of Birmingham, et al. v. Fairfax County Board of Zoning Appeals, et al., in Chancery No. 115934, entered December 20, 1991. This Decree can be reviewed at 4050 Legato Road, Fairfax, Virginia, between 8:00 a.m. and 4:30 p.m., Monday through Friday, 246-1280. (BZA DEF. FROM 3/31/92)

Chairman DiGiulian advised, if there was no objection, that he would first like to hear from the County and then hear from the appellant, and that each side had fifteen minutes to use whatever way they would like.

Jerry K. Emrich, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, represented the appellant, stating that it was his understanding that Mr. Kelley had left the meeting and would not be returning. He asked the BZA to continue the hearing until all seven members could be present. Mr. Emrich said that he believed it was very important in a case such as this; in addition, he said the County had contacted Virginia Department of Transportation (VDOT), soliciting VDOT to reverse its prior approval. He said he learned the previous day that VDOT had not reached a conclusion and he understood that they would probably reach a conclusion in about two weeks.

Mrs. Thonen said that since the BZA was exploring the findings of fact, they could be given to Mr. Kelley for his review, before the BZA voted on the findings of facts. Mrs. Harris agreed with Mrs. Thonen and said that it was unusual to have all seven members of the BZA present. Chairman DiGiulian said he believed that Mr. Kelley could listen to the tapes and review the written information for the findings of facts before the BZA voted on the matter.

Randy Greehan, Assistant County Attorney, said that, in the exhibits provided by the appellant, they had taken bits and pieces of depositions and he believed it would be only fair that the County's depositions be included in their entirety, along with exhibits. He said he believed that they should be given an opportunity to submit the complete depositions of Messrs. White, King, and Moore, which are referenced in Pulte's exhibits.

Chairman DiGiulian reminded Mr. Greehan that he had fifteen minutes.

Mrs. Thonen said that it would be impossible for the BZA to read all the material that day and that was why they would prefer a deferral.

Randy Greehan said that he represented the Director of the Department of Environmental Management (DEM), the Zoning Administrator, and the Board of Supervisors. As stated in their position paper, and reply paper, it was their position that Pulte's proposed road did not meet all of the flood plain regulations in the Zoning Ordinance, and did not meet the Public Facilities Manual provisions; therefore, it was not a permitted use, and not approvable by the Director of DEM. As pointed out in the position paper, the road did not comply with the purpose and intent provision set forth in Section 2-901: one is public safety and the other is environmental. Regarding public safety, Section 2-901 states that the regulations referring to the flood plain were created to provide safety from flooding and other dangers and to protect against loss of life, health, and property from flooding and other danger. He said that the road would jeopardize human life and would not offer protection from hazards; the road surface would be under water by at least 1.5 feet during every 10 year storm, 2.5 feet during every 25 year storm, 3.5 feet during every 50 year storm, and 4.5 feet during 100 year storm. He said that the preliminary subdivision plat which was disapproved by the

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Director of DEM contained elevations 18 inches deeper for each one of the foregoing measurements. Mr. Greehan said that Captain Minor of the Fairfax County Police, as he had been referred to in the submissions, had been promoted and was now Major Minor. Major Minor and Fairfax County Fire and Rescue Chief, Jerry Wine, both agreed in their statements to the BZA that 1 foot of water above a road surface is the maximum depth at which it is safe for emergency vehicles to pass through. He said that the reasons they had set forth were hydroplaning or actual floatation of automobiles once water reaches the level of the undercarriages, and inability to determine the alignment or the condition of the roadway underneath. He gave Dranesville Road as an example. Mr. Greehan said that other hazards were that, once a road was covered by water, it could not be determined whether the road was covered with 1 inch of water or was completely washed out, as well as decreased braking ability, electronic malfunctions when referring to fire and rescue vehicles, and engine stalls; also, the road is subject to rapid rises in water; Pulte's own engineer, in their exhibit KK, pointed out that the water will rise from the edge of the surface, to 2'5" above the road in as short a time as fifteen minutes. He said that in as short a time as he might take to run up to the shopping center to get his emergency supplies and food, coming back via the same route would present the potential for the water on the road rising almost 2.5 feet above what it was when he first traveled it. Mr. Greehan pointed out that, on the old BZA record on page 213, Pulte's engineer, Edward Addicott, pointed out that a standard of 1 foot below the 100 year water surface is a safety consideration; he said that is because it should be possible to get emergency vehicles through. He said that, during every 10, 25, 50, and 100 year storm, the water will be above the 1-foot mark. He said that Police Major Minor and Fire and Rescue Chief Jerry Wine, both note in their statements that, if the road is built, the emergency incidents will not be occurring in Loudoun County, but will be occurring at the intersection with Dranesville Road in Fairfax County, because of the high volume of traffic in Fairfax County on Dranesville Road, and because that is where the flooding will occur, made more hazardous by a sharp turn just before the intersection.

Mr. Greehan spoke at length about the potential hazards of the road, and stated that the appellant did not explore any other alternatives. He also said that County requirements did not necessitate two points of access.

Mr. Pammel said that there is a clear cut policy in the County, with the exception of very small developments, that there be at least two points of access.

Mr. Pammel asked when DEM had disapproved the plan and Mr. Greehan said he believed it was November 15, 1989. Mr. Pammel asked Mr. Greehan to provide documentation on when that was done because, in reviewing the document that was provided as part of the record, containing DEM's reasons for disapproving the plan, it was not dated. Mr. Greehan said that, in reading Pulte's memo, he found the statement that, in the application for appeal, it refers to the decision to require a special exception on the preliminary subdivision plat, which was disapproved on November 15, 1989. Mr. Pammel said that, even though it was disapproved, the Ordinance requires a disapproval to be in writing, and the reasons to be set forth. He said the point he was making was that there was no date on the memorandum and he did not know when DEM officially denied and, as far as he was concerned, the denial takes place at the time they (DEM) provide the reasons for the denial in writing.

Mr. Greehan said that the only issue in this case was: Was the decision to require a special exception appropriate. He said that any other issues related to the disapproval of the plan should have been raised with the Circuit Court and it was not brought up with the Circuit Court; it is now too late to bring it up with the Circuit Court. He referred to Section 15.1475, which says, "The reasons for the disapproval shall be set forth in writing." He said it could either be done on a plat or in a separate document. He said that the appellant had the authority under 15.1475 to appeal the decision and authority to appeal the reasons to the Circuit Court within 30 days of the decision. Mr. Pammel said that it is also required in the Flood Plan Ordinance.

Mrs. Harris said that she was assuming that Mr. Greehan's presentation was over. Mr. Greehan said that Major Minor wanted to address the safety concern.

Mrs. Harris said she had a question about the safety concern. She asked when Dranesville Road was shut off in a flood situation. Mr. Greehan deferred to Major Minor; however, Chairman DiGiulian said that Mr. Greehan had previously stated that it is only closed off after it's flooded and someone calls and says there is a problem; Mr. Greehan said that was his understanding. Chairman DiGiulian asked if Mr. Greehan thought that Dranesville Road should be closed, dug up, and have trees planted there to keep people from going into the water before the County gets there. Mr. Greehan said that Dranesville Road is on the Comprehensive Plan to be raised by 12 feet and widened to 4 lanes. Chairman DiGiulian said that does not help the poor individual who goes down there now and Mr. Greehan agreed. Mrs. Harris said that she used to live down near Dranesville Road and she remembered in flooding situations that the road used to be closed; she did not know if it was after someone was already trapped by the water, but she believed the Fire and Rescue people were well aware that Dranesville Road gets flooded from time to time. Mrs. Harris believed that the Fire and Rescue people went down to check the Road and closed it off before someone became stuck in the water. Mr. Greehan said he preferred to defer to the expert who was present, but that it was his understanding that it did not work the way Mrs. Harris believed it did. He said that, if a police officer is driving down Dranesville Road, and sees the road is flooded, chances are he will close it; but, most of the time, it is closed as a result of someone already being trapped and it becomes necessary for them to be rescued.

A lengthy discussion on flooding ensued.

Mr. Greehan submitted that, when an applicant presents a plan to DEM, it should represent the best of several explored options.

Mrs. Harris posed a hypothetical case in which an application was denied by the Director of DEM because he did not believe it met the requirements of the Comprehensive Plan or the environmental uses. She said it was her understanding that the applicant then had the opportunity to go before the Board of Supervisors (BOS) for a determination on whether the proposed plan was the least disruptive of the options reviewed and that the applicant had chosen the best access point across the floodplain. Mr. Greehan said that was correct under Section 2-903, wherein the Director was solely making a determination of whether the proposed use constituted a permitted use under Section 2-903; if it did not, he cannot approve it as a by right use. Under Section 2-904, the applicant has the discretion to file a special exception application with the BOS to obtain that particular use.

Mr. Pammel referred to Mr. Greehan having previously raised the issue of additional points of access and he asked how many of the streets were private, in existing developments, that cannot be used; he said that Mr. Greehan had said there were 8 or 9 and he asked Mr. Greehan to provide additional information about them, in the interim after the meeting, before submissions were due. Mr. Pammel asked Mr. Greehan to provide only the access points which could be achieved and said he did not want to hear anything about private streets through existing townhouse developments that everyone knew could not be used. Mr. Greehan said the reason for noting the private townhouse streets was that right now there are two proposed townhouse streets hooking onto Pulte's public road; near those two public streets which will be hooking on, there is a third street that is adjacent to the Pulte property which is not shown on any of the plans. He said that it would have made more sense to hook up the third street than the two that are shown. Mr. Greehan said that he could make a list for the BZA of other places where a public road could be established, but it would involve going across other people's property. Chairman DiGiulian asked Mr. Greehan to end his presentation and provide the information that Mr. Pammel had requested in writing.

On the preliminary plat that was denied, Mr. Emrich pointed out to the BZA the area that had been cleared for sanitary sewers; it also showed the trees which were left and was to include a water line. He said Dranesville Road near the bowling alley and the private road into Dranesville Road, will connect at Dranesville Road at almost the identical elevation as the proposed Woodson Drive. He said that the bowling alley had been there for a long time; that the BZA in 1975 had the matter before them, with two issues: one was a variance and one was a special use permit. He said he had submitted the pertinent documents which he had found late in the process, referenced the discussion by the BZA; he said it was clear at that time that the BZA realized that the road went through the floodplain; there was not a great deal of discussion, but the matter clearly had been raised. Mr. Emrich said that DEM had approved a grading plan for the entrance onto Dranesville Road and apparently had to relocate it because of a line of sight problem. He said the BZA record also indicated that the bowling alley was anticipated to generate 900 vehicle trips per day. Mr. Emrich said that, when Pulte first contracted for the property in 1987, Webb Shotwell proposed the same kind of development as the bowling alley because of topography and proximity to Dranesville Road, as most of the development in Loudoun County was part of the same parcel that naturally connected to Dranesville Road; they proposed the entrance onto Dranesville Road based on the precedent of the bowling alley. He said that the road was perpendicular to the floodplain and took the shortest route through the area that was available. Mr. Emrich said that the appellant went to Loudoun County for the rezoning application, proposing the one entrance on Dranesville Road, and Loudoun County said they had to have two entrances for two reasons: (1) Loudoun Fire and Rescue would be servicing that site; and (2) in the event that one entrance became blocked, for any reason, there would be a second entrance.

Mr. Emrich said that the two-entrance requirement was not unusual and the Fairfax County Transportation expert told DEM before the last BZA hearing that, for a development of this type, there should be two points of access, just as Loudoun County had stipulated. Mr. Emrich said that, when the plat was submitted to DEM, they rejected the plat and wrote on the plat that a special exception was required and that they should refer to the Zoning Ordinance for floodplain limitations. He said that DEM did not identify what provision of the floodplain requirement was applicable. Mr. Emrich said that the State Code says that, when a plat is denied, the denying authority must state the specific things that can be done and the provisions on which they rely to achieve approval. He said that, if DEM had done what was required of them, presumably they would have told the applicant that they had not satisfied DEM that there was no feasible option; the applicant could then have come back with a feasible option and would have submitted another plat. Mr. Emrich said that, after the plat was denied, Pulte went to DEM and had a meeting with them to find out what the problem was. He said that Pulte was told that Rabbit Run Terrace was their feasible option and that they did not need another option. Mr. Emrich said this resulted in Pulte's engineer writing a long letter to DEM outlining the meeting and submitted to BZA at an earlier hearing. He said that DEM has not denied that was their position.

Mr. Emrich said that, at the last hearing, one of the first questions put to DEM by Mr. Hammack was whether the appellant disagreed that two points of access were required. He said that was something that the County Office of Transportation (OT) and Office of Comprehensive Planning (OCP) should review. Mr. Emrich said that DEM had a memo from OT that said two points of access were required. He said that, later on, DEM talked generally about getting

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some input from OT, but they never said that they already had that input, stating that two points of access were required, and had forgotten to pass it on. 111

Mr. Emrich said that Rabbit Run Terrace is a public road and the only way that the appellant was able to gain access to Rabbit Run Terrace was that the property was going through the development process in Loudoun County. He said that when the developer went before the Planning Commission for approval, they were told they would have to agree to have Rabbit Run Terrace become a public road, with the cost of redesign and some of the additional construction to be borne by Pulte, at a time when the appellant was well into the development process.

Mr. Emrich said that Condition 7 or 8 was raised for the first time that day. He asked the BZA to ask staff what the cost would be, if the appellant could accomplish the task; the appellant would need to acquire the property from the property owner, it is zoned R-1, it is in the floodplain. Mr. Emrich said that staff's interpretation of the Ordinance is unreasonable because it means that the appellant would have to spend whatever money was necessary, without the power of condemnation, to acquire some other property. Mr. Emrich said that, if the appellant had been advised at the appropriate time of what was really required, it could have been achieved. Mr. Emrich referred to Mr. White's memo stating that the development was going the length of the floodplain, or perpendicular to the floodplain, and he said that the appellant was not crossing the entire floodplain. He spoke at great length about the issues involved in the appeal, stating that there was no viable alternative to the proposal submitted.

Mrs. Harris said that she read in the Deed of Sale that someone thought there might be a problem gaining access to the property because it said that, if the proposed access is not approved, another access point would be found, at no extra charge to the purchaser, leading her to believe that the seller believed there were other access points. Mrs. Harris said that there may have been another access point which would have been less disruptive and Mr. Emrich said they had submitted Mr. Addicott's affidavit as to why the precise location had been selected, and he said he believed that the location selected encroached upon the floodplain the least amount. Mrs. Harris said she was trying to point out that other access points were not pursued by the appellant. Mr. Emrich said that, when the appellant went to DEM, the engineer made the analysis, and they submitted the plans; DEM did not, as the code says, tell the applicant what they could do differently if there was a problem; they did not say there was another less disruptive way to address the issue. Mr. Emrich said that Mr. White mentioned in his memo, long before the application was submitted that, since the development was perpendicular to the floodplain, it was less intrusive than it otherwise might be.

Mr. Pammel asked Mr. Emrich if he agreed that the Director of DEM had rather broad discretion with respect to Section 9, Article 2, which is the floodplain ordinance, specifically that there are criteria established that apply to uses permitted by right, as well as special exceptions, and he said that he did agree; although he hastened to add that lawyers sometimes differ about wording, in this case the word "broad" may be inconsistent when used to describe discretion.

Mr. Pammel referred to Mr. White's Speed Letter and, since it was an administrative decision, Mr. White responded in writing to the question of whether the use was in compliance. Mr. Pammel asked if that decision was appealed in any process along the line. Mr. Emrich said that a different engineering firm went to Mr. White on behalf of Pulte to ask him some questions about going into the floodplain; at the time, there was some incorrect information given about the elevation of the water.

Discussion continued, culminating in Mr. Hammack making a motion to give each side 7 days to file proposed findings of facts and decisions for the BZA to consider, and that the BZA defer making a decision until May 12, 1992, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0; Mr. Kelley was not present for the vote.

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Page ///, April 23, 1992, (Tape 3), Action Item:

Request for Intent to Allow Withdrawal  
The Baptist Women's Convention of Northern Virginia, Inc.  
SP 92-Y-006

Mr. Hammack made a motion to grant the request. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page ///, April 23, 1992, (Tape 3), Action Item:

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that Ron Derrickson, Planning Technician, was distributing to the BZA the upcoming agendas through September 15, 1992. She requested that the BZA review the agendas, especially in relation to the week of Labor Day, September 7, 1992. She said that she knew that the BZA preferred not to meet during the week of Labor Day, which would make the first meeting on September 15,

1992. In answer to the question of whether the meetings were all scheduled for Tuesday, Ms. Kelsey said they were, except for an extra meeting in July in case problems developed in meeting the 90-day requirement; however, there were no cases scheduled for that date as yet.

Ms. Kelsey asked the BZA if they wished to decide not to have a meeting on September 8, 1992. The BZA members decided to defer decision on this matter until the following week.

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As there was no other business to come before the Board, the meeting was adjourned at 1:00 p.m.

Ger B. Bepko  
Ger B. Bepko, Substitute Clerk  
Board of Zoning Appeals

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

SUBMITTED: July 14, 1992

APPROVED: July 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 April 28, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; and James Pammel. Robert Kelley and John Ribble were absent from the meeting.

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 113, April 28, 1992, (Tape 1), Scheduled case of:

8:00 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. (DEF. FROM 1/21/92 - 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. The applicant's son, Donald Creed, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He said the applicant was seeking approval to allow an accessory dwelling unit in the basement of her house, there will be no exterior alterations, and the applicant meets the age requirements as set forth in the Zoning Ordinance. Mr. Riegle said staff had concluded that the applicant had met the applicable standards and recommended approval of the request.

Donald Creed said his mother was requesting the accessory dwelling unit to supplement her income and also to provide her with some security since she lives alone. He said the accessory dwelling unit would be located in the basement of the house with its own entrance.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve the request subject to the Development Conditions contained in the staff report dated January 14, 1992, with the following addition:

12. The Clerk to the Board of Zoning Appeals shall record this special permit in the Fairfax County Land Records.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-P-063 by HELEN C. CREED, under Section 8-918 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 7342 Barbour Court, Tax Map Reference 40-3((2))30, 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 April 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 17,891 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 house location plat submitted with this application dated February 19, 1957 and received in this office on June 14, 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.

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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 35% of the total gross floor area of the principal dwelling unit.
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 special permit use on the site, the second kitchen 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. Three (3) parking spaces shall be provided on site, the existing driveway and garage shall be deemed to fulfill this requirement.
11. The property owner shall have no more than one (1) vehicle parked on-site at any one time.
12. The Clerk to the Board of Zoning Appeals shall record this special permit in the Fairfax County Land Records.

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 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. 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 May 6, 1992. This date shall be deemed to be the final approval date of this special permit.

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It was not yet time for the next scheduled case and the BZA proceeded to take action on After Agenda Items.

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Page 114, April 28, 1992, (Tape 1), Action Item:

Scheduling of Appeal  
Ruth S. Baker, Trustee, and Emmanuel A. Baker, Jr., Trustee,  
Co-Trustees of the Emmanuel A. Baker, Sr., Residuary Trust Appeal

Mrs. Thonen made a motion to schedule the appeal for June 9, 1992, at 10:00 a.m. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 114, April 28, 1992, (Tape 1), Action Item:

Approval of Resolution  
Carlos A. Reyes, SPA 83-L-096-1 and VC 91-L-102

Mrs. Harris made a motion to accept the revised plat as submitted. Mrs. Thonen seconded the motion. Mr. Hammack noted that the steps still encroach onto the neighbor's property.

Jane Kelsey, Chief, Special Permit, pointed out that the steps were to be removed. She pointed out that the BZA had granted a waiver of the 12-month time limitation to allow the applicant to come back to the BZA with a different request; however, to finalize these applications the applicant had to submit revised plats in accordance with the BZA's approval.

The motion passed by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 115, April 28, 1992, (Tape 1), Scheduled case of:

8:15 P.M. SHILOH BAPTIST CHURCH, VC 91-D-118, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing church to remain 26.0 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. DEF. FROM 3/3/92 AT APPLICANT'S REQUEST)

8:15 P.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. DEF. FROM 3/3/92 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. Roland Maye replied that it was.

Bernadette Bettard, Staff Coordinator, said the subject property is presently developed with a church and related facilities, an accessory structure, 63 parking spaces, and an existing graveyard. The applicant has requested approval of a Special Permit for a church and related facilities to allow a two story building addition, additional seating and parking and a waiver of the dustless surface for designated parking spaces. Concurrently, the applicant has requested approval of a variance to allow the existing church to remain 26.0 feet from the front lot line and to allow the parking to remain 5.0 feet from the front lot line. The latter request is no longer necessary due to revisions made to the parking lot subsequent to the publication of the staff report.

Ms. Bettard said that in the Staff Report, dated February 25, 1992, staff recommended that SP 91-D-064 be approved. Staff found that the application was in harmony with the Comprehensive Plan and that the application met all of the applicable standards for special permit approval specified in the Zoning Ordinance, provided the Proposed Development Conditions attached in Appendix 1 of the Staff Report were adopted. Subsequent to the publication of the staff report, the applicant submitted a letter dated March 12, 1992, a revised plat received on April 7, 1992, and dated January 31, 1992, and a revised affidavit dated March 28, 1992. An Addendum which included those items and discussed the applicant's proposal had been submitted to the BZA. She said the primary change concerned the transportation improvements requested by the Office of Transportation (OT). Ms. Bettard said staff had met with the applicant and was now recommending that a right turn taper be provided instead of the right turn lane and Development Condition Number 16 has been revised to reflect the change. She said the only unresolved issue related to the entrance drive where OT had recommended the widening of the northern driveway and the closing of the southern entrance to eliminate a sight distance problem, and the applicant has not objected. Ms. Bettard said staff had recommended additional language to Development Condition Number 15. She suggested that a sentence be added to Development Condition Number 16 that reads, "A right turn taper shall be provided at the entrance to the site."

She said staff had reviewed the proposal and believed that the application, as revised, was still in harmony with the Comprehensive Plan and met all of the applicable standards for special permit approval as specified in the Ordinance provided the Revised Development Conditions are implemented. Thus, staff continued to recommend approval of SP 91-V-064, subject to the adoption of the Revised Proposed Development Conditions.

In response to a question from Mrs. Harris, Ms. Bettard replied that it was her understanding that the addition will not involve the sanctuary seating; however, several seats will be added but that could be done without the addition.

Carson Wise, pastor of the church, made a presentation to the BZA and submitted photographs showing what the church was proposing. He outlined the history of the church and said that the church would like to construct an addition which would allow them to increase the administrative office space, choir loft, and the main sanctuary. Pastor Wise said that the church would also like a waiver of the dustless surface requirement to allow a portion of the parking lot on the gravel surface instead of a paved surface and a variance to the front yard requirement. He explained that if the church were to comply with staff's recommendation of closing the southern entrance the church would lose several large trees that enhance the property and should not be sacrificed for a temporary entrance. Pastor Wise said staff had

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noted that the entrance may have to be moved to Lot 56 and since Lot 56 is not included in this application, a special permit amendment would be required to use Lot 56 as an entrance. He said to avoid going through the special permit amendment process the church was willing to include Lot 56 as part of the application, but the church objected to Development Condition Number 15 as it appeared to be contradictory. Pastor Wise said the second sentence indicates that the northern entrance is to be widened and the southern driveway closed. The last sentence seems to say that the entrance can be anywhere along the front lot line. He asked the BZA to delete the reference to widening the northern entrance and closing the southern entrance. Pastor Wise also expressed concern that staff was recommending that the church provide a right turn deceleration at the entrance along Spring Hill Road. He said the proposed addition to the church will not result in a significant increase in traffic to the site since the peak hours of usage are Sunday mornings between the hours of 9:30 a.m. to 1:30 p.m., when the traffic flow on Spring Hill Road is probably at its lowest. Pastor Wise said the church parking lot only has space for 65 vehicles and the cost for constructing a deceleration lane to serve such a small number of cars seems extravagant. He said OT has also recommended that the church dedicate 31 feet of right of way from centerline along the Spring Hill Road frontage in addition to another 10 feet for a deceleration easement. Based on the small amount of additional traffic that the sight might generate, he could not see the nexus. Pastor Wise said the lots surrounding the church site are vacant and used for agricultural purposes, thus he asked that Development Condition Number 6 be modified to require transitional screening along the north and east at such time as those properties are developed. He asked that Development Condition Number 6 be further modified to provide a waiver of the transitional screening along the southern lot line and to allow the existing vegetation to serve as the screening.

Pastor Wise distributed revised Development Conditions to the BZA and staff reflecting the wording that the church would like incorporated in Condition Number 6, 13, and 15. The church asked that Development Condition Number 16, which required the right of way dedication, be deleted.

In response to a question from Mrs. Harris, Pastor Wise replied that he had reviewed the January 26, 1986 Minutes contained in the staff report. He asked Mr. Naye to respond to the question regarding the entrance.

Roland Mays, 13505 Virginia Willow Drive, Fairfax, Virginia, explained that with the previous approval the BZA had stipulated that the northern entrance be used for exit only but it had not stipulated right turns only.

A discussion took place between the applicant and the BZA regarding where the entrance should be located.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant the variance for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 22, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-D-118 by SHILOH BAPTIST CHURCH, under Section 18-401 of the Zoning Ordinance to allow existing church to remain 26.0 feet from front lot line and parking to remain 5.0 feet from front lot line, on property located at 1331 Spring Hill Road, Tax Map Reference 29-1((1))58, 58A, 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 April 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-1.
3. The area of the lot is 2.24 acres.
4. The structure has stood on the premises since 1928.
5. There are topographical considerations on the property.
6. It would impose a hardship on the church to require the structure to be adjusted to meet the setback requirements.

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 church shown on the plat dated January 31, 1992, and revised March 27, 1992 (prepared by Harold Logan and Associates) and included with this application, and is not transferable to other land.

Mrs. Harris seconded the motion which carried by a vote of 5-0. 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 May 6, 1992. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel made a motion to grant the request for the reasons noted in the Resolution and subject to the Revised Development Conditions contained in the addendum dated April 22, 1992, with the following modifications:

6. The transitional screening shall be retained along the north property line, because at some point the property is going to be developed and the earlier the plantings are installed the more they will have grown prior to that development. It should be waived on Lot 56.
15. Delete in its entirety and replace with, "The present entrance to the parking lot of Shiloh Baptist Church will continue to be at the south end of the property as presently is the case and the northern driveway adjacent to the church will be used for exit purposes only."
16. He believed this condition is necessary with a clear understanding that the right of way will not be required until such time as the State and/or the County commences construction of this particular project. Add the provision that the church will provide a right turn taper into the parking lot access.

Mr. Hammack seconded the motion for purposes of discussion.

Chairman DiGiulian said he would like to see Development Condition Number 6 modified to require that the applicant provide Transitional Screening 1 along the northern and eastern lot lines to screen the church use from adjacent residential uses when the adjacent property is developed. He said he would also like Development Condition Number 6 deleted in its entirety.

Mr. Hammack agreed with Chairman DiGiulian's comments and added that he did not see the nexus that would require the dedication or the taper since the church has been operating satisfactorily.

Mr. Pammel said he would like to see some deciduous trees installed now.

Mrs. Harris seconded Chairman DiGiulian's amendments. She said she did not believe there was any nexus between the road improvements and the applicant's request.

Mr. Pammel said he would accept the amendments.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the BZA if they intended to waive the screening along the southern lot line as well. Chairman DiGiulian said "yes." Mr. Pammel amended his motion to also include the waiver of the dustless surface requirement.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-D-064 by SHILOH BAPTIST CHURCH, under Sections 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 property located at 1331 Spring Hill Road, Tax Map Reference 29-1((1))58, 58A, 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 April 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-1.
3. The area of the lot is 2.24 acres.
4. The structure has stood on the premises since 1928.
5. There are topographical considerations on the property.
6. It would impose a hardship on the church to require the structure to be adjusted to meet the setback requirements.
7. The property has several large trees and to relocate the entranceway would cause the removal of some of the trees.
8. The property is a historical site and is one of the few that has been left intact and it should stay the way it is now.

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, 8-915, and 8-903 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 Harold A. Logan and Assocs.), dated January 31, 1992 and revised March 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 by Harold A. Logan and Associates dated March 27, 1992. If a waiver of the site plan requirements is approved, the Director of the Department of Environmental Management (DEM) shall assure that the location of the entrance is approved by VDOT.

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5. The maximum number of seats in the main area of worship shall be two hundred sixty (260) with a corresponding minimum of sixty five (65) parking spaces as reflected on the Special Permit Plat. All parking for the church shall be on site.
6. Transitional Screening 1 (25) feet shall be waived along the northern, eastern, and southern lot lines.
7. Barrier B, a row of 6 foot trees, shall be modified to allow the provision of landscape plantings, a minimum of four (4) feet in height where possible, between the parking lot and Spring Hill Road along the western lot line to screen the view of the parking lot from Spring Hill Road. The variety of plantings shall be determined by the Director of DEM.
8. Interior parking lot and peripheral parking lot landscaping requirements according to Article 13-201 of the Zoning Ordinance shall be addressed at the time of site review.
9. Any future 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.
10. 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 Spring Hill Road to inhibit the transfer of gravel off-site.
  - o The dustless surface waiver shall be for a period as specified in the Zoning Ordinance.
11. Best Management Practices (BMP's) shall be provided, if determined necessary, by the Director of the Director, Department of Environmental Management (DEM).
12. Tree cover shall be provided as specified in Article 13 of the Zoning Ordinance. Final determination regarding compliance with these requirements shall be as determined by DEM at the time of site plan review.
13. All signs on the property shall conform to the provisions of Chapter 12. The existing church sign shall be removed to a location out of the area of right-of-way dedication, at the time of dedication.
14. The proposed addition shall consist of materials that are architecturally compatible with the existing structure.
15. The present entrance to the parking lot of Shiloh Baptist Church will continue to be at the south end of the property as presently is the case. The northern driveway, adjacent to the church, would be used for exit purposes only.

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 of the proposed addition to the existing church structure and the dustless surface parking spaces 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. 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 May 6, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 8:50 p.m. and reconvened at 9:08 p.m.

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Page 120, April 28, 1992, (Tape 1), Scheduled case of:

8:30 P.M. SOUTH RUN REGENCY, SPA 84-S-063-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 84-S-063 for community recreation center to allow building additions, loudspeakers, and floating aeration system or systems to be installed in adjacent pond, on approx. 9.78 acres, located at 9908 South Park Circle, zoned R-1, Springfield District, Tax Map 88-3((6))G.

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, Mike Shannon, replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. The subject property is located on the south side of Pond Point Drive, at its intersection with Lea Chapel Road in the South Run Regency subdivision, contains 9.78 acres, is zoned R-1 and is developed with an existing community swim and tennis facility which was approved as a special permit use in 1984. Surrounding lots are also zoned R-1 and are developed with single family detached dwellings to the west and south, South Run District Park to the east and a vacant lot to the north.

The applicant was requesting approval of an amendment to the existing special permit for a community recreation center to allow the construction of three building additions consisting of an open pavilion, an open slatted-roof sundeck and a storage structure, the addition of two loudspeakers to the existing bathhouse and the addition of a floating aeration system or systems to be installed on the adjacent stormwater management pond. There will be no new construction or alteration of the existing site and no changes to the hours of operation or any increase in the maximum number of 700 family memberships or the maximum number of 54 parking spaces.

Staff concluded that, with the implementation of the Proposed Development Conditions, the proposed additions and equipment would be in harmony with the recommendations of the Comprehensive Plan, and would satisfy all of the General Standards and the Standards for All Group 4 Uses. For these reasons, staff recommended the approval of SPA 83-S-063-1 subject to the adoption of the Proposed Development Conditions attached as Appendix 1. Ms. Dickey noted that these Development Conditions incorporate and supersede all applicable conditions of the previous special permit approval.

The applicant's agent, Michael J. Shannon, 7210 Laketree Drive, Fairfax Station, Virginia, President of the South Run Board of Trustees, addressed the BZA. He said initially the club would like to enhance the overall utility of the recreational center as well as the efficiency of the pond. Mr. Shannon said the storage shed will be used to store swim team equipment and lawn furniture and the two pavilions will provide a place for people to get in out of the sun. With regard to the loudspeakers, Mr. Shannon said the club would like to install seasonal speakers upon the southern wall of the bath house which would be taken down at the end of the season and between uses by the swim team. A floating aeration system will be installed in the pond which hopefully will improve the appearance of the pond. He agreed with and commented briefly on the development conditions.

Mr. Hammack discussed the loudspeakers with Mr. Shannon.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant the request for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated



10. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The use of loudspeakers shall be limited to the swim team for official meets only and shall be removed by the swim team representative when not in use during those five designated times. The maximum decibel level of the loudspeakers shall not exceed 55 dBA. The loudspeakers shall not be used for private parties or for other functions including evening functions.

Following a discussion among the BZA members, Mrs. Harris agreed that the loudspeakers were to be used only for swim meets.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 84-S-063-1 by SOUTH RUN REGENCY, under Section 3-103 of the Zoning Ordinance to amend SP 84-S-063 for community recreation center to allow building additions, loudspeakers, and floating aeration system or systems to be installed in adjacent pond, on property located at 9908 South Park Circle, Tax Map Reference 88-3((6))G, 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 April 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-1.
3. The area of the lot is 9.78 acres.
4. The building additions will be minimal and will conform with the architectural and building structures that are already on site and will not cause any visual harm to any of the surrounding areas.
5. The buffering that is included in the development conditions will adequately mitigate any visual impact.
6. The loudspeakers will only be used five times per year and will be monitored by the swim team representative and will be directed away from the surrounding houses in order to minimize impact on nearby residences.
7. The floating aeration system for the pond is a good idea and will keep down the algae that grows in the pond.

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 Amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat (prepared by Dewberry and Davis, dated January 15, 1992) and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permits 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 uses.
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 family memberships shall be limited to 700.
6. There shall be a minimum and maximum of fifty-four (54) parking spaces as shown on the special permit plat.

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7. The hours of operation shall be limited as follows:
  - o Tennis courts: 7:00 a.m. to 10:00 p.m.
  - o Swimming Pool: 8:00 a.m. to 9:00 a.m. for swim team activities and swimming lessons; 9:00 a.m. to 9:00 p.m. for general pool purposes.
  - o Multi-purpose Court: 9:00 a.m. to 9:00 p.m.
  - o Loudspeakers: 8:30 a.m. to 11:30 a.m. on a maximum of three (3) Saturdays, 6:00 p.m. to 9:00 p.m. on a maximum of two (2) Mondays; all for swim team meets only.
8. After-hours parties for the swimming pool shall be governed by the following:
  - o Limited to six (6 per season),
  - o Limited to Friday, Saturday and pre-holiday evenings,
  - o Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed,
  - o Shall not extend beyond 12:00 midnight,
  - o 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,
  - o 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 extended-hour party or for the first one at the beginning of a swim season, Requests shall be approved only if there are no pending violations of the conditions of the Special Permit, Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.
9. Lighting shall be in accordance with the following:
  - o The combined height of the light standards and fixtures for the tennis courts shall not exceed twenty (20) feet. There shall be an automatic shut off device installed which turns the lights off at 10:00 p.m.
  - o The lights shall be of a low-intensity design which directs the light directly onto the facility.
  - o Shields shall be installed, if necessary, to direct light away from neighboring lots and to prevent the light from projecting beyond the pool or tennis court area.
  - o The combined height of the light standards and fixtures for the pool and parking lot shall be twelve (12) feet.
10. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The use of loudspeakers shall be limited to the swim team for official meets only and shall be removed by the swim team representative when not in use during those five designated times. The maximum decibel level of the loudspeakers shall not exceed 55 dBA. The loudspeakers shall not be used for private parties or for other functions including evening functions.
11. Transitional Screening 1 shall be provided along all lot lines except along the eastern lot line abutting Lee Chapel Road and along the northern lot line abutting Pond Point Drive where the existing vegetation shall be maintained.
12. In order to provide visual relief from and to mitigate potential adverse impacts of the activities emanating from the additional structures to be located around the swimming pool, the existing screening along the southwestern lot line in common with abutting Lot 9 shall be supplemented with additional evergreen plantings, at least six (6.0) ft. in height, which are sufficient to provide a solid row of evergreen vegetation equivalent to Transitional Screening 1 to effectively screen the proposed structures from the adjacent dwellings. The quantity, type and location of the supplemental plantings shall be reviewed and approved by the Urban Forester and shall be installed within six (6) months of the approval of this special permit amendment.
13. The barrier requirement shall be waived provided the pool, tennis court and multi-purpose court are fenced.
14. The three (3) additional structures shall be architecturally compatible with the existing bathhouse, including building materials and colors, as determined by DEM.
15. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:

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- o All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.
- o If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

16. A sidewalk or trail shall be provided from South Park Circle to the bathhouse sidewalk.

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 legally established by obtaining a building permit, obtaining the necessary inspections and approvals, obtaining a Non-Residential Use Permit for the building additions and meeting all applicable conditions of this approval. 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. Pammel seconded the motion which carried by a vote of 5-0. 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 May 6, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 123, April 28, 1992, (Tape 1), Scheduled case of:

8:45 P.M. BAPTIST WOMEN'S CONVENTION OF NORTHERN VIRGINIA, INC., SP 92-Y-006, appl. under Sect. 3-303 of the Zoning Ordinance to allow group housekeeping unit on approx. 14,026 s.f., located 4124 Middle Ridge Dr., zoned R-3 (cluster), WS, Sully District, Tax Map 45-4((3))(29)1.

Chairman DiGiulian noted that the BEA had issued an intent to allow the withdrawal of SP 92-Y-006 at its April 23, 1992 meeting. Mr. Hammack made a motion to allow the withdrawal. Mrs. Thonen seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 123, April 28, 1992, (Tape 1), Action Item:

Out of Turn Hearing  
Richard and May Jo Myers, VC 92-B-037

Mrs. Thonen made a motion to deny the applicants' request. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 123, April 28, 1992, (Tape 1), Action Item:

Out of Turn Hearing  
Dennis D. Bilowus, SP 92-V-022

Mrs. Thonen made a motion to deny the applicants' request. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Additional Time  
Jeffrey and Paula Kaiser, VC 89-M-029

Mrs. Thonen made a motion to grant the applicants' request. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting. The new expiration date is May 1, 1993.

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Approval of Resolutions from April 23, 1992

Chairman DiGiulian said that the approval of the Resolution for Golf Park would be held until Mr. Kelley had an opportunity to review the development conditions since he was the maker of the motion.

Mr. Pammel stated that any reference to "dog" in VC 92-D-014 should be deleted and noted that the criteria for granting the variance had to do with topographical considerations and the fact that the fence was well within the right of way line of the property.

Mr. Hammack made a motion to approve the Resolutions as modified with the exception of Golf Park which would be deferred until Mr. Kelley could be present at the meeting. Mrs. Thonen seconded the motion which passed by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Deletion of the Board of Zoning Appeals  
Scheduled for September 8, 1992

Hearing no objection, Chairman DiGiulian deleted the September 8, 1992 public hearing.

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As there was no other business to come before the Board, the meeting was adjourned at 9:37 p.m.

Betsy S. Witt  
Betsy S. Witt, Clerk  
Board of Zoning Appeals

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

SUBMITTED: June 9, 1992

APPROVED: June 16, 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 May 5, 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 9:15 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 125, May 5, 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. DEFERRED FROM 1/7/92 AT APPLICANT'S REQUEST.)

Chairman DiGiulian stated that the Board of Zoning Appeals had received a request for deferral.

Mrs. Thonen made a motion to defer A 90-L-014. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 125, May 5, 1992, (Tape 1), Scheduled case of:

9:15 A.M. MICHAEL A. WILLEY, SP 92-S-008, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow structure to remain 14.9 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 21,781 s.f., located at 6033 Pocol Dr., zoned R-C, Springfield District, Tax Map 66-4((4))4.

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. Willey 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 approval of a special permit for a reduction to the minimum yard requirements, based on an error in building location, to allow a 24 foot by 24 foot two car garage currently under construction to remain 14.9 feet from the side lot line. Sect. 3-C07 of the Zoning Ordinance requires a minimum side yard of 20 feet; therefore, the applicant was requesting a modification of 5.1 feet to the minimum side yard requirement.

The applicant, Michael A. Willey, 6033 Pocol Drive, Clifton, Virginia, addressed the BZA. He stated that he had obtained a building permit on October 23, 1992, and had immediately commenced construction. He explained that on October 31, 1992, the County issued a "Stop Work Order" and revoked the current permit. Mr. Willey said that when he investigated the matter, he was informed that the County had mistakenly issued the permit. He explained that the proposed garage would be 14.9 feet from the side lot line, therefore, it would intrude into the 20 foot minimum yard requirement. Mr. Willey stated that he had the neighbors' support; there was no other site on the property on which to place the garage; the addition would be aesthetically pleasing; there would be no detrimental impact on the community; and asked the BZA to grant the request.

In response to questions from the BZA regarding constructing the garage elsewhere on the lot, Mr. Willey stated that the proposed location would be architecturally superior. He further stated that they bought the property so their future children would have a large backyard in which to play. Mr. Willey said that the footers had already been dug and the concrete already poured when he received the "Stop Work Order." He noted that the plat submitted when he obtained the Building Permit did reflect the 14.9 foot setback. Mr. Willey said that a new driveway would be installed and the existing driveway would be resodded.

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

Mrs. Thonen suggested that when building permits are requested, The Department of Environmental Management, (DEM) caution the applicant to check the setback requirements before commencement of construction.

Mr. Hammack made a motion to grant SP 92-S-008 for the reasons reflected in the Resolution subject to the modified development conditions 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 92-8-008, by MICHAEL A. WILLEY, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow structure to remain 14.9 feet from side lot line, on property located at 6033 Pocol Drive, Tax Map Reference 66-4((4))4, 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 May 5, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006 of 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 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 Terry Land Measurement, Inc. dated August 16, 1991) approved with this application, as qualified by these development conditions.
3. A Building Permit shall be obtained and final inspections shall be approved for the attached structure.
4. All outside lighting of the attached structure shall be directed away from the southern surrounding residential lot and shall be equipped with shields to mitigate the potential effects of glare onto surrounding lots.
5. The two car garage shall be architecturally compatible with the existing dwelling.
6. The existing gravel driveway shown on the plat submitted with the application shall be removed and revegetated. The new driveway shall be located to align with the entrance of the garage addition.

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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 permits 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 a building permit has been obtained and final inspections approved. The Board of Zoning Appeals may grant additional time to establish the use 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. Pammel seconded the motion which carried by a vote of 7-0.

Mr. Pammel made a motion to waive the eight-day waiting period. 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 May 5, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 127, May 5, 1992, (Tape 1), Scheduled case of:

9:30 A.M. MOBIL OIL CORPORATION & MERCHANTS, INC., VC 92-Y-020, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of building 4 ft. from rear lot line (20 ft. min. rear yard required by Sect. 4-807) on approx. 34,320 s.f., located at 13908 Lee Hwy., zoned C-8, SC, HC, WS, Sully District, Tax Map 54-4((1))pt. 50, pt. 51A, pt. 55.

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. Ms. Travesky replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to the minimum yard requirement to permit renovation of an existing service station to include six multi-pump dispensers, canopy, and a 912 square foot quick service food store. Ms. Dickey said the applicants were also requesting a variance to allow the construction of a new structure 4 feet from the rear lot line. She noted that the Zoning Ordinance requires a minimum rear yard of 20 feet; therefore, the applicants were requesting a variance of 16 feet from the minimum rear yard requirement.

Ms. Dickey stated that in regard to surrounding uses, a Merchant's tire facility was approved by special exception on adjacent Lots 50, 51A, and 53, located east of the proposed Braddock Road realignment, to construct a vehicle light service establishment. She noted that on February 10, 1992, the Board of Zoning Appeals approved VC 91-Y-127 to allow Merchants Inc. to construct the proposed structure 29 ft. from the front lot line that abuts proposed Braddock Road realigned.

The applicant's agent, Marie Travesky, with Travesky and Associates, Limited, 3900 Jermantown Road, #300, Fairfax, Virginia, addressed the BZA. She stated that the applicant would like to construct a new station on the site. Ms. Travesky explained that the applicants have worked with the Rocky Gorge Community and the citizens in the area to facilitate the Braddock Road realignment. She noted that the applicants' road dedication for the improvement had caused the need for the variance. Ms. Travesky said that the application had the support of the community and asked the BZA to grant the request. In conclusion, she noted that contrary to the statement in Paragraph 3 of Page 2 of the staff report dated April 28, 1992, there will be direct access from the subject lot to Lee Highway.

In response to Mrs. Harris' question as to the plans for the service road between the subject property and Lee Highway, Ms. Travesky stated that it would remain and be recorded as a public easement.

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

Mr. Pammel made a motion to grant VC 92-Y-020 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-020 by MOBIL OIL CORPORATION AND MERCHANTS, INC., under Section 18-401 of the Zoning Ordinance to allow construction of building 4.0 feet from rear

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lot line, on property located at 13908 Lee Highway, Tax Map Reference 54-4(1)pt. 50, pt. 51A, pt. 55, 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 May 5, 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 C-8, SC, BC, WS.
3. The area of the lot is 34,320 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. The irregularly shaped lot which resulted from the dedication of the right-of-way for public purposes has caused the need for the variance.
6. The adjacent property to the north and west is in a similar situation zoned C-8 for commercial uses.

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 structures shown on the plat (prepared by Dewberry and Davis, dated July 22, 1991 as revised through December 6, 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 construction has commenced and has 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 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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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 May 13, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 129, May 5, 1992, (Tape 1), Scheduled case of:

- 9:40 A.M. CLAUDE H. CREGER, SR. AND JACQUELINE T. CREGER, VC 92-B-021, appl. under Section 18-401 of the Zoning Ordinance to allow enclosure of structure 8.2 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,200 s.f., located at 7909 Hatteras La., zoned R-3, Braddock District, Tax Map 79-2((3))(25)18. (CONCURRENT WITH SP 92-B-007)
- 9:40 A.M. CLAUDE H. CREGER, SR. AND JACQUELINE T. CREGER, SP 92-B-007, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow structure to remain 8.1 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 11,200 s.f., located at 7909 Hatteras La., zoned R-3, Braddock District, Tax Map 79-2((3))(25)18. (CONCURRENT WITH VC 92-B-021)

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. Sanders replied that it was.

Robby Robinson, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. He stated that the applicants were requesting approval of a special permit to allow a reduction of the minimum side yard requirement based on an error in building location and to allow a roofed deck (open porch) to remain 8.1 feet from the side lot line on the eastern boundary of the property. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 3.9 feet was requested.

He explained that on December 20, 1990, the BZA denied a special permit request for a reduction of minimum yard requirements based on an error in building location. Mr. Robinson stated that on April 15, 1991, the Zoning Administrator issued a Notice of Violation which also cited the applicant for construction without a building permit. He noted that one of the structures in violation, a tree house, had been removed. Mr. Robinson said that on January 27, 1992, in the Circuit Court of Fairfax County, the Zoning Administrator requested an injunction requiring the removal of all structures in the minimum required side yard and all structures erected without a building permit. The Zoning Administrator further requested the Court to require the applicants to obtain building permits for all structures. He stated that on March 30, 1992, the court ordered that a mandatory injunction in favor of the Zoning Administrator should not be entered until the BZA acted on the pending special permit and variance applications.

Mr. Robinson said that the pending applications were for a reduction of the minimum side yard based on an error in building location and to allow a roofed deck, or open porch, to remain 8.1 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 3.9 feet was requested. He noted that the applicants were also requesting a variance to the minimum side yard requirement to allow the enclosure of a screened porch 8.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 3.8 feet was requested.

Mr. Robinson noted that the asphalt paving between the dwelling and the eastern side lot line would be removed and the resulting area would be planted with seven Schip Laurel trees. He stated that in order to mitigate the impact of the addition, staff recommended landscaping, screening, and grass or ground cover be provided in the area. In conclusion, Mr. Robinson said that it was staff's belief that the applications met the necessary standards for the granting of a special permit. He noted that with the implementation of the development conditions, staff recommended approval.

The applicants' attorney, H. Kendrick Sanders, 3905 Railroad Avenue, #200N, Fairfax Virginia, presented photographs which depicted the subject property as well as the neighboring property. He noted that the County Attorney, on behalf of the Zoning Administrator, had filed suit seeking a Court Order to require the applicants to remove the porch. He acknowledged that the Court had ordered that action be deferred until the BZA made a determination on the issues.

Mr. Sanders stated that the applicant merely wished to enclose a screened porch with glass. He noted that at the time of construction, a building permit had been issued for the screened porch and it had met the Zoning Ordinance requirements. Mr. Sanders explained that the applicants had previously been cited for violation because they had replaced the screening with glass. He stated that the glass had since been removed and had been replaced with the screens.

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He said that although the open deck had been constructed without a building permit, the applicant had since obtained one. Mr. Sanders said that the porch was both aesthetically and architecturally attractive and expressed his belief that it was an asset to the neighborhood.

Mr. Sanders stated that in an effort to mitigate the visual impact, the applicants would be willing to plant seven Laurel trees between the additions and the house. He explained that he had recommended that the driveway be removed but had been informed by the applicants that it would be a financial burden. Therefore, he made a proposal that only part of the driveway be removed. In conclusion, Mr. Sanders stated that the applicants' request would not have a detrimental impact on the community and asked the BZA to grant the requests.

In response to questions from the BZA regarding the addition, Mr. Sanders stated that the screened porch had been constructed under a previous Zoning Ordinance. He noted that at a later date, the applicant had extended the porch. Mr. Sanders explained that while the finished floor of the porch was less than 4 feet in height, the roof caused it to be a non-conforming use. He noted that although Schip Laurels were recommended by a private nursery, the applicant would be willing to abide by the County Forester's recommendations.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Eric James Berghold, an attorney with Miles and Stockbridge, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, addressed the BZA and presented pictures of the applicants' as well as the property of his client, Mr. Whalon. He noted that Mr. Whalon was in opposition to the request. Mr. Berghold said that the Zoning Ordinance should protect property owners and noted that the original structure had many unlawful additions. He expressed his belief that the application did not meet the necessary standard for the granting of a special permit and asked the BZA to deny the request.

In response to Mr. Pammel's question regarding the length of time that Mr. Whalon had lived on the property, Mr. Berghold stated it had been approximately 30 years. Mr. Berghold said that his client only become concerned when the expansions were constructed without a building permit and not in accordance with the Zoning Ordinance.

Donald C. Whalon, 7907 Hatteras Lane, Springfield, Virginia, addressed the BZA. He stated that the illegal structure presented both a financial and aesthetic detrimental impact on his property, and asked the BZA to deny the request. Mr. Whalon explained that when the roof was added to the porch, the air flow was changed.

In response to questions from the BZA regarding the roof, Mr. Whalon stated that the roof had been added to the structure in 1990. He explained that the problem stemmed from the fact that the original screened porch roof had been removed and a new roof was installed. Mr. Whalon said that although he had no problem with the applicant glassing in the original screened porch, he was very concerned with the extensions that were made without building permit and in violation of the Zoning Ordinance.

Chairman DiGiulian called Mr. Sanders to the podium for rebuttal.

Mr. Sanders stated the trees that had provided screening between the two properties had been removed because their needles had caused problems for the applicant. He expressed his belief that the additions caused no detrimental impact on Mr. Whalon and noted that the Zoning Ordinance did provide for the granting of variances and special permit. Mr. Sanders expressed his belief that the opposition was for personal reasons and there was no merit for the opposition of the application.

Mrs. Thonen made a motion to grant VC 92-B-021 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-021 by CLAUDE H. CREGER, SR. AND JACQUELINE T. CREGER, under Section 18-401 of the Zoning Ordinance to allow enclosure of structure 8.2 feet from side lot line, on property located at 7909 Hatteras Lane, Tax Map Reference 79-2(3)(25)18, 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 May 5, 1992; and

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

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1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,200 square feet.
4. The porch had been legally built under the Zoning Ordinance and the changes to that Zoning Ordinance have caused the need for the variance.
5. A Building Permit had been obtained and the porch was built in good faith.
6. An extraordinary situation exists when the Zoning Ordinance is changed and the older properties can no longer comply with the existing Zoning Ordinance.
7. The variance would provide relief of the extraordinary situation.
8. The hardship was not caused by the applicants.

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 addition shown on the plat prepared by Alexandria Surveys, Inc., dated September 10, 1990, as revised through January 16, 1992, and is not transferable to other land.
2. A Building Permit shall be obtained for the screened porch and to convert the screened porch to a glass-enclosed porch.

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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 13, 1992. This date shall be deemed to be the final approval date of this variance.

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Mrs. Thonen made a motion deny SP 92-B-007 for the reasons 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 92-B-007 by CLAUDE H. CREGER, SR. AND JACQUELINE T. CREGER, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow structure to remain 8.1 feet from side lot line, on property located at 7909 Hatteras Lane, Tax Map Reference 79-2((3))(25)18, 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 May 5, 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 11,200 square feet.
4. The construction of the open porch, as depicted on the plat, was not done in good faith.
5. A Building Permit had not been obtained for the construction of the open porch.
6. The granting of the special permit would create a detrimental impact on the neighbors.
7. The driveway too has been widen up to the property line which gives the impression of intrusion to the abutting properties.
8. Although the porch is attractive, it has had a detrimental impact on the neighbors and should not be permitted.

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 8-914 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 4-3 with Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, and Mr. Hammack voting aye; Mr. Kelley, Mr. Pammel and Mr. Ribble voting nay.

This decision was officially filed in the office of the Board of zoning Appeals and became final on May 13, 1992.

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The BZA recessed at 10:30 a.m. and reconvened at 10:40 a.m.

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Page 132, May 5, 1992, (Tape 2), Scheduled case of:

9:55 A.M. TOM V., KIMBERLY W., JOAN J., AND TOM V. III RICHARDSON, SPA 91-Y-035-1, appl. under Sects. 3-C03 and 8-915 of the Zoning Ordinance to amend SP 91-Y-035 for riding and boarding stable and waiver of dustless surface requirement to allow deletion of 5 year term and preclusion of horse shows, on approx. 40.00 acs., located at 6001 Bull Run Post Office Rd., zoned R-C, WS, Sully District, Tax Map 42-4((1))15V,2 (FORMERLY Tax Map 42-4((1))12). (OTH GRANTED BY THE BZA)

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. Richardson replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicants were requesting an amendment to the existing special permit which was granted in December of 1991. She noted that the applicants were requesting that the term of five years, which was previously placed on the use, be removed. She further noted that the applicant, in order to alleviate staff's concerns, had agreed not to conduct any horse shows at the facility. Ms. Greenlief said that staff had previously recommended the imposition of the five year term because of the uncertainty surrounding certain aspects of the horse shows such as the number of spectators which would affect the traffic generation to the site and the

parking. She explained that since that aspect of the use has been deleted, staff had no objection to a deletion of the five year term.

Ms. Greenleaf stated that the revised development conditions presented to the BZA were to correct two typing errors in the development conditions. She stated that with the implementation of the development conditions, staff recommended approval.

The applicant, Tom V. Richardson, 6001 Bull Run Post Office Road, Centreville, Virginia, addressed the BZA. He noted that there had been no opposition to the application and explained that staff had recommended the 5 year term because of concerns regarding the horse shows. He stated that because of the financial investments involved, he would like to eliminate the horse shows so that the 5 year term could be deleted from the application.

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

Mrs. Thonen suggested that the BZA authorize the Zoning Administrator to extend the 5 year term. After a brief discussion, Chairman DiGiulian asked Mr. Richardson to comment on the issue. Mr. Richardson stated that because of the \$750,000 in development cost, it would be impossible to find financial investors if the 5 year term were imposed on the use.

Mrs. Harris made a motion to grant SPA 91-Y-035-1 for the reasons reflected in the Resolution and subject to the revised development conditions dated May 5, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 91-Y-035-1 by TOM V., KIMBERLY W., JOAN J., AND TOM V. III RICHARDSON, under Sections 3-C03 and 8-915 of the Zoning Ordinance to amend SP 91-Y-035 for riding and boarding stable and waiver of dustless surface requirement to delete five (5) year term and preclude horse shows on property located at 6001 Bull Run Post Office Road, Tax Map Reference 42-4((1))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 May 5, 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-C and WS.
3. The area of the lot is 40.00 acres.
4. The BZA imposed a 5 year term on the original special permit because of the concerns regarding the horse shows' impact on traffic and neighboring properties. The applicant deleted the horse shows; therefore, the 5 year term can also be deleted.
5. The horse stable is a good use in the area.
6. Should the applicant request an amendment to the special permit which would include horse shows, the BZA should seriously consider readopting a term on the special permit.
7. The application meets 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 8-603 and 8-609 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.

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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 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.
7. There shall be a maximum of 5 students 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. Wire 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 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

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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. 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.
23. There shall be no horse shows conducted on 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 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.

Mrs. Thonen and 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 May 13, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 136, May 5, 1992, (Tape 2), Scheduled case of:

10:10 A.M. SUZANNE AND JAMES MARSHALL, GAIL AND CHARLES DAVENPORT, VCA 87-D-087-1, appl. under Sect. 18-401 of the Zoning Ordinance to amend VC 87-D-087 to allow corner Lot 1 to have lot width of 50.61 ft. (105 ft. min. lot width required by Sect. 3-306), to allow existing dwelling to remain 17.4 ft. from front lot line on Lot 1 (30 ft. min front yard required by Sect. 3-307), and to allow 4 ft. high deck on Lot 1 to be located 1.7 ft. from side lot line 1 (7 ft. side yard required by Sects. 3-307 and 2-412) on approx. 27,295 s.f., located at 6520 & 6522 Old Chesterbrook Rd., zoned R-3, R-4, Dranesville District, Tax Map 30-4((1)63A, 63B. (OTH GRANTED 3/17/92)

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. Davenport replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicants were requesting an amendment to VC 87-D-087 which allowed the property to be subdivided with Lot 63A having a width of approximately 60 feet and allowed existing dwelling on Lot 63A to be located at a distance 20 feet from the front lot line formed by the street line of Old Chesterbrook Road. Subsequent to the approval of VC 87-D-087, it was determined that the plat used for the purpose of the application had been surveyed incorrectly. Mr. Riegler stated that as a result, the amount of variance granted by the BZA does not correspond to the actual width and configuration of Lots 63A and 63B and was not sufficient to allow the existing dwelling on Lot 63A to remain in its current location. Accordingly, the subject application had been filed to correct the mistake.

He noted that the lot was 50.61 feet wide and there is a distance 17.4 feet from the dwelling to the front lot line formed by Old Chesterbrook Road. Mr. Riegler stated a minimum lot width of 105 feet was required; therefore, a variance of 54.39 feet was requested. He said that in addition, the applicants were requesting approval of a variance to allow the existing dwelling on Lot 63A (proposed Lot 1) to remain at a location 17.4 feet from the front lot line formed by the street line of Old Chesterbrook Road. He noted that a minimum front yard of 30 feet was required; therefore, a variance of 12.6 feet was requested.

Mr. Riegler said that there was a companion variance request to allow the existing deck attached to the dwelling on Lot 63A (proposed Lot 1) to remain at a location 1.7 feet from the side lot line. He noted that although a minimum side yard of 12 feet was required, a deck is permitted to extend an additional 5 feet from the side lot line; therefore, a variance of 5.3 feet was requested. He further noted that the abutting property to the north is owned by the applicants. He explained that the land was conveyed to the applicants following a vacation of right-of-way along the northern lot line; however, the land has not been incorporated into Lot 63A, and therefore cannot be used to fulfill the minimum yard requirement for the deck. Mr. Riegler stated that applicant was in the process of incorporating the lots and has submitted a subdivision plan to the Department of Environmental Management.

In response to Mrs. Harris' question as to the identity of the person who conducted the original survey, Mr. Riegler stated it was James Smith, a certified surveyor.

One of the applicants, Charles Davenport, 1500 Twisting Tree Lane, McLean, Virginia, addressed the BZA. He explained that he owned Lot 63B, one of the two lots which were involved in the request. Mr. Davenport stated that in 1987, a single lot which was subdivided in two lots was incorrectly surveyed. He said that the approval of the variance would allow the applicants to file a corrected map which would show the accurate length of the boundary line. He expressed his belief that the granting of the request would eliminate an undue hardship, would not be detrimental to the area, and would allow the recordation of a corrected deed.

The co-applicant, Suzanne Marshall, 6520 Old Chesterbrook Road, McLean, Virginia, addressed the BZA. She stated that they would like to correct the record as to the actual dimensions of the property. Ms. Marshall stated that it was not until they attempted to refinance the property that it was discovered that the original surveyor had made a substantial error in the survey. She explained the long and tedious process they had undertaken to correct the mistake and said that without the variances, they would not be able to receive the needed financing of the property and asked the BZA to grant the request.



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

Mr. Kelley made a motion to grant VCA 87-D-087-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Amendment Application VCA 87-D-087-1 by SUZANNE AND JAMES MARSHALL, GAIL AND CHARLES DAVENPORT, under Section 18-401 of the Zoning Ordinance to amend VC 87-D-087 to allow corner Lot 1 to have lot width of 50.61 feet and to allow existing dwelling to remain 17.4 feet from front lot line on Lot 1 and to allow 4 foot high deck on Lot 1 to be located 1.7 feet from side lot line 1, on property located at 6520 and 6522 Old Chesterbrook Road, Tax Map Reference 30-4(1)63A, 63B, 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 May 5, 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 and R-4.
3. The area of the lot is 27,295 square feet.
4. The application meets the standards necessary for the granting of variance.
5. The variance would correct the surveyor's error and remove the cloud on the title to the property.
6. The granting of the variance would not be detrimental to the community.
7. Although the applicant plans to purchase Outlot A, additional land would not solve the cloud on the title of the property, or the financial concerns absent 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.

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

1. This variance is approved to permit: lot width of 50.61 feet for Lot 1; to correct lot sizes for previous subdivision of Lots 1 and 2; to correct boundary measurements for Lots 1 and 2; for the location of the existing dwelling 17.4 feet from the front lot line formed by the street line of Old Chesterbrook Road; and for the location of the existing deck on Lot 1 at a location 1.7 feet from the side lot line as shown on the plat approved with this application (prepared by Alexandria Surveys, dated March 9, 1992).

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 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 May 13, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 138, May 5, 1992, (Tape 2), Scheduled case of:

10:20 A.M. RAVENSWORTH BAPTIST CHURCH/NVCC, SP 92-B-009, appl. under Sect. 3-303 of the Zoning Ordinance to allow church and related facilities and child care center, on approx. 4.5425 acs., located at 5100 Ravensworth Rd., zoned R-3, Braddock District, Tax Map 70-4((6))A.

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. Murphy replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the existing church contains 205 seats, has a child care center with a maximum daily enrollment of 30 students and a mothers-day out program with a maximum enrollment of 60 children. He noted that if approved, the variance would bring the church under special permit.

Mr. Riegle said that the applicant was proposing to construct two building additions to the existing structures. He stated that the seating capacity of the church or the number of parking spaces would not change. He noted that the applicant was also requesting that the requirements for transitional screening be modified to allow the existing vegetation, with supplementation, to fulfill the applicable requirements. Mr. Riegle stated that the applicant was also requesting that the barrier requirement be waived.

He explained that in an attempt to mitigate the traffic concerns, staff had recommended that the primary point of entrance be from Bristol Drive. Mr. Riegle stated that with the implementation of the development conditions, staff recommended approval.

Frank Murphy, 12142 Brantleigh Place, Fairfax, Station, Virginia, addressed the BZA. He stated that the applicant would like to retain the entrance on Braddock Road. Mr. Murphy explained that in 1974, the church was required to provide a deceleration lane on Braddock Road and to double the size of the entrance. He said that although an additional 25 feet on Braddock was dedicated, the site plan required a sidewalk be installed along the curb. He noted that if the dedication was enacted, then a sidewalk would have to be built within a right of way that was no longer part of the applicant's property.

In response to questions from the BZA, Mr. Riegle explained that although no plans or funding were available for the widening of the road, the right-of-way dedication reflected the recommendations of the Comprehensive Plan.

In response to questions from the BZA, Mr. Murphy explained the improvement that were proposed. He noted that the additions would provide handicap facilities, cover during inclement weather, and would improve the aesthetic value of the property.

The BZA discussed the traffic concerns and the dedication requirements with regards to the application.

Chairman DiGiulian called for speakers in support of the application and the following citizen came forward.

Mary Fernan, Vice President of the Ravenworth/Bristol Civic Association addressed the BZA. She stated that the Association had voted to support the request. Ms. Fernan explained that due to traffic problems, access to the driveway was essential to the neighbors and asked the BZA not to block the entrance.

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 SP 92-B-009 for the reasons reflected in the Resolution and subject to the development conditions with the modifications 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 92-B-009 by RAVENSWORTH BAPTIST CHURCH/NVCC, under Section 3-303 of the Zoning Ordinance to allow church and related facilities and child care center, on property located at 5100 Ravenworth Road, Tax Map Reference 70-4((6))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 May 5, 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 4.5425 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 Special Permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat prepared by The Engineering Groupe Inc. dated August 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 The Engineering Groupe Inc. dated August 1991, and these development conditions. The BZA has no objection to the granting of a site plan waiver.
5. The maximum number of seats in the main area of worship shall be 225 with a corresponding minimum of 56 parking spaces. All parking shall be on site.
6. The maximum daily enrollment for the child care center shall be 30 with a corresponding minimum of 6 parking spaces. All parking shall be on site. The maximum daily enrollment for the mother's day out program shall be 60.
7. 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 is preserved and is supplemented with an evergreen hedge four (4) feet in height along the western boundary of the parking area. Species of plants used to fulfill this requirement shall be as determined by the Urban Forestry Branch, DEM.

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8. The Barrier requirement shall be waived.
9. Right-of-way dedication to 45 feet from the existing centerline of Ravensworth Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple as such time as Ravensworth Road is an approved and funded project by the Virginia Department of Transportation (VDOT).
10. The proposed concrete sidewalk will not be a condition of the special use permit granted by the BZA.

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 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 May 13, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 140, May 5, 1992, (Tape 2), Scheduled case of:

10:35 A.M. 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 79-3((4))114. (DEP. FROM 11/12/91, 1/28/92, AND 4/2/92 AT APPLICANT'S REQUEST)

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. Nunes replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that the applicant was requesting the modification to the limitation on the keeping of animals in order to keep her three dogs. Mr. Riegler stated that a minimum lot size of 12,500 square feet is required by the Zoning Ordinance. He noted that the applicant's property consisted of 10,500 square feet; therefore, there is a deficit of 2,000 square feet. Mr. Riegler said that included in the development conditions were requirements for the maintenance of the yard and for keeping the animals indoor during the late evening and early morning hours. He stated that staff recommended approval of the application subject to the development conditions contained in the staff report.

The applicant's attorney, Morris A. Nunes, 7247 Lee Highway, Falls Church, Virginia, addressed the BZA. Mr. Nunes stated that when the applicant acquired the third dog, she did not realize that it was not in keeping with the Zoning Ordinance. He referred to the letter dated January 21, 1991, from John Klimavicz, a veterinarian with Kings Park Animal Hospital, and noted that the family dogs are not vicious and are well cared for.

Mr. Nunes stated that the applicant would acquiesce to all the development conditions including the one stipulating that upon the demise of any of the dogs, that dog would not be replaced. He noted that the life expectancy for the female dog was less than two years. In conclusion, Mr. Nunes explained that the dogs posed no detrimental impact to the neighbors and asked the BZA to approve the request.

In response to Mrs. Harris' question regarding the development condition which did not specify the hours of containment, Mr. Riegler stated that the condition was included in order to prevent potential impact from the dogs in the late evening or early morning hours. Mrs. Harris suggested that the development condition be worded, "The dog shall be housed in the house overnight."

Chairman DiGiulian called for speakers in support and the following citizen came forward.

James Collins, 8460 Thames Street, Virginia, addressed the BZA. He stated that although he was in support of the application, he would like an additional development condition

requiring a 7 foot high wall or fence be installed. He explained that due to the aggressive nature of the dogs, he believed that a wall or fence would provide security for his children when they play in the backyard which abuts the applicant's property.

In response to questions from the BEA, Mr. Collins stated that he had lived on the property since October 1989. He stated that although the dogs do not jump the existing 4 foot chain length fence, a 7 foot fence would provide additional security. Mr. Collins said that although there was screening, he believed that additional plantings should be installed.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian called Mr. Nunes to the podium for rebuttal.

Mr. Nunes stated that the applicant would like to mitigate any detrimental impact to the neighbors; therefore, would agree to plant additional vegetative screening.

Mr. Hammack made a motion to grant SP 91-B-045 as reflected in the Resolution and subject to the development conditions dated November 7, 1992, with the modifications 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-B-045 by RITA FINPROCK, under Section 8-917 of the Zoning Ordinance to allow 3 dogs, on property located at 8436 Thames Street, Tax Map Reference 70-3((4))114, 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 May 5, 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 10,500 square feet.
4. The application meets the standards necessary for the granting of a special permit.
5. There has been no testimony given to indicate that the dogs are vicious or propose a threat to anyone.
6. The abutting neighbor can provide privacy by screening the area or installing a fence.
7. The special permit may be for a short duration as one of the dogs is not well and will not be replaced.
8. The property owner could keep two dogs of any size as a matter of right.
9. The impact on the abutting neighbor is not substantial enough to require a fence.

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 8-917 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 to other land.
2. A copy of this special permit shall be made available to all departments of the County during working hours.
3. The yard shall be kept free of animal debris. The yard used to exercise the dogs shall be cleaned on a daily basis.
4. This approval shall be for the applicant's existing three dogs. If any of these specific animals die or are sold or given away, the number of dogs kept on the property shall not exceed two (2) as permitted by Sect. 2-515 of the Zoning Ordinance.
5. The three (3) dogs shall be housed in the applicant's home overnight.

This approval contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards.

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Mr. Kelley 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 May 13, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 142, May 5, 1992, (Tape 2), Action Item:

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. DEFERRED FROM 1/7/92 AT APPLICANT'S REQUEST.)

Chairman DiGiulian stated that the BZA should set a date and time certain for the appeal that had been deferred earlier in the meeting.

Mrs. Thonen made a motion to defer A 90-L-014 for to June 23, 1992, at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 142, May 5, 1992, (Tape 2), Action Item:

Approval of Resolutions from April 28, 1992 Hearing

Chairman DiGiulian noted that South Run Regency, SPA 84-S-063-1, had requested a reconsideration.

Mr. Hammack stated that he had some changes to the finding of fact on the Resolution for SPA 84-S-063-1. He noted that he would also like to clarify the loudspeaker issue.

After a brief discussion, it was the consensus of the BZA to hold-over to the end of the meeting the Resolution for SPA 84-S-063-1.

Mrs. Harris made a motion to approve the Resolutions with the exception of SPA 84-S-063-1. Mrs. Thonen seconded the motion which carried by a vote 6-0 with Mr. Ribble not present for the vote.

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Page 142, May 5, 1992, (Tape 2), Action Item:

Approval of Minutes from February 4, and February 11, 1992 Hearings

Mr. Pammel stated that he had a correction on the February 4, 1992 minutes. He noted that on Page 3, next to the last paragraph, the second line, the word "before" should be added after the word "week".

Mr. Pammel made a motion to approve the Minutes for February 4, 1992, with the correction as stated above. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Mr. Pammel made a motion to approve the Minutes of February 11, 1992, as submitted. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 142, May 5, 1992, (Tape 2), Action Item:

Request for Intent to Defer  
Virginia Run Community Association, SPA 87-S-045  
Scheduled for May 26, 1992

Mr. Pammel made a motion to issue an intent-to defer indefinitely the above-referenced application. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Request for Additional Time  
La Petite Academy, SP 89-V-042  
8008 Redman Street/8803 Hoos 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 6-0 with Mr. Ribble not present for the vote. The new expiration will be November 24, 1992.

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Page 143, May 5, 1992, (Tape 2), Action Item:

Out-of-Turn Hearing  
Date and Time for Appeal  
Centreville Partnership

Mrs. Thonen made a motion to deny the out of turn hearing and to schedule the appeal for July 14, 1992 at 10:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 143, May 5, 1992, (Tape 2), Action Item:

Request for Out-of-Turn Hearing  
McLean Bible Church, SPA 73-D-151-3

Marilyn Anderson, Staff Coordinator stated that the case was scheduled to be heard on June 23, 1992. She noted that the scheduled date was two week earlier than normal.

Mrs. Thonen made a motion to deny the request. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 143, May 5, 1992, (Tape 2), Action Item:

Request for Out-of-Turn Hearing  
David C. Buckis, SP 92-Y-023

Mrs. Thonen made a motion to deny the request. Mrs. Harris seconded the motion.

Marilyn Anderson, Staff Coordinator, stated that the case was scheduled to be heard on July 14, 1992. She noted that, due to the complexity of the application, staff recommended denial.

The applicant's attorney, Lisa Harris Dean with the law firm of Vernier, Lipfert, Bernhard, McPherson, and Hand, 8280 Greensboro Drive, Sixth Floor, McLean, Virginia, addressed the BZA. She stated that the applicant was under a Court Consent Decree with Fairfax County for the purpose of completing all the work related to the special permit application prior to October 1, 1992.

In response to questions from the BZA, Ms. Dean stated that the application was not processed because the applicant had requested a fee waiver. She explained that the fee waiver and an out-of turn hearing was requested at the time the application was filed. She noted that the fee waiver was not granted and the application was not processed until the fee was paid.

Mr. Kelley made a substitute motion to grant the request and hear the application on July 7, 1992. Mr. Pammel seconded the motion which 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 143, May 5, 1992, (Tape 2), Action Item:

Request for Intent to Defer  
Tyson Briar  
Scheduled for May 12, 1992

Mrs. Harris made a motion to issue an intent to defer. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 143, May 5, 1992, (Tape 2), Action Item:

Virginia Freedom of Information Act

Mr. Hammack stated that he had received a letter from Mr. Wilson, 1538 Crowell Road, Vienna, Virginia. He stated that Mr. Wilson had written to staff requesting certain information, regarding Golf Park, Inc., under the Virginia Freedom of Information Act.

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Mr. Hammack said that Mr. Wilson has not had a formal response because there has been disagreement between Mr. Zook and the County Attorney's Office as to which party should respond to the request.

Chairman DiGiulian noted that Jane C. Kelsey, Chief, Special Permit and Variance Branch, had replied, by letter, to Mr. Wilson's request. Mr. Hammack stated that he had seen the letter and believed that it did not fully comply with the provisions of the statute.

Mr. Hammack made a motion to request that James P. Zook, Director, Office of Comprehensive Planning, and the appropriate representative from the County Attorney's Office meet to determine who will be responsible for responding to requests received by the Board of Zoning Appeal under the Virginia Freedom of Information Act. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 144, May 5, 1992, (Tape 2), Action Item:

Approval of Resolution from April 28, 1992 Hearing

Chairman DiGiulian noted that South Run Regency, SPA 84-S-063-1 had requested a reconsideration.

Mr. Hammack stated that the request was for the reconsideration of the use for loudspeaker.

Mr. Hammack stated that he had some change to the finding of fact on the Resolution for SPA 84-S-063-1 should read as follows:

7. To minimize the impact on nearby residence, the sound impact would be less intense than it is now with the present amplification system.
8. The floating aeration system for the pond is a good idea and will keep down the algae that grows in the pond.

Mr. Hammack stated that he believed that the temporarily mounted speakers would be hard to control. He expressed his belief that loudspeakers should not be use at night or at after hour parties.

After a brief discussion, it was the consensus of the BZA that the loudspeaker be used for swim meets only.

Mr. Hammack stated that he had rewritten Condition 10 to read:

10. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The use of loudspeakers shall be limited to the swim team for official meets only and shall be removed by the swim team representative when not in use during those five designated times. The maximum decibel level of the loudspeakers shall not exceed 55 dBA. The loudspeakers shall not be used for private parties or for other functions including evening functions.

Mr. Hammack made a motion to deny the request for reconsideration. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

Mrs. Harris stated that she wanted to clarify the loudspeaker issue.

Mr. Hammack made a motion that the swim team would only be permitted to use an amplification system at five swim meets. Mrs. Thonen 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 12:14 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: July 21, 1992

APPROVED: July 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 May 12, 1992. 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 9:15 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 145, May 12, 1992, (Tape 1), Scheduled case of:

9:00 A.M. DUNG THI YOUNG, SP 92-L-004, appl. under Sect. 4-603 of the Zoning Ordinance to allow a billiard hall, on approx. 2,464 s.f. of 11.80 acres, located at 7064 Spring Garden Dr., zoned C-6, Lee District, Tax Map 90-2(1)17; 90-2(2)1. (DEF. FROM 4/14/92 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. Thomas replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report stating that, central to the analysis, is the fact that the property could be developed by right with other commercial uses of comparable intensity. Accordingly, as a component of a larger shopping center, staff believed that there are no land use, environmental, or transportation impacts by the proposed application. Mr. Riegler said that the application had met all the applicable standards for approval and staff recommended approval, subject to the implementation of the Proposed Development Conditions contained in the staff report.

Mrs. Harris asked if the hours of operation of this use corresponded with the hours of operation of the other uses in the shopping center. Mr. Riegler said that he was not certain; the week day hours would be from 11:00 a.m. to 11:00 p.m., with extended hours on week ends. He said he knew that there were restaurants and other uses that conceivably have evening hours, along with the typical retail uses one would see in shopping centers. Mr. Riegler deferred to Mr. Thomas.

William C. Thomas, with the law firm of Fagelson, Schonberger, Payne & Deichmeister, 1733 King Street #300, Alexandria, Virginia, represented the applicant, stating that he could not state unequivocally what the hours of the other businesses were, but at least a couple of the restaurants are open the maximum hours allowed by the Town, by State law, and by the Alcohol Beverage Control Board (ABC), which is 2:00 a.m.

Mr. Thomas presented the statement of justification, stating that what had been proposed was a smaller use with seven tables and no alcohol. He spoke of the change in the image of the billiard parlor from the old smoke filled pool halls of the 50's and 60's to what he called a "yuppy" pastime, and frequently found on colleges campuses. Mr. Thomas said that the applicant had met with the Springdale Civic Association, which had responded by letter, stating that they had no objection to the application; he said they had met with the Springfield Green Condominium Association, immediately adjacent to the property, off Spring Garden Drive and, while some members were skeptical as to whether the applicant could succeed with a billiard parlor of that size, without alcohol, they did not object. Mr. Thomas said that there would be a coffee shop associated with the use.

Mrs. Harris asked Mr. Thomas if he had reviewed the Development Conditions and if he had any problems with them. He said that he had reviewed them and did not have any problem with them.

Mr. Kelley asked if there would be any other revenue enhancing activities, such as a pinball machines, video games, etc. Mr. Thomas said that the applicant had not made any requests for video games or pinball machines and he did not believe there was a potential for them. He said it was possible that a video game might be added at some future time.

Mr. Kelley asked Mr. Thomas under what conditions, if any, alcohol could be added. Mr. Thomas said he represented that there is no alcohol associated with the use at this time and the civic associations did not seem to be overly concerned over whether or not alcohol would be included in the use. He said that the civic associations were concerned about whether the noise would be contained.

Mr. Riegler said that the applicant could bring alcohol into the facility without coming back before the BZA, unless the BZA conditioned the use by stating that there could be no alcohol served or that the applicant had to come back before the BZA if it was proposed to be served. If there was no condition added, the applicant would simply have to comply with the ABC procedures. Mr. Kelley said that he would not add that kind of a condition but that he just wanted it on the record. Mr. Thomas said the coffee shop would not meet ABC standards as far as required combinations of food and alcohol to meet the percentages.

Mrs. Harris said that, if this was presented to the citizens as not serving alcohol and then did serve alcohol, it concerned her that they would not have any input into the action. Mr. Thomas said that the way it was presented to the civic associations was that alcohol would not be precluded in the future. He said that the Springdale group asked that, if the applicant modified the use, they would be allowed to review the proposed modification(s). Mr. Kelley said it was his understanding that there were two types of licenses: one that

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included all alcoholic beverages and one that included only beer and wine. It was also his belief that the applicants attended hearings to obtain licenses which had to be posted, much like the BZA requirement. Mr. Thomas confirmed that was a fact. Mrs. Harris asked if it was required that the applicant notify citizens groups of such action and he said not normally, but that he would be happy to do so.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel noted that there was a letter of opposition in the Board's package and he asked that it be included in the record.

Mr. Hammack made a motion to grant SP 92-L-004 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 9, 1992, with one change: On Condition 5, he changed it to read that the hours of operation shall not exceed 11:00 a.m. to 11:00 p.m. Sunday night through Thursday night and 11:00 a.m. to 1:00 a.m. on Friday and Saturday nights.

Mrs. Harris said that she would feel more comfortable if he added another condition, even though she understood what Mr. Kelley said about them being compelled to have a hearing regarding any alcohol or beverage change. She asked if it might be good to say something about the presence of a small coffee shop serving sandwiches, coffee and soda item, on site, to serve the patrons. She said that she was concerned that one thing was being represented to the public with the intention of doing something else; if and when they decided to put alcoholic beverages in, she wanted to be sure that the citizens were contacted in the surrounding area and have an opportunity to comment.

Mr. Hammack said that what Mrs. Harris alluded to was more a finding of fact than a Development Condition.

Mr. Kelley said that he was in sympathy with Mrs. Harris' intent toward the citizens and he believed the applicant was on record with testimony that they would notify the citizens associations if they did intend to expand the use.

Chairman DiGiulian said that he did not understand what kind of input or influence the citizens might have with the ABC Board. He said that he was very familiar with the shopping center and that the roadway going through the center from Backlick Road to the west goes into an apartment project and has residences all the way around. Chairman DiGiulian said that there have been a number of problems in the shopping center which might have been attributed to alcoholic beverages. He said he would like to see a condition saying that, if they wanted to serve alcoholic beverages, they would need to come back before the BZA. Mr. Pammel said that he would second that motion. Mr. Hammack asked if it was too broad to say that no intensification of the use would be allowed without further appearance before the Board. Chairman DiGiulian said that he would like to specify alcoholic beverages. Mr. Hammack suggested that the condition state that no sale or consumption of alcoholic beverages shall be permitted on site without approval of the BZA. Mrs. Harris seconded that motion, which carried by a vote of 6-0. Mrs. Thonen 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 Application SP 92-L-004 by DUNG THI YOUNG, under Section 4-604 of the Zoning Ordinance to allow a billiard hall, on property located at 7064 Spring Garden Dr., Tax Map Reference 90-2((1))17; 90-2((2))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 May 12, 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 approximately 11.80 acres.
4. The area subject to the special permit is approximately 2.464 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 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 Runyon and Associates and dated March 7, 1977, revised through June 16, 1977 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 hours of operation shall not exceed 11:00 a.m. to 11:00 p.m. on Sunday night through Thursday night, and 11:00 a.m. to 1:00 a.m. on Friday and Saturday nights.
6. A minimum of 14 parking spaces shall be allocated for this use. All parking shall be on site. At the time of site plan review, a parking tabulation shall be submitted to and approved by DEM which shows that the required parking for all uses can be provided in the shopping center or this special permit shall be null and void.
7. No sale or consumption of alcoholic beverages shall be permitted on site without approval of 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.

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. 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 May 20, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 147, May 12, 1992, (Tape 1), Scheduled case of:

9:15 A.M. TYSONS-BRIAR, INC., SPA 82-C-025-2, appl. under 3-103 of the Zoning Ordinance to amend SP 82-C-025 for community swim and tennis club to allow lighting of two existing tennis courts, construction of walkway decks, and additions, and reduction in land area, on approx. 6.696 acres, located at 9117 Westerholme Way, zoned R-1, Centreville District, Tax Map 28-4((1))45A, 47. (DEF. FROM 4/14/92 FOR ADDITIONAL INFORMATION).

Chairman DiGiulian advised that the Board of Zoning Appeals (BZA) has issued an Intent to Defer the previous week, until July 7, 1992. Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that the applicant had sent a subsequent letter requesting June 23, 1992, at 9:30 a.m., and that staff concurred. Mrs. Harris so moved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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9:30 A.M. PULTE APPEAL, A 89-D-017, (Appeal of determination by the Director of Environmental Management disapproving a preliminary plat with the notation that a special exception is required pursuant to Part 9 of Article 2, Floodplain Regulations), this hearing is to consider matters that were remanded to the Board of Zoning Appeals, including evidence and argument of the parties, pursuant to a Decree of the 19th Judicial Circuit Court of Virginia in the case of Birmingham, et al. v. Fairfax County Board of Zoning Appeals, et al., In Chancery No. 115934, entered December 20, 1991. This Decree can be reviewed at 4050 Legato Road, Fairfax, Virginia, between 8:00 a.m. and 4:30 p.m., Monday through Friday, 246-1280. (BZA DEF. FROM 3/31/92. DEF. FROM 4/23/92 FOR BZA TO REVIEW ADDITIONAL INFORMATION)

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that the attorney for the County was present, but the attorneys for the Board of Zoning Appeals (BZA) and the appellant were not present. Chairman DiGiulian advised that he had received a great deal of material within the past two weeks, after the deadline for submission of material. For that reason, Chairman DiGiulian said that he would like to see the hearing deferred. Mr. Ribble moved to defer the hearing. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

Mrs. Harris said that, just so that the appeal would not be deferred again, the final papers had been received from the appellant and from the County, followed by another paper from the appellant. She said she was wondering if she would be receiving any more material from the County.

Randy Greshan, Assistant County Attorney, advised that he had filed on time and would like the BZA to disregard the appellant's filing after the deadline.

Ms. Kelsey said that staff had believed the BZA wanted the material one week prior to the meeting and had included the County Attorney's material in the BZA package; whereas the appellant had sent material directly to the BZA members instead of sending it through staff to include in the package.

A discussion ensued regarding the date on which the case would be heard. It was decided that the appeal would be heard on June 16, 1992, at 8:00 p.m., as moved by Mr. Ribble, seconded by Mr. Hammack, and carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Request for Reconsideration  
Mr. and Mrs. Claude Creger, SP 92-B-007

The Board of Zoning Appeals (BZA) discussed whether to reconsider the Creger's request for a special permit to allow an existing open porch to remain. The BZA noted that it had allowed an enclosed structure, but had denied an open porch (deck with a roof). Robby Robinson, Staff Coordinator, said that to be in conformance, the applicant would only need to take down that portion of the roof over the open porch. Mr. Kelley said that having to remove the roof was punitive. Chairman DiGiulian said that the BZA had made a decision based upon the information they had and should let it stand.

The subject of the applicant's not having obtained a building permit was discussed, with Mr. Hammack noting that he found that difficult to accept because, admittedly, the builder had been living with the applicants at the time. Whether or not the builder should be brought in was also a subject of discussion.

After a lengthy discussion concerning the merits of the Board's previous actions, Mr. Hammack made a motion to reconsider SP 92-B-007. Mr. Kelley seconded the motion. Mrs. Harris stated that she would not support the motion because there was no new evidence presented and the issues had been thoroughly discussed and reviewed at the time of the hearing. She said that the Board addressed the findings of fact and those facts were adequately represented by a competent attorney.

The motion to reconsider failed by a vote of 3 to 3 with Messrs. Hammack, Kelley and Pammel voting aye; Chairman DiGiulian, Mrs. Harris, and Mr. Ribble voting nay; Mrs. Thonen was absent from the meeting.

It was noted that the Board was in receipt of a letter from Mr. Whalon concerning this request.

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Approval of Resolutions from May 5, 1992

Mr. Kelley so moved. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Request for Out-of-Turn Hearing  
Mr. and Mrs. Kent L. Goering, VC 92-M-040

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that this application was accepted April 28 and was currently scheduled for July 7, because staff was attempting to fit in as many variances as possible before the summer recess, since they did not need to be staffed; so the variance had already been scheduled three weeks earlier than normal.

Mrs. Harris noted that the applicants were requesting the variance to replace an existing roof and questioned the need for a variance. It was noted that the roof was leaking. Ms. Kelsey could not answer the questions asked by the BZA because there had been insufficient time to review such a new application.

After a review of the agendas, it was decided that the schedule was entirely too full to allow the case to be heard any earlier than the date it already was scheduled for.

Mrs. Harris made a motion to deny the request and hear the case on July 7, 1992. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Request for Additional Time  
Accotink Unitarian Universalist Church, SP 85-S-083

Mrs. Harris made a motion to grant twelve months additional time, making the new expiration date June 3, 1993. Mr. Pammel said that he had read through this file and found that a letter had been received from the Zoning Administrator the week before, indicating that the site plans were not in order. Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, said that was true and that the applicant had an option at this time of going back to the site plan which the BZA had approved, or coming forth with a special permit amendment and she recommended that the BZA grant the additional time so that, if they choose not to file a special permit amendment, they will have the option of going back to the original plan.

Mr. Pammel said that he had counted four extensions of this special permit and he believed that it should be indicated at this point that no more extensions would be granted; if nothing is done within the next twelve months, a new application will need to be filed.

Mrs. Harris made Mr. Pammel's comments a part of the motion and Mr. Hammack seconded the motion, which carried by a vote of 5-1; Mr. Kelley voted nay and said that he was opposed to the amendment. Mrs. Thonen was absent from the meeting.

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Request for Change of Permittee  
Valewood Church of the Nazarene/Montessori School of Oakton, SPA 84-C-024-2

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, reminded the BZA that they had previously stipulated that requests for a change of permittee be (1) accompanied by a statement signed by the new permittee, stating that they agree to abide by the conditions imposed on the original approval, and (2) that a representative of the new permittee be present to answer any questions which the BZA might have, or to further verify that they will abide by the originally imposed conditions. Ms. Kelsey said that the applicant's representative was present.

Mrs. Harris said that the letter was exactly what the BZA wanted and made a motion to approve the request. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Request for Out-of-Turn Hearing  
Larry & Stephanie Stewart, VC 92-S-042

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that this application was accepted April 28 and was currently scheduled for July 7, because staff was attempting to fit in as many variance applications as possible before the summer recess, since they did not need to be staffed; so the variance had already been scheduled three weeks earlier than normal.

Mr. Pammel made a motion to deny the request. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Approval of Minutes for January 7, 1992

Mrs. Harris 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. Thonen was absent from the meeting.

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Approval of Resolution and  
Revised Plat for Golf Park, Inc., SP 91-C-070  
Heard on April 23, 1992

Mr. Kelley made a motion to grant approval of the Resolution and the revised plat. He said that he believed there were sufficient findings of facts in the records, based upon the fact that the Resolution contained everything he had said in making the original motion, to his satisfaction. Mr. Ribble seconded the motion, which carried by a vote of 5-0-1; Mr. Pammel abstained and Mrs. Thonen was absent from the meeting.

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Shortened Staff Reports

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that staff had now completed examples of the shortened staff reports and suggested that she and Barbara A. Byron, Director, Zoning Evaluation Division, present them to the BZA on June 5, 1992, when the BZA had only three cases scheduled.

It was the consensus of the Board that Ms. Kelsey's recommendation be approved.

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As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

*Gerri B. Bepko*

Gerri B. Bepko, Substitute Clerk  
Board of Zoning Appeals

*John P. DiGiuliano*

John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED:

July 14, 1992

APPROVED:

July 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 May 19, 1992. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; and Robert Kelley. Chairman John DiGiulian and Mr. Pammel were absent from the meeting.

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Chairman DiGiulian called the meeting to order at 8:01 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 51, May 19, 1992, (Tape 1), Scheduled case of:

8:00 P.M. BOWL AMERICA INC. APPEAL, A 92-Y-002, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that construction of the bowling alley authorized in Special Permit SP 89-S-031 did not commence prior to the expiration date, that such special permit was therefore expired and that new special permit approval was needed in order to establish the use, on approx. 3.0906 acres, located on Willard Rd., zoned I-5, Sully District, Tax Map 33-4((4))2A. (DEF. FROM 3/31/92 AT APPELLANT'S REQUEST)

Vice Chairman noted that the appellant had requested to be allowed to withdraw the appeal. Mrs. Harris made a motion to allow the withdrawal of A 92-Y-002. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 51, May 19, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ROBERT M. LABELLE AND DEBORAH S. DALTON, VC 92-V-022, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure to cover more than 30% of the minimum required rear yard (required by Sect. 10-103) and allow addition to dwelling to be constructed 9.4 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 6,500 s.f., located at 6405 14th St., zoned R-3, Mount Vernon District, Tax Map 83-4((2))(25)11 and 12. (CONCURRENT WITH SP 92-V-010)

8:00 P.M. ROBERT M. LABELLE AND DEBORAH S. DALTON, SP 92-V-010, 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 to remain 4.0 ft. from side lot line, (12 ft. min. side yard required by Sect. 3-307 and 12 ft. min. rear yard required by Sect. 10-104) 3.5 ft. from rear lot line, and to allow dwelling to remain 10.4 ft. and 9.4 ft. from side lot line, on approx. 6,500 s.f., located at 6405 14th St., zoned R-3, Mount Vernon District, Tax Map 83-4((2))(25)11 and 12. (CONCURRENT WITH VC 92-V-022)

Mrs. Harris said that the applicants' letter stated that they had been out of the country, therefore had not met the notice requirement as set forth in the Zoning Ordinance. Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicants had been cited with a Notice of Violation and suggested the applications be scheduled as soon as possible. Following a discussion between Ms. Kelsey and the BZA, Mrs. Thonen made a motion to defer the applications to June 30, 1992, at 10:15 a.m. Mrs. Harris 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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Page 51, May 19, 1992, (Tape 1), Scheduled case of:

8:00 P.M. KHALIL M. KARJAWALLY, VC 92-M-023, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lots 1 and 2 having lot widths of 14.44 ft. (80 ft. minimum lot width for interior lot, 105 ft. minimum lot width for corner lot required by Sect. 3-306) on approx. 1.1403 acs., located at 6160 Leesburg Pike., zoned R-3, HC, Mason District, Tax Map 51-3((1))22.

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, Marwan S. Shahin, 1420 Beverly Road #270, McLean, Virginia, replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. The applicant was requesting approval of a variance to allow the subdivision of one vacant lot into three lots with Lots 1 and 2 having lot widths of 14.44 feet each and Lot 3 having a lot width of 107.44 feet. The Zoning Ordinance requires a minimum lot width of 80 feet for an interior lot and a minimum lot width of 105 feet for a corner lot in the R-3 district. Therefore, the applicant was requesting a variance of 65.56 feet to the minimum lot width requirement for Lot 1 and for Lot 2. Proposed Lot 3 meets the zoning Ordinance lot width requirement. Ms. Dickey said staff concluded that this application met the standards for variance approval as discussed on pages 6 and 7 of the staff report. She noted that the lack of offsite Olin Drive ROW dedication by the adjoining Ravenwood Apts. lot at the time it was developed to be a mitigating factor in considering whether the subject lot has an extraordinary situation that was not created by the applicant. The portion of the ROW from Munson Hill Road to the

application property was not dedicated to County standard, which prevents the applicant from developing the application property by right with three lots as it was originally designed and approved by the Department of Environmental Management (DEM). The goals of the Comprehensive Plan for this area are to seek infill development compatible with existing development and although the proposed development is not strictly characteristic of the subdivision to the north, it would not change the character of the zoning district.

Mrs. Harris asked who owned Lot 21. Ms. Dickey said it was owned by the Smith family and developed with one single family house.

Mr. Shahin said the applicant purchased the property in 1987 with plans to develop the site into three lots in the future. In May 1989, he said the applicant file for a subdivision plat with the right of way coming down the extension of Olin ending in a cul-de-sac, which was approved by DEM and has been in bonding since August 1990. Mr. Shahin said following that approval it was determined that the right of way on the side of Ravensworth Towers was not 20 feet as shown on the record plat, but was only 11 feet. He said that the applicant discussed the problem with DEM and Supervisor Alexander and they recommended that he apply for a variance. Mr. Shahin agreed with the development conditions.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to approve the request subject for the reasons noted in the staff report and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-023 by KHALIL M. KARJAWALLY, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots, proposed Lots 1 and 2 having lot widths of 14.44 ft. (80 ft. minimum lot width for interior lot, 105 ft. minimum lot width for corner lot required by Sect. 3-306), on property located at 6160 Leesburg Pike, Tax Map Reference 51-3((1))22, 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 May 19, 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, HC.
3. The area of the lot is 1.1403 acres.
4. The property has an unusual and extraordinary condition being that the applicant went to great lengths to put in a public road to service these lots and through no fault of his own, due to prior dedication, found that the land was not there.
5. This is a perfect situation where hardship is not shared by general properties in the vicinity.
6. This is a hardship approaching confiscation of property as distinguished from a special privilege.
7. The property has been planned and zoned for this use.
8. It is similar in size to the other lots and is compatible with the existing neighborhood and would be in harmony with the intended spirit of the Ordinance and the Comprehensive Plan.

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

2. That the subject property has acquired 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 subdivision of the existing lot into three (3) lots as shown on the plat (prepared by Cad-Con Incorporated, dated October 23, 1991, as revised through January 29, 1992) submitted with this application.
2. Limits of clearing and grading shall be clearly illustrated on all three lots as shown on the Variance plat and shall include any additional areas of preservation required by the Urban Forester in addition to those depicted on the approved Variance plat.
3. A thirty (30.0) foot wide ingress/egress easement shall be provided along the length of the pipestem across Lots 2 and 3, and pipestem driveway pavement of a minimum of eighteen (18.0) feet shall be provided within this easement along Lot 3 narrowing to a pavement width of 12.0 ft. along Lot 2 to the southern lot line of Lot 1.
4. A mutual access easement for Lots 1, 2 and 3 shall be established for the pipestem driveway, subject to DEM approval, at the time of subdivision plan approval. This easement shall be recorded among the land records of Fairfax County.
5. The applicant shall seek a waiver from the Virginia Department of Transportation (VDOT) to allow the subdivision entrance to remain closer than 12.5 feet from the side lot line.
6. Final location and construction of the service drive along the frontage of the subject site shall be determined by VDOT and DEM at the time of site plan review.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

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 this subdivision has been recorded among the land records of Fairfax County and construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time for recordation of this subdivision 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. 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 May 27, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 153, May 19, 1992, (Tape 1), Scheduled case of:

8:00 P.M. CHURCH OF THE BLESSED TRINITY, SP 92-Y-012, appl. under Sect. 3-C03 and 8-915 of the Zoning Ordinance to allow church and related facilities and waiver of the dustless surface requirement, on approx. 1.0 ac., located at 15011 Sacred La., zoned R-C, WS, Sully District, Tax Map 64-2(1)18.

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, Donald D. Smith, 5618 Wharten Lane, Centreville, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report on behalf of Greg Riegle. She said staff recommended approval of the request in accordance with the development conditions because staff believed the application met all the standards. She called the BZA's attention to the revised development conditions, specifically Number 9, and noted that the change was underscored.

Mr. Smith introduced the pastor of the church Rev. Brown who outlined the church's request.

Rev. Floyd B. Brown, Jr., 7411 Carver Road, Gainesville, Virginia, said he had been pastoring the church for 32 years and at the time the church was constructed, sewage and water was not available. He said it is now available and the church would like to construct a small addition which would include a pastor's study, a small all-purpose room, and restrooms. Reverend Brown agreed with the development conditions.

In response to a question from Mrs. Thonen, Ms. Kelsey said staff had suggested relocating the outlet road. Mr. Smith said staff has recommended that there be an easement over the driveway to the church to Lot 10 if a building permit is ever issued for Lot 10. He said the 20 foot ingress/egress easement is 21 foot from the corner of the church to the lot line.

Mr. Smith said the pastor's mother owns Lot 10 and it will be conveyed to the church upon her demise and the pastor's cousin owns Lot 9. In response to the BZA's question, Ms. Kelsey noted that Lot 9 had access through Round Post Court.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to approve the request subject to the revised development conditions dated May 19, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-012 by CHURCH OF THE BLESSED TRINITY, under Section 3-C03 and 8-915 of the Zoning Ordinance to allow church and related facilities and waiver of the dustless surface requirement, on property located at 15011 Sacred Lane, Tax Map Reference 64-2(1)8, 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 May 19, 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 1.0 acre.

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 8-903 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 dated November 18, 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, and these development conditions. The Board of Zoning Appeals recommended a waiver of the site plan.
5. The maximum number of seats in the main area of worship shall be 72 with a corresponding minimum of 18 parking spaces. All parking shall be on site.
6. 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 and is supplemented with an single row of evergreen trees to be placed directly north of the seven spaces along the driveway, directly west of the 6 spaces along the western edge of the parking area and in the area generally north of the stormwater management pond and the driveway. All trees used to fulfill this requirement shall have a planted height of six (6) feet. Species of planted used to fulfill this requirement shall be as determined by the Urban Forestry Branch, DEM.
7. The Barrier requirement shall be waived.
8. 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.
9. To ensure availability of access to Lot 10, an access easement running along the church driveway and extending southwest to the shared lot line with Lot 10 shall be recorded in the land records of Fairfax County at such time as a building permit is issued for construction of a single family dwelling on Lot 10.

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 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 May 27, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 155, May 19, 1992, (Tape 1), Action Item:

Approval of Resolutions from May 12, 1992 Public Hearing

Mrs. Harris made a motion to approve the resolutions as submitted. Mr. Hammack seconded the motion which passed by a vote of 5-0. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 156, May 19, 1992, (Tape 1), Action Item:

Jean and Alvin Manalaysay, VC 92-Y-045  
Out of Turn Hearing Request

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to a memorandum from Marilyn Anderson, Assistant Branch Chief, and explained that the August recess was approaching and because of the 90-day time limitation staff was trying to fill in the agendas with as many applications as possible.

Mrs. Thonen said she was concerned with Burgess application, VC 92-D-046, wherein the applicants were requesting approval in order to construct a handicap ramp. Mrs. Harris asked if staff could accommodate VC 92-D-046. Ms. Kelsey said staff supported all three out of turn hearing requests. She suggested July 14th for Jean and Alvin Manalaysay, VC 92-Y-045, and Mr. and Mrs. Earle Burgess, VC 92-D-046. Mr. Hammack so moved.

Mr. Kelley questioned why staff was supporting the out of turn hearing request. Ms. Kelsey explained that staff was supporting the request to alleviate the applications being carried over to September or having to schedule a meeting for the middle of August in order to meet the 90-day State Code requirement.

Mrs. Harris seconded the motion. The motion to schedule VC 92-Y-045 for July 14th passed by a vote of 4-1. Mr. Kelley voted nay. Chairman DiGiulian and Mr. Pammel were absent from the meeting.

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Page 156, May 19, 1992, (Tape 1), Action Item:

Mr. and Mrs. Earle Burgess, VC 92-D-046  
Out of Turn Hearing

Mrs. Thonen made a motion to schedule VC 92-D-046 for July 14, 1992. Mr. Kelley seconded the motion which passed by a vote of 5-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 156, May 19, 1992, (Tape 1), Action Item:

Cornerstone Church of Christ Bible Way World Wide  
SP 92-V-029 and VC 92-V-049

Mrs. Thonen made a motion to schedule VC 92-D-046 for July 21, 1992. Mr. Kelley seconded the motion which passed by a vote of 5-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 156, May 19, 1992, (Tape 1), Information Item:

Deferral Request for Classical Homes

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to a deferral request from one of the property owners in the Classical Homes appeal. She said the case was scheduled to be heard by the BZA on May 26, 1992.

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Following further discussion between the BZA and Ms. Kelsey regarding the scheduling problem with the August recess approaching, it was the consensus of the BZA to allow staff to administratively schedule the cases that would be a potential problem. The BZA agreed to proceed with the meeting now tentatively scheduled for Thursday, July 23, 1992.

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As there was no other business to come before the Board, the meeting was adjourned at 8:32 p.m.

  
Betsy S. Purgett, Clerk  
Board of Zoning Appeals

  
John Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: June 16, 1992

APPROVED: June 23, 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 May 26, 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.

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Chairman DiGiulian called the meeting to order at 9:11 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 57, May 26, 1992, (Tape 1), Scheduled case of:

9:00 A.M. VIRGINIA RUN COMMUNITY ASSOCIATION, SPA 87-S-045-1, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 87-S-045 for community swimming pool, tennis courts, and community center, to expand hours of operation, and amend Conditions 10 and 11 regarding annual number of events and occupancy load, on approx. 5.22 acres, located at 15300, 15308 Lee Highway and 15355 Wetherburn Court, zoned R-C and MS, Sully District, Tax Map 64-2(3)4,5; 64-2(6)M. (NOTICES AND STAFF REPORT NEED TO BE DONE. DEF. 4/14/92 AT APPLICANT'S REQUEST).

Chairman DiGiulian stated that the Board of Zoning Appeals had issued an intent to defer on May 5, 1992.

Mrs. Thonen made a motion to defer Virginia Run Community Association, SPA 87-S-045-1 indefinitely. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 57, May 26, 1992, (Tape 1), Information Item:

Approval of Resolutions from May 19, 1992 Hearing

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Hammack seconded the motion with an amendment to SP 92-Y-012, Church of the Blessed Trinity. He stated that Development Condition 4, should be amended to reflect that the Board of Zoning Appeals recommended a waiver of the site plans. Mr. Ribble seconded the amendment.

The motion carried a vote of 5-0 with Mr. Pammel abstaining from the vote. Mr. Kelley was absent from the meeting.

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Page 57, May 26, 1991, (Tape 1), Information Item:

Approval of Minutes from January 28 and February 18, 1992 Hearings

Mr. Ribble 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. Mr. Kelley was absent from the meeting.

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Page 57, May 26, 1991, (Tape 1), Information Item:

Request for Date and Time  
The Furniture Store by John Mazur

Mrs. Thonen made a motion to schedule the appeal for July 28, 1992 at 10:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 57, May 26, 1992, (Tape 1), Scheduled case of:

9:15 A.M. ST. AIDAN'S EPISCOPAL CHURCH, SP 92-Y-003, appl. under Sect. 3-303 of the Zoning Ordinance to allow addition to existing church and related facilities and nursery school, on approx. 7.4777 acres, located at 8531 Riverside Rd., zoned R-3, Mt. Vernon District, Tax Map 102-3(1)33. (DEF. FROM 4/23/92 FOR NEW PLAT)

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. Davey replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report and submitted revised plats to the BZA. She stated that the applicant was requesting approval of a special permit for an existing church and related facilities and a nursery school to construct a 4,001 square foot addition to the parish hall of the church facility. She noted that no other alteration of the existing site and no changes to the operation of the church or the nursery school were proposed. Ms. Dickey said that there would be no concurrent use of the facility by the church and the nursery school.

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She stated that the applicant had requested a modification of the transitional screening requirements and a waiver of the barrier requirements along all lot lines in favor of the existing vegetation shown on the special permit amendment plat submitted with the application.

Ms. Dickey said that the revised plat depicted the existing screening fence 0.6 feet and the parking lot 2.6 feet from the northern lot line. She noted that staff had insufficient time to review the revised plat with regard to the requirement to provide transitional screening along the northern lot line and said that the applicant had not proposed any additional vegetation material along that lot line.

Ms. Dickey stated that with the implementation of the development conditions, staff recommended approval with the exception of the proposed transitional screening along the northern lot line.

The applicant's agent, Michael E. Davey, 8236 Governors Court, Alexandria, Virginia, addressed the BZA. He stated that the church had outgrown the parish hall which was built over 30 years ago and noted that the kitchen facilities were no longer functional. He explained that although the applicant would like to remodel the kitchen and increase the size of the main room in the parish hall, there would be no changes in the use.

In response to questions from the BZA, Mr. Davey stated that the main room would be used by various groups such as the Boy Scouts, the Girl Scouts, exercise classes, Alcoholics Anonymous, a theater group, and school groups. He noted that the parking facilities were more than adequate for the uses and said that he had no knowledge of any after-hour problems on the property. Mr. Davey explained that while a section of the parking lot was within two feet of the lot line, the adjoining neighbors had merely requested that a new fence be installed.

Mr. Ribble abstained from taking part in the public hearing.

There being no speakers in support of the request, Chairman DiGiulian called for speakers in opposition.

John Ribble, 10680 Main Street, Suite 201, Fairfax, Virginia, addressed the BZA. He stated that while he would like to be a good neighbor to the church, there were problems that should be resolved. He explained that the police have had to be called because of trouble in the parking lot. He requested that a gate be installed so that cars could not enter the parking lot late in the evening. Mr. Ribble offered to donate \$100 towards the installation of a new stockade fence, and expressed his belief that the applicant should install additional screening and take steps to mitigate the lighting and glare problems.

In response to questions from the BZA, Ms. Dickey stated that Development Condition 16 addressed the lighting problems. She explained that she could not comment on the proposed screening because staff had not been given sufficient time to review the revised plat.

Chairman DiGiulian called for rebuttal.

Mr. Davey stated that while he had conferred with the abutting neighbor on Lot 5, regarding screening concerns, he was unaware of any other problems.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to defer SP 92-V-003 to June 23, 1992 at 9:10 a.m. She noted that while the applicant had worked diligently to resolve the neighbors' concerns, it was the BZA's belief that additional screening along the northern lot line and a gate at the parking lot entrance was needed. She further noted that the deferral would allow time for staff to review the revised plat.

Mr. Hammack seconded the motion with an amendment to the motion that required the applicant to submit a new plat, to address the security of the parking lot, and to address the screening of the northern lot line. Mrs. Thonen accepted the amendment.

Ms. Dickey stated that the applicant would be unable to appear before the BZA on June 23, 1992 and asked for another date and time.

Mrs. Thonen amended her motion to defer SP 92-V-003 to June 30, 1992 at 10:30 a.m.

Mrs. Harris seconded the amendment which carried by a vote of 5-0-1 with Mr. Ribble abstaining from the vote. Mr. Kelley was absent from the meeting.

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Page 159, May 26, 1992, (Tape 1), Scheduled case of:

9:15 A.M. DANIEL AND VIRGINIA W. MARONITZ, VC 92-M-013, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots with proposed Lot 3 having lot width of 12 ft. (80 ft. min. lot width required by Sect. 3-306), on approx. 1.56 acres, located at 3109 Sleepy Hollow Rd., zoned R-3, Mason District, Tax Map 51-3(1)15.

Chairman DiGiulian stated that a letter requesting deferral had been received by the Board of Zoning Appeals (BZA).

The applicants' attorney, William Hansbarger, 301 Park Avenue, Falls Church, Virginia, addressed the BZA and asked that the case be deferred to September 1992. He stated that he had contacted the applicants' neighbors to advise them of the deferral request.

Mrs. Thonen made a motion to defer VC 92-M-013 to September 29, 1992 at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Kelley was absent from the meeting.

The applicants' neighbor requested that the BZA not defer the application.

Mrs. Thonen withdraw the motion.

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

Tony Sobrul, 3105 Sleepy Hollow Road, Falls Church, Virginia, addressed the BZA. He stated that he was an abutting neighbor and expressed his opposition to the deferral.

Kenneth Longmeyer, 3108 Sleepy Hollow Road, Falls Church, Virginia, addressed the BZA. He presented a letter from the Sleepy Hollow Citizens Association and expressed his opposition to the deferral.

Mr. Hansbarger stated that it was his belief that the applicants could work with the neighbors to resolve any outstanding issues.

After a brief discussion, it was the consensus of the BZA to defer the case.

Mrs. Thonen made a motion to defer VC 92-M-013 to September 29, 1992 at 9:00 a.m. Mrs. Harris and Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Kelley was absent from the meeting.

The BZA indicated that there would be no more deferrals granted on the application.

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Page 159, May 26, 1992, (Tape 1), Scheduled case of:

9:25 A.M. ROBERT A. POWERS, VC 92-B-027, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 12.2 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 21,854 s.f., located at 7116 Larrlyn Dr., zoned R-2, Braddock District, Tax Map 71-3(6)3.

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. Powers replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was proposing the construction of a one-story garage and room addition to 12.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, the applicant was requesting a variance of 2.8 feet to the minimum side yard requirement.

The applicant, Robert A. Powers, 7116 Larrlyn Drive, Springfield, Virginia, addressed the BZA. He stated that he would like to modify the entrance level to provide complete living quarters. Mr. Powers said that he had the neighbors' support for the request.

In response to Mrs. Harris regarding the hardship issue, Mr. Powers stated that while the addition might be placed elsewhere on the lot, the proposed location would be architecturally and aesthetically superior.

Chairman DiGiulian called for speakers in support of the request and the following citizen came forward.

Karl Eichenauer, 7112 Larrlyn Drive, Springfield, Virginia, addressed the BZA. He stated he was an abutting neighbor and expressed his support for the application.

There being no further speakers in support and no speakers in opposition to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny SP 92-B-027. Mr. Ribble seconded the motion.

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After a brief discussion, it was the consensus of the BZA to submit a substitute motion.

Mr. Pammel made a substitute motion to grant-in-part SP 92-B-027. Mrs. Thonen seconded the motion. The motion failed by a vote 1-5 with Mr. Pammel voting aye; Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Pammel, and Mr. Ribble voting nay. Mr. Kelley was absent from the meeting.

Mr. Hammack made a substitute motion to defer SP 92-B-027 to allow the applicant time to revise the application. The motion failed for the lack of a second.

Chairman DiGiulian called for a vote on the main motion to deny the application. The motion failed by a vote of 2-4 with Mrs. Harris and Mr. Hammack voting aye; Chairman DiGiulian, Mrs. Thonen, Mr. Pammel, and Mr. Ribble voting nay. Mr. Kelley was absent from the meeting.

Mrs. Thonen made a motion to grant SP 92-B-027 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 19, 1992.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 92-B-027 by ROBERT A. POWERS, under Section 18-401 of the Zoning Ordinance to allow addition 12.2 feet from side lot line, on property located at 7116 Larrlyn Drive, Tax Map Reference 71-3((6))3, 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 May 26, 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 21,854 square feet.
4. The placement of the house in the middle of the property has created a hardship.
5. Without a variance, the applicant would have to remove large hardwood trees.
6. The tapering lot lines have caused the need for a variance.
7. The application meets the standards necessary for the granting of a variance.
8. The placement of the house in the middle of the yard denies the use of both sides of the property.
9. 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.
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 addition to the specific dwelling shown on the plat (dated January 10, 1992) prepared by James H. Guynn and submitted with this application.
- 2. A Building Permit shall be obtained prior to any construction. All final inspections shall be completed.

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 construction of the addition 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 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 4-2 with Mrs. Harris and Mr. Hammack voting 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 June 3, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 161, May 26, 1992, (Tape 1), Scheduled case of:

9:35 A.M. MILES R. WALBRECHT, VC 92-V-024, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 9.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 22,169 s.f. located at 2637 Childs Lane, zoned R-3, Mount Vernon District, Tax Map 102-3((11))(4)17.

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. Walbrecht replied that it was.

Robby Robinson, Staff Coordinator, Zoning Evaluation Division, addressed the BZA. He stated that the applicant was requesting a variance to the minimum side yard requirement in order to construct a two (2) car garage. He noted that the proposed garage would replace an existing carport and would be located 9.5 feet from the northern lot line, which is shared with Lot 18. The Zoning Ordinance requires a minimum side yard of twelve feet; therefore, the applicant was requesting a variance of 2.5 feet to the minimum side yard requirement.

In response to Mr. Ribble's question as to whether the variances granted or denied in the area had been for two car garages, Mr. Robinson stated that he did not know.

The applicant, Miles R. Walbrecht, 2637 Childs Lane, Alexandria, Virginia, addressed the BZA. He stated that he merely wished to replace an existing carport with a two car garage. Mr. Walbrecht explained that the garage would be architecturally compatible and would be constructed with the same material as the existing structure. He stated that although he could place the garage in the front yard without a variance, it would not be architecturally suitable. In addressing the placing of the garage in the back yard, Mr. Walbrecht stated that the steep slope, as well as the converging lot lines, would preclude the construction of the garage in that area.

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

Mr. Ribble made a motion to grant VC 92-V-024 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 19, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

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In Variance Application VC 92-V-024 by MILES R. WALBRECHT, under Section 18-401 of the Zoning Ordinance to allow addition 9.5 feet from side lot line, on property located at 2637 Childs Lane, Tax Map Reference 102-3(111)(4)17, 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 May 26, 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 22,169 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. The lot has an exceptional shape.
6. The side lot line converges toward the front of the property.
7. Only a portion of the addition needs a variance.
8. There is no other site on the property on which to reasonably place 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 garage shown on the plat prepared by Miles R. Walbrecht, P.E., dated January 3, 1992, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and all final approvals shall also be obtained.

3. The architectural style and building materials shall be compatible with the existing structure.

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 construction has commenced and has 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 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 and Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 3, 1992. This date shall be deemed to be the final approval date of this variance.

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The BZA recessed at 10:15 a.m. and reconvened at 10:30 a.m.

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Page 163, May 26, 1992, (Tape 2), Scheduled case of:

9:45 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. (RESCHEDULED FROM 3/3/92 AT APPELLANT'S REQUEST. DEF. FROM 4/14/92 AT APPLICANT'S REQUEST. NOTICES NEED TO BE DONE.)

Chairman DiGiulian stated that a letter requesting withdrawal had been received by the Board of Zoning Appeals.

Mrs. Thonen made a motion to allow the withdrawal of A 92-V-001. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 163, May 26, 1992, (Tape 2), Scheduled case of:

9:55 A.M. RAMON W. & KAREN B. JONES, VC 92-P-025, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 3.5 ft. from side lot line and 26.5 ft. from front lot line (10 ft. min. side yard and 30 ft. min. front yard required by Sect. 3-407) on approx. 8,750 s.f. located at 7412 Add Drive, zoned R-4, Providence District, Tax Map 60-1((16))110.

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.

Lorrie Kirst, Staff Coordinator, Zoning Evaluation Division, addressed the BZA. She stated that the applicants were requesting a variance to the minimum front and side yard requirements in order to construct an attached two-car garage 26.5 feet from the front lot line abutting Add Drive and 3.5 feet from the eastern side lot line. The Zoning Ordinance requires a minimum front yard of 30 feet and a minimum side yard of 10 feet; therefore, the applicants were requesting a variance of 3.5 feet to the minimum front yard requirement and a variance of 6.5 feet to the minimum side yard requirement.

The applicant, Ramon W. Jones, 7412 Add Drive, Falls Church, Virginia, addressed the BZA. He stated that the topographic conditions of the lot precluded the construction of the garage to the rear of the property. He explained that the proposed location of the garage would allow an existing bedroom window to be retained.

In response to Mrs. Thonen's question regarding windows and doors on the back of the structure, Mr. Jones stated that there were no rear windows or doors on the lower level of the house.

Mrs. Harris asked if the original structure had had an internal garage. Mr. Jones stated that although the original structure had a garage, he had converted it into two bedrooms.

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

Mr. Hammack made a motion to deny VC 92-P-025 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 92-P-025 by RAMON W. AND KAREN B. JONES, under Section 18-401 of the Zoning Ordinance to allow addition 3.5 feet from side lot line and 26.5 feet from front lot line, on property located at 7412 Add Drive, Tax Map Reference 60-1((16))110, 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 May 26, 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-4.
3. The area of the lot is 8,750 square feet.
4. The application does not meet the standards necessary for the granting of a variance.
5. When the applicant converted an existing garage into living space they created the hardship.
6. The applicant could build an oversized one car garage within the setback requirements.
7. The BZA cannot justify the granting of a variance for a 27 foot long addition which would be 3 1/2 feet from the side lot line.
8. The applicant has not demonstrated a hardship which would justify the granting of a front yard 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. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley 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 June 3, 1992.

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Page 165, May 26, 1992, (Tape 2), Scheduled case of:

10:00 A.M. CLASSICAL HOMES APPEAL, A 92-D-003, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Department of Environmental Management's issuance of a Residential Use Permit (RUP) for the dwelling located at 1008 Bellview Rd. without addressing appellant's concerns about the effect of drainage from the site on the appellant's property located at 8531 Old Dominion Dr. Dwelling at 1008 Bellview Rd., located on approx. .5 acs., zoned R-E, Dranesville District, Tax Map 20-1(1)61. (DEF. FROM 4/9/92 FOR NOTICES.)

Chairman DiGiulian stated that a request for deferral had been received by the Board of Zoning Appeals (BZA).

The landowners of the property at 1008 Bellview Road attorney, Joseph Davoli, with the law firm of Clayton, Wilcox, and Vergara, 8996 Burke Lake Road, Suite 301, Burke, Virginia, addressed the BZA. He explained that his client was out-of-town; therefore, he was unable to attend the meeting. He asked that the BZA defer the public hearing.

The appellant's representative, Tom Bryant, with Classical Homes, Inc., 9808 Oakdale Woods Court, Vienna, Virginia, stated that the case had previously been granted a deferral and asked the BZA to proceed with the public hearing.

Mr. Pammel made a motion to hear A 92-D-003, but to hold the case over to the end of the scheduled agenda. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the hearing.

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Page 165, May 26, 1992, (Tape 2), Scheduled case of:

10:15 A.M. GARY W. PFEIFER, VC 92-S-026, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 12.1 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 10,760 s.f., located at 8725 Cuttermill Pl., zoned R-3 (cluster), Springfield District, Tax Map 89-3(6)100.

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. Pfeifer replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to construct an addition, consisting of a covered porch, 12.1 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 12.9 feet to the minimum rear yard requirement.

The applicant, Gary W. Pfeifer, 8725 Cuttermill Place, Springfield, Virginia, addressed the BZA and noted that the request was for a screened porch. He stated that the exceptional shallowness and shape of the lot, as well as the location of the house on the property had caused the need for the variance. Mr. Pfeifer said that any detrimental impact would be mitigated by the woods to the rear of the property. He expressed his belief that the application met the necessary standards and asked the BZA to approve the application with a waiver of the eight day waiting period.

In response to Mrs. Harris' question regarding the property that was dedicated to the public street, Mr. Pfeifer stated that the dedication was no longer relevant because it was dedicated for the Springfield Bypass which had been re-routed.

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

Mr. Pammel made a motion to grant VC 92-S-026 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 19, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-026 by GARY W. PFEIFER, under Section 18-401 of the Zoning Ordinance to allow addition 12.1 feet from rear lot line, on property located at 8725 Cuttermill Place, Tax Map Reference 89-3(6)100, Mr. Pammel 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 May 26, 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 10,760 square feet.
4. The lot has an unusual configuration as depicted on the plat.
5. The location of the house at a minimal distance from the rear lot line has deprived the applicant of any flexibility to construct an addition in the rear yard.
6. The placement of the house on the lot has 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.
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 addition shown on the plat (prepared by Larry B. Newman, dated March 4, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.
3. The 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 construction has commenced and has 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 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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Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 167, May 26, 1992, (Tape 2), Scheduled case of:

10:00 A.M. CLASSICAL HOMES APPEAL, A 92-D-003, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Department of Environmental Management's issuance of a Residential Use Permit (RUP) for the dwelling located at 1008 Bellview Rd. without addressing appellant's concerns about the effect of drainage from the site on the appellant's property located at 8531 Old Dominion Dr. Dwelling at 1008 Bellview Rd., located on approx. .5 acs., zoned R-E, Dranesville District, Tax Map 20-1((1))61. (DEF. FROM 4/9/92 FOR NOTICES.)

Chairman DiGiulian called for the location of the property and the staff report.

Paul Lynch, Chief, Combination Inspection Branch, Department of Environmental Management (DEM) presented staff's position. He stated that the property which is owned by Ezio and Christiane DeFillipis, is located at 1008 Bellview Road, Tax Map 20-1((1))61. He said that the total area of the lot is approximately .50 acres, zoned R-E, and is located in the Difficult Run Watershed. He explained that the property at 8531 Old Dominion, Lot 70C, has been affected by the drainage.

Mr. Lynch stated that on May 17, 1988, a grading plan and a building permit were issued to the DeFillipis for a single family detached custom home. He explained that although construction began on or about May 17, 1988 and progressed normally, on December 20, 1991, a formal complaint was received by DEM.

In summary, Mr. Lynch stated that the minimum requirements of Article 18, Section 18-704 of the Zoning Ordinance were satisfied and the issuance of the Residential Use Permit (RUP) was appropriate.

In response to Chairman DiGiulian's question as to whether it was standard procedure for the County to issue a RUP when the alleged final construction does not comply with the approved site and grading plan, Mr. Lynch said it was not. Mr. Lynch explained that the approved grading plan that had been submitted in 1988 had not been complied with at the time of the RUP issuance.

Chairman DiGiulian noted that in lieu of a drainage swale a pipe had been installed, a retaining wall which was not shown on the plan was built, and there had been a question as to whether the grading had been done according to the site plan. Mr. Lynch stated that the Chairman was correct.

In response to Chairman DiGiulian's question as why the County issued the RUP, Mr. Lynch said that although poor judgment had been a part of that issuance, the minimum requirements of the Zoning Ordinance had been met. He explained that violations had been issued for the retaining wall and non-compliance with the site plan. He noted that staff did plan to take the property owner to court.

Mrs. Thonen expressed her concern over one property owner being allowed to pipe drainage water onto another person's property.

Mr. Hammack asked if the applicant had complied with the provision in Article 2-602 of the Zoning Ordinance. Mr. Lynch stated that the dotted line on the original map represented bed and banks which flowed through Lot 70C and stated that the culvert that goes under the driveway had initially emptied out at the bed and banks. He explained the bed and banks, which had been the basis of the approval of the original site plan, no longer existed. He further stated that Lot 70 was the last lot in the subdivision and water has, and will continue to flow onto the lot from the swale. Mr. Lynch explained that the inspector believed that the pipe would be no better or worse than the swale. He noted that DEM now considered that judgment to be erroneous.

The BZA expressed its concern regarding the issuance of the RUP when the site did not match what was shown on the grading plan. Mr. Lynch stated that the relative lay of the land was unchanged.

Brian Smith, Deputy Director, Inspection Services Division, addressed the BZA. He stated that when he visited the site it was evident that the VDOT culvert, as shown on the viewgraph, had been 90 to 100 percent blocked. He expressed his belief that a sheet flow

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action was taking place. Mr. Smith explained that the inspector would not see a concentrated flow of water or the erosion; therefore, he would approve the grading plans. He stated that DEM believed that the best means of rectifying the situation was through the issuance of a violation of Virginia Uniform Statewide Building Code.

The applicants' attorney, Thomas J. Bryan, with Brian International Properties, Limited, 9808 Oakdale Woods Court, Vienna, Virginia, addressed the BZA. He stated that although there had been ample time for the County and the property owner to resolve the matter, they had not done so. Mr. Bryan noted that the property owner had occupied the structure for over one year, had installed a driveway, had added extensive landscaping, but had not addressed the drainage issue. He expressed his belief that additional pressure was needed to ensure that the issue would be addressed.

Mr. Hammack stated that the property owners' attorney, Mr. Davoli, had submitted a letter to the BZA which stated that the complaints had either been resolved or are in the process of being resolved. Mr. Bryan stated that in the meeting with Mr. DeFillipis, Dr. and Mrs. Lee, the owner of the property at 8531 Old Dominion Drive, had requested that the County standards be met before they made any commitments.

Chairman DiGiulian called for speakers to the appeal and the following citizen came forward.

Mr. and Mrs. DeFillipis' attorney, Joseph Davoli, with the law firm of Clayton, Wilcox, and Vergara, 8996 Burke Lake Road, Suite 301, Burke, Virginia, addressed the BZA. He stated that after many attempts to contact Dr. and Mrs. Lee, his client had finally gotten permission to enter the Lee's property in order to remove part of the pipe. He stated that the retaining wall issue was in the process of being resolved.

Mr. Davoli expressed his belief that because of topographic conditions on the Lee's property, the natural flow of the water will continue to drain onto the property. He noted that before Lot 70C had been excavated and several hundred loads of fill dirt brought in, a creek had run through the property. In summary, Mr. Davoli stated that the flood plain situation had existed before the property had been developed and asked the BZA not to cancel the RUP. He noted that the issue would be resolved in the court system.

In response to Chairman DiGiulian's question as to the identity of the builder, Mr. Davoli stated that Mr. DeFillipis had been the main contractor.

There being no further speakers to the appeal, Chairman DiGiulian called for rebuttal.

Mr. Bryant stated that although Mr. Davoli stated that Lot 70C was in a floodplain, both the County and the U.S. Geological Survey map refuted the allegation. He noted that the start of the tributary depicted in the U.S. Geological Survey Map was beyond the appellants' property line. He noted that the pictures submitted to the BZA showed that the erosion was centered around the pipe. In summary, Mr. Bryant noted that Mr. DeFillipis did not comply with the original grading plan and had also increased the roof and the driveway by over 50 percent.

In response to Mr. Pammel's question regarding the amount of fill that occurred on Lot 70c, Mr. Bryant said that fill dirt was not used in the swale area. He explained that the dirt was used to create a berm with a waterfall in order to screen the property in accordance with the approved grading plans.

The appellant, Dr. Chong Lee, 8531 Old Dominion Drive, McLean, Virginia addressed the BZA. He stated that although Mr. DeFillipis had continued to improve his property, he had done nothing about the drainage problem. He expressed his belief that the removal of part of the pipe would not correct the problem. Mr. Lee stated that the BZA should ensure that Mr. DeFillipis adhere to the County Zoning Ordinance and correct the deficiencies.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to reverse the determination of the Department of Environmental Management's issuance of a Residential Use Permit (RUP) for the dwelling located at 1008 Bellview Road without addressing the appellant's concerns about the affect of drainage from the site on the appellant's property located at 8531 Old Dominion Drive.

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

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Approval of Minutes from February 18, 1992 Hearing

Mr. Hammack made a motion to approve the minutes as submitted. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 169, May 26, 1992, (Tape 2), Information Item:

Request for Additional Time  
Alice Utterback, VC 90-D-025  
11007 Georgetown Pike  
12-1((1))12

Mrs. Harris made a motion to grant the additional time request. Mrs. Thonen and Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting. The new expiration date will be May 30, 1993.

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Page 169, May 26, 1992, (Tape 2), Information Item:

Request for Additional Time  
Congregation Beth Emeth, SPA 84-C-008-3  
12523 Lawyers Road  
35-2((1))15A

Mrs. Harris made a motion to grant the additional time request. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting. The new expiration date will be December 6, 1992.

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Page 169, May 26, 1992, (Tape 2), Information Item:

Request for Additional Time  
Hampton B. and Marinda Barnes, VC 89-P-157  
1773 Chain Bridge Road  
30-3((2))233

Mrs. Harris made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting. The new expiration date will be November 25, 1993.

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Page 169, May 26, 1992, (Tape 2), Information Item:

Request for Date and Time  
Thomas J. Rother Appeal

Mrs. Thonen made a motion to schedule the appeal for July 28, 1992 at 10:15 a.m. Mr. Hammack and Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 169, May 26, 1992, (Tape 2), Information Item:

Request for Date and Time  
Dion Appeal

Chairman DiGiulian noted that the appellant, Mr. Dion, and the County's representative, Mr. Shoup, were present to speak to the request.

William Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA). He expressed his belief that the appeal should not be accepted by the BZA. He explained that although the appeal cited the application of the Subdivision Ordinance and Public Facilities Manual provisions, and referenced the gift lot provisions, it did not cite any specific Zoning Ordinance provision. He stated that since the issue is not related to a Zoning Ordinance provision, it was not a proper appeal.

The appellant, Brian Dion, stated that he disagreed with the Department of Environmental Management's decision.

In response to questions from the BZA, Mr. Shoup stated that he did not believe there was an appeal procedure under the subdivision ordinance.

Mr. Hammack made a motion to accept the appeal and schedule it for July 28, 1992 at 10:30 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

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

SUBMITTED: September 22, 1992

APPROVED: September 29, 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 June 2, 1992. 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 9:10 a.m. and Mrs. Thonen gave the invocation.

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Page 171, June 2, 1992, (Tape 1), Board Item:

Mr. Hammack said that he had brought a copy of a Supreme Court Decision which had been reversed one time recently when the Board of Zoning Appeals sided with the staff.

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Page 171, June 2, 1992, (Tape 1), Scheduled case of:

9:00 A.M. DONALD L. AND ELIZABETH H. LOWDERMILK, YC 92-L-003, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed lot 2 having lot width of 20.58 ft. (80 ft. min. lot width required by Sect. 3-306) on approx. 1.24 acres, located at 4505 Elmwood Dr., zoned R-3, Lee District, Tax Map 82-1((4))35. (DEF. FROM 4/2/92 TO ALLOW BOARD OF SUPERVISORS TO CONSIDER ZONING ORDINANCE AMENDMENT)

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that the application had been heard on April 2, 1992; the case had a full hearing and was deferred for decision only, in order for staff to review the proposed Zoning Ordinance Amendments and determine if there was a Zoning Ordinance Amendment pending which would address this particular situation. Ms. Kelsey said that a copy of a memo had been distributed to the Board, indicating that Jane W. Swinn, Zoning Administrator, advised that there are no Zoning Ordinance Amendments pending which would address this issue.

Ms. Kelsey reviewed the application, stating that the applicant proposed the subdivision of one lot into two lots, with Lot 2 having a lot width of 20.58 feet; 80 feet is the minimum lot width required by Section 3-306. There were two concerns with the application: (1) that there is an existing dwelling in the back, which was constructed in error, and (2) there is also a sanitary sewer easement along a portion of the property, which would cause the access easement to traverse interior to the lot and not along the front of the lot.

Ms. Kelsey continued, stating that staff had some concerns with the application and believed that the application did not meet all of the standards for a variance, as outlined in 18-404 of the Zoning Ordinance. Ms. Kelsey said that, in particular, staff believed that approval of this application would set an undesirable precedent for the area and it did not meet variance standards 4, 5, and 6. She said that the strict application of the Ordinance would not produce unnecessary hardship, and that this situation does occur on other properties in the general vicinity. Ms. Kelsey said that, because of the foregoing, staff believed that the application did not meet the standards for a variance.

Vice Chairman Ribble asked if there were any speakers and, receiving no response, closed the public hearing.

Mr. Kelley said that staff had just reiterated their opposition and that the applicant should be allowed to make some kind of presentation.

Mr. Ribble said that he had just asked if there was anyone to speak in favor of the application.

Lawrence A. McDermott of the firm of Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, represented the applicant and said that he would be very brief because he had already addressed this application two months ago. He said it had been deferred in the hope that the Zoning Ordinance might allow relief to the applicant. Mr. McDermott said that none of the issues had changed since 1986. He said that he believed that Mr. and Mrs. Lowdermilk had acted in good faith on advice from more than two County staff members, the structure exists, unlike a request for a variance to build a structure, the resulting lot sizes on average are larger than many of the existing lots in the area. He said that directly to the south of the property there was a recent subdivision of eight lots and the resulting lot sizes are significantly smaller than the subject lots. Mr. McDermott said that he was absolutely convinced that this situation resulted from a misunderstanding between the Lowdermilks and staff, not placing blame anywhere; however, the applicants had spent a great deal of money on the construction.

Mr. Hammack said that he was not present on April 2, 1992, and did not get the benefit of the entire hearing. He said that he had read the staff report and it appeared to him that somewhere along the line, Mr. Lowdermilk had been told that he could build the structure as a residence. Mr. McDermott said that was true; the applicant had been told that on two separate occasions by an engineer and a zoning inspector. Mrs. Thonen said that she had spoken with one of the two people, Mr. McAdams, who said that he had never said the dwelling could be built. Mr. McDermott said that was why he had stated that there was some misunderstanding or misinterpretation. He said that he had discussions with Mr. McAdams, had

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worked with Mr. McAdams when he was a County staff member, and he would hope that he did not give incorrect information; however, the bottom line is that it was interpreted by the Lowdermilks that they could build a second dwelling unit.

Mrs. Thonen said that she remembered that the applicant had said that he would do the project in phases; however, it appeared to her that he just moved right along. Mr. McDermott said that the applicant began building in 1986 and it was not until very recently that he had tried to get his Residential Use Permit and it was denied because there was more than one dwelling on the lot.

Mrs. Thonen said that as the applicant built the structure, he just put the apartment in. Mr. McDermott said that the applicant did finish the building; however, he did not put in the appliances until just before he was denied his Residential Use Permit. Mrs. Thonen said that was very close to the finish of the garage.

Mrs. Harris asked if the applicants had applied for a Residential Use Permit in 1990 and Mr. McDermott answered that they had. She asked when the violation had been issued and he said some time afterwards. Mrs. Harris asked if there was someone living there and Mr. McDermott said no. He said that the violation notice had been acknowledged by many people; he believed that Supervisor Joe Alexander was involved, he was involved, there was a density issue at the onset which took some time but has been resolved, so there was a delay between the time that the violation was identified and the formal notice of violation.

Mr. Hammack asked Mr. McDermott, in the original building permit, why the applicant did not show the kitchen or the bedroom; he showed one room and one half bath. Mr. McDermott said he could not answer that. He said that the copy of the building permit looked something like a house and that the applicant told County staff that he intended to put an apartment there at sometime in the future, and he obtained his building permit.

Mrs. Thonen and Mrs. Harris read from the building permit, which stated under description: garage and storage. It included one bath, but no kitchen or fireplace. She said that, if the parcel were subdivided, it would have to meet the standards for two individual lots and would need a pipestem. She said that the pipestem which was proposed to go over the culvert could not be used. Mr. McDermott said that the pipestem would be at the other side of the house from an existing driveway to the garage and is already in place. He said that access to the second dwelling unit would be from the other side of the house, not where the pipestem is located. The discussion continued about the driveway and the dimension thereof, while referring to a plan.

Mr. Hammack asked staff if it was necessary under the existing Ordinance to submit an application to put in a kitchen and the other facilities that the applicant installed in order to complete the storage area. Ms. Kelsey said that the building permit was for a garage and storage area. Mr. Hammack referred to the fact that the applicant had said there was a misunderstanding, but he wanted to know if the applicant came back to apply for a building permit to complete the project, and asked if he was required to. Ms. Kelsey said that the applicant would be required to seek an additional building permit and there were no records in the files indicating that he did so, nor could it have been approved if he had.

Mrs. Thonen spoke of setting a bad precedent in the area where there were so many long lots. Mr. Pammel said he believed that had already occurred, as the staff report referred to the property immediately to the rear, which would be developed as a subdivision, currently being reviewed, which he suspected would probably have a pipestem.

Vice Chairman Ribble closed the public hearing.

MR. PANNEL: Mr. Chairman, I'm going to reinstitute the motion that I made on April 2nd to grant the subject application for the reasons set forth at that time, which was basically the irregular shape and size of the lot; the fact that there clearly has been, in my mind, a misunderstanding involved in this case as to what the individual could do and the communication problem has resulted in undertaking a major expense. The variance requested here is minimal, the end result will be two lots that will be approximately 2/3 of an acre apiece, which is well within the density as prescribed by the Comprehensive Plan, as well as the existing zoning on the property.

MR. KELLEY: Mr. Chairman, I second the motion. I would like to point out again that there is...and go back to the Ms. Bettard's statement at the original hearing that there was another pipestem in the area and it would not be setting a precedent by approving this case. I believe the applicant, I believe the representations they made and I think maybe Mr. McDermott made a very good case.

VICE CHAIRMAN RIBBLE: Any further discussion? All those in favor of the motion to grant the variance signify by saying aye.

MR. PANNEL: Aye.

MR. HAMMACK: Aye.

MR. KELLEY: Aye.

VICE CHAIRMAN RIBBLE: Aye

MS. HARRIS: Nay.

MRS. THOMEN: Nay.

VICE CHAIRMAN RIBBLE: It passes by 4 to 2.

(Chairman DiGiulian arrived at this time and Vice Chairman Ribble relinquished the Chair to him.)

MS. KELSEY: Mr. Chairman, Mr. McDermott forgot to ask if he could get a waiver of the eight-day time limitation.

MR. PANNEL: So moved, Mr. Chairman.

MR. KELLEY: Second.

MR. HANNACK: While we have his...under the Development Conditions, are they going to have to record that easement, for that property, and if they...

MR. PANNEL: Mr. McDermott is shaking his head.

MR. HANNACK: If they don't, I'm going to ask that it be reconsidered right now and have that as a Development Condition.

MR. McDERMOTT: The ingress/egress easements will be recorded.

MR. HANNACK: Do you have any objection to that being added to the Development Conditions?

MR. McDERMOTT: Absolutely not.

MR. HANNACK: If we could, I'd add Condition 3 that says that the ingress/egress easement shall be recorded among the land records.

MR. PANNEL: Second, Mr. Chairman.

CHAIRMAN DIGIULIAN: All in favor?

All ayes.

CHAIRMAN DIGIULIAN: There was a motion to waive the eight days?

MR. PANNEL: Yes there was, Mr. Chairman.

MR. KELLEY: I second that, Mr. Chairman.

CHAIRMAN DIGIULIAN: All in favor?

All ayes. 7-0

CHAIRMAN DIGIULIAN: The motion carries.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-003 by DONALD L. AND ELIZABETH H. LOWDERMILK, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed lot 2 having lot width of 20.58 ft., on property located at 4505 Elmwood Dr., Tax Map Reference 82-1((4))35, Mr. Pannel 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 June 2, 1992; and

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

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1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.24 acres.
4. The lot is of irregular shape and size.
5. A misunderstanding occurred between County staff and the applicant as to what the applicant could do, which resulted in the applicant making major expenditures.
6. The variance is minimal, which will result in two lots approximately 2/3 of an acre each, which is well within the prescribed density in the Comprehensive Plan, as well as the existing zoning on the property.

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 35 into two lots as shown on the plat prepared by Dewberry and Davis and dated December 31, 1991.
2. The proposed shared entrance for Lots 1 and 2 shall meet all applicable standards set forth in the Public Facilities Manual (PFM).
3. The ingress/egress easement shall be recorded in the land records.

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 by the recording of the subdivision plat in the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to establish the use 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 4-2; Mrs. Harris and Mrs. Thonen voted nay. Mr. DiGiulian was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 2, 1992; the BZA waived the eight-day limitation. This date shall be deemed to be the final approval date of this variance.

9:20 A.M. RUSSELL L. MARLOR, VC 92-S-028, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 16.3 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 8,400 s.f., located at 8727 Cuttermill Pl., zoned R-3 (cluster), Springfield District, Tax Map 89-3((6))101.

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. Marlor replied that it was.

Robby Robinson, Staff Coordinator, presented the staff report, stating that approximately 360 feet south of the subject property is an open, wooded space and town homes. He said that for Lot 100, located east of the subject property, VC 92-S-026 was approved by the BZA on May 26, 1992. In that case the applicant was granted a 12.9 foot variance to the minimum rear yard requirement in order to construct an addition.

Russell L. Marlor, 8727 Cuttermill Place, Springfield, Virginia, presented the statement of justification, stating that he had acquired the property in 1978, with the intent of having it as a retirement home when he retired from the service, which he did last September. Mr. Marlor said that his house sits quite far back on the lot, further back than any other houses in the neighborhood, except for Lot 100 to the east, which had a variance approved the previous week. Mr. Marlor said that the addition he proposed to build will not be seen by any of the neighbors, except Mr. Pfifer on Lot 100. He said that the Homeowners Association had verbally told him that they would accept the plans that he had drawn up. Mr. Marlor said there are woods in the rear and no neighbors; the property immediately to the west sits far enough forward that they will not be able to see the proposed addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 92-S-028, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 26, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-028 by RUSSELL L. MARLOR, under Section 18-401 of the Zoning Ordinance to allow addition 16.3 ft. from rear lot line, on property located at 8727 Cuttermill Pl., Tax Map Reference 89-3((6))101, 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 June 2, 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 8,400 square feet.
4. The house is situated to the rear of the property. It is really pushed back quite far, creating a very shallow backyard.
5. The property backs up to the now-abandoned dedicated area for public street purposes, which is quite adequate as a buffer and enough to justify 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 with the following limitations:

1. This variance is approved for the location and the specific sunroom shown of the plat prepared by Alexandria Surveys, Inc., dated March 4, 1992, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and all final approvals shall also be obtained.
3. The architectural style and building materials of the addition shall be compatible with the existing structure.

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 construction has commenced and has 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 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 6-1; Mrs. Thonen voted nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 10, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 176, June 2, 1992, (Tape 1), Discussion:

Shortened Format for Certain Staff Reports

Barbara A. Byron, Director, Zoning Evaluation Division, came to the podium to inform the Board of Zoning Appeals about the project called Business Process Redesign which she and other County staff members had been working on for the past nine months. She said that one of the major premises was to pool resources and focus energies in a way that is commensurate with the level of the request. One of the by-products of the effort is the shortened format for certain staff reports. Ms. Byron distributed copies of sample reports for the BZA to review. She explained the differences in the new examples from the existing staff report format, resulting in narrative being replaced by an easier-to-read checklist format. Ms. Byron asked the BZA for their input after they have had some time to study the new format. The BZA expressed willingness to accept the new concept.

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Page 176, June 2, 1992, (Tape 1), Action Item:

Approval of Resolutions from May 26, 1992 Hearing

Mr. Pammel moved to approve the Resolutions as submitted by the Clerk. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Request to Withdraw  
Expressions of McLean, Inc.  
Appeal A 92-D-007  
Scheduled for June 23, 1992

Mrs. Harris so moved. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Request for Change of Permittee  
Green Trails Associates to SAD Realty Corporation  
SP 90-S-004

Mr. Pammel so moved. Mrs. Harris said the BZA had a letter from the SAD Realty Corporation, as requested, stating that the new permittee would abide by the original Development Conditions imposed on the special permit. Mrs. Harris seconded the motion, which carried by a vote of 7-0. Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that a representative of the new permittee was also present.

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Request for Additional Time  
Green Trails Associates/SAD Realty Corporation  
SP 90-S-004

Mr. Pammel so moved. The new expiration date is April 11, 1993. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Approval of Minutes from March 10 and March 17, 1992 Hearings

Mr. Pammel requested a minor correction on the Minutes of March 10, on page 18, and made a motion to approve the minutes with the minor correction. Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, noted the correction. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Nemo from Marilyn Anderson  
Requests for Out-of-Turn Hearings  
Ira & Rosa McKoy, SP 92-M-033  
Christian Fellowship Church, SPA 82-D-06604  
Maurice R. St. George, VC 92-V-058

Mrs. Harris expressed concern that staff might not have adequate time to prepare the three cases for out-of-turn hearings. Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, advised that the three applicants had not agreed to be heard outside the 90-day time limitation set by the State Code. Barbara A. Byron, Director, Zoning Evaluation Division, advised Mrs. Harris that staff was concerned about the short time frame under which they would be forced to produce the evaluation and the staff report. She said that it would be staff's preference to hear the cases at the first meeting in September, rather than in July.

Mrs. Harris asked what options the BZA had.

Ms. Byron advised that, in previous years, the Board did rule to hear cases after the 90-day limitation because of the summer recess. She advised that the applicant had recourse to take the BZA to Court and force them to hear the case; however, they would hear the case anyway, even though it would be outside the stated 90-day limitation. Ms. Byron said there may be more cases coming in which could not be fit into the time limitation. Mr. Kelley asked if there were not some types of cases which, if not acted upon with the 90-day limitation, would be considered approved. Ms. Byron said that the answer was no.

Mrs. Harris was particularly concerned about the Christian Fellowship Church, which she remembered to be very complex and Ms. Byron said that another effort would be made that day to contact the representative of the Church to ask if the applicant would be willing to have the hearing scheduled for the first meeting in September.

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Mrs. Harris asked if it were possible for the BZA to defer decision on whether or not to grant the out-of-turn hearings.

Chairman DiGiulian asked Ms. Byron if another week would hurt very much in rescheduling and Ms. Byron said it would not. She suggested that, the following week, the BZA would be presented with a calendar of scheduled cases up to September, with a separate list of the cases waiting for scheduling.

Mr. Pammel pointed out that the first meeting in September would be on the 15th because of Labor Day, and Ms. Byron advised that would be only two weeks beyond the 90-day limitation.

Chairman DiGiulian said that, if staff was not allowed to have enough time to adequately review an application, he would be opposed to the application.

Mr. Kelley said that he recalled asking staff to take action regarding the cases and report back on it. This was established as the consensus of the Board.

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Change of Permittee  
Green Trails Associates/SAD Realty Corporation  
SP 90-S-004

Jane C. Kelsey, Chief, Special Permit and Variance Evaluation Branch, requested that the Board waive the eight-day limitation for so that the applicant could get his building permit. Mrs. Thonen so moved. 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 9:55 a.m.

Geri B. Sepko  
Geri B. Sepko, Substitute Clerk  
Board of Zoning Appeals

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

SUBMITTED: July 14, 1992

APPROVED: July 21, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on June 9, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; and James Pammel. Paul Hammack, Robert Kelley, and John Ribble were absent from the meeting.

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Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mrs. Thonen gave the invocation.

Mrs. Thonen made a motion to go into Executive Session to meet with legal counsel to discuss factors which should be considered in making an appropriate response to the Circuit Court's order of December 20, 1991, pertaining to A 89-D-017, Pulte Homes Appeal. Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

The BZA reconvened the public hearing at 9:45 a.m. Mrs. Harris then MOVED THAT THE MEMBERS OF THE BOARD OF ZONING APPEALS CERTIFY THAT TO THE BEST OF THEIR KNOWLEDGE, ONLY PUBLIC BUSINESS MATTERS LAWFULLY EXEMPTED FROM THE OPEN MEETING REQUIREMENTS PRESCRIBED 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 BOARD OF ZONING APPEALS DURING THE EXECUTIVE SESSION.

Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

Chairman DiGiulian called for the first scheduled case.

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Page 179, June 9, 1992, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES WESLEY UNITED METHODIST CHURCH/NORTHERN VIRGINIA CHRISTIAN CHILD CARE CENTER, INC., SPA 77-D-047-1, 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. (DEF. FROM 3/3/92 AND 4/9/92 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. The applicant's agent, Al Balavage, 105238 West Drive, Fairfax, Virginia, replied that it was.

Carol Dickey, Staff Coordinator, said the applicant was requesting a special permit amendment to allow a parking lot addition at the rear of the subject property to remain 10.1 feet from the rear lot line and 15 feet from the side lot line. On April 9, 1992, the BZA deferred the case to allow the applicant an opportunity to resolve the issues listed in the March 5, 1992, memorandum from Jane Kelsey, Chief, Special Permit and Variance Branch. Ms. Dickey said staff received responses from the Department of Environmental (DEM), the Zoning Administrator, the Virginia Department of Transportation, the County Health Department, and the applicant's engineer. She said that the documents showed that the applicant has complied with most of the previous development conditions and have answered some of the questions the BZA raised at the March 3, 1992 public hearing. Ms. Dickey added that staff had concluded that the documents should be submitted to DEM and the Zoning Administration Division in order for staff to complete the review of the application and certify that all issues have been resolved.

Mr. Balavage did not object to staff's recommendation to defer the case to allow the applicant time to respond to the remaining issues.

Mrs. Harris discussed with Mr. Balavage the possibility of adding detention ponds to the site to assist with the water flow. Ms. Dickey said DEM and the applicant are still negotiating, but DEM has indicated that the applicant can formally request a waiver of the storm water requirements.

Following a discussion between the BZA and staff, Ms. Dickey said DEM had indicated if the BZA was so inclined it could recommend that DEM review the application, which might expedite the process.

There were no speakers to address the deferral.

At the BZA's request, Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out the heavy case load prior to the August recess. Mrs. Thonen asked if the applicant would be agreeable to deferral date of September 15, 1992, and Mr. Balavage agreed.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to defer SPA 77-D-047-1 to September 15, 1992, at 9:00 a.m. He included as a part of the motion that DEM review the applicant's request for a waiver of stormwater management facilities. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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9:10 A.M. KUNIHIRO MATSUDA, VC 92-V-029, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.7 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 9,060 s.f., located at 7904 West Boulevard Dr., zoned R-2, Mt. Vernon District, Tax Map 102-2((17)164A.

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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. Matsuda replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance of 9.3 feet in order to construct a three-story addition to the rear of the existing dwelling 5.7 feet from the northern lot line. Ms. Dickey said the files in the Office of Zoning Administration did not show the location of the dwelling on Lot 65; but the applicant had provided a copy of a plan for Lot 65, which showed the dwelling approximately 20 feet from the shared lot line. The dwelling on Lot 64 to the south is located approximately 6.3 feet from the shared lot line.

The applicant, Kunihiro Matsuda, 7904 West Boulevard Drive, Alexandria, Virginia, said he had lived on the subject property for 14 years, the existing dwelling was built approximately 50 years, the lot is only 60 feet, and the addition cannot be constructed without a variance. He said there are no objections from the neighbors and called the BZA's attention to the letters from his neighbors in support of the request.

In response to a question from Mrs. Harris, Mr. Matsuda pointed out the location of the existing garage on the viewgraph.

Andrew Nelson, 7908 West Boulevard, Alexandria, Virginia, said his house and the applicant's house was constructed in 1941 and both were constructed 6 feet from the lot line to the north. Mr. Nelson said in 1976 he enlarged his house by adding a similar addition and that the neighbors heartily supported the applicant's request.

Mrs. Harris asked if he had obtained a variance and Mr. Nelson replied that one was not needed. He added his addition was approximately 7 feet from the shared lot line.

There was no one to speak in opposition and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 92-V-029 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated June 2, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-029 by KUNIHIRO MATSUDA, under Section 18-401 of the Zoning Ordinance to allow addition 5.7 feet from side lot line, on property located at 7904 West Boulevard Drive, Tax Map Reference 102-2((17)164A, 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 June 9, 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 9,060 square feet.
4. The dwelling on the property was built in 1941.
5. It is a long narrow lot.
6. There is no other place to construct the addition without a variance.
7. The addition will not be constructed any closer to the lot lines than the existing dwelling.
8. The property should perhaps be grandfathered.
9. The lot has exceptional narrowness and shape.
10. It will not add to the density and will be in harmony with the neighborhood.

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;

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- 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 addition shown on the plat (prepared by Kephart and Company, dated February 26, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.
3. The 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 construction has commenced and has 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 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 4-0. Mr. Hammack, 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 June 17, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 181, June 9, 1992, (Tape 1), Scheduled case of:

9:30 A.M. AMANDA CORPORATION, A VIRGINIA CORPORATION, VC 91-M-146, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing parking to remain 0.0 ft. from front lot line (10 ft. min. front yard required by Sect. 11-102) and to allow existing building to remain 2.8 ft. from one side lot line and 0.0 ft. from other side lot line (22.6 ft. min. side yard required by Sect. 5-307), on approx. 4.3402 acres, located at 3441, 3443, 3445, 3447 Carlin Springs Rd., zoned I-3, HC, SC, Mason District, Tax Map 62-1((1))16A. (CONCURRENT WITH SE 91-M-058)

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, Barnes Lawson, Jr., 1100 North Ohio Street, Arlington, Virginia, replied that it was.

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Greg Chase, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. He said the applicant's request for a variance resulted from the approval of Special Exception, SE 91-M-056, for a wholesale trade establishment, which was granted by the Board of Supervisors on June 8, 1992. Mr. Chase said the applicant was requesting a 10 foot variance in order to allow parking to remain 0.0 feet from the front lot line.

Mr. Lawson said Urban Payne & Sons has been in business in the Bailey's area since 1900 and because asbestos was detected at its present location the occupant must be relocated. He said the only available space was across the I-3 line from the C-8 line, and because of the particular use of Urban Payne & Sons it generated a requirement for a Special Exception. Mr. Lawson said the Board of Supervisors waived many of the requirements, but they could not waive the need for a variance. He explained the applicant was requesting two variances, one for the two side yards, and one for the parking. Mr. Lawson said the applicant considered moving the parking back to bring it into compliance but that would have impacted the whole site, in particular the travel lanes.

Mrs. Harris asked staff to point out on the viewgraph the lot lines involved in the variance request and Mr. Chase did so.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 91-M-146 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated June 2, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 91-M-146 by AMANDA CORPORATION, A VIRGINIA CORPORATION, under Section 18-401 of the Zoning Ordinance to allow existing parking to remain 0.0 feet from front lot line, on property located at 3441, 3443, 3445, 3447 Carlin Springs Road, Tax Map Reference 62-1(1)16A, 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 June 9, 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 I-3, HC, SC.
3. The area of the lot is 4.3402 acres.
4. There is an unusual situation on the subject property being that the buildings were constructed approximately 1960.
5. If the parking was moved 10 feet in order to meet the setback requirement, it would seriously diminish the amount of travel lanes that are necessary for the kind of vehicles that use the establishment and would create a dangerous situation.
6. Strict application of the Ordinance would produce a hardship because the buildings have been in existence for over 30 years and are coming into compliance due to a Special Exception and change of use.
7. The granting of the variance will not be detrimental to the subject property nor adjacent properties.
8. The granting of the variance will be in harmony with the intended spirit and purpose of the 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:

1. This variance is approved for the location and the specific structure shown on the plat prepared by Walter L. Phillips, Inc. which is dated November 18, 1991, and revised to April 30, 1992, and is not transferable to other land.

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

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 construction has commenced and has 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 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. Mr. Hammack, 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 June 17, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 183, June 9, 1992, (Tape 1), Scheduled case of:

9:40 A.M. SANDRA WILLWERTH, SP 92-P-015, appl. under Sect. 3-103 of the Zoning Ordinance to allow kennel with ancillary veterinary hospital, on approx. 1.01261 acs., located at 8801 Lee Hwy., zoned R-1, HC, Providence District, Tax Map 49-3(1)5.

Chairman DiGiulian said that the notices were not in order and asked staff for a suggested date. Jane Kelsey, Chief, Special Permit and Variance Branch, said staff had major concerns with the application and because of those concerns had published a staff report recommending denial. She suggested a September meeting date in order to allow the applicant time to try to address staff's concerns.

In response to a question from Chairman DiGiulian as to why the notices were not in order, Ms. Kelsey explained that the applicant had only notified nine surrounding properties. She said that since one of the property owners notified was the owner of the subject property, the notice requirement had not been met.

Matt Ravencraft, FLINN & BEAGAN, 8330 Boone Boulevard, #440, Vienna, Virginia, agreed that the notices were not in order. He said the applicant was very anxious to have the

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application heard and asked the BZA to schedule the case before the August recess. Mr. Ravencraft said a revised plat had been submitted to staff but the staff report did not reflect those changes.

Mrs. Harris pointed out that it would be to the applicant's benefit to allow staff time to thoroughly review the revisions and present their comments to the BZA. Mr. Ravencraft said the applicant was under contract to purchase the property and the contract would expire the early part of September.

In response to Mr. Ravencraft's comments regarding a revised plat, Ms. Kelsey said the applicant had submitted a revised plat but it still did not show that the parking sets back 50 feet from the lot line of an adjoining residential district as required by the Zoning Ordinance.

Mrs. Thonen made a motion to defer the application to September 15, 1992, at 9:15 a.m. Mrs. Harris and Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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The BZA recessed at 10:22 a.m. and reconvened at 10:38 a.m.

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Page 184, June 9, 1992, (Tape 1), Scheduled case of:

9:50 A.M. WILLIAM E. REINHART, VC 92-P-030, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.1 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,025 s.f., located at 2514 Drexel St., zoned R-3, Providence District, Tax Map 49-1((9))I2.

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. Reinhart replied that it was.

Bernadette Bettard, Staff Coordinator, presented the staff report. She said the applicant was requesting a 6.9 foot variance in order to construct a garage addition 5.1 feet from the side lot line. Ms. Bettard said the applicant was also proposing to add a screened porch and a 9.68 foot high deck 11.0 feet from the side lot line which would be attached to the rear of the proposed addition. The dwelling on Lot 1B, which is adjacent to the subject property on the north, is located approximately 22.2 feet from the shared lot line.

The co-owner, William Reinhart, 2514 Drexel Street, Vienna, Virginia, said he would like to add a two car garage, screened in porch, and deck in order to improve the property. Mr. Reinhart said he chose the proposed location for three reasons: 1) there is a walkout basement on the rear of the house, 2) the rear of the lot is wooded and very steep, and 3) the design is similar to others in the neighborhood. He said there are no objections from his neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 92-P-030 for the reasons noted in the resolution and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-030 by WILLIAM E. REINHART, under Section 18-401 of the Zoning Ordinance to allow addition 5.1 feet from side lot line, on property located at 2514 Drexel Street, Tax Map Reference 49-1((9))I2, 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 June 9, 1992; 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 11,025 square feet.
4. The subject property was acquired in good faith.



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5. The subject property has exceptional topographical conditions as it slopes away considerably in the rear which would prohibit the applicant from constructing the garage in the rear of the lot.
6. The strict of the application of the Ordinance would produce an undue hardship on the applicant.
7. There is a chimney that extends on the northern side of the house in addition to steps that lead to a door on the rear house and this makes the applicant's request for a 22 foot wide garage reasonable.
8. The garage will only be 24 feet long, which is a reasonable length.
9. The granting of the variance will not change the character of the zoning district.
10. The variance will be in harmony with the intended spirit and 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:

1. This variance is approved for the addition to the specific dwelling shown on the plat (dated February 20, 1992) prepared by Christopher P. Hodges and submitted with this application.
2. A Building Permit shall be obtained prior to any construction. All final inspections shall be completed.

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 construction of the addition 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 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. Mr. Hammack, 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 June 17, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 186, June 9, 1992, (Tape 1), Scheduled case of:

10:00 A.M. RUTH S. BAKER, TRUSTEE, AND EMMANUEL A. BAKER, JR., TRUSTEE, & FAIRFAX RADIOLOGY CONSULTANTS APPEAL, A 92-P-004, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the representation of the Deputy Zoning Administrator for Permit, Plan Review Branch, that appellant's first parking tabulation submitted in connection with a proposed medical office at 8318 Arlington Boulevard could not be approved by the Department of Environmental Management since the medical office use is an expansion or enlargement of an existing structure or use and parking for the entire structure must comply with current Zoning Ordinance requirements pursuant to Par. 2B of Sect. 11-101, on approx. 70,192 sq. ft., located at 8318 Arlington Blvd., zoned C-3, Providence District, Tax Map 49-3((22))1.

10:00 A.M. RUTH S. BAKER, TRUSTEE, AND EMMANUEL A. BAKER, JR., TRUSTEE APPEAL, A 92-P-005, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Department of Environmental Management's approval of a second parking tabulation submission in connection with a proposed medical office at 8318 Arlington Boulevard which showed parking for the entire building under current requirements in accordance with Par. 2B of Sect. 11-101 of the Zoning Ordinance on approx. 70,192 sq. ft., located at 8318 Arlington Blvd., zoned C-3, Providence District, Tax Map 49-3((22))1.

Liz Walther, with the law firm of Rust, Rust & Silver, 4165 Chain Bridge Road, Fairfax, Virginia, came forward and requested a deferral.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested September 29, 1992, at 10:00 a.m.

Mr. Pammel asked the reason for the deferral. Ms. Walther said the appellant would like time to respond to the staff report.

Mrs. Thonen made a motion to defer A 92-P-004 and A 92-P-005 to the date and time suggested by staff. Mrs. Harris seconded the motion and asked that any new information be forwarded to the BZA at least two weeks prior to the public hearing. The motion carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Page 186, June 9, 1992, (Tape 1), Action Item:

Approval of June 2, 1992 Resolutions

Mr. Pammel made a motion that the BZA reconsider its action with respect to VC 92-L-003 by Donald and Elizabeth Lowdermilk. Mrs. Thonen seconded the motion. She asked that all the members review the application and the history of the case. The motion carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

Mr. Pammel asked staff for a date to schedule the new public hearing. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested September 22, 1992, at 8:00 p.m. Mr. Pammel so moved. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

Mr. Pammel made a motion to approve the remainder of the June 2, 1992 Resolutions. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Page 186, June 9, 1992, (Tape 1), Action Item:

Approval of April 2 and April 9, 1992 Minutes

Mrs. Harris made a motion to approve the minutes as submitted. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Scheduling of M. A. Mofenamín and Ahmad Mofenamín

Mrs. Thonen made a motion to schedule the appeal on July 30, 1992, at 10:00 a.m. as suggested by staff. Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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Big Apple Circus  
Out of Turn Hearing

Chairman DiGiulian said the BZA had received a letter from the Wolf Trap Foundation with respect to an out of turn hearing for the Big Apple Circus. He said it was his understanding that the application had been accepted and staff was awaiting the affidavit from the County Attorney's office. Mrs. Thonen made a motion to grant the applicant an out of turn hearing for August 4, 1992. Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Kelley, and Mr. Ribble were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:47 a.m.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

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

SUBMITTED: June 30, 1992

APPROVED: July 7, 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 evening June 16, 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 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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Mrs. Thonen set the order of the cases to be heard.

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Mrs. Thonen made a motion to adjourn to Executive Session to discuss the legal matters of the Pulte Appeal Court Case. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Pammel not present for the vote.

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The BZA reconvened at 8:15 p.m.

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Mrs. Harris made a motion that the Board members certify, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene to Executive Session were heard, discussed or considered by the Board of Zoning Appeals (BZA) during Executive Session. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 189, June 16, 1992, (Tape 1), Scheduled case of:

8:00 P.M. PULTE APPEAL, A 89-D-017, (Appeal of determination by the Director of Environmental Management disapproving a preliminary plat with the notation that a special exception is required pursuant to Part 9 of Article 2, Floodplain Regulations), this hearing is to consider matters that were remanded to the Board of Zoning Appeals, including evidence and argument of the parties, pursuant to a Decree of the 19th Judicial Circuit Court of Virginia in the case of Birmingham, et al. v. Fairfax County Board of Zoning Appeals, et al. In Chancery No. 115934, entered December 20, 1991. This Decree can be reviewed at 4050 Legato Road, Fairfax, Virginia, between 8:00 a.m. and 4:30 p.m., Monday through Friday, 246-1280. (BZA DEF. FROM 3/31/92. DEF. FROM 4/23/92 FOR BZA TO REVIEW ADDITIONAL INFORMATION. DEF. FROM 5/12/92 FOR ADDITIONAL INFORMATION)

Mr. Kelley made a motion to reaffirm the Board of Zoning Appeals' previous decision in granting appeal A 89-D-017, the appeal by Pulte Homes of the decision of the Director of the Department of Environmental Management (DEM) that a special exception was required for Pulte Homes' proposed Woodson Drive. He stated that the BZA's finding and conclusion would be reported to the Circuit Court as Exhibit A to the written copy of the motion. Mr. Ribble seconded the motion which carried by a vote of 6-1 with Mr. Hammack voting nay.

There was a brief discussion with Randall T. Greehan, Assistant County Attorney, as to what matters the BZA discussed during the Executive Session.

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Page 189, June 16, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ANTHONY E. WESTREICH AND TIMOTHY T. LANDRES, SP 92-Y-017, appl. under Sect. 3-103 of the Zoning Ordinance to allow commercial golf course and driving range on approx. 31.18 acres located on 12908 Lee-Jackson Memorial Highway, zoned R-1, HC, WS, Sully District, Tax Map 45-2(1)pt. 1.

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

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a commercial golf course and driving range on the property. She noted that the hours of operation would be from 7:00 a.m. to 9:30 p.m. with a maximum of 10 employees on site on any one time. She said that parking for 136 vehicles would be provided at the front of the site. Mrs. Greenlief stated that a lighted 60 tee driving range, which would be surrounded by berms and an unlighted nine-hole par-3 golf course, would be located in the center of the site. She noted that a clubhouse and maintenance building would be located in the southwestern corner of the site. Ms. Greenlief stated Transitional Screening 2 within a 50 foot wide screening yard would be located along the western, eastern, and northern lot

lines with landscaping and screening as shown on the plat along the southern lot line. She noted that the plat has gone through many revisions as staff had serious concerns when the application was initially filed. She stated that staff concerns have been alleviated and staff now supported the application subject to the implementation of the revised proposed development conditions dated June 11, 1992.

The applicants' attorney, William B. Lawson, 4141 N. Henderson Road, Plaza Suite 5, Arlington, Virginia, addressed the BZA. He stated that due to the cooperation between the community, the staff, and the applicant, the application before the BZA was outstanding. He explained that the community's and staff's concerns had been resolved and expressed his belief that the application met the necessary standards. Mr. Lawson noted that in compliance with the neighbors' request, a deceleration lane would be added. He explained that the neighbors have a very difficult access problem and requested the BZA allow the entrance to be modified so that the driveway could be used as a turn around. In summary, Mr. Lawson asked the BZA to grant the request.

Mr. Lawson, in response to questions from the BZA regarding the turn lane and the entrance modifications, explained the reasons the community requested the turn lane.

Lawrence R. McDermott, with the firm of Dewberry and Davis, 8401 Arlington Boulevard, Fairfax, Virginia, addressed the BZA. He stated that the applicant had provided turn lanes, transitional screening, landscaping, parking, open space, and three ponds to ensure that the application met all the Zoning Ordinance requirements and asked the BZA to grant the request.

Mrs. Harris expressed concern regarding the stream bed. Mr. McDermott stated that the golfers would use the trail along the course and would not disturb the stream bed.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

John Tisdale, President of the Towns of Greenbriar Homeowners Association, 12927 Lee Jackson Memorial Highway, Fairfax, Virginia; Ken Oleynik, 4052A Gray's Point Court, Fairfax, Virginia; and Marilyn Jackson, representative of the Greenbriar Civic Association, 4104 Maureen Lane, Fairfax, Virginia; addressed the BZA. They stated that they supported the application and noted that the applicant had worked hard to resolve the communities concerns and had agreed to provide turn lanes. They asked that the BZA allow the applicant to modify the entrance.

The being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 92-Y-017 subject to the revised development conditions dated June 11, 1992 with the modifications 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 Amendment Application SP 92-Y-017 by ANTHONY E. WESTREICH AND TIMOTHY T. LANDRES, under Section 3-103 of the Zoning Ordinance to allow commercial golf course and driving range, on property located at 12908 Lee-Jackson Memorial Highway, Tax Map Reference 46-2(1)pt. 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 June 16, 1992; and

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

1. The applicants are the contract purchasers of the land.
2. The present zoning is R-1, HC, and MS.
3. The area of the lot is 31.18 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, 8-604, and 8-606 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 prepared by Dewberry & Davis dated March 11, 1992, revised through May 21, 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 Dewberry & Davis dated March 11, 1992 revised through May 21, 1992 and these development conditions.
5. The hours of operation shall be limited to 7:00 a.m. to 9:30 p.m., seven days a week. There shall be no operation of loudspeakers, machinery, mowing equipment or mechanical ball gathering nor the lighting of the driving range prior to 9:00 a.m. or after 9:30 p.m.
6. There shall be no more than ten (10) employees on site at any one time.
7. There shall be one hundred and thirty-six (136) parking spaces provided as shown on the special permit plat. All parking for this use shall be on-site. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.
8. Right-of-way shall be provided to 140 feet from the centerline of Lee Jackson Memorial Highway as shown on the 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 access easements shall be provided to facilitate the road improvements as determined by the Department of Environmental Management (DEM).
9. Right and left turn lanes and an acceleration lane shall be provided at the entrance to the site and shall be designed and constructed to a standard required by DEM and the Virginia Department of Transportation (VDOT).
10. A contribution toward the installation of a future traffic signal at the entrance to the site shall be provided if determined necessary by DEM and VDOT at the time of site plan review.
11. A service drive shall be provided along the site's frontage and shall be designed and constructed to a standard determined by DEM and VDOT unless the provision of a service drive is waived by VDOT.
12. There shall be no illumination of the nine-hole golf course or the putting green. There shall be no more than eight (8) lights, no more than thirty (30) feet in height, provided on the driving range. The driving range lights shall be directed and/or shielded so as to minimize glare impacts on the adjoining properties. There shall be no more than twenty (20) parking lot lights, no more than twelve (12) feet in height. Parking lot lighting shall be directed and/or shielded so as to minimize glare impacts on the adjoining properties. There shall be no more than seven (7), twelve (12) foot high driveway lights. The driveway lights shall be directed and/or shielded so as to minimize glare impacts on the adjoining properties.
13. The maximum number of tees provided on the driving range shall be sixty (60). The size of the covered tee area shall be no larger than that shown on the special permit plat.
14. If it is determined by the Fairfax County Health Department that neither of the two proposed septic fields can adequately serve the use, this special permit shall be considered null and void unless alternate septic field locations can be found that do not disturb screening, landscaping, wetlands, berming, parking or structures as shown on the plat or unless a connection to public sewer is made. Should public sewer be provided, the areas shown as proposed septic fields shall remain as grassed areas as shown on the plat.
15. Transitional screening, barriers and landscaping shall be provided as follows and as approved by the Urban Forestry Branch, DEM:

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Plantings equivalent to Transitional Screening 2 shall be provided within a fifty (50) foot wide screening yard along the western and northwestern lot lines with the exception of the following areas: between golf course holes 1 and 2 where the stream and pond are shown on the plat; between golf course holes 3 and 4 where the stream and pond are shown on the plat; and, within the area referenced by Note 11 on the plat along the western lot line. The existing vegetation in these areas shall be preserved and shall be supplemented with evergreen trees to a level as close to Transitional Screening 2 as possible. All tees, greens, fairways and the putting green shall be located outside of this fifty foot wide screening area.

Plantings equivalent to Transitional Screening 2 within a fifty (50) foot wide screening yard shall be provided along the northern lot line adjacent to the Fairfax County Parkway. All tees, greens, greens and fairways shall be located outside of this fifty foot wide screening area.

Plantings equivalent to Transitional Screening 2 within a fifty (50) foot wide screening yard shall be provided along the eastern lot line with the exception of the area between golf course holes 8 and 9 shown on the plat as a wetlands preservation area. The walkway over the wetlands area can be located as shown on the special permit plat. All tees, greens, fairways shall be located outside of this fifty foot wide screening area.

Plantings in lieu of Transitional Screening 1 and 2 shall be provided as shown on the special permit plat along the southern lot line.

The six (6) berms shown between the golf course and the driving range shall be provided and landscaped as shown on the special permit plat. All parking lot landscaping, driving range landscaping, landscaping around the clubhouse and maintenance building, and landscaping on the south side of the parking lot and driveway shall be provided as shown on the special permit plat. The area of tree preservation shown in the southern corner of the site and along the western lot shall be provided.

The barrier requirement shall be waived along all lot lines.

16. In order to prevent groundwater contamination, all surfaces used for chemicals, machines, vehicle storage or cleaning and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile liner designed to remove contaminants and pollutants. A written maintenance plan for the system shall be developed. The catchment system design and the maintenance plan for this system shall be approved by the Department of Environmental Management (DEM). In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premises. The emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.
17. An Integrated Pest Management Plan (IMP) shall be developed in accordance with the Virginia Cooperative Extension Service Pest Management Guide (PMG) and a copy provided to DEM prior to site plan approval and implemented, as required by DEM, so that adverse impacts to water quality from increased levels of fertilizers, herbicides and pesticides can be prevented to the maximum extent feasible. This Plan shall include an on-going monitoring and written reporting method. The monitoring and reporting method for the Integrated Pest Management Plan shall be used to document the intent and success of the Integrated Pest Management program and shall be made available to the Office of Comprehensive Planning (OCP), if requested.
18. In order to mitigate impacts to existing wetlands, all wetland areas to be preserved within the limits of clearing and grading shall be shown on the site plan as wetlands preservation areas. These areas shall be designed and maintained to preserve the wetlands within hazard areas (features of the golf course designed to challenge play but not to include tees, greens or manicured fairways) of the golf course and driving range. A written wetland/habitat conservation plan shall be developed and approved by the Office of Comprehensive Planning and DEM to specifically address the golf course/driving range operational management of these areas to ensure these areas are managed to function as natural wetlands within the golf course/driving range and will remain as Wetland Preservation Areas for the life of the golf course.
19. Stormwater Management Best Management Practices (BMPs) shall be provided in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual to the satisfaction of the Director, DEM and as shown on the special permit plat. The BMP wet pond and the BMP dry pond located on the north and west boundary of the site shall be designed to contain a



shallow marsh bench. The shallow marsh bench within the perimeter of these ponds shall be graded to form a 10 to 20 foot wide shallow bench designed to enhance the growth of emergent aquatic vegetation, to provide an area for sediment deposits near the inflow channel and to allow the establishment of a shallow marsh area. The design of the ponds and a list of plant species to be replanted in the wetlands areas disturbed by stormwater management facilities shall be in substantial accordance with the Landscaping Guide for Stormwater Management Areas, Table 9.2, Chapter 9 of the Metropolitan Council of Governments (COG) document entitled Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs and/or the Maryland Department of Natural Resources document entitled Guidelines for Constructing Wetland Stormwater Basins or with other methods approved by DEM and shall be provided to and approved by the Urban Forestry Branch at the time of site plan review.

20. Approval from the Army Corps of Engineers shall be obtained, if necessary, for impacts to the wetlands areas on site.
21. The roughs and peripheral fairways of the golf course and driving range shall be maintained as a herbaceous grass meadow. Existing vegetation and shall be preserved to the greatest extent possible.
22. The development may be phased, provided all parking, transitional screening, landscaping, berming, stormwater management for the entire development, right-of-way dedication, and other road improvements are provided in conjunction with the first phase of development.
23. Any sales activity on the site shall be limited to the ancillary selling of beverages and food at the snack bar and golf-related accessories. The sale of alcohol shall not be permitted on the premises without prior approval of the BZA.
24. If underground storage tanks (USTs) will be utilized for the storage of petroleum products or other hazardous materials, the regulations of the Environmental Protection Agency (EPA) and the Fairfax County Department of Fire and Rescue Services shall be followed.
25. Public water shall be provided to the site for this use.
26. A minor relocation of the entrance gate may be permitted at the discretion of staff.

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 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 and 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 June 24, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 9:17 p.m. and reconvened at 9:30 p.m.

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Page 193, June 16, 1992, (Tapes 1 and 2), Scheduled case of:

8:00 P.M. THE COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., SPA 82-Y-052-2, appl. under Sects. 3-203 and 8-014 of the Zoning Ordinance to amend SP 82-Y-052 for a monastery to allow addition, increase number of residents, and increase parking, on approx. 6.4514 acres located at 2501, 2503, and 2505 Stone Hedge Dr., zoned R-2, Mount Vernon District, Tax Map 93-3(8)(3)1,2,3 and 93-3(1)1,4.

Chairman DiGiulian called the applicant's representative 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.

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Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of an amendment to the existing special permit to allow an addition to the rear of the existing building (monastery), an increase in the number of residents, and an increase in parking. Ms. Bettard said that the addition will provide for an expansion of the living and working quarters of the Poor Clares Sisters to allow for a maximum of thirty (30) residents.

Ms. Bettard stated that the proposed development conditions would ensure that the proposed development would avoid problem soils and would be designed so that the surrounding residential areas would be protected from any adverse land use and environmental impacts associated with the addition.

Ms. Bettard said staff believed that the subject application met the applicable Zoning Ordinance standards for the use and was in harmony with the Comprehensive Plan; therefore, staff recommended approval, subject to the development conditions contained in the staff report dated June 9, 1992.

The applicant's attorney, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Ehrlich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the BZA. She stated that the original application had been approved by the BZA in 1977 and had been amended to permit construction of a new chapel and choir in 1982. She noted because the BZA had denied an subsequent amendment, the applicant had revised the request so that it would conform to the neighborhood. She noted that the proposed addition would be constructed to the rear of the property and would not have a detrimental impact on the area. Ms. Strobel expressed her belief that the application met the necessary standards and asked the BZA to grant the request.

In response to questions from the BZA, Ms. Strobel stated that the applicant would strictly adhere to the Department of Environmental Management's (DEM) requirement regarding soil conservation, a geotechnical report would be done in compliance with Fairfax County regulations, and the applicant would adhere to the conditions imposed by the BZA regarding the preservation of any historical structures.

Chairman DiGiulian called for speakers in support and the following citizens came forward. Rev. Msgr. John Hannon, pastor of St. Andrews Church, Centreville, Virginia; Rev. Msgr. James McMartin; Rev. James R. Gould, St. John's Parish, McLean, Virginia; John L. Kilcullen, Nancy A. O'Kane addressed the BZA. They stated that the maximum number allowed by the Cannon Law in the Community is 30 nuns. They noted that the Poor Clares Sisters were a cloister community and had little impact on the neighborhood. They expressed their belief that the property was aesthetically pleasing and noted the extensive improvements and landscaping of the property that has been provided by the Poor Sisters.

There being no further speakers to the request, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Tim Berkoff, President of the Calvert Park Civic Association, 7120 Rita Court, Alexandria, Virginia, addressed the BZA and expressed his concerns regarding the application. He asked that heavy equipment vehicles not be allowed to damage the streets in the area and that construction vehicles not be used prior to 8:00 a.m. or after 5:00 p.m. He also requested that the Popkins Farm foundation be preserved and that soil erosion be prevented.

In response to Mr. Kelley's question as to whether he and the Civic Association were in opposition to the request, Mr. Berkoff stated that many of the concerns were his own and did not reflect the concerns of the Civic Association. He noted that the Civic Association had worked with the applicant to resolve the concerns expressed at the previous BZA hearing.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

In rebuttal, Ms. Strobel stated that during the site plan process, the applicant would comply with all the requirements. She noted that staff had addressed the environmental concerns and believed that there would be no detrimental impact on the area. In regard to the Popkins Farm building, Ms. Strobel stated that her research had revealed that although Heritage Resources were pleased that the building would be preserved, they would not place it on any preservation list. She noted that the applicant would comply with the neighbor's request that no construction equipment be placed on the neighboring streets. Ms. Strobel stated that the applicant would also be sensitive to the neighbors' request regarding the hours of construction and asked the BZA not to impose stringent conditions on the issue.

In response to questions from the BZA regarding the retaining wall, Ms. Strobel stated that she believed that the retaining wall consisted of railroad ties and noted that the area had been landscaped. She expressed her belief that the slope was stable and erosion was not a problem. Ms. Strobel said that the geotechnical review and the development condition would address the erosion concerns.

The applicant's architect, Fred Sheridan, addressed the BZA and stated that because a 1977 a geotechnical survey revealed marine clay existed on the property, the building had been

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designed accordingly. He noted that there has been no shifting of the foundation of the existing buildings. Mr. Sheridan expressed his belief that the erosion had taken place long before the property had been developed and noted this was supported by a 1991 topographic survey.

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

Mr. Kelley made a motion to grant SPA 82-V-052-2 subject to the development conditions contained in the staff report dated June 9, 1992.

Mr. Hammack seconded the motion. He asked that the motion be amended to include Development Condition 12 as reflected in the Resolution. The maker of the motion accepted the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-V-052-2 by THE COMMUNITY OF THE POOR CLARES OF ALEXANDRIA, INC., under Sections 3-203 and 8-014 of the Zoning Ordinance to amend SP 82-V-052 for a monastery to allow addition, increase number of residents, and increase parking, on property located at 2501, 2503 and 2505 Stone Hedge Drive, Tax Map Reference 93-3((8))(3)1,2,3 and 93-3((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 June 16, 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 6.4514 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 Sheridan-Behm-Eustice & Assoc., Ltd.), dated March 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 Sheridan-Behm-Eustice & Associates, Ltd. and dated March 1992.
5. The maximum seating capacity of the chapel choir shall be sixty (60) seats.
6. A maximum of twenty-six (26) parking spaces shall be provided as reflected on the Special Permit Plat.
7. The number of residents on the site shall be limited to thirty (30).

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8. Transitional Screening 1 (25) shall be provided along all lot lines in order to screen the abutting residential properties. This requirement may be modified to allow the existing and the proposed vegetation as shown on the Special Permit Plat to satisfy this requirement with additional evergreen plantings provided between the proposed parking spaces and Stone Hedge Drive if deemed necessary by the Urban Forester.
9. The barrier requirement shall be satisfied by the provision of the four foot high wooden and six foot high chain link fences shown on the Special Permit Plat.
10. A geotechnical study shall be prepared by, or under the direction of, a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved as determined by the Department of Environmental Management (DEM). The recommendations of the study shall be implemented.
11. The stormwater management system shall be provided as approved by the Department of Environmental Management (DEM). In order to prevent sheet erosion and problems with foundation drainage, any roof drains associated with the addition shall be incorporated into the existing subsurface drainage system that outfalls into the stormwater dry pond or shall be designed so that the runoff from the roof drains into the pond as approved by the Director, DEM.
12. The foundation of the Popkins Farm barn shall be preserved in its present condition.

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 of the proposed addition to the existing monastery 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. 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 June 24, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 196, June 16, 1992, (Tape 2), Information Item:

Approval of Resolutions from June 9, 1992 Hearing

Mrs. Harris made a motion to approve the Resolutions as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 196, June 16, 1992, (Tape 2), Information Item:

Approval of Minutes from March 3, March 31, April 14, April 28, 1992 Hearings

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. and noted that in the Allen D. and Claudia H. Butler, YC 92-B-008 minutes, the date of the approved plat had been left blank. She explained that it had been purposely left blank because the application was granted-in-part, subject to the submission of a revised plat within thirty days, and the plat had not been received.

After a brief discussion, it was the consensus of the BZA that the minutes could be approved as submitted.

Mr. Pammel stated that on Pages 26 and 27 of the March 31, 1992 minutes, it was erroneously indicated that he had abstained from the vote. He asked Ms. Kelsey to review the record before the minutes were approved.

Mr. Pammel made a motion to approve the minutes with the exception of March 31, 1992. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 197, June 16, 1992, (Tape 2), APPROVAL OF MINUTES FROM MARCH 3, MARCH 31, APRIL 14, APRIL 28, 1992 Hearings, continued from Page 196 }

After a brief discussion, it was the consensus of the BZA that the March 31, 1992 minutes could be approved subject to the stipulation that Ms. Kelsey review the record and make the necessary corrections as specified by Mr. Pammel.

Mrs. Harris made a substitute motion to approve the March 31, 1992 minutes subject to the stipulation Mr. Pammel made. Mr. Kelley seconded the motion which carried by a vote of 7-0.

Mrs. Harris made a motion to have the Clerk inform Allen and Claudia Butler that the BZA would withdraw its approval of VC 92-B-008 unless revised plats were submitted to the BZA by July 17, 1992. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 197, June 16, 1992, (Tape 2), Information Item:

Intent to Defer  
The Furniture Store by John Mazur  
Scheduled for July 28, 1992 at 10:00 a.m.

Mrs. Thonen issued an intent to defer Appeal A 92-N-009. Mrs. Harris seconded the motion which carried by a 7-0.

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Page 197, June 16, 1992, (Tape 2), Information Item:

Reconsideration  
Donald and Elizabeth Lowdermilk, VC 92-L-003

Chairman DiGiulian noted that at its June 9, 1992 hearing, the BZA had made a motion to reconsider VC 92-L-003. He stated that the motion has been deemed null and void because at the June 2, 1992 hearing, the BZA had waived the eight-day waiting period.

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Page 197, June 16, 1992, (Tape 2), Information Item:

Additional September Meeting

Chairman DiGiulian stated that staff had advised the Board of Zoning Appeals (BZA) that because of the volume of applications, an additional September meeting may be necessary.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and submitted a schedule of upcoming hearings to the BZA. She suggested that the BZA schedule an extra meeting on September 24, 1992.

Mr. Hammack made a motion to schedule a public hearing on the suggested date. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 197, June 16, 1992, (Tape 2), Information Item:

Mrs. Thonen made a motion to direct staff to write a letter to Robert Howell, Acting County Attorney, and the Board of Supervisors regarding the conduct of Randall Greehan, Assistant County Attorney during the public hearing.

After a brief discussion it was the consensus of the BZA that Chairman DiGiulian write the letter.

Chairman DiGiulian directed the Clerk to provide a verbatim of the Pulte Appeal Hearing to the BZA.

The motion carried by a vote of 5-0-1 with Mr. Hammack abstaining from the vote.

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Mr. Hammack stated that the Board of Zoning Appeals had been excluded from the opening ceremony for the Government Center and asked staff to ensure that the BZA is on the current Fairfax County mailing list for official functions.

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Request for Out-of-Turn Hearing  
Reston Property Investors Limited Partnership, SPA 80-C-091-1

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Jane Kelsey, Chief, Special Permit and Variance Branch, submitted a letter regarding the Reston Property Investors Limited Partnership, SPA 80-C-091-1. She explained the applicant's position and after a brief discussion, it was the consensus of the BZA to schedule the application.

Mr. Ribble made a motion to grant an out-of-turn hearing for August 4, 1992. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mrs. Harris not present for the vote.

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Mr. Kelley asked that the BZA reconsider its decision to conduct the public hearings at the Massey Building.

After a brief discussion, it was the consensus of the BZA to have staff investigate the availability of an appropriate meeting room at the Government Center and report their findings at the next public hearing.

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Rescheduling  
The Furniture Store by John Mazur  
Scheduled for July 28, 1992 at 10:00 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that although the BZA had issued an intent-to-defer Appeal A 91-M-009 earlier in the public hearing, the case had not been advertised; therefore, the BZA could reschedule the case and suggested October 6, 1992 at 10:00 a.m.

Mr. Hammack so moved. The motion carried by a vote of 6-0 with Mrs. Harris 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 9:55 p.m.

Helén C. Darby  
Helén C. Darby, Associate Clerk  
Board of Zoning Appeals

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

SUBMITTED: September 22, 1992

APPROVED: September 29, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on June 23, 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 9:15 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 199, June 23, 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 10/30/90 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. DEF. FROM 10/8/91 AT APPLICANT'S REQUEST. DEF. FROM 1/7/92 AT APPLICANT'S REQUEST. DEF. FROM 5/5/92 - NOTICES NEED TO BE DONE)

Chairman DiGiulian advised that a request for a 90-day deferral had been received. Mrs. Thonen said that she had made a motion previously for a 6-month deferral. There was some question that there might have been an Intent to Defere; however, Mrs. Thonen said that she would again make a motion for a 6-month deferral. She also said that the BZA would grant no further deferrals to this appellant. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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Page 199, June 23, 1992, (Tape 1), Scheduled case of:

9:00 A.M. CHESTERBROOK SWIMMING AND TENNIS CLUB, INC., SPA 79-D-054-1, appl. under Sects. 3-103 and 3-303 of the Zoning Ordinance to amend SP 79-D-054 for community swimming pools and tennis courts to increase land area and to allow two additional tennis courts with lights, on approx. 8.91 acs., located at 1812 Kirby Road, zoned R-1, R-3, Dranesville District, Tax Map 31-3((5))1A; 31-3((1))60B.

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. McNaugher replied that it was.

Carol Dickey, Staff Coordinator, presented the staff report, stating that staff recommended approval subject to the implementation of the Proposed Development Conditions.

Thomas L. McNaugher, 1941 Lorraine, McLean, Virginia, stated that he was on the applicant's Board. He represented the applicant and presented the statement of justification. Mr. McNaugher said that the reason for expansion was that there was a demand for additional facilities, especially for the youth of the area. He said that at least one of the existing tennis courts was in such poor condition and so far back in the woods that the members were reluctant to let the youths use them because of the safety factor; one of the courts with a canvass surface could not be used for tournament play; thus, they really had only two courts for overall utilization. Mr. McNaugher said that they wanted good, quality courts, with minimal impact upon the environment. He said they had worked with the County and were satisfied with the results; the land contained mostly dead trees and overgrowth, along with some very nice trees which they had tried to preserve. Mr. McNaugher referred to Condition 19, dealing with frontage improvements on Kirby Road, as determined by Virginia Department of Transportation (VDOT) and Fairfax County Department of Environmental Management (DEM) at the time of the site plan review. He said he had been surprised to see Condition 19 because he believed the issue had arisen a few months ago in the first discussions with the County and he thought it had been dispensed with. He said he did not want to be silent about the condition, since it might be interpreted as approval. He was willing to let the matter go until site plan review; however, he wanted it to be left open as to whether they rebuild Kirby Road or simply do the other lot improvements.

Mrs. Thonen asked Mr. McNaugher whether he had read the two letters of opposition and he said that he had spoken with the two people who wrote the letters as well as some of the other neighbors.

Mrs. Thonen said she believed that the drainage issue should be addressed. Mr. McNaugher said that the architect, Mark J. Cross, had walked the property the previous day with the author of the letter regarding drainage. He said there was a kind of swale designed by nature which could effect drainage; the clearing at the top of the hill does add to that problem; however, the new courts are far enough to the south that they believe strongly that

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they don't contribute to the drainage problem. One of those in opposition objected to being woken up early Saturday mornings when the Club had swim meets, but Mr. McNaugher said that the Club had only three or four swim meets per year. As far as late night noise was concerned, Mr. McNaugher said that the Club had five or six social events per year, none of which went on past 9:30 a.m. or 10:00 p.m., to his knowledge. He said, to his knowledge, they had never found it necessary to request an after-hours permit from the County.

Mrs. Thonen asked Mr. McNaugher about a loudspeaker system and he replied that they did have one: specifically, a microphone system which they used for swim meets and for paging people when they received telephone calls. He said he knew that the County Code limited noise to 55 dBs, but he did not know what the volume of their system was.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 79-D-054-1, for the reasons outlined in the Resolution and subject to the Proposed Development Conditions, as amended: Deleting Condition 19 and allowing the swim club to resolve the situation without the requirement being imposed by the BZA.

Mrs. Harris asked if Mr. McNaugher could monitor the volume of the loudspeaker. Mr. Hammack pointed out that the applicant was bound to comply with the County dB level requirement and, if they were in violation, the County would come out and request compliance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 79-D-054-1 by CHESTERBROOK SWIMMING AND TENNIS CLUB, INC., under Sections 3-103 and 3-303 of the Zoning Ordinance to amend SP 79-D-054 for community swimming pools and tennis courts to increase land area and to allow two additional tennis courts with lights, on property located at 1812 Kirby Road, Tax Map Reference 31-3{(5)}1, 1A; 31-3{(1)}60B, 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 June 23, 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-1, R-3.
3. The area of the lot is 8.91 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 Amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat (prepared by Cross Clayton Associates, dated March 10, 1992) and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permits 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 uses.
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 family memberships shall be limited to 550.
6. Ninety-five (95) parking spaces shall be provided for the community recreation facility as shown on the Special Permit Amendment Plat.
7. The hours of operation shall be limited as follows:
  - o Swimming Pools: 8:00 a.m. to 10:00 p.m.
  - o Tennis Courts: 7:00 a.m. to 10:00 p.m.
8. After-hours parties for the swimming pool shall be governed by the following:
  - o Limited to six (6) per season.
  - o Limited to Friday, Saturday and pre-holiday evenings.
  - o Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed.
  - o Shall not extend beyond 12:00 midnight.
  - o 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.
  - o 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 extended-hour party or for the first one at the beginning of a swim season.

Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.

Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.
9. Lighting shall be in accordance with the following:
  - o The combined height of the light standards and fixtures for the tennis courts shall not exceed twenty (22.0) feet. There shall be an automatic shut off device installed which turns the lights off at 10:00 p.m.
  - o The lights shall be of a low-intensity design which directs the light directly onto the facility.
  - o Shields shall be installed, if necessary, to direct light away from neighboring lots and to prevent the light from projecting beyond the pool or tennis court area.
  - o The combined height of the light standards and fixtures for the pool and parking lot shall be twelve (12) feet.
10. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The maximum decibel level of the loudspeakers shall not exceed 55 dBA.
11. Transitional Screening shall be provided along the western and southeastern lot lines as shown on the approved Special Permit Amendment Plat.
12. The limits of clearing and grading shall be no greater than those approved on the Special Permit Amendment Plat. If possible, the limits of clearing and grading shall be reduced to save additional vegetation as determined by the Urban Forestry Branch.
13. Prior to site plan approval and any disturbance of the site, a pre-construction meeting shall be held on-site between the applicant and the Urban Forestry staff in order to further identify measures to save significant vegetation. All clearing and construction shall adhere to the limits of clearing and grading shown on the Special Permit Amendment Plat. Appropriate tree protection shall be installed, per the review and approval of the Urban Forester, prior to the start of construction in order to mitigate any potential damage to the trees to be saved from construction activity.

14. In order to provide visual relief from and to mitigate potential adverse impacts of the activities emanating from the lighted tennis courts to be located on Lot 60B, a minimum of 25.0 ft. of existing, mature vegetation shall be preserved along Kirby Road on Lot 60B in an undisturbed state. The existing vegetation along the southern lot line in common with abutting Lot 59 shall be supplemented with additional evergreen plantings, at least six (6.0) ft. in height at the time of planting, in the cleared area between the existing outlet road and the tennis courts, which are sufficient to provide a solid row of evergreen vegetation fifteen (15.0) feet in width to screen the proposed courts from the adjacent church. In addition, the area cleared for grading around the courts shall be revegetated with supplemental vegetative materials. The quantity, type and location of the supplemental plantings shall be reviewed and approved by the Urban Forestry Branch.
15. The barrier requirement shall be waived along all lot lines, provided the pool enclosure and tennis courts are fenced with ten (10.0) foot high chain link fences.
16. Irrespective of Notes 5 and 14 and the proposed location of the stormwater management pond shown on the Special Permit Amendment Plat, in the event that on-site stormwater detention measures are required by DEN, the stormwater management pond shall be located on Lots 1 or 1A outside the area shown on the approved plat to be undisturbed.
17. Interior parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by the Department of Environmental Review (DEM) at the time of site plan review.
18. Right-of-Way (ROW) to 45.0 ft. from centerline on Kirby Road along the subject site frontage shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first.
19. The existing divided entrance shall be designated as one-way entrances by pavement markings, per the review and approval of DEM at the time of site plan review.
20. Paved pedestrian accessways shall be provided on the northern and southern sides of the entrances from the sidewalks along Kirby Road to the community recreation facility.
21. Accessible parking spaces shall be provided in accordance with the PFM standards, per the review and approval of DEM at the time of site plan review.
22. A striped no-parking delineation shall be added to the area between the two southernmost aisles that is depicted as space for vehicles to back out to exit this portion of the parking lot.
23. The existing outlet road along the southern lot line of Lot 60B which provides access to residential lots 60A and 60C shall be identified with sign(s) stating that it is a private road and shall not be used for access to the community recreation facility.
24. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:
  - o All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.
  - o If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

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 construction has commenced and has 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. 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 July 1, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 203, June 23, 1992, (Tape 1), Scheduled case of:

Mr. Ribble advised that this was Carol Dickey's last case with the Board of Zoning Appeals and said that the members of the Board all would miss her a great deal. The BZA members conveyed regrets at her leaving the BZA and Mrs. Harris asked her to come back to visit.

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Page 203, June 23, 1992, (Tape 1), Scheduled case of:

9:20 A.M. ELIJAH AND ERLENE L. KIRKLAND, VC 92-M-031, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (porch) 25 ft. from street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), on approx. 6,514 s.f., located at 3537 Moncure Ave., zoned R-3, Mason District, Tax Map 61-4((1))111A; 61-4((30)21. (OTH GRANTED 4/9/92)

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. Kirkland replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report.

Mr. Hammack asked Mrs. Anderson if there were any other variances to the front yards along Moncure Avenue that show up in County records, and Mrs. Anderson said that none were noted. Mr. Kelley asked if there were any existing structures, built prior to the Code, that would be within 30 feet or 25 feet, and Mrs. Anderson said that none were noted in staff's research.

Erlene L. Kirkland, 7013 Oakridge Road, Falls Church, Virginia, presented the statement of justification, stating that the addition was just about finished and that they had already moved in. She said that they also had a garage, but that was to be deleted; she also said that their house was the only new house on Moncure Avenue and that their next door neighbor was a family member and they were on a family lot. She said there was no one else there but the two families.

Mr. Hammack asked Mrs. Kirkland if the addition was going to be an open porch and she replied that it was.

Mrs. Thonen asked if the porch would in any way block the view or if there were any plans to widen the road in that area. Mrs. Anderson said that it is a corner lot, but the dwelling is sited a long way from the corner, and would not interfere with the view. She said there were only two other houses on the street which are approximately 30 years old and would not come under the Ordinance; they sit back approximately the same distance as what they applicant is requesting.

In answer to a question from Mrs. Harris, the applicant said that the house had been designed with a porch. Mrs. Harris asked the applicant when she had found out that a variance was required for the porch and the applicant said it was when the builder told them at the time they started to build. Mrs. Kirkland said that the builder said that the first surveyor had given them the wrong information, on the basis of which they had designed the house.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pamme made a motion to grant VC 92-M-031 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-031 by ELIJAH AND ERLINE L. KIRKLAND, under Section 18-401 of the Zoning Ordinance to allow addition (porch) 25 ft. from street line of a corner lot, on property located at 3537 Moncure Avenue, Tax Map Reference 61-4((1))111A; 61-4((30))21, Mr. Pamme? 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 June 23, 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 6,514 square feet.
4. The lot is exceptionally small, approximately 1/2 the size of what is required in the R-3 District; but it is a recorded lot and the applicants have the right to build on it. The applicants have very narrow constrictions because of the size of the lot.
5. The variance requested is minimal and would permit an open porch.
6. It was always the intention of the applicant to include the porch but, obviously due to an error in judgment by the first surveyor when digging the footing, the porch was not included. It is through no fault of the applicant that the house was sited incorrectly. The house was designed with the porch and the porch was not an afterthought.

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 6' by 40' front porch addition to the specific dwelling shown on the plat entitled "Grading Plan of the property of Elijah and Erlene L. Kirkland" (dated August 13, 1991) prepared by H. Aubrey Hawkins & Associates) and submitted with this application.
2. A Building Permit shall be obtained prior to any construction. All final inspections shall be completed.

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 construction of the porch addition 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 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 July 1, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 205, June 23, 1992, (Tape 1), Scheduled case of:

9:30 A.M. TYSONS-BRIAR, INC., SPA 82-C-025-2, appl. under 3-103 of the Zoning Ordinance to amend SP 82-C-025 for community swim and tennis club to allow lighting of two existing tennis courts, construction of walkway decks, and additions, reduction in land area, and to allow existing parking and pool lights to remain, on approx. 6.696 acres, located at 9117 Westerholme Way, zoned R-1, Centreville District, Tax Map 28-4((1))45A, 47. (DEF. FROM 5/12/92 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. Donnelly replied that it was.

Lori Greenlief, Staff Coordinator, advised that the applicant had been granted a deferral previously to allow time to meet with the neighbors to discuss the division and sale of land area along the western lot line, the screening of the park in that area, and to allow the applicant to revise the special permit plat to add some existing lights. She said that those things had been accomplished and staff had published an addendum to the staff report dated June 16, 1992, which discussed those issues. Ms. Greenlief said that the sale of the land was not yet final but the Proposed Development Conditions addressed the contingency of the land not being deleted.

Ms. Greenlief said that staff recommended approval of this application, subject to the Revised Proposed Development Conditions attached to the Addendum dated June 16, 1992.

Mrs. Harris said that Condition 18 still concerned her and that, since the plat says land is to be deleted, should it not be deleted. Ms. Greenlief said that the applicant had told her that it could take some time before the sale of land became final and staff's concern was that, if the land is not sold to the members and is deleted, it is irregularly shaped and does not have access to a street and would not meet any minimum lot requirements for the District. Ms. Greenlief said staff believed that it should remain under special permit; however, at this point, she did not believe the applicant was ready to make a decision on whether or not to delete the land. Mrs. Harris asked if the reason for deferral was so that the applicant could have time to find out what the outcome of the land deletion would be. Ms. Greenlief said that the applicant did meet with the neighbors and had made a decision but, as far as contracts and finalization were concerned, she did not believe that had occurred.

William E. Donnelly, III, with the law firm of Hazel & Thomas, P.C., 3110 Fairview Park Drive, Falls Church, Virginia, said that representatives of the Club had met with the neighbors and had reached an agreement in principal on certain issues, but had not worked out all the details. He said that some of the neighbors were present and they might want to address the issues. It was his belief that an agreement had been made on the location of the fence and the location of the screening; what had been agreed to was that the fence would be fifty feet inside their property line and that the screening would be inside the fence. Mr. Donnelly believed that what had been discussed was that the neighbors would purchase up to forty feet of the fifty foot strip, assuming they could come to an agreement on the details. He said that finalization of the deal would be complicated; appraisals would be required and they would need to go through the subdivision process. Mr. Donnelly said that the way the staff had worded the Conditions was the ideal solution; i.e., if they did not sell the land

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to the neighbors, the land would revert and become part of the application property and, if they did sell it, it would be deleted.

Mrs. Harris asked what might happen if they only sold half of the land proposed for deletion. Mr. Donnelly said that it was his understanding that any unsold land would become part of the application. Mrs. Harris said that her interpretation was that it was an all or nothing proposition, based on all neighbors agreeing to the purchase. Ms. Greenlief said that the Conditions could be reworded to accommodate a partial deletion/purchase. Possible wording was explored to accommodate a number of possibilities. Mr. Donnelly suggested the wording: "Any portion not conveyed shall become part of..."

Mr. Donnelly said he believed that the citizens had come to an agreement with the applicant as to the fence being on the outside of the screening, but the staff still had not agreed and wanted the fence to be on the inside of the screening. He said this issue was negotiated with the citizens as important to the Club and they had hoped that the BZA would go along with allowing the applicant to keep the fence on the 50-foot line and have the screening inside the fence. He said it made the demarcation of the property line easier and made it easier to cut the grass and maintain the trees and shrubs. If the BZA did agree, he asked that the last sentence of Condition 16 be changed by striking the phrase, "...except that the fence shall be relocated..." and just put the period after the word requirement.

Mr. Pammel said that Mr. Donnelly had not satisfied the concern he had raised at an earlier hearing, which was the screening around the southern boundaries. He said that the plat still showed only 10 feet and he had raised the question previously about the potential development of that property at some future point in time. Mr. Pammel said that Mr. Donnelly was proposing a level of screening in this area that was not consistent with the screening being provided for the other adjoining neighbors which he believed was due simply to the fact that the other properties were developed and this property was not developed. Mr. Donnelly said that he did remember Mr. Pammel raising that question previously and the compromise they were proposing was a single row of white pines instead of the double row that normally would be provided. He said that there were a couple of reasons for that which he believed had been addressed very well in the addendum to the staff report. He said there were some existing trees on the applicant's side of the fence in that area. Also, he said they would like to have access to the area to resurface the tennis courts when required. He said that, if they were to put in a second row of trees, it would be very difficult, if not impossible, for them to access the area. Mr. Donnelly said that, as staff mentioned, there is a gully behind the tennis courts and, if they put in a second row of trees, they would be down in the gully and they wouldn't be very affective. Mrs. Harris said that she had been out to look at that area and she was satisfied that one row of trees was all that could be put there. She said the slope is such that she believed the trees would die. Mr. Pammel said that the one row of trees was still not enough for sufficient screening.

Mr. Donnelly asked to address Mr. Pammel's point and said that his client reminded him that the two tennis courts that are opposite the area in question are not lit; they would need to come back before the BZA to get lighting permission and they issue could be addressed at that time. Mr. Pammel said that the area he was referring to was the existing lighted court to the west of the unlighted court which abuts the property. Mr. Donnelly said he believed that staff agreed with the applicant that existing vegetation between those courts and the fence is sufficient to meet the intent of the transitional screening. He said staff had never asked them to supplement the screening in that area; the only area staff asked them to supplement the screening in was to the south of the two unlighted courts. Mr. Pammel said that the plat he was looking at showed the tree line which did not shield the existing lighted court. Mrs. Harris asked Mr. Pammel if he had gone to see the area and he said that he had not. Mrs. Harris said that, when she had looked at the area, she had not seen where the applicant could put any more vegetation in. Mr. Pammel said that he was concerned about the lack of adequate screening in that area when future development occurred. Mr. Kelley said that the new developer could address that issue when they began the development. Chairman DiGiulian asked if there had been any complaints about inadequate screening at those existing courts. Mr. Donnelly said that the lot was vacant. Chairman DiGiulian pointed out that staff was satisfied with the existing screening.

Mr. Hammack said he would like to go back to Development Condition 18, stating that he was not entirely satisfied because, if property were conveyed to some of the property owners and not to others, it would give the applicant a very irregular lot line. He said that, if he were a property owner, he would be disinclined to buy it if he could have the Club maintain it. He said he liked the Development Condition proposed by staff, which said all or nothing. Mr. Donnelly said that the advantage of the neighbors buying the property would be that the neighbors would have control of the land and the applicant could not move the fence at will. He said he believed that an irregular property line was of no significance.

The following people came forward to speak in support of the application: Mark Moulton, 1754 Wexford Way, Vienna, Virginia, Lot 16; and Sara and Pete Willen, 1750 Wexford Way, Vienna, Virginia, Lot 18. They supported the applicant's proposal and said that negotiations culminated with the decision that the fence would be 50 feet away because they wanted the fence as far away from their property as possible, whether or not the property is sold to the

neighbors. They said that, if they do purchase the land from the applicant, they intended to put up their own screening. If they do not buy the land, they asked that the screening be installed outside the fence by the applicant. If the neighbors did purchase the land, they asked that the screening be on the inside of the fence.

Mrs. Harris said that the Condition would be extremely difficult to word in order to cover all of the contingencies. Mr. Donnelly said he did not think it would be difficult and Chairman DiGiulian asked him if he would care to write the Condition. He said that he would.

Mr. Hammack asked the supporters what would happen if some of the property owners bought the land and others did not; would the screening in some places be inside the fence and outside the fence in other places. The supporters stated that everyone wanted to buy the property and that they were waiting for a firm offer.

Mrs. Thonen asked why there had not been a decision already made during the past month of deferral. Mr. Donnelly said that they had an agreement in principal but had not been able to work out the details.

Serge Ogranovitch, c/o The Potomac Partnership, 8521 Leesburg Parkway, Vienna, Virginia, said that he was on the Board of Directors of Cardinal Hill. He said that the original plan was to make some additions to the property; the division of the land resulted from a request from the neighbors, not something which the Club wanted or needed. He said the applicant was trying to accommodate the neighbors. Mr. Ogranovitch said that they had to contact appraisers to evaluate the property in questions and, as soon as they had an appraisal, they would be in a position to make an offer.

Mr. Kelley asked Mr. Ogranovitch why the Club did not give the property to the neighbors and he said that he did not believe the 600 members of the Club would approve that type of action. Mrs. Harris asked Mr. Ogranovitch how long it would take them to get the appraisal and he said that it would probably take a couple of weeks, after which they would need to have a special meeting of the membership; they were talking about thirty days, followed by contact with the neighbors. Mr. Ogranovitch said he believed it would take two or three months. He said he was anxious to start getting the work done for the benefit of the 600 families who are members of the Club.

Mr. Donnelly said that the proposal had been approved by a wide majority of the membership, subject to final approval when the agreement was finalized.

Chairman DiGiulian advised Mr. Donnelly that he had a couple of minutes for rebuttal. Mr. Donnelly asked if it were possible to defer the case until later in the meeting for the purpose of discussion between Mr. Donnelly and representatives of the adjacent property owners.

Mr. Hammack made a motion to allow the case to be deferred until later in the meeting. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 207, June 23, 1992, (Tape 1), Scheduled case of:

9:40 A.M. EARL AND JOAN HUGHES HOLSINGER, VC 92-D-032, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling to remain 11.6 ft. from front lot line (30 ft. min. front yard required by Sect. 3-307), on approx. 19,958 s.f., located at 1749 Chain Bridge Rd., zoned R-3, Dranesville District, Tax Map 30-3((2))90,91,92,93. (CONCURRENT WITH SP 92-D-018. OTH GRANTED 4/9/92)

9:40 A.M. EARL AND JOAN HUGHES HOLSINGER, SP 92-D-018, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow gazebo to remain 0.3 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 19,958 s.f., located at 1749 Chain Bridge Rd., zoned R-3, Dranesville District, Tax Map 30-3((2))90,91,92,93. (CONCURRENT WITH VC 92-D-032. OTH GRANTED 4/9/92)

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. Holsinger replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report on the variance request. He said that the gazebo had been removed and the special permit would be withdrawn.

Applicant, Earl Holsinger, 1749 Chain Bridge Road, McLean, Virginia, presented the statement of justification, stating that they had purchased the subject property in October of 1990, unaware of the existing zoning violation. He said they became aware of the violation last year when they requested a permit to build a deck and, since that time, they have been in the process of requesting the approval of a variance.

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There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 92-D-032 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 16, 1992.

Mrs. Harris made a motion to waive the eight-day waiting period. Mr. Kelley seconded the motion, which carried unanimously.

Mr. Kelley made a motion to allow withdrawal of special permit SP 92-D-018. Mrs. Thonen 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 92-D-032 by EARL AND JOAN HUGHES HOLSINGER, under Section 18-401 of the Zoning Ordinance to allow dwelling to remain 11.6 ft. from front lot line, on property located at 1749 Chain Bridge Rd., Tax Map Reference 30-3((2))90,91,92,93, 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 June 23, 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 19,958 square feet.
4. There is an unusual situation on the property, due to a prior owner having subdivided the property in front of the house, leaving the house in a situation which was not the fault of the current owner/applicant.
5. The granting of this variance will not be a detriment to any adjacent property owners, nor will it change 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:
  - 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.



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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 specified structure shown on the plat prepared by Carl F. Neuburg, received on January 10, 1992 submitted with this application and is not transferable to other land.
2. The existing gazebo shall be removed.

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

Mrs. Harris made a motion to waive the eight-day limitation. 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 June 23, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 209, June 23, 1992, (Tape 1), Scheduled case of:

9:50 A.M. MCLEAN BIBLE CHURCH, SPA 73-D-151-3, appl. under Sect. 3-103 of the Zoning Ordinance to amend SPA 73-D-151-2 for church and related facilities to modify Condition 16 to allow asphalt surface of entire parking lot, on approx. 5.75 acres located at 850 Balls Hill Rd., zoned R-1, Dranesville District, Tax Map 21-3(1)56A.

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. Hansbarger replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report and stated that staff had recommended approval, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report. Mr. Riegler explained that this amendment was requested to modify previous Condition 16, stipulating that half of the parking area be constructed with a gravel surface; whereas, final engineering by the applicant had indicated that the water table on the site is too high to permit the use of a gravel surface and a letter from their soil consultant was also included in the staff report. Mr. Riegler said that analysis by the County's Environmental staff confirmed the high water table; accordingly, staff was supporting the request to pave the entire lot. He pointed out that there was no increase in the size of the lot, no increase in the capacity of the church nor intensification associated with the application.

William H. Hansbarger with the law firm of Baskin, Jackson & Hansbarger, 301 Park Avenue, Falls Church, Virginia, presented the statement of justification along the lines of Mr. Riegler's presentation. He said that the applicant had made every effort to find a solution to this problem and the result was the request to amend Condition 16.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to approve SPA 73-D-151-3 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 16, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 73-D-151-3 by McLEAN BIBLE CHURCH, under Section 3-103 of the Zoning Ordinance to amend SPA 73-151-2 for church and related facilities to modify Condition 16 to allow asphalt surface entire parking lot, on property located at 850 Balls Hill Rd., Tax Map Reference 21-3((1))56A, 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 June 23, 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-1.
3. The area of the lot is 5.75 acres.
4. There are no environmental concerns and all the necessary standards have been met.

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 consisting of two (2) pages entitled Special Permit and Waiver Plat McLean Bible Church of Fairfax County, Virginia dated December 1987, revised through April 2, 1992 and Landscape Plan dated September 23, 1988, revised April 2, 1992 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 seats in the main area of worship shall be 980 with a corresponding minimum of 245 parking spaces. All parking shall be on site as shown on the special permit plat.
6. The applicant shall provide acoustical treatment for the building addition in order to reduce the interior noise level to a maximum of 50 dBA Ldn using the following guidelines:
  - o Exterior walls shall have a laboratory sound transmission class (STC) of at least 45, and
  - o Doors and windows shall have a laboratory sound transmission class of at least 37. If windows function as walls, then they shall have the STC specified for exterior walls.
  - o Adequate measures to seal and caulk between surfaces shall be provided.
7. Screening shall be provided along the site's frontage on Balls Hill Road as shown on the Landscape Plan dated September 29, 1988 revised April 2, 1992 and shall be deemed to satisfy the screening requirement with the following addition:

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- o The southern edge of the proposed parking area shall be set back one-hundred (100) feet from the Georgetown Pike right-of-way and the area between the parking and the right-of-way shall be planted with a mixture of trees and shrubs in order to achieve a natural landscaped appearance and arrangement as determined by the Urban Forestry Branch, DEM. A portion of the plantings used to fulfill this requirement shall be placed along the southeastern edge of the parking area to stabilize the cleared area and prevent erosion and sedimentation. The specific number of plantings shall be as determined by the Urban Forestry Branch DEM. The portion of the parking lot along Balls Hill Road shall be set back a minimum of 60 feet from the future right-of-way of Balls Hill Road and the area between the parking and the right-of-way shall be planted with a mixture of evergreen and deciduous trees as determined by the Urban Forestry Branch, DEM.
- 8. As determined by the Virginia Department of Transportation and the Department of Environmental Management, the applicant shall dedicate right-of-way to the Board of Supervisors in fee simple and construct one half of a standard two lane shoulder section and a right turn acceleration lane according to current YDOT and Fairfax County PFM standards along the site frontage on Balls Hill Road as shown on the revised special permit plat dated December 1987, revised April 2, 1992.
- 9. If currently active, the septic field shall be disconnected and treated with lime to enhance the natural bacterial decomposition of the septic effluent. Effluent or sludge remaining in the tank shall be removed in accordance with Chapter 68 of the Fairfax County Code.
- 10. Best management practices aimed at meeting water quality standards as set forth in the Public Facilities Manual for the Occoquan Basin shall be provided for the site as determined by the Department of Environmental Management.
- 11. Parking lot lighting shall conform to the following specifications:
  - o The combined height of the light standard and fixture shall not exceed 12 feet.
  - o The lights shall be of a low intensity design and shall focus the light directly on the subject property.
  - o If necessary, shields shall be installed to prevent the light from projecting beyond the lot lines.
- 12. The barrier requirement shall be waived.
- 13. The maximum floor area of the addition shall be 12,000 square feet.
- 14. The main parking lot access points shall be controlled by gates at each access, and the gates shall be closed during the hours of darkness when there is no church activity taking place.

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 6-0. Mr. Ribble was not present for the vote.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 1, 1992. This date shall be deemed to be the final approval date of this special permit.

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10:00 A.M. EXPRESSIONS OF McLEAN, INC. APPEAL, A 92-D-006, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the determination of the Zoning Administrator that the appellant displayed a portable sign in violation of Par. 2 of Sect. 12-104 of the Zoning Ordinance, on approx. 75,347 sq. ft., located at 1313 Dolley Madison Blvd., zoned C-2, Dranesville District, Tax Map 30-2((4))(H)pt. Lots 1-15 and 50-64.

Mr. Pammel said there was a letter requesting withdrawal and made a motion to accept the request for withdrawal. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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9:30 A.M. TYSONS-BRIAR, INC., SPA 82-C-025-2, appl. under 3-103 of the Zoning Ordinance to amend SP 82-C-025 for community swim and tennis club to allow lighting of two existing tennis courts, construction of walkway decks, and additions, reduction in land area, and to allow existing parking and pool lights to remain, on approx. 6.696 acres, located at 9117 Westerholme Way, zoned R-1, Centreville District, Tax Map 28-4((1))45A, 47. (DEF. FROM 5/12/92 AT APPLICANT'S REQUEST.)

This case was deferred from earlier in the meeting in order for the applicant's representative and property owners' representatives to negotiate an agreement concerning the deletion and sale of land by the Club to the adjacent property owners.

Mr. Donnelly said that, in drafting Condition 18, he would recommend adding three sentences: In the event that the entire strip of land shown on the plat as to be deleted is conveyed to the contiguous lot owners, the transitional yard shall be as shown on the special permit plat. In the event that no portion of such strip is conveyed to the contiguous lot owners, the transitional screening yard shall be relocated to the east side of the fence. In any event, the fence shall remain as shown on the plat.

Mr. Hammack said that he did not agree with the Condition and would rather not grant that portion of the special permit. Mrs. Harris said that she believed the applicant was trying to be a good neighbor and she believed they should not be penalized. Chairman DiGiulian said his concern was that, after they had been working together all this time, if the BZA did not grant the deletion, it would kill the deal.

Mrs. Thonen asked why they could not defer the case again and the parties involved would know that they have a deadline to negotiate an agreement. Mrs. Harris said she believed that the property owners wanted to know where the screening would be because it would influence their decision. The BZA continued the discussion along these lines. Mr. Hammack also suggested deferring the case again.

Chairman DiGiulian asked Mr. Donnelly how long he believed it would take to get an appraisal of the subject property and a vote from the club members. Mrs. Thonen said that the BZA could defer the case and still hear it before the August recess. Mr. Donnelly said that they would then lose this building season. He also had to allow for the review and recordation of the subdivision. Mr. Kelley said that he believed Mr. Hammack's idea of granting in part was a good solution. He said that he believed the BZA should not be mediating between the adjacent property owners and the applicant. Mrs. Thonen said that she had been under the impression that the delay was being caused by the applicant not being able to get the members to agree on the situation and to establish a price for the land.

Chairman DiGiulian closed the public hearing and Mr. Hammack made a motion to grant-in-part SPA 82-C-025-2, denying the deletion of land area, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 16, 1992, with the following modifications:

In the first paragraph, delete the language "the deletion of land area," and approve the rest of the request.

A new plat shall be submitted prior to the ultimate approval of the Resolution.

Development Condition 16 shall read, "...Transitional Screening 1 shall be provided as shown on the special permit plat along the eastern lot line as shown on the special permit plat submitted with the application...." The next sentence shall be changed to read, "...a fence parallel to the eastern lot line adjacent to Lots 15, 16, 17, and 18 shall be located 40 feet inside the existing lot line shown on the special permit plat and shall be permitted to satisfy the barrier requirement...." The remainder of that sentence shall be deleted.

Development Condition 18 shall be deleted in its entirety.

Ms. Greenleaf asked for a clarification regarding the existing globe-shaped pool lights, which she had recommended should remain.

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Mr. Hammack said that he would add that as Condition 19.

Mrs. Harris said that, since the applicant is not deleting the property, they may not want to change the location of the fence. Mr. Hammack said that he would be happy to defer the entire application or put the fence on the existing lot line, where he thinks it should be; however, anticipating that everyone wanted to work with the citizens, it would mean that 306 feet of fence would have to be taken up and replaced. He said that, if they place it at the existing lot line, 40 feet away, it would require the transitional screening to be inside the existing lot line. A conversation ensued among the Board members and Mr. Donnelly regarding the fence and the location of the fence.

Mr. Pammel said that the thing he believed was needed was a binding contract between the parties; then, the BZA could take action based on the contract. Mr. Kelley said that the portion of the motion dealing with land deletion should be deleted and the BZA should take action on the rest of the application.

Mr. Hammack said that, on Development Condition 16, he would amend by beginning at "Transitional Screening 1" on the bottom of page three, he restating as follows:

Transitional Screening 1 shall be provided along the existing eastern lot line, adjacent to Lots 15, 16, 17, and 18.

Mr. Hammack reiterated that revised plats would be required before the Resolution could be approved. He said that proposed Condition 18 should be deleted and adopted the suggestion by staff that the globe lights be permitted to remain.

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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-025-1 by TYSONS-BRIAR, INC., under Section 3-103 of the Zoning Ordinance to amend SP 82-C-025 for community swim and tennis club to allow lighting of two existing tennis courts, construction of walkway decks, and additions, reduction in land area, and to allow existing parking and pool lights to remain (THE BOARD DENIED THE REQUEST FOR REDUCTION IN LAND AREA), on property located at 9117 Westerholme Way, Tax Map Reference 28-4((1))45A, 47, 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 June 23, 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-1.
3. The area of the lot is 6.696 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 Bouma Associates dated December 20, 1991, revised July 6, 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.

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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 Bouma Associates dated December 20, 1991, revised July 6, 1992, and these development conditions.
5. The hours of operation shall be limited to:
  - o Pool, 9:00 a.m. to 9:00 p.m. with six (6) special swim and diving functions per year being allowed to begin at 8:00 a.m. (Management and lifeguards can be in the pool area for maintenance and cleanup outside of the specified hours of operation, but the pool cannot be open for business.)
  - o 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).

In addition to the pre-holiday evenings mentioned above, three (3) of the six (6) permitted parties may be weeknight parties provided written parties 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.
  - o Tennis, 7:00 a.m. to 10:00 p.m. All lights are to be controlled by an automatic timing device to shut off at 10:00 p.m.
6. No loudspeakers shall be allowed except for the special swim and diving meets.
7. The number of memberships shall be limited to 600.
8. The overgrown vegetation near the entrance and at the curve in the parking lot shall be cut back and maintained to restore the original parking spaces in that area. The existing striping near the security fence shall be changed so that the existence of the fence does not interfere with any parking spaces. This restriping shall occur prior to the opening of the 1992 summer season. The dumpster and the bike rack shall not be located on the parking lot surface or block any parking spaces. The area at the end of the parking lot near the tennis courts shall be restriped to conform to what appears on the plat submitted with this application.
9. A parking monitor shall be stationed in Westerholme Court at the times of swim meets to ensure that no overflow parking occurs on the subdivision streets.
10. 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.
11. One hundred and thirty-eight (138) parking spaces shall be provided on site as shown on the special permit plat.
12. Tennis court lights for the two western-most tennis courts shall be a maximum of twenty-two (22) feet in height. To further minimize the impact of the lights on adjacent properties, the lights shall be directed downward and shall be shielded, if necessary, as determined by the Director, Department of Environmental Management, to prevent glare on adjacent properties.

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13. The limits of clearing and grading labeled as "existing tree line" on the special permit plat shall be preserved.
14. The three existing trees in the area of the proposed deck shown as "Proposed Deck #2" on the special permit plat, to the east of the pool shall not be disturbed.
15. In the area shown as "proposed picnic area" on the special permit plat, all mature hardwoods and coniferous trees shall be preserved. Dead or dying trees and scrub vegetation may be removed. A tree preservation plan indicating the preservation of these trees and the trees specified in Condition 14 shall be submitted for review and approval by the Urban Forestry Branch, DEN.
16. The existing vegetation and fencing along the northern and western lot lines shall be deemed to satisfy the Transitional Screening 1 and Barrier requirements. Transitional Screening 1 shall be modified to allow a ten (10) foot wide screening yard planted with one row of evergreen trees, 9 feet on center, as shown on the Special Permit Plat, along the southern lot line, south of the group of four tennis courts. The existing vegetation along the remainder of the southern lot line shall be deemed to satisfy the Transitional Screening 1 requirement. The existing fencing along the southern lot line shall be deemed to satisfy the barrier requirement. Transitional Screening 1 shall be provided along the existing eastern lot line, adjacent to Lots 15, 16, 17, and 18. Barrier and screening shall be applied to the eastern lot line adjacent to Lots 15, 16, 17, and 18.
17. The three, twenty (25) foot high lights located at the entrance, near the northwest corner of the bathhouse and to the west of the two lighted tennis courts shall be shielded and directed downward so as to not allow light or glare to impact adjacent properties.
18. The existing globe lights around the pool may remain.

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.

Mr. Kelley seconded the motion which carried by a vote of 5-1. Mrs. Thonen voted nay. Mr. Ribble 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 July 7, 1992; the date that revised plat was approved by the Board. That date shall be deemed to be the final approval date of this special permit.

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Page 215, June 23, 1992, (Backup Tape 2), Action Item:

Approval of Resolutions from June 16, 1992 Hearing

Mr. Hammack said that there was a change needed on SP 92-Y-017. He said that Mr. McDermott, the engineer for the applicant, has determined that there is a pipe carrying water to an area which would require a wooden walkway and, under the circumstances, Development Condition 26 could be deleted, and the following conditions could be renumbered. With that correction, Mr. Hammack moved 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 not present for the vote.

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Page 215, June 23, 1992, (Backup Tape 2), Action Item:

Approval of Minutes from May 19, 1992 Hearing

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 6-0. Mr. Ribble was not present for the vote.

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Request for Additional Time  
Northern Virginia Electric Cooperative  
SP 90-S-011

Mrs. Thonen made a motion to grant this request. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date is June 20, 1993.

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Request for Change of Permittee  
from Baxter's Sports Junction, Inc.  
to Guinea Road Associates

Mr. Pammel moved to approve this request. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. It is noted that the BZA was in possession of a letter from the new permittee, stating that they would abide by all of the previously imposed conditions.

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Request for Date and Time for Appeal  
Felipa L. Unciano

William E. Shoup, Assistant Director, Zoning Evaluation Division, called attention to a June 10, 1992, memorandum to the Board, and said that the appeal stemmed from a notice of violation issued by the Zoning Enforcement Branch for maintaining five dwelling units on a lot; whereas the Zoning Ordinance permits only one dwelling unit on a lot. He said that the notice of violation was dated May 1, 1992, and it was received by the appellant on May 6, 1992. State Code and Zoning Ordinance provisions require that an appeal be filed within thirty days of the date of the decision, which would require that the appeal needed to be filed no later than June 1, 1992. The appeal was filed on June 5, 1992 and it, therefore, was his position that the appeal was not timely filed. Mr. Shoup did note that on June 1, 1992, staff did incorrectly advise the appellants that they had thirty days from receipt of the notice to file, and he said he regretted the misrepresentation had occurred. Mr. Shoup said that the foregoing did not negate the fact that the appellant must comply with the State Code and the Zoning Ordinance language requiring thirty days from the date of the decision.

Mrs. Harris asked how the applicant knew of the decision being made May 1 when they did not receive the letter until May 6. Mr. Shoup said they would not have known until they received the letter, but then the Zoning Ordinance required that they appeal within thirty days of the decision. Mrs. Harris asked what would happen if the letter was lost in the mail and the appellant had never received it. Mr. Shoup said that they may have reissued the notice, but he could not guess what would have happened.

Mr. Kelley asked if a signature was required for a Sheriff's letter and Mr. Shoup said that it could be posted on the door. Mr. Kelley asked when the Sheriff had received the notice and it was noted that the Sheriff had stamped it "received" on May 5. Mr. Kelley said that the appellant was then "five days in the hole." Mr. Kelley also said that he believed citizens need to be able to depend on what staff tells them, even if it is incorrect. Mr. Shoup said he understood that but that he did not agree with it.

Mr. Kelley moved, for discussion purposes, that the application was timely filed. Mr. Hammack seconded the motion, for the following reasons: The position taken by the Zoning Administrator is so contrary to established principles of law on notice of a violation and due process. If the County wants to appeal it, he hopes the Supreme Court would agree with his basic logic. Mr. Hammack said that, since he has been on the Board, the staff has always said that the minute the County Zoning Administrator makes up her mind, even if in a phone call, that is the time of decision. He said he did not agree with that concept, so he would support the motion. Mrs. Harris said that she believed that the appellant should also be advised in the notice of violation that they had thirty days from the date of the notice to respond. Mr. Pammel moved that staff should include the language in any future letters of violation. Mr. Kelley said that he would like to see a motion to address the situation to discuss what should actually be included. Chairman DiGiulian said that he believed they should think about it for a week.

Chairman DiGiulian called for a vote. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote. Mr. Shoup said that the appellant had agreed to waive the 90-day hearing requirement, since the BZA calendar was so full. The appeal was scheduled for October 13, 1992 at 9:00 a.m. Melanie Riley, attorney for the applicant, stated for the record that the applicant waived the 90-day requirement. Mrs. Thonen made a motion to hear the case on October 13, 1992 at 9:00 a.m. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Request for Additional Time  
SMC-McLean Limited Partnership  
SP 90-D-019

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Mrs. Thonen moved to grant this request. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date is December 20, 1994.

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As there was no other business to come before the Board, the meeting was adjourned at 11:15 a.m.

*Geri B. Bepko*

Geri B. Bepko, Substitute Clerk  
Board of Zoning Appeals

*John P. DiGiulian*

John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: September 8, 1992

APPROVED: September 15, 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 June 30, 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 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 219, June 30, 1992, (Tape 1), Scheduled case of:

9:00 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. (DEF. FROM 6/4/91 AT APPLICANT'S REQUEST. DEF. FROM 10/1/91 AT APPLICANT'S REQUEST. DEF. FROM 1/14/92 AT APPLICANT'S REQUEST. DEF. FROM 4/9/92)

Mrs. Thonen made a motion to defer A 91-S-002, as requested by the appellant, to December 1, 1992, at 9:15 a.m. She added that this would be the last deferral. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 219, June 30, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ANNA MARIE TRUONG, SP 91-N-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))Q14. (DEF. FROM 2/4/92 TO ALLOW APPLICANT TO BE PRESENT. DEF. FROM 2/11/92 FOR APPLICANT AND BUILDER TO BE PRESENT AND FOR ADDITIONAL DOCUMENTATION FROM BUILDER. DEF. FROM 4/14/92 FOR STAFF TO SUBPOENA BUILDER).

Vice Chairman Ribble asked staff if the builder had been subpoenaed. Greg Riegler, Staff Coordinator, said the Process Server had been unable to serve the contractor.

Since the contractor was not present, Mr. Pammel made a motion to defer SP 91-M-068 to July 30, 1992, at 10:50 a.m. to allow the Process Server more time to serve the contractor. Mr. Kelley seconded the motion.

Dewey La, agent for the applicant, said the applicant had also tried to contact the builder but had not been successful. He pointed out this was the third time that he and the applicant had appeared before the BZA. Mrs. Harris explained to Mr. La the importance of having the builder present to address the question of "good faith."

The motion to defer SP 91-M-068 to July 30, 1992, passed by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 219, June 30, 1992, (Tape 1), Scheduled case of:

9:10 A.M. WILLIAM E. AND CHERIE ARTZ, VC 92-D-036, appl. under Sect. 18-401 of the Zoning Ordinance to allow deck 14.75 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 1.23 acres, located at 964 Saigon Rd., zoned R-1, Dranesville District, Tax Map 21-3((7))23.

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. Artz replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He said the applicants were requesting a variance of 5.25 feet from the side lot line in order to construct an addition to an existing deck 14.75 feet from the side lot line.

William E. Artz, 964 Saigon Road, McLean, Virginia, said he and his wife have resided on the subject property since 1977 and the house that was originally on the lot was a very small A-frame that they remodeled a year ago. Mr. Artz said the lot configuration is very irregular and narrow and they were requesting the variance in order to create a usable deck on the corner of the house that serves the guest bedroom. Mr. Artz said his wife's 90-year old mother is in a wheelchair and the expansion of the deck will provide her with easier access to the outside. He said there are no objections from the neighbors.

In response to a question from Mr. Pammel, Mr. Artz replied that the lot is served by well water and sewer.

There were no speakers to address the request and Vice Chairman Ribble closed the public hearing.

Mr. Pammel 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 June 23, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-036 by WILLIAM E. AND CHERIE ARTZ, under Section 18-401 of the Zoning Ordinance to allow deck 14.75 feet from side lot line, on property located at 964 Saigon Road, Tax Map Reference 21-3((7))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 June 30, 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-1.
3. The area of the lot is 1.23 acres.
4. The lot has an unusual configuration.
5. The variance request for the deck is a minimal request and is reasonable.
6. The applicant has demonstrated a compelling need to construct the deck in the proposed location.
7. The unusual lot size constrains the applicant from the flexibility to provide the necessary improvements to the existing dwelling.

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 specified deck shown on the plat prepared by Bowers & Associates, P.C. dated November 15, 1991, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 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 5-0. Mr. Hammack was 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 July 8, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 221, June 30, 1992, (Tape 1), Information Item:

Mr. Pammel asked staff to add the district designation to the front cover of the abbreviated variance staff reports. Jane Kelsey, Chief, Special Permit and Variance Branch, agreed.

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Page 221, June 30, 1992, (Tape 1), Scheduled case of:

9:30 A.M. ALAN AND MARY M. ROMAN, VC 92-L-034, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.8 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407), on approx. 9,486 s.f., located at 7201 Essex Ave., zoned R-4, Lee District, Tax Map 80-3((2))1815.

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. Roman replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report prepared by Carol Dickey. He said the applicants were requesting a 3.2 foot variance in order to construct a one-story addition 6.8 feet from the side lot line. Mr. Riegle said the dwelling on adjacent Lot 6 is located 5 feet from the shared lot line.

Alan Roman, 7201 Essex Avenue, Springfield, Virginia, said the proposed addition would allow them to expand the dining room into a family/dining room and add a bedroom and a bath. He said there are currently three bedrooms and with two children they need the additional living space. Mr. Roman said the materials used to construct the addition would match those on the existing house.

In response to questions from the BZA, Mr. Roman replied that the lot is very narrow and it would not be feasible to construct an addition to the rear of the lot. He explained that the addition would be on the side of the applicant's driveway, therefore there would be no visual impact. He added that the neighbor had written a letter in support of the request.

There were no speakers to address the applicants' request and Vice Chairman Ribble 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 June 23, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

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In Variance Application VC 92-L-034 by ALAN AND MARY M. ROMAN, under Section 18-401 of the Zoning Ordinance to allow addition 6.8 feet from side lot line, on property located at 7201 Essex Avenue, Tax Map Reference 80-3(2)(18)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 June 30, 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-4.
3. The area of the lot is 9,486 square feet.
4. There is no other place for the applicant to construct the addition without a variance.
5. The existing dwelling is sited in such a way on the lot that any addition would need a variance.
6. The strict application of the Ordinance would produce an undue hardship.
7. The surrounding properties will not be harmed 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 with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat (prepared by Kephart and Company, dated February 21, 1992) submitted with this application and is not transferable to other land.

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2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.
3. The 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 construction has commenced and has 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 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 July 8, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 223, June 30, 1992, (Tape 1), Scheduled case of:

Request for Reconsideration  
Chesterbrook Swim and Tennis Club, Inc., SPA 79-D-054-1

Vice Chairman Ribble said the Board of Zoning Appeals (BZA) had received a letter from William Jones requesting that the BZA reconsider its action of June 23, 1992 to grant SPA 79-D-054-1. Mr. Hammack made a motion to deny the request for reconsideration. Following a discussion among the BZA, Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 223, June 30, 1992, (Tape 1), Scheduled case of:

9:40 A.M. KEUN HOON LEE, SP 92-M-021, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow structure to remain 7.8 ft. from front lot line (35 ft. min. front yard required by Sect. 3-207), on approx. 17,286 s.f., located at 3400 Gallows Rd., zoned R-2, Mason District, Tax Map 59-2((1))298.

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. Thong Lee, the applicant's son, replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report prepared by Carol Dickey. He said the porch on the front of the house had been enclosed at a location 7.8 feet from the front lot line. The Zoning Ordinance requires a 35 foot minimum front yard in the R-2 District, thus the applicant was requesting a modification of 27.2 feet. Mr. Riegler explained there appeared to be some confusion regarding right-of-way from Gallows Road and the exact location of the front lot line. He said the applicant was cited with a Notice of Violation since a building permit had not been obtained prior to the construction.

In response to a question from Mr. Pammel, Mr. Riegler replied that he had not been able to ascertain when the earlier right-of-way dedication occurred. He pointed out that the street files in the Office of Zoning Administration did not contain any other Notice of Violations.

Mr. Lee said when his parents purchased the house in June 1990 it had an open porch. In April 1992, they decided to enclose the porch because of the noise generated by Gallows Road and to provide the family privacy. He said during the construction process his father was notified that a special permit was needed because the structure did not meet the front yard requirements. Mr. Lee said at the time they purchased the house the structure did not meet the setback requirements due to the widening of Gallows Road. He asked the BZA to allow the porch to remain.

In response to questions from the BZA, Mr. Lee replied the room is empty with no electrical connections. He added that the shrubs were removed in response to citizens' concern with respect to sight distance. The debris mentioned in one of the neighbor's letters had been removed from the back yard. Mr. Lee said a building permit had been obtained in order to construct a deck in the rear of the property.

There were no speakers to address the request.

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Mrs. Harris asked if the foundation was there when his parents purchased the house and Mr. Lee replied that it was. He added that the porch was previously enclosed with screen.

Vice Chairman Ribble closed the public hearing.

Mrs. Harris asked if there was any way to confirm whether or not the porch was classified as an addition at the time the applicant purchased the property. Mr. Rfegle explained there was a timing issue involved since the Zoning Ordinance previously treated screened porches differently than they are treated under the present Ordinance. Mrs. Harris said she believed this should be determined prior to the BZA ruling on the case. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that absent a building permit in the file, staff would have no way of determining when the construction took place.

Mr. Hammack suggested that the BZA proceed with the next case while staff researched the file.

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Page 224, June 30, 1992, (Tape 1), Scheduled case of:

9:50 A.M. BESSIE H.M. SHAO, SP 92-P-019, appl. under Sect. 8-917 of the Zoning Ordinance to allow 3 dogs on approx. 1,443 s.f. (12,500 s.f. min. lot required by Sect. 2-512), located at 3349 Contessa Ct., zoned R-12, Providence District, Tax Map 59-1((22)94.

Mrs. Thonen made a motion to allow the withdrawal of SP 92-P-019 as requested by the applicant. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 224, June 30, 1992, (Tape 1), Information Item:

Approval of June 23, 1992 Resolutions

Mr. Pammel made a motion to approve the Resolutions as submitted. Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 224, June 30, 1992, (Tape 1), Scheduled case of:

KEUN HOON LEE, SP 92-M-021

(This case was heard earlier in the public hearing and was passed over to allow staff time to research a question from the BZA.)

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that she had reviewed Ms. Dickey's notes which indicated there was no building permit for the enclosed porch and the grading plan was dated 1985 and did not show the porch. (She submitted the grading plan to the BZA.)

Mrs. Harris said it was apparent that some time between now and 1985 someone added the porch. Ms. Kelsey said that in 1985 a screened porch was considered an addition.

There was no further discussion and Mrs. Harris made a motion to grant SP 92-M-021 subject to the Development Conditions contained in the staff report dated June 23, 1992.

Mr. Pammel suggested that Development Condition Number 3 be amended to reflect an "addition." Mrs. Harris agreed with the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-M-021 by KEUN HOON LEE, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow structure to remain 7.8 feet from front lot line, on property located at 3400 Gallows Road, Tax Map Reference 59-2((1)298, 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



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WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 30, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and 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 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 Harold A. Logan Associates P.C., dated February 25, 1992) approved with this application, as qualified by these development conditions.
3. A Building Permit shall be obtained and final inspections approved for the addition.

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 permits 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 a building permit has been obtained and final inspections approved. The Board of Zoning Appeals may grant additional time to establish the use 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 and 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 July 8, 1992. This date shall be deemed to be the final approval date of this special permit.

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10:00 A.M. TRUSTEES OF FAITH PRESBYTERIAN CHURCH, SP 92-L-020, appl. under Sect. 3-103 of the Zoning Ordinance to allow church and related facilities, on approx. 3.943 acres located at 6426 S. Van Dorn St., zoned R-1, Lee District, Tax Map 81-4((1))57. (CONCURRENT WITH RZ 92-L-004)

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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. Keith Martin, attorney for the applicant, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Bernadette Bettard. She said the applicant was proposing to construct a church and related facilities in two phases and outlined the parking for Phase I and II on the viewgraph. Ms. Kelsey said there would be a total of 450 seats for both phases with 126 parking spaces. She said the original staff report had recommended denial of the request because the applicant, in staff's view, had not mitigated the impact of the use from the adjacent properties. In addition, staff did not believe that the transportation concerns had been adequately addressed. Ms. Kelsey said the applicant had submitted a revised plat showing the required transitional screening all around the site, with the exception of the southern lot line where staff had recommended landscape plantings to the rear of the parking lot. Ms. Kelsey said with the implementation of the Proposed Development Conditions contained in the Addendum staff recommended approval of the application.

In response to a question from Mrs. Harris, Ms. Kelsey replied the applicant was requesting that the BZA approve both phases. She explained the transportation analysis took into consideration both phases. Ms. Kelsey said the applicant would have to provide 5% internal parking lot landscaping.

Keith Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, said the subject property is zoned R-1 and located adjacent to the Kingstowne Development. He said the applicant proposed to construct a 450 seat church in two phases and, depending on the applicant's capital improvement program, there was a possibility the church would be constructed all at once, but the applicant would like the flexibility of the two phases. Mr. Martin said the uses would consist of regular Sunday services, various committee meetings during the week, choir practice, youth group meetings, and periodic dinners which are normally associated with churches.

With respect to transitional screening, he said the applicant had requested a modification along the southern lot line, which staff supported, but had agreed to provide full transitional screening along the east and west. Mr. Martin said transitional screening will also be provided along the drainage swale along the western lot line and the engineering firm has assured the applicant this can be done. He said the applicant has redesigned the church, the internal travelway and parking lot. In addition, Mr. Martin said the applicant has agreed to remove the drop off area, to provide a sidewalk to Castlewellan Drive, to provide a full 25 foot transitional screening yard along the eastern lot line, to provide accessible parking spaces along the rear of the church, and to reduce parking lot lighting height to 12 feet. He said the engineers and architects have assured him that the proposed building will meet all bulk regulations in terms of building height, and the angle of bulk plane measurement of the Zoning Ordinance will not come into play. The site will be accessed by Castlewellan Drive, which will be constructed by the developer of Kingstowne. He said there had been recent approvals in Kingstowne and it was his understanding that the public improvement plan for Castlewellan Drive had already been submitted or soon would be submitted to the County.

In response to questions from the BZA, Mr. Martin replied there was a Development Condition which stipulated that the building permit will not be issued until Castlewellan Drive has been constructed. He said the plan cannot be changed because the Final Development Plan has been approved. Mr. Martin asked the engineer to address the BZA's questions with respect to how the drainage will be handled.

Doug Wrenn, engineer with BC Consultants, explained that the first phase of Castlewellan Drive had been approved by the Department of Environmental Management (DEM) and the construction would take place in the fall. He said when Kingstowne was approved years ago there was a comprehensive stormwater management study done and the Kingstowne Lake was designed to take care of stormwater for the portion of the area where the applicant will construct the church. Mr. Wrenn explained that the drainage from the subject property would be handled by the lake and the outfall would be channeled to the Creek.

There were no speakers to address the request and Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant the applicant's request subject to the Development Conditions contained in the staff report addendum dated June 24, 1992.

Mr. Kelley suggested that the applicant be given "36 months" to commence construction as opposed to 30 months. Mr. Hammack agreed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-L-020 by TRUSTEES OF FAITH PRESBYTERIAN CHURCH, under Section 3-103 of the Zoning Ordinance to allow church and related facilities, on property located at 6426 S. Van Dorn Street, Tax Map Reference 81-4((1))57, 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 June 30, 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-1.
3. The area of the lot is 3.943 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 The B.C. Consultants) and dated February 14, 1992 and revised June 15, 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 The B. C. Consultants dated February 14, 1992, revised June 15, 1992.
5. The maximum number of seats in the main area of worship for Phase One shall be 250 with a corresponding minimum of 72 parking spaces. The maximum number of seats in the main area of worship for Phase Two shall be 200 with a corresponding minimum of 50 parking spaces. The maximum number of parking spaces on site shall be one hundred thirty-one (126) as shown on the Special Permit Plat. All parking for the church shall be on site.
6. Construction for Phase 2 development shall begin within ten (10) years from the date of approval of this special permit.
7. The building shall meet the bulk regulations for the R-1 District.
8. Transitional Screening 1 (25) feet shall be provided along the eastern and western lot lines. Where encroachment by stormwater facilities or an easement exists along the western lot line, where plantings cannot be provided, the required plantings shall be provided outside of this area. Transitional Screening 1 shall be modified along the southern lot line to allow evergreen plantings along the southern edge of the Phase 2 parking area. The purpose of these plantings is to screen the parking lot from adjacent properties. Additional landscape plantings, a minimum of 2.0 feet in height, shall be provided around the foundation of the building to visually enhance the view of the site. The nature and amount of all plantings shall be provided as determined by the Urban Forestry Branch, Department of Environmental Management (DEM).
9. The barrier shall be waived along all lot lines.

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10. If not otherwise constructed by others, the church shall provide for the construction of Castlewellan Drive so as to ensure that this street shall be constructed and available for use prior to the issuance of a building permit. Ancillary easements to facilitate the construction shall be provided. The nature of the road construction and the width of the ancillary easements shall be provided as determined by DEM.
11. A refuse dumpster location shall be identified on the site plan prior to submission. This dumpster shall not be in the front yard and shall be adequately screened from the view of adjacent properties.
12. Certification to the satisfaction of the DEM shall be provided prior to site plan approval that Kingstowne Lake is appropriately sized and can be used to accommodate stormwater runoff from this site. If this lake cannot accommodate the stormwater, and an on-site pond is necessary, a Special Permit Amendment shall be submitted for review and approval.
13. 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.
14. The sign located at the site entrance shall not be lighted and shall conform to the provisions of Chapter 12, Signs.

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 unless this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty-six (36) months after the date of approval\* unless construction has begun. The Board of Zoning Appeals may grant additional time to establish the use 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 July 8, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 228, June 30, 1992, (Tapes 1-2), Scheduled case of:

- 10:15 A.M. ROBERT M. LABELLE AND DEBORAH S. DALTON, VC 92-Y-022, appl. under Sect. 18-401 of the Zoning Ordinance to allow existing structure to cover more than 30% of the minimum required rear yard (required by Sect. 10-103) and allow addition to dwelling to be constructed 9.4 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 6,500 s.f., located at 6405 14th St., zoned R-3, Mount Vernon District, Tax Map 83-4((2))(25)11 and 12. (CONCURRENT WITH SP 92-Y-010) (DEF. FROM 5/19/92 FOR NOTICES)
- 10:15 A.M. ROBERT M. LABELLE AND DEBORAH S. DALTON, SP 92-Y-010, 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 to remain 4.0 ft. from side lot line, (12 ft. min. side yard required by Sect. 3-307 and 12 ft. min. rear yard required by Sect. 10-104) 3.5 ft. from rear lot line, and to allow dwelling to remain 10.4 ft. and 9.4 ft. from side lot line, on approx. 6,500 s.f., located at 6405 14th St., zoned R-3, Mount Vernon District, Tax Map 83-4((2))(25)11 and 12. (CONCURRENT WITH VC 92-Y-022) (DEF. FROM 5/19/92 FOR NOTICES)

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. LaBelle replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Bernadette Bettard. She said the applicants were requesting a reduction to the minimum yard requirement to allow a garage/carport 4.0 feet from the side lot and 3.5 feet from the rear lot line. Ms. Kelsey said under Sect. 10-104 the rear yard requirement is based on the height of the building; therefore, a minimum rear yard of 12 feet is required since the height of the building is 12 feet. She said the request was also to allow a dwelling to remain 10.4 and 9.4 feet from the side lot line.

Ms. Kelsey said the applicants were also requesting a variance to allow accessory structures to cover more than 30% of the minimum required rear yard and to allow an addition to the dwelling to be constructed 9.4 feet from the side lot line. She said the applicants proposed to construct a second story to the existing dwelling and the second floor would be cantilevered over the first floor, thus generating the need for the variance.

In response to questions from the BZA, Ms. Kelsey replied the garage was constructed prior to the present Zoning Ordinance but the applicants were in the process of remodeling the garage when they were cited with a Notice of Violation. She said a building permit for a new roof and siding was obtained. Ms. Kelsey added that the applicants' statement indicated that the dwelling and the garage/workshop were constructed in 1940, prior to the applicants purchasing the property in 1982 and the carport was added to the garage in 1962. (She submitted photographs to the BZA.)

Robert M. Labelle, 6405 14th Street, Alexandria, Virginia, said there are 16 matching houses on 14th Street and it was his understanding that the houses were constructed with the garages. He said all the siding and the roofing shown in the photographs is new but the basic foundation and most of the block is old. Mr. Labelle said he had extended the length of the garage by 5 feet during the renovations. He said he believed the carport was permitted in 1962 and had been constructed with a green corrugated roof and they believe the renovations have improved the property. Mr. Labelle said the building permit contained in the file had been obtained by the previous owner for the enclosure of a screened in porch. He said it appeared that in 1980 the builder built 10.4 feet from the lot line rather than 12 feet.

In response to a question from Mrs. Harris, Mr. Labelle replied that the garage is used as a workshop, but the cars can access the carport. (Mr. Labelle submitted photographs to the BZA.)

A discussion took place between the BZA and staff as to how the "garage" can be designated as such since the structure is not used to park cars. Ms. Kelsey explained the structure was classed as an accessory structure.

Mr. Labelle said he believed the requirement of providing plantings around the garage would create an undue hardship that was not imposed on his neighbors. He was also opposed to reducing or removing the existing shed.

In response to a question from Mr. Pammel, Mr. Labelle replied that the shed had doors on one side but was open on the other side. He said he did know when the concrete block wall was constructed.

Mr. Labelle submitted letters from the neighbors into the record.

Vice Chairman Ribble called for speakers in support of the request.

Barbara Frankford, 6404 13th Street, Alexandria, Virginia, said she lived directly behind the applicants and she believed they had greatly improved the property.

There were no speakers in opposition to the request and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant VC 92-V-022 for the reasons noted in the Resolution subject to the implementation of the Development Conditions contained in the staff report dated May 12, 1992 with the deletion of Condition Number 3.

Mrs. Thonen said she could support the structures that are already on the property but could not support the request for the second story addition. She added that she would not support the variance request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-022 by ROBERT M. LABELLE AND DEBORAH S. DALTON, under Section 18-401 of the Zoning Ordinance to allow existing structures (garage/workshop, carport and

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shed) to cover more than 30% of the minimum required rear yard and allow addition to dwelling to be constructed 9.4 feet from side lot line, on property located at 6405 14th Street, Tax Map Reference 83-4((2))(25)11 and 12, 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 June 30, 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 6,500 square feet.
4. This particular piece of property is a developed property on a lot that is 6,500 square feet, which is extremely smaller than that required by the R-3 Zoning District, which is normally associated with a quarter lot.
5. The variance request is reasonable.
6. The applicants are requesting variance approval to construct a second story addition to provide additional living space.
7. The variance request is nominal.
8. The structures which occupy the rear yard were in existence prior to the applicants purchasing the property.
9. The standards for a variance have been satisfied, specifically with respect to the small area of the lot in question and also the dimensions of the lot and the fact that the structures that have been eluded to that occupy the rear in excess of the Code requirement of 30% were in existence and have been in existence for a number of years.
10. There have been minor modifications and expansions but they are certainly consistent with the character of the area and do not create a problem with respect to the adjoining 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.

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

1. This variance is approved to allow existing accessory structures to cover more than 30 percent of the minimum required rear yard and allow an addition to dwelling to 9.4 feet the side lot line as specified on the special permit/variance plat (dated October 16, 1985 and revised January 29, 1992) prepared by William E. Ramsey, P.E. included with this application, and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and all structures on the property shall comply with all applicable codes and inspections.

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 of the addition to the dwelling 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 4-2 with Mrs. Harris and 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 June 30, 1992. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel made a motion to grant SP 92-V-010 subject to the development conditions contained in the staff report dated May 12, 1992 with the deletion of Condition Number 5.

Mr. Hammack said he would like to have the language "to allow an existing accessory storage shed to remain" added to the development conditions. Mr. Pammel agreed.

Mr. Kelley made a motion to waive the 8-day waiting period for both the special permit and variance applications. Mrs. Thonen seconded the motion. The motion carried by a vote of 6-0. Chairman DiGiulian 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 Application SP 92-V-010 by ROBERT M. LABELLE AND DEBORAH S. DALTON, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow accessory structure to remain 4.0 feet from side lot line, on property located at 6405 14th Street, Tax Map Reference 83-4((2))(25)11 and 12. 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 June 30, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006 General Standards for Special Permit Uses and 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;

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- 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 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 William E. Ramsey, P.C. dated October 16, 1985 and revised, January 29, 1992 and approved with this application, as qualified by these development conditions.
- 3. A building permit reflecting the location of the existing dwelling and the existing garage/workshop accessory structure shall be obtained. All required building/construction plans and permits shall be submitted by the applicant, as determined appropriate by the 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 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 by the receipt of the appropriate building permits, and inspections for the renovation of the garage/workshop structure and for the existing dwelling has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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.

The Board of Zoning Appeals waived the eight day waiting period making the final approval date June 30, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 233, June 30, 1992, (Tape 1), Scheduled case of:

10:15 A.M. ST. AIDAN'S EPISCOPAL CHURCH, SP 92-Y-003, appl. under Sect. 3-303 of the Zoning Ordinance to allow addition to existing church and related facilities and nursery school, on approx. 7.4777 acres, located at 8531 Riverside Rd., zoned R-3, Mt. Vernon District, Tax Map 102-3(1)33. (DEF. FROM 4/23/92 FOR NEW PLAT. DEF. FROM 5/26/92 TO ALLOW THE APPLICANT TIME TO SUBMIT A REVISED PLAT ADDRESSING THE BZA'S CONCERNS)

Mrs. Thonen said after reviewing the plat and reading the development conditions she believed the applicant had addressed all the BZA's concerns. Mrs. Harris agreed.



Mrs. Thonen made a motion to approve SP 92-V-003 subject to the Development Conditions contained in the Memorandum dated June 18, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-V-003 by ST. AIDAN'S EPISCOPAL CHURCH, under Section 3-303 of the Zoning Ordinance to allow addition to existing church and related facilities and nursery school, on property located at 8531 Riverside Road, Tax Map Reference 102-3((1))33, 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 June 30, 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 7.4777 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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat (prepared by John B. Kelso, AIA, dated October 5, 1991 as revised through June 15, 1992) and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permits 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 uses.
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 church seats shall be limited to 300.
6. The maximum daily enrollment of the nursery school shall not exceed ninety-nine (99) children.
7. Hours of operation of the nursery school shall be limited to 9:00 a.m. until 2:00 p.m., Monday through Friday.
8. The number of parking spaces provided to serve the two (2) uses shall be a minimum and a maximum of 102 spaces. 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.
9. Transitional Screening requirements shall be modified along the western, eastern and southern lot lines in favor of the existing natural and landscaped vegetation as shown on the approved special permit plat.
10. Transitional Screening requirements shall be modified along the northern lot line in favor of supplemental evergreen vegetative materials consisting of fourteen (14) Juniper trees planted along the northern lot line from the southeastern corner of adjacent Lot 4 to the southeastern lot line of adjacent Lot 6 in order to mitigate

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effect of the existing uses and proposed addition on the adjacent residential uses. The trees shall be located between the existing screening fence and the edge of the existing parking lot pavement. All supplemental screening materials shall be reviewed and approved by the Urban Forestry Branch.

11. The Barrier requirements shall be waived along the east, south and west lot lines and, along the north lot line, shall be limited to the existing 7.0 ft. high wood fence that is located between the parking lot and the north lot line. The screening fence shall be kept in good repair.
12. The play area for the nursery school shall be in the area as shown on the approved special permit plat, as approved by the Health Department. This play area shall remain fenced and shall be located outside the required transitional screening yard.
13. Interior parking lot landscaping shall be provided in accordance with Article 13.
14. Dedication of right-of-way shall be provided along the frontage of Riverside Road to forty-five (45.0) feet from the centerline in order to comply with the recommendations of the adopted Transportation Plan for improvements to Riverside Road to a standard two-lane facility.
15. In order to facilitate future construction of improvements to Riverside Road, all necessary ancillary easements shall be provided, per the review and approval of the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT) at the time of site plan review.
16. A cul-de-sac shall be provided at the end of Lombardy Lane, per VDOT requirements, or a waiver of this requirement shall be obtained by the applicant at the time of site plan review, subject to the review and approval of VDOT and DEM.
17. In order to mitigate any potential impacts of glare from outside lights on the surrounding residential lots, any outside lighting of the parking lot shall be directed away from residential lots and shall be equipped, if necessary, with shields to prevent light from projecting onto surrounding residential lots.
18. Adequate on-site stormwater management facilities shall be provided to the satisfaction of the Department of Environmental Management (DEM) to contain and direct stormwater draining from the building addition to an approved public or private stormwater management system in order to protect adjacent residential lots from any potential adverse impacts from stormwater originating from the subject property. If a site plan waiver is requested from DEM, site plan waiver approval shall be conditioned upon the submission and approval of a drainage plan to address stormwater drainage from the subject property.
19. The existing church structure shall remain connected to the public water and sanitary sewage systems.
20. In order to prevent unauthorized use of the parking lot during hours church activities are not in session, two (2) six (6) inch by six (6) inch wide wooden bollards shall be installed on both sides of the driveway, just to the east of the dumpster. A chain with a padlock shall be extended between the bollards during hours that church activities are not in session.

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 legally established by obtaining a Building Permit, obtaining the necessary inspections and approvals, obtaining a Non-Residential Use Permit for the building addition and meeting all applicable conditions of this approval. The Board of Zoning Appeals may grant additional time to establish the use or 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 and Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Vice Chairman Ribble abstained. 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 July 8, 1992. This date shall be deemed to be the final approval date of this special permit.

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Scheduling of James Hohman Appeal

Mr. Hammack made a motion to schedule the appeal for September 15, 1992, at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Paradiso, Inc., VC 92-L-074  
Out of Turn Hearing

Mrs. Thonen made a motion to grant the request and schedule the application for August 4, 1992. Mr. Hammack seconded the motion. Following a discussion among the BZA members, the motion carried by a vote of 4-2 with Mrs. Harris and Mr. Kelley voting nay. Chairman DiGiulian was absent from the meeting.

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Scheduling of Additional BZA Meeting Dates

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested the BZA schedule additional meeting dates for October 15, 1992, and November 19, 1992.

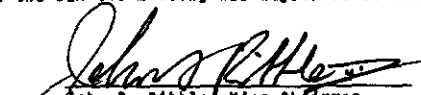
Vice Chairman Ribble asked staff if the Board of Supervisors had reached a decision with regard to changing its meeting day from Monday to Tuesday. Ms. Kelsey said she did not know.

Mrs. Thonen made a motion to accept staff's suggestion of two additional meeting dates. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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There being no other matters to come before the BZA the meeting was adjourned at 11:12 a.m.

  
Betsy S. Wurtz, Clerk  
Board of Zoning Appeals

  
John R. Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: September 8, 1992

APPROVED: September 15, 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 July 7, 1992. 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 9:13 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 237, July 7, 1992, (Tape 1), Scheduled case of:

9:00 A.M. LARRY AND STEPHANIE STEWART, YC 92-S-042, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of deck 0.5 ft. from rear lot line (5 ft. min. rear yard required by Sect. 2-412), on approx. 6,851 sq. ft., located at 7400 Arundel Pl., zoned PDH-3, Springfield District, Tax Map 89-3((30))15.

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. Stewart replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, comprised of the following information, for Carol Dickey who is no longer with the Office of Comprehensive Planning.

Ms. Kelsey stated that the applicants were requesting approval of a 4.5 foot variance to allow a deck to extend 0.5 feet from the rear yard. She noted that the rear yard abutted the subdivision's common ground.

The applicant, Larry Stewart, 7400 Arundel Place, Springfield, Virginia, addressed the BZA and thanked staff for their help in processing the application. He explained that the exceptionally shallow lot had caused the need for the variance and said that there was no other place on the property where the deck could be built. Mr. Stewart stated that there were six similar decks in the neighborhood and noted his deck would conform with those decks. In summary, he expressed his belief that the application met the necessary standards.

In response to Mrs. Harris' question as to whether the other decks in the neighborhood had required variances, Mr. Stewart explained that he was informed by the County that a liberal interpretation of the Zoning Ordinance would indicate that a variance was not needed. He stated that he had consulted with staff who believed it advisable to apply for the variance.

Ms. Kelsey explained that in the Planned Development District (PDH) at the time of development, the developer has greater flexibility on where to place dwellings. She noted that after the development had been completed, the homeowner no longer had this flexibility and must comply with the Zoning Ordinance.

Mr. Stewart stated that the homeowners association and the neighbors had supported the application and he requested a waiver of the eight-day waiting period should the variance be granted.

There being no speakers to the request, Chairman DiGiulian called for staff's comments concerning the PDH district regulations. After a brief discussion with Ms. Kelsey, he noted that the BZA was familiar with PDH stipulations and closed the public hearing.

Mr. Pammel made a motion to grant YC 92-S-042 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated June 30, 1992.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application YC 92-S-042 by LARRY AND STEPHANIE STEWART, under Section 18-401 of the Zoning Ordinance to allow construction of deck 0.5 feet from rear lot line, on property located at 7400 Arundel Place, Tax Map Reference 89-3((30))15, 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 July 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 PDH-3.
3. The area of the lot is 6,851 square feet.
4. The application met the standards necessary for the granting of a variance.

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5. The shallowness of the lot has caused the need for the variance.
6. The property, which is a planned development district, does not have a deck because it was not indicated on the development plan at the time the dwelling was approved.
7. The adjacent properties have similar decks that were permitted because they were indicated on the development plan.
6. The deck will back up to open space.
7. Due to architectural considerations, the only exit from the house is at that location; therefore, the deck could not be placed anywhere else on the lot.

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 addition shown on the plat (prepared by Rinker-Detwiler and Associates, P.C., dated April 17, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.

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 construction has commenced and has 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 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. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

Mr. Pammel made a motion to waive the eight-day waiting period. Mrs. Harris seconded the motion which carried by 5-0 with Mr. Hammack 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 July 7, 1992. This date shall be deemed to be the final approval date of this variance.

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9:10 A.M. DENNIS D. BILOWUS AND MARY E. BILOWUS, SP 92-V-022, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 1.4 ft. from rear lot line (10.0 ft. min. rear yard required by Sects. 3-307 and 10-104), on approx. 16,823 sq. ft., located at 7932 Bayberry Dr., zoned R-3, Mt. Vernon District, Tax Map 102-1((29))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. Bilowus replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, comprised of the following information, for Carol Dickey who is no longer with the Office of Comprehensive Planning.

Ms. Kelsey stated that the applicants were requesting approval of a special permit for an error in building location to allow a 12 foot high shed to remain 1.4 feet from the rear lot line. She noted that the Whitman Intermediate School abutted the rear of the property. Ms. Kelsey said that the applicant had indicated the original shed, which was also in excess of 8.5 feet, had been replaced by the existing shed.

In response to questions from the BZA as to whether the shed was grandfathered, Ms. Kelsey stated that although she could not answer the question, the applicant had indicated that the existing shed was higher than the original shed. She noted that although a "Notice of Violation" had been issued on June 27, 1992, there was no indication that a complaint had been filed.

The applicant, Dennis D. Bilowus, 7932 Bayberry Drive, Alexandria, Virginia, addressed the BZA. He stated that he had replaced the original deteriorating metal shed and had received a notice informing him that the shed was in violation of the Zoning Ordinance. He explained that he had been unaware of the height requirements.

In response to questions from the BZA, Mr. Stewart stated that the existing shed was larger than the original shed. He explained that the shed had been built to accommodate a canoe. Mr. Stewart said that three of the abutting neighbors had submitted letters of support and explained that because his property is in a gully, the shed does not create a visual impact on the neighborhood.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Dennis Bertsch, 7930 Bayberry Drive, Alexandria, Virginia, addressed the BZA and stated that he is an abutting neighbor and supported the application. He said that the shed was aesthetically pleasing and had no detrimental impact on the neighborhood.

In response to Mrs. Harris' question regarding other sheds in the area, Mr. Bertsch stated that there were many similar size sheds in the neighborhood.

There being no further speakers in support and no speakers in opposition, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SP 92-V-022 for the reasons reflected in the Resolution subject to the development conditions contained in the staff report dated June 30, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-V-022 by DENNIS D. BILOWUS AND MARY E. BILOWUS, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 1.4 feet from rear lot line, on property located at 7932 Bayberry Drive, Tax Map Reference 102-1((29))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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, 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:

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- 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 neighbors would like the shed to remain at its present location rather than be placed in the middle of the yard.
- I. An old shed existed in the exact location as the existing shed.
- J. The fact that the existing shed is 2 feet higher than the old shed has caused the need for the variance.
- K. The lot has an exceptional shape and there is an existing drainage ditch.
- L. The application meets the necessary standards.
- M. There would be no detrimental impact on the neighbors.
- N. The applicant has done a good job in locating the shed at a location which would have the least impact on 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.

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 (shed) 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 Kephart and Company, dated July 26, 1991) 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 applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits 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 a building permit has been obtained and final inspections approved. The Board of Zoning Appeals may grant additional time to establish the use 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. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mr. Ribble was 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 July 15, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page <sup>241</sup> 241, July 7, 1992, (Tape 1), Scheduled case of:

9:20 A.M. RICHARD B. MYERS, VC 92-B-037, appl. under Sect. 18-401 of the Zoning Ordinance to allow garage addition 7.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,170 sq. ft., located at 5406 Ellzey Dr., zoned R-3, Braddock District, Tax Map 68-3((5))88.

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. Myers replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, comprised of the following information, for Bernadette Bettard who is no longer with the Office of Comprehensive Planning.

Ms. Kelsey stated that the applicant was requesting a variance to allow the enclosure of an existing carport and extension 7.0 feet from the side lot line. Because the plat submitted to the BZA had not depicted the extension and the BZA had only received revised plats on the day before the hearing, any neighbors who had reviewed the file would not be aware of the extension. She noted that the revised plat conformed with the applicant's building plans and the extension would line up with the back of the existing structure. Ms. Kelsey said that staff was unable to advise the BZA as to whether the letters in support referenced the original plat submitted with the application or the revised plat. She suggested that the applicant address the issue.

Mrs. Harris expressed her belief that it had been an honest mistake and said that the statement of justification indicated that the applicant had intended to request a storage area to the rear of the carport.

In response to Mrs. Harris' question as to which plat had been shown to the neighbors, Mr. Myers said that the neighbors had been shown the revised plat and had submitted letters of support. He noted that the most affected neighbor had only submitted a letter of support for enclosure of the existing carport and did not support the extension. He explained that the revised plats had been submitted to staff only after he realized the contractor had submitted the wrong plats.

Mr. Myers noted that the plats had been submitted to the County one week earlier than staff had received them. Ms. Kelsey stated that although the plats may have been received earlier, the BZA staff had received them on July 6, 1992.

After a brief discussion, it was the consensus of the BZA that the application had been advertised correctly and the case would be heard.

Mr. Myers stated that he merely wished to enclose an existing carport and add an extension so that the garage would be flush with the existing structure. He explained that the enclosure would provide security as well as protection in inclement weather. Mr. Myers said that the addition would be aesthetically pleasing and would provide badly needed storage space for his family and noted that an existing storage shed would be removed. In summary, Mr. Myers expressed his belief that the addition would conform with other structures in the area and asked the BZA to grant the request.

In response to Mr. Hammack's question as to the need for a 9 by 20 foot storage area, Mr. Myers said that although he would like the full extension, he would be willing to compromise.

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

Mrs. Harris made a motion to grant-in-part VC 92-D-027 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated June 30, 1992. She stated that a 20 by 20 foot garage, built on the existing carport that has been in existence for 15 years, was a reasonable request. She noted that the storage addition, which would extend the area by 10 feet, could be moved so that a variance would not be required.

Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley stated that he believed the application should be granted in full. He expressed his belief that it would be preferable to have the addition flush with the house. He noted that if the applicant built the extension by-right, it would not be aesthetically pleasing.

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Mrs. Thonen expressed her support of the original application and noted that the addition would square off the back of the structure.

Mrs. Harris stated that while she would support the enclosure of the carport, she could not support the additional 10 foot variance.

Mr. Pammel expressed his support of the motion. He noted that with the additional 10 feet of storage space, the applicant would have the option of storing two cars.

Mr. Kelley made a substitute motion to defer VC 92-D-027 for one week so that the neighbor and the applicant could come to an agreement on the addition.

Mrs. Thonen seconded the motion which carried by a vote of 4-2 with Mr. Hammack and Mr. Pammel voting nay. Mr. Ribble was absent from the meeting.

Ms. Kelsey suggested a date of July 14, 1992 at 10:30 a.m. Chairman DiGiulian so moved.

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The Board of Zoning Appeals recessed at 9:40 a.m. and reconvened at 9:52 a.m.

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Page 240, July 7, 1992, (Tape 1), Scheduled case of:

9:40 A.M. ANNA BONOMO, VC 92-D-043, appl. under Sect. 18-401 of the Zoning Ordinance to amend variance V19390 to allow construction of addition 8.8 ft. from street line of a corner lot and allow dwelling to remain 17.8 ft. from side lot line (50 ft. min. front yard, 20 ft. min. side yard required by Sect. 3-E07), on approx. 36,315 sq. ft., located at 411 River Bend Rd., zoned R-E, Dranesville District, Tax Map 8-4((4))276.

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

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. Oxley replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to construct a garage addition 8.8 feet from the front lot line formed by the right-of-way of Sterling Montague Drive. The Zoning Ordinance requires a minimum front yard of 50 feet; therefore, the applicant was requesting a variance of 41.2 feet.

Mr. Riegle noted that the application had originally been filed with another variance request which would have allowed the dwelling to remain 17.2 feet from the side lot line. He explained that research of the Zoning Administration's files had indicated that a variance which allowed the dwelling to remain 18.2 feet from the side lot line had been granted; therefore, that part of the application was not necessary.

The applicant's attorney, Gregory L. Oxley, with the law firm of Miller and Bucholtz, 1801 Reston Parkway, Suite 301, Reston, Virginia, addressed the BZA. He stated that when the applicant purchased the house in January of 1992, she had been assured that a garage addition could be built. He noted that the original plat had included an attached garage on the northern side of the property. Mr. Oxley explained that although the original owners had intended to build the addition, they did not do so because of financial considerations.

Mr. Oxley stated it was only after the applicant had purchased the property and hired a contractor, she was informed that the addition could not be built without a variance. He explained that at the time the original owner had assembled a group of church camp sites in order to form the lot, Sterling Montague Drive did not exist. He noted that approximately 10 years ago, the property to the north was developed and Sterling Montague Drive was installed. Mr. Oxley noted that prior to the development and installation of Sterling Montague Drive, the setback requirement had been 20 feet. In summary, Mr. Oxley stated that the proposed site is the only practical location for an attached garage and asked the BZA to grant the request.

In response to questions from the BZA, Mr. Oxley explained that the applicant's structure is smaller than the other houses in the area. He explained that the garage addition would enable the house to be in harmony with the neighborhood.

The applicant's builder, Gerald Peonnie, Peonnie Associates, Manassas Virginia, addressed the BZA. He stated the chimney, the need for structural support at the mid-point, and the aesthetic considerations were the reasons for the garage dimensions.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Richard Peters, President of the Great Falls Citizens Association, Great Falls, Virginia, addressed the BZA. He explained the background of the development in the area and expressed his belief that the Sterling Montague Homeowners Association should have been advised of the hearing.

Elizabeth Huebner Pfeiffer, 9103 Weant Drive, Great Falls, Virginia, addressed the BZA. She stated that although she did not object to the application, she was concerned that it would set a precedent. She explained that there had been many problems with the maintenance of Sterling Montague Drive.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

In response to Mr. Hammack's question as to what trees would have to be removed, Mr. Oxley stated that no trees would be removed.

In response to Mrs. Harris' question as how much fill would be required, Mr. Peonnie stated that no fill would be needed. He stated Dickinson T. Brent, President of the Sterling Montague Homeowners Association, had signed the petition stating that he had no objection to the request.

The applicant, Anna Bonomo, 411 River Bend Road, Great Falls, Virginia, addressed the BZA. She stated that while she intended to preserve the 200 year old trees on the property, she needed the two car garage. She explained that if the variance was not granted and she had to construct the garage by-right, some of the trees would have to be removed. Ms. Bonomo expressed her belief that the garage addition would be aesthetically pleasing.

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

Mr. Hammack made a motion to grant-in-part VC 92-D-043 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated June 30, 1992.

Chairman DiGiulian noted that new plats would be needed and requested they be submitted to the BZA before August 4, 1992. Mr. Oxley agreed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-043 by ANNA BONOMO, under Section 18-401 of the Zoning Ordinance to amend variance V10390 to allow construction of addition 8.8 feet from street line of a corner lot (THE BZA GRANTED A VARIANCE OF 13.8 FROM STREET LINE OF A CORNER LOT) and allow dwelling to remain 17.8 feet from side lot line, on property located at 411 River Bend Road, Tax Map Reference 8-4((4))276, 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 July 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-E.
3. The area of the lot is 36,315 square feet.
4. The application has met the standards necessary for the granting of a variance.
5. There is an unusual condition with respect to the property. The buildable lot was compiled from campsites.
6. The lot is very deep and narrow.
7. There is no other location on which the garage could be placed.
8. The applicant has not justified the granting of such a large variance.
9. Approval in-part would be for a garage 22 1/2 feet extended from the existing dwelling which would reduce the addition by 5 feet.
10. The garage would be constructed to within 13.8 feet from the property line which would be adequate and reasonable.
11. The approval in-part would allow not only for the chimney, but would also allow a two car garage to be constructed.

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.

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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 the dwelling and garage shown on the plat prepared by Alexandria Surveys dated February 25, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 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 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 July 15, 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 10:20 a.m. and reconvened at 10:30 a.m.

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Page 244, July 7, 1992, (Tape 2), Scheduled case of:

9:50 A.M. ROSS F. ROGERS, VC 92-D-039, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 6 lots, proposed Lot 1 having lot width of 168.0 ft. (225 ft. min. lot width for corner lot required by Sect. 3-E06) and proposed Lots 2, 3, 5, and 6, having lot width of 5.0 ft. (200 ft. min. lot width required by Sect. 3-E06) on approx. 12.47 acres located on Utterback Store Rd., zoned R-E, Dranesville District, Tax Map 7-1((9))A, B.

Greg Riegler, Staff Coordinator, addressed the BZA and stated that the applicant had asked for a deferral.

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The applicant's agent, Mike Mahaffee with the engineering firm of Greenhorne and O'Mara, 11211 Maples Mill Road, Fairfax, Virginia, addressed the BZA. He stated that the deferral was needed in order to resolve legal issues with the property owners and to address the neighbors' concerns.

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

The neighbors' representative, William C. Thomas, Jr. with the firm of Fagelson, Schonberger, Payne, and Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, addressed the BZA. He stated that he would concur with the deferral.

After a brief discussion, it was the consensus of the BZA to defer the case.

Mr. Hammack made a motion to defer VC 92-D-039 to October 6, 1992 at 9:00 a.m. Mrs. Harris and Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mr. Ribble was absent from the meeting.

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Page 246, July 7, 1992, (Tape 2), Scheduled case of:

10:00 A.M. RAYMOND E. AND ELIZABETH A. ARNDT, VC 92-L-041, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure and extension of carport to 6 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407), on approx. 12,001 sq. ft., located 6903 Essex Ave., zoned R-4, Lee District, Tax Map 80-4((2))(5)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. Arndt replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to the minimum side yard requirement to allow enclosure and an expansion of a carport for a room addition 6 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, the applicants were requesting a variance of 4 feet to the minimum side yard requirement.

The applicant, Elizabeth A. Arndt, 6903 Essex Avenue, Springfield, Virginia, addressed the BZA. She stated that she was currently studying for a doctorate in music and this, along with her family's need for storage space, was the reason for the request. She explained that there is very little storage space in the existing house.

In response to questions from the BZA, Ms. Arndt stated that the placement of the house on the lot had caused the need for the variance and noted that the neighbors had expressed their support.

The co-applicant, Raymond E. Arndt, 6903 Essex Avenue, Springfield, Virginia, addressed the BZA. He stated that either the existing roof line would be modified or the roof would be raised.

Mrs. Harris raised the question as to how the existing carport was currently being used. Mr. Arndt stated that it was used as a porch.

After a brief discussion regarding the advertising of the case, Chairman DiGiulian ruled that it had been properly advertised.

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

Mr. Pammel made a motion to deny VC-L-041 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 92-L-041 by RAYMOND E. AND ELIZABETH A. ARNDT, under Section 18-401 of the Zoning Ordinance to allow enclosure and extension of carport to 6 feet from side lot line, on property located at 6903 Essex Avenue, Tax Map Reference 80-4((2))(5)10. 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 July 7, 1992; and

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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 12,001 square feet.
4. The application does not meet the standards necessary for the granting of a variance.
5. The 32 foot depth bulk of the addition, only 6 feet from the property line, would have a detrimental impact on the adjoining property.
6. The addition could be built within the prescribed side lot line limitation with an extension to the rear.

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 failed a vote of 3-3 with Mrs. Harris, Mr. Hammack and Mr. Pammel voting aye; and Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley voting nay. (The application was DENIED for the lack of four affirmative votes which are required for the granting of a variance.)

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1992.

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Page 246, July 7, 1992, (Tape 2), Scheduled case of:

10:10 A.M. KENT L. GOERING, VC 92-M-040, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of carport 9.5 ft. from side lot line and addition of pitched roof on structure 9.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,340 sq. ft., located at 5418 Ferndale St., zoned R-3, Mason District, Tax Map 80-1{(2)}(2)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. Mr. Goering replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to the minimum yard requirement to allow enclosure of an existing

carport and an addition of a pitched roof 9.5 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 2.5 feet to the minimum side yard requirement.

The applicant, Kent L. Goering, 5418 Ferndale Street, Springfield, Virginia, addressed the BZA. He stated he wished to enclose the 12 foot wide carport and replace the flat roof on a previously built addition. He explained that although the existing flat roof had been repaired, it was still not sound. Mr. Goering said that the carport addition would not be used as a garage, but would be an expansion to the existing small kitchen. He said that the neighbors had been given detailed information regarding the addition and had voiced their support.

In response to questions from the BZA, Mr. Goering explained that when the previous addition had been constructed, a variance was not needed. He noted that the County records indicated that it had been an approved addition. He explained that the variance was needed only because he was replacing the flat roof with a pitched roof.

In response to Mr. Pammel's question regarding the records, Ms. Greenleaf stated that although she had investigated the matter, the files were skimpy.

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

Mrs. Thonen made a motion to grant VC 92-M-040 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated June 30, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-040 by KENT L. GOERING, under Section 18-401 of the Zoning Ordinance to allow enclosure of carport 9.5 feet from side lot line and addition of pitched roof on structure 9.5 feet from side lot line, on property located at 5418 Ferndale Street, Tax Map Reference 80-1(2)(21)10, 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 July 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 11,340 square feet.
4. The structure has been in existence since 1957 and the applicant merely wants to change the flat roof to a pitch roof.
5. The need for a variance in order to improve the roof is proof of how regulated the County has become.
6. The application meets the necessary standards for the granting of a variance.
7. The subject property was acquired in good faith.
8. The narrow configuration of the lot, along with the floor plan has placed restraints on any remodeling.
9. The intend or design use of the structure would not result in the need to amend the Zoning Ordinance.
10. The strict application of the Zoning Ordinance would cause undue hardship.
11. The flat roof can cause damage and may be unsafe.
12. There would be no detrimental impact on the neighbors.

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 specified enclosure of carport/room addition and roof shown on the plat prepared by Runyon, Dudley, Anderson Associates, Inc. dated April 17, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing single family dwelling unit.

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 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 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 July 15, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 248, July 7, 1992, (Tape 2), Scheduled case of:

10:20 A.M. DAVID C. BUCKIS, D.D.S., SP 92-Y-023, appl. under Sect. 3-103 of the Zoning Ordinance to allow home professional office (dental), on approx. 2.018 acres, located at 12601 Camberley Forest Road (formerly 3238 West Ox Road), zoned R-1, Sully District, Tax Map 35-4((14))18 (formerly 35-4((1))35). (OTH GRANTED 5/5/92)

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant had requested a one week deferral. Ms. Kelsey said that the applicant's attorney, Ms. Dean, was present. She further noted that an interested citizen had no objection to the deferral.

The BZA expressed its concerns regarding the applicant's requesting and receiving an out-of-turn hearing, and then requesting a deferral.

The applicant's attorney, Lisa Harris Dean, with the law firm of Verner, Lipfert, Bernhard, McPherson, and Hand, 8280 Greensboro Drive, 6th Floor, McLean, Virginia, addressed the BZA. She explained that they were requesting the deferral so that Ms. Kelsey, the County Urban Forester, and Dr. Buckis could meet to resolve outstanding issues.



Mr. Pammel made a motion to deny the deferral. Mrs. Harris seconded the motion.

Mrs. Thonen made a substitute motion to defer SP 92-Y-023 to July 14, 1992, at 10:30 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. Ribble was absent from the hearing.

After a brief discussion, it was the consensus of the BZA that there would be no further deferrals issued for this application.

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Page 249, July 7, 1992, (Tape 2), Information Item:

Approval of Resolutions from June 30, 1992 Hearings

Mr. Pammel made a motion to approve the Resolutions as submitted. 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 249, July 7, 1992, (Tape 2), Information Item:

Approval of Minutes from June 9, 1992 Hearings

Mr. Pammel made a motion to approve the minutes subject to a modification on Page 1. He noted that the unfinished sentence " Paul Hammack; Robert Kelley; and John Ribble.", should be completed by adding, "were not present at the meeting." 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 249, July 7, 1991, (Tape 2), Information Item:

Request for Out-of-Turn Hearing  
Montessori School of Alexandria, SPA 80-L-033-3

Mrs. Harris made a motion to deny the request. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the hearing.

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Page 249, July 7, 1991, (Tape 2), Information Item:

Request for Additional Time  
St. Mark Coptic Church, SP 80-S-013  
11821 Braddock Road  
Tax Map Reference 67-1{(4)}34

Mr. Pammel made a motion to grant the request. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the hearing. The new expiration date will be April 4, 1993.

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Page 249, July 7, 1991, (Tape 2), Information Item:

Request for Date and Time  
James A. and Sharon B. Kelley

Mr. Pammel made a motion to schedule the appeal for September 15, 1992 at 10:15 a.m. Mrs. Harris and Mr. Hammack seconded the motion.

In response to Mr. Kelley's question as to whether the Appellant had been advised that he could request a variance for the fence, Jane Kelsey, Chief, Special Permit and Variance Branch, said that she did not know.

After a brief discussion, it was the consensus of the BZA that staff contact the appellants to advise them of the variance procedure.

Mr. Kelley made a substitute motion to defer the request until the next public hearing on July 14, 1992. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the hearing.

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Approval of Plats  
Tysons-Briar, Inc., SPA 82-C-025-2

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Lori Greenleaf, Staff Coordinator, addressed the BZA and stated that at the June 23, 1992 public hearing, Mr. Hammack had made the motion to grant-in-part SPA 82-C-025-2. She noted that the new required plat had been submitted and explained the changes made to the plat.

Mrs. Harris made a motion to approve the Resolution and plat for SPA 82-C-025-2 as submitted. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Additional Board of Zoning Appeals Meetings

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that at the June 30, 1992 public hearing, the BZA had approved two extra meeting dates. She said that the BZA would receive a revised schedule reflecting the changes.

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As there was no other business to come before the Board, the meeting was adjourned at 12:00 noon.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

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

SUBMITTED: September 29, 1992

APPROVED: October 6, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 14, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. James Pammel was absent.

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Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation.

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Page 251, July 14, 1992, (Tape 1), Board Matter:

Chairman DiGiulian addressed Jane C. Kelsey, Chief, Special Permit and Variance Branch, referring to a revised agenda for 10/20/92 on which deferral was said to have been requested on the Buckis case. Ms. Kelsey said that was probably an oversight and the notation should have been removed, because the Buckis case was scheduled for 10/20/92. The BZA was satisfied with that explanation.

There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 251, July 14, 1992, (Tape 1), Scheduled case of:

9:00 A.M. MR. AND MRS. EARLE BURGESS, VC 92-D-046, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of ramp 0.0 ft. from front lot line (30 ft. min. front yard required by Sect. 3-307), on approx. 11,348 sq. ft., located at 6610 Jerry Pl., zoned R-3, Dranesville District, Tax Map 40-2(21)39. (OTH GRANTED 5/19/92)

Chairman DiGiulian asked the applicant if he was ready to reaffirm the affidavit and Mrs. Thonen interrupted the applicant's response by stating that some of the BZA members had spoken with the applicant previous to the meeting being called to order and found that the Certified Receipts and other required notice information had not been delivered to the Clerk as requested, so the information had not been checked on the County Computer. Mrs. Thonen made a motion to defer the case until the applicant's representative took the information to the Clerk for verification. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 251, July 14, 1992, (Tape 1), Scheduled case of:

9:10 A.M. DOUG AND SUSAN O'BOYLE, VC 92-S-048, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 19.6 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 8,400 sq. ft., located at 9509 Southern Cross La., zoned R-3 (Cluster), Springfield District, Tax Map 88-1(5)416.

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. O'Boyle replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that the application was for construction of an enclosed porch, requiring a variance of 5.12 feet.

Doug O'Boyle, 9509 Southern Cross Lane, Burke, Virginia, came back to the podium to present the statement of justification. He told the BZA that the lot was below the average size in the county, which was about 11,500 square feet. He said the existing deck would be taken down and replaced by the porch, which will be 2 feet larger. He said that the lot was very shallow with a wooded floodplain in the back. Mr. O'Boyle said that strict application of the Ordinance would create an undue hardship; he did not believe the addition would adversely affect the neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 92-S-048 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 7, 1992.

Mr. Kelley said that he would like to have a condition added concerning the construction materials. Mrs. Thonen said that she would add a condition stating that 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 92-S-048 by DOUG AND SUSAN O'BOYLE, under Section 18-401 of the

Zoning Ordinance to allow construction of addition 19.6 ft. from rear lot line, on property located at 9509 Southern Cross La., Tax Map Reference 88-1((5))416, 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 July 14, 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 (Cluster).
3. The area of the lot is 8,400 square feet.
4. Because the cluster zoning makes the lot very shallow and because of the way the house is situated on the lot, there is nowhere else where the addition could be placed without requiring a variance.
5. Since the area is so wooded, the variance will not visually impact upon the neighbors.

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 specified addition shown on the plat prepared by Alexandria Surveys dated April 22, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing structure.

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 construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant

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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 5-0. Mr. Hammack was not present for the vote. 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 July 22, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 253, July 14, 1992, (Tape 1), Action Item:

Request for Reconsideration  
Raymond & Elizabeth Arndt  
VC 91-L-041

Mrs. Thonen said that this was the case where the applicants wanted to enclose the carport and build around the carport. She said that the artist's sketch did not show the house, the current use, nor the planned expansion, which created confusion. Mrs. Thonen said that questions asked by several Board members concerning the appearance of the roof were not adequately answered by the applicant. She said that the applicants believed that they had not presented their case as well as they could have and would like to have an opportunity to come before the BZA again.

Mrs. Thonen said that she was in favor of reconsideration because the property was in one of the older areas and the applicants should be able to add on to their house. She further stated that there had been a tie vote of 3-3 for a motion to deny. Mr. Ribble was absent. Jane C. Kelsey, Chief, Special Permit and Variance Branch, reviewed the voting at the original hearing: She said that there was a motion to deny, which failed by a vote of 3-3, with Mrs. Harris, Mr. Hammack and Mr. Pammel voting in favor, and Chairman DiGiulian, Mrs. Thonen and Mr. Kelley voting against the motion. It was stated that a member from the prevailing side would need to make the motion to grant reconsideration. Mr. Ribble asked if there was some way the vote to reconsider could be deferred until he had a chance to read the staff report. Ms. Kelsey reminded the Board that, if they did pass a motion to reconsider, the application would need to be readvertised.

Mrs. Harris make a motion to reconsider because she believed that any vote of 3-3 deserved reconsideration. Mrs. Thonen seconded the motion, which carried by a vote of 5-1. Mr. Hammack voted nay. Mr. Pammel was absent from the meeting. The reconsideration was scheduled for October 13, 1992.

Chairman DiGiulian went back to the regular agenda.

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Page 253, July 14, 1992, (Tape 1), Scheduled case of:

9:20 A.M. ALVIN R. AND JEAN E. MANALAYSAY, VC 92-Y-045, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.5 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207), on approx. 8,850 sq. ft., located at 4530 Stone Pine Ct., zoned PDH-2, WS, Sully District, Tax Map 45-3(3)59. (OTH GRANTED 5/19/92)

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. Manalaysay replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the applicant was requesting a variance of 3.5 feet. He said that the rear lot line does abut open space which was conveyed to the Homeowners Association in conjunction with the PDH District rezoning.

Mrs. Thonen asked the applicant if the house had met the requirements at the time it was built and Mrs. Manalaysay said that it had.

Applicant Jean E. Manalaysay presented the statement of justification, referring to her letter of justification. She reiterated some of the points in the letter, which is part of the file. Mrs. Manalaysay said that they believed the lot to have exceptional shallowness; the area is smaller than the average lot in Fairfax County; also, the lot is pie-wedge shaped and angled such that neither neighbor on either side of their property will be able to see the addition unless they walk deep into their lot. The addition had been approved by the Homeowners Association and none of the neighbors had an objection to the proposed addition.

There were no speakers and Chairman DiGulian closed the public hearing.

Mrs. Harris made a motion to grant VC 92-045 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 7, 1992.

(See further reference to this case on page 269.)

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-045 by ALVIN R. AND JEAN E. MANALAYSAY, under Section 18-401 of the Zoning Ordinance to allow addition 21.5 ft. from rear lot line, on property located at 4530 Stone Pine Ct., Tax Map Reference 45-3((3))59, 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 July 14, 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 PDH-2, WS.
3. The area of the lot is 8,850 square feet.
4. The lot is unusually pie-shaped and the house is slightly skewed on the lot and backs up to open space.
5. A minimal variance of 3.5 feet is being requested.
6. There is no place on the lot where the addition could be placed without a variance; it cannot be placed to the west because of the 10-foot sanitary sewer easement.
7. Granting this variance will clearly alleviate a hardship and will not be of substantial detriment to the adjacent property owners because of the way the house is sited.
8. There is no way that this variance will visually impact the neighbors and it backs up to open space.
9. This is a PDH subdivision and, if the addition had been put on the original plat, it would have been an authorized use.

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.

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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 addition shown on the plat (prepared by Patton Harris Rust and Associates, dated December 17, 1979 as revised through February 27, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing structure.

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 construction has commenced and has 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 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. Mr. Pammel was absent from the meeting.

Mrs. Harris made a motion to waive the eight-day limitation. Mr. Ribble 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 July 14, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 255, July 14, 1992, (Tape 1), Action Item:

Request for Reconsideration  
Raymond & Elizabeth Arndt  
VC 92-L-041

Mrs. Harris made a motion to grant this request for reconsideration and the reconsideration was scheduled for October 13, 1992. Mrs. Thonen seconded the motion which carried by a vote of 5-1. Mr. Hammack voted Nay. Mr. Pammel was absent from the meeting.

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Page 255, July 14, 1992, (Tape 1), Action Item:

Approval of Resolution from July 7, 1992 Hearing

Mrs. Harris made a motion to approve the Resolutions, with the exception of Arndt, as submitted by the Clerk. Arndt had been granted a request for reconsideration. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 255, July 14, 1992, (Tape 1), Action Item:

Request for Additional Time  
George F. & Jo Ann Crichton  
VC 90-D-036

Mr. Hammack made a motion to grant this request for additional time. Mrs. Harris and Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting. The new expiration date is December 29, 1992.

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Request for Date and Time for Appeal  
National Tire Wholesale

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Mrs. Harris made a motion to accept this appeal and schedule it for September 22, 1992. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Request for Approval of Resolution and Plat  
South Run Baptist Church

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that they had approved the Resolution, conditioned upon submission of a revised plat which relocated the proposed trailer behind trailer number 2. She said that the revised plat did reflect the relocation, and staff recommended approval. Mrs. Thonen made a motion to approve the plat. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Pammel 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 87-S-078-1 by SOUTH RUN BAPTIST CHURCH, under Section 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 property located at 8712 Selgar Drive, Tax Map Reference 89-3((3))2, 3, 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 10, 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-1.
3. The area of the lot is 10.59 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) for Phases 1 through 4 and the associated parking indicated on the special permit plat (prepared by Greenhorne and O'Mara) and dated July, 1988, and received in this office on August 5, 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 Greenhorne and O'Mara and dated July, 1988, and stamped received by the Zoning Evaluation Division on August 5, 1991.
5. The maximum number of seats in phases one (1) through four (4) shall be six hundred (600). A maximum of two hundred forty-five (245) parking spaces shall be provided for all four (4) phases with a minimum of one hundred fifty (150) spaces previously provided. All parking shall be on-site.



6. Transitional Screening 1 shall be maintained along the western property lines. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the Urban Forester. The existing Environmental Quality Corridor to the east and south of the buildings shall be considered sufficient to satisfy the transitional screening requirements along those lot lines provided it is left undisturbed in accordance with the following condition. Transitional Screening 1 along the northern lot line shall be waived.
7. Pursuant to the Virginia Code Sect. 10.1-1700 et seq., the applicant shall be at the time of site plan approval, record among the land records of Fairfax County, an Open Space easement to the Board of Supervisors. The easement shall include that land which is defined by the Comprehensive Plan as Environmental Quality Corridor (EQC). The exact location for the boundary shall be determined at the time of site plan review by the Office of Environmental Management. There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs and no grading with the exception of the improvements determined necessary by DEM for the road, and the stormwater detention area and sanitary sewer lines if the EQC is the only feasible area where these lines can be placed. Proposed grading for these features 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 structures located in the EQC area except for those mentioned in this condition.
8. Any paving which exists on site which is not used in the approved road access and is within the EQC should be removed and the area reconfigured to match the existing contours and reclaimed through the planting of native vegetation as determined by the Urban Forester.
9. The barrier requirement, a six foot board on board fence, shall be maintained along the western lot line in its current position interior to the transitional screening yard. The barrier requirement shall be waived in all other areas.
10. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.
11. The limits of clearing and grading shall be the delineation of the Environmental Quality Corridor as previously defined. However, minor alterations shall be permitted to accommodate engineering or other code required changes as specified in Condition Number 7 and as determined by the Urban Forester.
12. 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.
13. The stormwater ponds shall be designed as Best Management Practices (BMP's) and shall achieve a 35 percent phosphorous removal efficiency ratio as determined by the Director, Department of Environmental Management.
14. The stormwater management facility shall be in the location shown on the plat in the area designated as Phase 4. It shall be constructed as determined by the Department of Public Works and Department of Environmental Management and maintained by the applicant. The applicant shall allow access and inspection by the appropriate County agencies. If a regional stormwater management facility is constructed, the facility shall be in the location shown on the plat and be maintained by the County. The facility shall accommodate all uncontrolled upstream drainage.
15. The Special Permit Plat shall be consistent with the Resource Protection Area (RPA) and the BMP phosphorus removal regulations of the County's proposed Chesapeake Bay Preservation Ordinance. Best Management Practices (BMP's) shall be provided to the satisfaction of the Director, Department of Environmental Management.
16. A wetlands study shall be conducted by the applicant and provided to the Director of DEM. The study shall determine the limits of any wetlands located on the site and determine how much if any will be disturbed by the access easement and the stormwater management pond. If required, the applicant shall obtain the appropriate Army corps of Engineer Permits prior to site plan approval. If the study reveals that a site redesign is necessary, a Special Permit Amendment shall be required prior to the approval of the site plan by DEM.

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17. The temporary trailers shall be skirted and foundation plantings provided. These trailers shall be approved for a period of three (3) years only from the date of final approval of this Special Permit.
18. Signage or a pedestrian crosswalk shall be provided to clearly guide pedestrian traffic from the temporary church structure to the temporary trailers.
19. Trailer 3, if required, will be located north of and parallel to trailer 2. \*\*A revised plat shall be submitted for approval by the BZA, showing the new proposed location of trailer 3.

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.

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 shall become final on \*\*July 14, 1992, the date the revised plat was approved by the Board. That date shall be deemed to be the final approval date of this special permit.

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Page 258, July 14, 1992, (Tape 1), Action Item:

Request for Date and Time for Appeal  
James A. and Sharon B. Kelley

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that this item was deferred from the previous week in order that staff could find out whether the Zoning Administrator had suggested to the appellant that he did have the right to apply for a variance. The Zoning Administrator's Office had done that and the appellant indicated that he planned to file a variance. She said that there was a letter in the file stating that the appellant would like to hold up the appeal until such time as he knows whether the Board acts favorably on the variance. Ms. Kelsey said, therefore, the appellant agrees and staff concurs that this appeal be deferred indefinitely.

Mrs. Thonen made a motion to defer a decision on scheduling this appeal for an indefinite period of time. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 258, July 14, 1992, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD O. AND CAROL M. LYON, YC 92-P-047, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport 17.6 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 41,287 sq. ft., located at 2944 Rosemoor La., zoned R-1, Providence District, Tax Map 49-3(16)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. Mr. Lyon replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Applicant Richard O. Lyon, 2944 Rosemoor Lane, Chantilly, Virginia, presented the statement of justification for the conversion of a carport into a two-car garage, to increase the value and appearance of the dwelling and for safety and security reasons. He said that his house was built in the late 50's, before the Zoning Ordinance. Mr. Lyon said that the lot is 110 feet wide, which makes it substandard under current zoning; other property owners in his neighborhood have attached two-car garages.

Mr. Hammack said the photographs appeared to indicate that the applicant had poured another parking pad to extend the carport. Mr. Lyons said he did that about 1 or 1-1/2 years ago. Mr. Hammack asked the applicant if he was right in believing that only a corner of the carport would require a variance and Mr. Lyon said that was correct.

There were no speakers and Chairman DiGuffian closed the public hearing.

Mr. Ribble made a motion to grant VC 92-P-047 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 7, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-047 by RICHARD O. AND CAROL M. LYON, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport 17.6 ft. from side lot line, on property located at 2944 Rosemoor La., Tax Map Reference 49-3(16)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 July 14, 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-1.
3. The area of the lot is 41,287 square feet.
4. The property has exceptional narrowness.
5. Only one corner of the property requires 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 of the specific addition shown on the plat (prepared by Dewberry and Davis, dated March 3, 1992) submitted with this application and is not transferable to other land.

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2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing structure.

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 construction has commenced and has 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 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. Pammel was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 22, 1992. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 9:40 a.m. and reconvened at 9:50 a.m.

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Page 260, July 14, 1992, (Tape 1), Scheduled case of:

9:40 A.M. ALBERT J. TRICARICO, JR. AND ELEANOR Y. TRICARICO, SP 92-P-025, appl. under 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 21.9 ft. from rear lot line (25 ft. rear yard required by Sect. 3-307), on approx. 8,768 sq. ft., located at 9802 Brightlea Dr., zoned R-3(C), Providence District, Tax Map 48-1(7)100.

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. Tricarico replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the applicant was requesting a variance of 3.1 feet. She said that a building permit had been issued for the structure to a previous owner and that both the building permit and the plat indicated a 25 foot rear yard; evidently, that was not the way the screened porch was constructed. Ms. Greenlief said that the dwelling on Lot 111, to the west, is located approximately 38 feet from the shared lot line.

In answer to a question from Mr. Kelley, Ms. Greenlief said that there was no notice of violation issued.

Applicant Albert J. Tricarico, 9802 Brightlea Drive, Vienna, Virginia, presented the statement of justification, stating that they had purchased the property in February of 1992 and it was brought to their attention that the error existed. Mr. Tricarico said it was their desire to keep the porch and would restructure the dwelling to bring it up to Code, or keep it as it is if the BZA granted the variance. He said that no one had complained; they simply desired to be in conformance.

Mr. Kelley asked the applicant how the error was brought to their attention and he said that the family attorney brought it to their attention at the time of settlement. Mr. Hammack asked who the applicant's lawyer was and he replied that it was Roger Brook. Mr. Ribble said that Roger was very competent and would notice something of that nature.

Members of the BZA expressed pleasure at having the applicants come forward of their own volition to advise them of an error.

Chairman DiGiulian said he noted that, if the porch were to be cut back in accordance with the Code, it would be only 8 feet wide, which was very narrow.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 92-P-025 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 7, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-P-025 by ALBERT J. TRICARICO, JR. AND ELEANOR Y. TRICARICO, 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 21.9 ft. from rear lot line, on property located at 8902 Brightlea Dr., Tax Map Reference 48-1((7))100, 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 July 14, 1992; and

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

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

The Board has determined that:

- A. 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 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 Deputy Surveying, dated January 6, 1992) 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 applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mr. Hammack 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 July 22, 1992. This date shall be deemed to be the final approval date of this special permit.

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9:50 A.M. TAKASHI HORITA, VC 92-M-044, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport 10.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 10,500 sq. ft., located at 5407 Clifton St., zoned R-3, Mason District, Tax Map 80-2((2))135.

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. Horita replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that a variance of 1.5 feet was being requested. She said that the distance from the shared lot line to the dwelling on adjacent Lot 136 is approximately 10.5 feet.

Takashi Horita, 5407 Clifton Street, Springfield, Virginia, presented the statement of justification, stating that he proposed to enclose an existing carport into a garage, so that he could keep his vehicle covered throughout the year.

Chairman DiGiulian asked Mr. Horita to confirm that he proposed to enclose what already existed and would not increase the size.

Mrs. Harris asked about the enclosed area at the back of the garage. Mr. Horita said it was a shed which he proposed to remove.

Mr. Hammack made a motion to grant VC 92-M-044 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 7, 1992.

Mrs. Harris added that the shed area appeared to be an integral part of the structure; the roof line would change if the shed were removed and it appeared that the other houses in the area all had similar roof lines over the garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-044 by TAKASHI HORITA, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport 10.5 ft. from side lot line, on property located at 5407 Clifton St., Tax Map Reference 80-2((2))135, 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 July 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.
3. The area of the lot is 10,500 square feet.
4. The lot is older, is 80 feet wide, and met the applicable standards for the carport and a shed that is partially enclosed; the applicant simply wants to continue and enclose the carport area.
5. The variance of 1.5 feet is minimal and would not change the character of the zoning district or be in conflict with the harmony and intended spirit and purpose of the Ordinance, nor contrary to the public interest.
6. There is no other place where the applicant could put the enclosure with the present configuration of the house.
7. The shed area appears to be an integral part of the structure and the roof line would need to be changed if it was removed; the other houses in the area all have similar roof lines over the garages.

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 specified enclosed carport shown on the plat prepared by Runyon, Dudley, Anderson Associates, Inc. dated February 27, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The enclosure 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 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 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 July 22, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 263, July 14, 1992, (Tape 1), Scheduled case of:

9:00 A.M. MR. AND MRS. EARLE BURGESS, VC 92-D-046, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of ramp 0.0 ft. from front lot line (30 ft. min. front yard required by Sect. 3-307), on approx. 11,348 sq. ft., located at 6610 Jerry Pl., zoned R-3, Dranesville District, Tax Map 40-2(21)39. (OTH GRANTED 5/19/92)

This case had been deferred from earlier in the meeting so that the applicant's agent could take the notice information to the Clerk for verification.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board of Zoning Appeals (BZA) that the Clerk to the Board had determined that the notices were not in order, according to the Code. She said that the applicant had notified according to street address, instead of by tax map reference as instructed. According to the real estate records, the owner of Lot 50, diagonally across from the applicant's property, lives in Bethesda, Maryland, and was not notified.

Mitchell Jones, 1214 Kelley Street, Vienna, Virginia, Agent for the applicant, claimed he did not know that he was supposed to go to the Tax Assessment Office to get the addresses of the contiguous property owners. Chairman DiGiulian asked Mr. Jones to confirm that he had no contact with the owner of Lot 50 and he did so.

Ms. Kelsey pointed out that the requirement to obtain the correct addresses for the property owners through the Tax Assessment Office is contained in the typed instructions for sending notices, which Mr. Jones had received.

Chairman DiGiulian asked if there was anyone present who was interested in the case and received no response. He asked Ms. Kelsey how long it would take to send a legal notice to the owner of Lot 50. Ms. Kelsey said that the Code requires that the contiguous property owners be notified twenty days prior to the date of the public hearing. Mr. Kelley asked if the owner of the lot could waive his rights. Ms. Kelsey said that, according to the Code, there are no waiver provisions. She said that she knew that the BZA has done that in the past, if they believed that the applicant had met the intent and the property owner actually knew about the hearing. In this instance, Ms. Kelsey said, there is no evidence that the actual property owner knows about the hearing.

Mr. Kelley moved that the case be deferred for one week, during which time he requested that staff and the applicant's agent make every effort to notify the owner of Lot 50 and have the owner provide a written statement to that effect.

Mrs. Thonen seconded the motion, which carried by a vote of 7-0. Mr. Pammel was absent from the meeting.

Ms. Kelsey asked if the BZA would like to schedule the hearing for Thursday, July 23, rather than Tuesday, July 21, so that the applicant would have more time to notify the property owner in question.

The case was deferred until Thursday, July 23, 1992 at 9:00 a.m. so that the applicant could get a written statement from the owner of Lot 50, waiving the twenty-day notice requirement.

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Page 264, July 14, 1992, (Tape 1&2), Scheduled case of:

10:00 A.M. CENTREVILLE PARTNERSHIP APPEAL, A 92-Y-007, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that construction of the service station, quick-service food store and car wash authorized in SE 88-S-013 did not commence prior to the expiration date, that such special exception has therefore expired and that new special exception approval is required in order to establish the proposed uses, on approx. 60,792 sq. ft., located at 5784 Union Mill Road, zoned C-6 and WSP00, Sully District, Tax Map 55-3(1)47F.

William E. Shoup, Deputy Zoning Administrator, presented the staff report, describing the appeal as shown above. He summarized some of the key points as follows: SE 88-S-013 was approved on July 11, 1988, concurrent with rezoning, proffer condition amendment, conceptual development plan amendment, and two other special exceptions. The five applications were approved and provided for development of the Colonnade Shopping Center. Two of the SEs were for a drive-in bank and a fast-food restaurant with a drive-in window on separate pad sites. The special exception that is the subject of this appeal was for the service station quick-service food store and carwash, located on a third pad site within the shopping center. Under the provisions of Section 9-015 of the Zoning Ordinance, the SE was approved by the Board of Supervisors (BOS) with a thirty month time limit in which to commence construction. On April 14, 1991, the BOS approved an additional nine months to commence construction, extending the expiration date to October 11, 1991. It has been staff's position that, when a use is authorized under special exception, where the use involves the construction of a building, that the approval of a Building Permit and a pouring footings for one of the buildings involved, prior to the expiration date, are the necessary factors to validate the use under Section 9-015. Building Permit approval and the pouring of footings had not been accomplished and, consequently, it was staff's determination that the special exception expired. It was noted that there had been preliminary work performed to prepare the pad site for construction. The appellant argued that the work constituted the commencement of construction and that he did diligently pursue it. Some of the items cited include road improvements and the provision of infrastructure within the shopping center and to the internal road connections. It was staff's position that was part of the shopping center development. It was also noted that utilities were provided to serve the site; however, the appellant represented, at the time of the additional time request previously, that the utilities were provided at that time; thus, it was staff's position that it should not now be used as a factor for justifying the commencement of construction. Staff believed that the work performed on the special exception pad site was some grading of the pad site, some partial landscaping at the perimeter of the pad site, some interior curb and gutter that was put in on the site, a monitoring well and two light poles. It was staff's position that the work constituted site work and left staff with the question of whether or not they would consider site work as being a valid factor for constituting the commencement of construction. If staff did view the situation as such, where would they draw the line. It was noted that with any use, especially in the development of a shopping center, where there are pad sites, preliminary site work will be involved. It was staff's judgment that the work was preliminary to construction and, because buildings were authorized in the special exception approval, it was the commencement of construction of the buildings that constituted satisfying the requirements of 9-015.

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In response to a question from Chairman DiGiulian, Mr. Shoup said that the project was all one site plan and the public improvements were bonded for that site plan. Mr. Shoup further stated the public improvements that had been bonded were required because of, or to facilitate the construction of, the buildings that are under the special exception and Mr. Shoup said that was correct in a way, such as to accommodate the construction of the shopping center.

Chairman DiGiulian said that his question was whether there were any bonded public improvements that actually entered into the pad sites in question. Mr. Shoup said that he could not say whether there was anything special to that site pad that was bonded. He believed the bond had been released on the shopping center because the appellant came back and obtained site plan waiver approval to pull out this particular pad site, so that the bond could be released.

Frank McDermott, attorney with Hunton & Williams, distributed a set of exhibits to the BZA members, stating that the interpretation put forth by the Zoning Administrator's office was that construction of the building must commence in order to establish the use. He said that a special exception was not an approval for a building and that the cases the Zoning Administrator relied upon were Building Permit cases: O.W. McClung v. County of Henrico and MANY v. Houff. Mr. McDermott said there was an analogy here to the special use permit process through which one goes before the BZA. He said that the BZA approved the special permit plat in its entirety and the uses requested, and the plat is part and parcel of what has been approved. He said that the level of detail on the special permit plat is greater than even a general development plan and, often, greater than a special use permit requirement. Mr. McDermott said that this was a package; even though staff treated the special exceptions individually, allowing for possible changes in one special exception and, thereby, not bringing the entire package under consideration. He said that the most valuable portions of a commercial use are the individual pad sites, more so than the shops. He said that the applicant had made commitments to the commercial part of the zoning to provide improvements to Union Mill Road, the intersection of Union Mill Road and Braddock Road, to realign existing Braddock Road, and to provide a traffic signal. Mr. McDermott said that the zoning case required that the improvements be done before the shopping center. He said that the portion of the Union Mill improvement that was allocated to the shopping center was \$2.2 million and Taxaco had paid to Hazel Paterson, the developer, \$300,000 for the portion of the on-site infrastructure allocated to the pad. He said that, by the time this point was reached, there was an enormous financial commitment. Mr. McDermott said that, not only had a site plan been filed, it had been filed, prosecuted, the public improvement infrastructure in place, off-site/roads only, in the amount of \$2.2 million.

Mr. McDermott referred to the statement by Mr. Shoup to the effect that this particular use was ultimately withdrawn during the pendency of waiting for a decision about whether or not the special exception had expired, so that the development could get off the bond. He said that there is a practice in Fairfax that, if an applicant is on a bond for one project, there is a limitation on what can be done about bonding another project. He said that, to the extent that the whole facility was bonded, including this site, with no indication of the completion time, it was wise to get out of the bond for the entire site. Mr. McDermott said that there is a provision in the Ordinance for such a situation. He said that getting out of bonding did not indicate anything about intent and they would not have gotten out of bonding unless they had done everything required.

With respect to the question of whether there were any public infrastructure improvements actually on site, Mr. McDermott said that the sewer is on site, water is on site, they had to bond the curb, gutter, and landscaping which cost \$18,000.

Mr. McDermott called the Board's attention to the first page of the staff report, specifically Sect. 9-015, first paragraph:

1. Except for Category 6 waivers, whenever a special exception is approved by the Board, the use authorized thereby shall be established, or any construction authorized...

Referring to the language, "...whenever a special exception is approved by the Board, the use authorized thereby shall be established, or any construction..." Mr. McDermott said it does not say "the building of the structure," it says, "any construction authorized." He said there was no factual dispute that all of that was in place as of October 11, 1991; plus, all the underground public infrastructure. He said that the special exception was not only for the buildings, but was for the entire site encompassed by the special exception plat, for the entire pad.

Mrs. Harris asked Mr. McDermott if she understood correctly that the shopping center could not be built without the developer building roads to access the area and he replied no, that the property fronted on existing Braddock Road but that they realigned the entire southern side of the property fronting Braddock Road. He said that was done so that the ultimate new Braddock Road could be built to the south, and the intersection of the existing Braddock Road could be realigned. Mr. McDermott said that they could have built the shopping center without building the roads, but the zoning approval required the changes. He said that, had

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the property been zoned commercial, without the necessity of committing to all the road improvements, they could have obtained the Building Permit with the frontage on Braddock Road.

Mrs. Harris asked Mr. McDermott why he had requested additional time in January, and did not do so before the new expiration date, since the status of the progress had not changed. Mr. McDermott said that three of the nine months requested had already expired by the time the extension was approved. Mr. McDermott said that he had requested the first extension because he believed that staff had been sending him a signal and he wanted to be prudent. He also said that he had originally requested eighteen months and that, when staff said that they would not agree to it, he requested an extension of nine months. When the new expiration date was approaching, Mr. McDermott said that he did not request another extension because the case was in the hands of Texaco and he believed it was a lack of awareness of the interpretation by staff and the issue being distanced from Hazel Peterson's records. He said that, if he had known the expiration date was approaching, he would have requested an extension "out of an abundance of caution."

Mr. McDermott summed up by stating that they clearly had satisfied the "any construction" issue.

Chairman DiGiulian asked if there was anyone else to speak to the appeal and received no response. He asked Mr. Shoup to respond to Mr. McDermott's statement.

Mr. Shoup referred to Mr. McDermott having discussed in detail the amount of improvements provided and the amount of money expended. He noted that the road improvements pertained to the development of the center, proffered in the rezoning; there was nothing in the special exception that required the road improvements. Mr. Shoup said that the special exception pertained to this particular site and not the overall shopping center. He said that, in a discussion of "any construction authorized," what was authorized in this special exception was the service station, quick-service food store, and carwash; it was staff's position that, to satisfy the requirements of Section 9-015, it would be necessary to commence construction of the use authorized. Mr. Shoup said that, using the appellant's argument regarding "any construction" is like saying that the site improvements drive the use; whereas, it is staff's position that the use drives the site improvements. He said that there would be no need for the site improvements if there was no authorized use.

In answer to a question from Mrs. Thonen, Mr. Shoup said it was obvious that the utilities should be brought to the site first, but that did not establish the authorized use, otherwise the site could exist forever with only the utilities. On that basis, Mr. Shoup said that if a developer did some gutter work on a site, that could be construed as establishing the use; theoretically, the site could remain in that condition forever. Mrs. Thonen said that the phrase, "diligently pursued," seemed to be what was required and she believed the applicant had met that requirement. Mr. Shoup said they had diligently pursued to this point, staff believed there was nothing relating specifically to this special exception, except some site improvements, and it was staff's concern that accepting site improvement work as validation of the use could result in a problem in establishing the guidelines.

In answer to a question from Mrs. Harris, Mr. Shoup confirmed that the applicant had to obtain three different special exceptions for the three different pads, in addition to the rezoning. He confirmed that the uses had been established and are functioning for the two other special exception uses. Mr. Shoup also confirmed to Mrs. Harris that, when Mr. McDermott requested the time extension, it was for all three special exceptions; two proceeded to establish uses within the extended time frame and one did not.

Mrs. Thonen asked Mr. Shoup who had decided not to extend for the additional eighteen months and extended for only nine months. Mr. Shoup said that was done by the Board of Supervisors, based upon a recommendation by the Zoning Evaluation Division. Mrs. Thonen asked Mr. McDermott who rejected the eighteen months and granted nine months and he said it was the Zoning Evaluation Division (ZED). The subject of the time the request was held up in ZED was raised and Mr. Shoup said that the reason it had been held up was that ZED did not agree with the appellant that eighteen months should be required and it was because of discussions between ZED and the appellant that the request had been held up.

Mrs. Harris asked Mr. McDermott if there was anything about the preparation of this site that made it mandatory that a gas station be put on it. He said that there was and referred to the soil monitoring wells in the photographs, stating that they were a specific adjunct to the use of a gas station by a plethora of state and federal regulations. He said they could be removed but it was a special expense related specifically to gas station use. Mr. McDermott said that, in making the overall commitments, the value of a particular use must be projected, and the value of the pad for a gas station is far greater than the value of a pad for a florist shop; therefore, the level of the commitments made are directly tied in. In answer to Mr. Hammack's question, he said Mr. Hammack was absolutely correct in that, if the appellant had not done the on-site improvements, they would not have had access to this site, because the design of the overall approval was that it be accessed internally from the shopping center.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he believed that the Board had the opportunity to look at the Section of the Code, especially the part that says, "diligently pursued," and "any construction authorized." He said that statutes such as this are difficult to interpret and should be construed in favor of the applicant. He said he believed that the BZA had been somewhat consistent in supporting applicants that put substantial funds into site improvements and pursued construction as defined under the Zoning Ordinance and that, in looking at this case, the two Supreme Court decisions upon which staff relies, were really Building Permit cases arising out of an entirely different development process than exists in this County. He said that he could distinguish them from the process the BZA follows, while still accepting the narrow determination of the Supreme Court in defining what it thinks construction is under a Building Permit. He did not believe that those cases should control a situation like this, where there is a site plan and development of a center such as this. Mr. Hammack said he was impressed that quite a bit of construction had been pursued and that this application had been diligently prosecuted within the meaning of our statute.

In appeal A 92-Y-007, Mr. Hammack made a motion to overrule the determination of the Zoning Administrator that construction of the service station, quick-service food store and carwash authorized under Special Exception SE 88-S-013 did not commence prior to the special exception expiration date and that a new special exception approval must be obtained in order to establish the proposed use.

Mr. Ribble seconded the motion.

Mrs. Harris said that this application would generate a lot of traffic and because of the road alignment, the pro rata share that this appellant had to contribute probably had been anticipated, rather than if the use were a florist shop or something else. She said that this type of contribution to the infrastructure had been used as a criterion in the past in establishing a use. She said she believed that because of the intensity of the use, the appellant probably paid more money into the road construction; therefore, they assisted in constructing the use and that swayed her.

The motion carried by a vote of 6-0 and the Zoning Administrator's decision was overruled. Mr. Pammel was absent from the meeting.

This decision became final on July 22, 1992.

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Chairman DiGiulian relinquished the Chair to Vice Chairman Ribble.

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Page 267, July 14, 1992, (Tape 2), Scheduled case of:

10:10 A.M. GUL E. NASREEN, SP 92-Y-024, appl. under Sect. 3-803 of the Zoning Ordinance to allow home child care facility, on approx. 2,480 sq. ft., located at 14113 Honey Hill Ct., zoned R-8, Sully District, Tax Map 65-2((9))154.

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. Nasreen replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, stating that the property is in the Heritage Estates Subdivision. She said that there would be nine children proposed at any one time, the care center would be operating from 6:00 a.m. to 6:00 p.m., Monday through Friday, with Ms. Nasreen as the sole care giver. Ms. Kelsey said that the parking spaces would be located in the common area. She said that staff had concerns about this application which had been discussed with the applicant. One of the concerns is the inadequacy of parking places: 2.3 parking spaces are required for each single family attached dwelling unit. The subject dwelling was constructed prior to the requirement of the Zoning Ordinance for 2.3 parking spaces and this particular unit has two parking spaces. There are no additional spaces allocated for this unit. Ms. Kelsey said that the applicant indicated she has only one vehicle and she proposes that the other space will be used for people who might be bringing their children. Staff believed this would be fine if only one parent came at a time, but that would be unlikely. Staff was also concerned about the potential for noise that might be generated by the children using the play area which is in the applicant's rear yard and is directly adjacent to the space for the adjacent townhouse. Staff discussed with the applicant the possibility of using the open play area provided to the homeowners, but had received a letter from the Homeowners Association, which was being distributed, indicating that they had a meeting concerning this application and they do not support it; they were concerned because it is not in accordance with their covenants. Ms. Kelsey said she realized the BZA did not get involved with covenants; but, for purposes of determining whether or not the Association would agree to allow the applicant to use the common play area, from the letter she would assume that they would not allow it. Ms. Kelsey said that, because of the foregoing, staff recommended denial of the application.

Mrs. Harris asked if there was a rule of thumb about how much outdoor play area is required per child. Ms. Kelsey said that, if this were a child care center, the Zoning Ordinance would require that 100 square feet of play area per child within the play area at any one time; however, this is a home child care center. In answer to a question from Mrs. Harris,

Ms. Kelsey said that, using the 100 square foot criterion, 900 square feet would be required. Ms. Kelsey said that there are 2,480 square feet in this entire parcel, which she believed was more than required, but she was not sure because it was not indicated on the plat.

The applicant, Gul E. Nasreen, 14113 Honey Hill Court, Centreville, Virginia, presented the statement of justification, stating that it was true that there were two parking spaces assigned to her, but she said that there are two visitor's parking spaces next to her unit and there is also parking allowed on the street and that the cars delivering children would be parked for only a short time. Ms. Nasreen said that, because she has an end unit, it has a bigger yard than inside lots. She said that she could use the common playground because most of the children would be from the neighborhood and would be allowed to use the parking lot and play area would be available to parents and children.

Mr. Ribble said that the Association rules limited home child care to a maximum of five children and asked Ms. Nasreen if she was aware of that. She said that she had tried to talk with the Association but they had been unreasonable because the covenant did not say that she could not care for more than ten children; it said that consideration would be on a case by case basis, depending upon the circumstances, and particularly the effect on surrounding properties.

Mrs. Thonen said that the letter from the Association said that the request should be denied because it does not meet their criteria for a home child care facility. Ms. Nasreen disagreed with the Association's opinion.

Mrs. Harris said she knew that people who lived in townhouses were very covetous of their parking spaces and would track people down who infringed on their allocated spaces. She said she believed that Ms. Nasreen was wrong in assuming that sufficient spaces would be available for her use; all that she could assume she had was one for her car and the one she would not be using. Mrs. Harris said that the outdoor play area was too small because all of the children would have to be out at one time since Ms. Nasreen was the only care giver. She said the applicant also had to allow for the fact that not all of the children would not be from Heritage Woods and could not join the other children in the common playground.

Speaking in opposition was: James Hart, Secretary of the Homeowners Association for Heritage Forest. He said they agreed with staff's position on this case; concerning the playground issue, they did not feel the insurance coverage would include invitees; they believed that nine children were too many; they would approve up to five if the parking rules and other issues could be complied with.

In her rebuttal, Ms. Nasreen said that she had talked to her neighbors, explained the situation, and they told her that they did not have any problem and signed a paper to that effect. Ms. Nasreen said that she is a single parent with two children and five children or less would not bring in enough income to allow her to quit her job and stay home to care for children.

There were no other speakers and Mr. Ribble closed the public hearing.

Mrs. Thonen made a motion to deny SP 92-Y-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 92-Y-024 by GUL E. NASREEN, under Section 3-803 of the Zoning Ordinance to allow home child care facility, on property located at 14113 Honey Hill Ct., Tax Map Reference 65-2((9))154, 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 July 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-8.
3. The area of the lot is 2,480 square feet.
4. The playground is inadequate.
5. The standards for a home care facility state that additional parking is required, even if not required by the Zoning District, and the applicant does not meet the requirement.

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6. The proposed use is too large for the size of the townhouse and grounds which might be provided by a detached dwelling; considering that, under Article 13, screening and landscaping might be required to buffer the noise, the townhouse does not allow for this requirement.
7. The Homeowners Association is opposed to the application as it is in violation of their covenants.

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 and 8-305 of the Zoning Ordinance.

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

Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Hammack were not present for the vote. 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 July 22, 1992.

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Page 269, July 14, 1992, (Tape 2), Scheduled case of:

(continued from page 254.)

9:20 A.M. ALVIN R. AND JEAN E. MANALAYSAY, VC 92-Y-045, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.5 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207), on approx. 8,850 sq. ft., located at 4530 Stone Pine Ct., zoned PDH-2, WS, Sully District, Tax Map 45-3((3))59. (OTH GRANTED 5/19/92)

Vice Chairman Ribble said it had come to his attention that Mr. and Mrs. Manalaysay, whose case was heard earlier in the meeting, had neglected to request a waiver of the eight-day limitation.

Dan Smith, 14405 Philly Court, Centreville, Virginia, the applicant's contractor, said they had not been aware of the eight-day limitation and would like to request a waiver.

Mrs. Harris made a motion to grant a waiver of the eight-day limitation. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Vice Chairman Ribble relinquished the Chair to Chairman DiGiulian.

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Page 269, July 14, 1992, (Tape 2), Scheduled case of:

10:20 A.M. KENNETH E. NOSECK, VC 92-S-038, appl. under Sect. 18-401 of the Zoning Ordinance to allow garage addition 7.48 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 32,877 sq. ft., located at 8816 Stewart St., zoned R-1, Springfield District, Tax Map 78-2((2))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. Mr. Noseck replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, stating that the applicant was requesting a variance of 12.52 feet.

Mrs. Harris asked how close the house on Lot 11 was to the lot line and where it was positioned. Ms. Kelsey said that she would allow the applicant to address that question.

The applicant, Kenneth E. Noseck, 8816 Stewart Street, Burke, Virginia, advised that the dwelling on Lot 11 is approximately 135 feet away and approximately 140 feet from Stewart Street; whereas the applicant's dwelling is set back approximately 75 feet. He said that the variance is a request to demolish an existing shed/garage which is approximately 5 feet away from the lot line at the closest point and approximately 15 feet away at the furthest point. Mr. Noseck said that he had completely remodeled the house and this was the last thing that he wanted to finish off.

A discussion ensued regarding a walkway about which Mr. Noseck had communicated with the County and which, he had been advised, should be vacated. Mr. Ribble said that it sounded as if the walkways had been abandoned and would be split in half by Mr. Noseck and the adjacent property owner.

Mrs. Harris made a motion to grant VC 92-S-038, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions outlined in the staff report dated July 7, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-038 by KENNETH E. NOSECK, under Section 18-401 of the Zoning Ordinance to allow garage addition 7.48 ft. from side lot line, on property located at 8816 Stewart St., Tax Map Reference 78-2((2))10, 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 July 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-1.
3. The area of the lot is 32,877 square feet.
4. The lot is of unusual configuration and the placement of the dwelling on the lot is unusual.
5. Strict application of the Ordinance would produce undue hardship.
6. The applicant states that there is a frame structure on the property that is closer to the lot line; it is damaged and he is going to repair it, thereby moving it closer to the house.
7. The width of the proposed garage is only 20 feet.
8. A minimal variance is being requested and will not be detrimental to the adjacent neighbor who is set back a great distance from Stewart Street and from the lot line.
9. Another unusual condition exists in the form of a 10 foot abandoned walkway adjacent to the applicant's property and Lot 11; the applicant is in the process of trying to have 5 of those 10 feet attached to his property.
10. The septic field in the back of the house further limits the placement 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:

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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 specified addition shown on the plat prepared by R C Fields Jr. and Associates dated October 29, 1991, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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 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. 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 July 22, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 271, July 14, 1992, (Tape 2), Scheduled case of:

10:20 A.M. RICHARD B. MYERS, VC 92-B-037, appl. under Sect. 18-401 of the Zoning Ordinance to allow garage addition 7.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,170 sq. ft., located at 5406 Ellzey Dr., zoned R-3, Braddock District, Tax Map 68-3((5))88. (DEF. FROM 7/7/92)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the case was deferred so that the applicant could contact the adjacent property owner and determine whether or not they could come to an agreement on how far the structure should be from the lot line. She said the applicant had done that and had obtained a statement from the neighbor which he was ready to present to the Board of Zoning Appeals (BZA). Ms. Kelsey said that the applicant had amended his plat to bring the addition to the garage back to 10 feet from the lot line, rather than 7 feet.

The applicant, Richard B. Myers, 5406 Ellzey Drive, Fairfax, Virginia, presented the revised plat to the BZA. He also presented the letter obtained from his neighbor.

Chairman DiGiulian asked Mr. Myers if he believed that the new plats conformed to the letter obtained from his neighbor and he said that he did.

Mr. Myers requested a waiver of the eight-day limitation, which was granted and is reflected in the Resolution.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 92-B-037 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 30, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-037 by RICHARD B. MYERS, under Section 18-401 of the Zoning Ordinance to allow garage addition 7.0 feet from side lot line, on property located at 5406 Ellzey Drive, Tax Map Reference 68-3((5))88, 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 July 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.
3. The area of the lot is 11,170 square feet.
4. The subject property does have the unusual characteristic of converging lot lines and there is a skewed back lot line.
5. Strict application of the Zoning Ordinance would produce a hardship.
6. The proposed location is the only reasonable place to put the garage.
7. Enclosing the carport at 20.2 feet is a minimal variance and the configuration of the garage addition is much superior to what it was when the applicant first submitted the plat.

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 March 20, 1992) prepared by Bartlett Consultants, Ltd. and submitted with this application.
2. A Building Permit shall be obtained prior to any construction. All final inspections shall be completed.

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 construction of the addition 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 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 with Mr. Pammel absent from the meeting.

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Mrs. Harris made a motion to waive the eight-day limitation. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammei was absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 273, July 14, 1992, (Tape 2&3), Scheduled case of:

10:20 A.M. DAVID C. BUCKIS, D.D.S., SP 92-Y-023, appl. under Sect. 3-103 of the Zoning Ordinance to allow home professional office (dental), on approx. 2.018 acres, located at 12601 Camberley Forest Road (formerly 3238 West Ox Road), zoned R-1, Sully District, Tax Map 35-4((14))18 (formerly 35-4((1))35). (OTH GRANTED 5/5/92. DEF. FROM 7/7/92 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. Connor replied that it was.

John B. Connor, attorney with the law firm of Verner, Lipfert, Bernhard, McPherson & Hand, Chtd., asked to make a preliminary statement to the BZA. He apologized to the BZA, stating that the reason for the deferral the previous week was that he was out of town and could not turn the case over to an associate to handle because he did not understand some of the "things" that happened in the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the application had a long history, detailed in the staff report. She said that staff's major concern with the application had been the non-residential appearance of the parking lot; the surrounding area had changed significantly since the last time the application was before the BZA. Ms. Greenlief presented the plan that was developed during the site plan process, after the 1986 approval. Ms. Greenlief said that an area which had been owned by the applicant at the time of approval was later sold and developed with single family dwellings, forming a new lot line approximately 11 feet from the existing parking lot. She said that the parking lot configuration had also been changed, resulting in a 2/1 slope which drops off the ledge of the parking lot pavement, down to a sidewalk, which is half on and half off the applicant's property. Ms. Greenlief said that there are currently 8 trees planted in the strip, pictures of which were distributed to the BZA, one of which had died and the soil and mulch had washed off another one. She said that staff was concerned about whether or not trees planted in the area could survive because of the slope; further, the trees planted did not provide an adequate screen for the parking lot because of their spacing and the fact that they are on a slope and, therefore, much lower than the parking lot. Ms. Greenlief said it was staff's belief that the only way to screen the parking lot would be to remove some of the asphalt to provide adequate room and a slope conducive to the growth of the trees; reducing the parking lot would result in ameliorating its non-residential appearance. Ms. Greenlief said that a representative of the Urban Forestry Branch was out to the site last week and made some specific recommendations for plantings, which the submitted plat does not reflect. Thus, staff recommended denial of the application in that it does not satisfy special permit standards 1, 2, 3, and 5, as specified in Section 8-006 of the Zoning Ordinance.

Chairman DiGiulian asked whether the Urban Forester had offered an opinion as to whether or not trees could grow on the slope. Ms. Greenlief said that the Urban Forester believed that, unless the slope was built up, the trees would have a problem surviving.

Mr. Connor gave the history of the special permit from 1983, which was the first time the application appeared before the BZA. Mr. Connor said that he had not anticipated a problem with the staff report because the applicant had done everything requested by the County.

Mrs. Thonen said she had gone to look at the property and had to agree with staff that the screening was not adequate and that, when the BZA previously heard the case, the property had not been developed and no one was concerned about screening.

Mr. Connor went on to say that the reason he had not anticipated any problem with the staff report was that the applicant was not asking for anything that had not been previously requested. Mr. Connor said that he and Dr. Buckis agreed with staff that the parking lot did not look very good. Mrs. Thonen said the only thing she saw wrong with the parking lot was the screening. Mr. Connor said that, since the number of 10 parking spaces had been previously set by the BZA, the BZA could change the number of parking spaces required. He agreed that more screening was required.

The applicant, Dr. Buckis, came to the podium, stating that he had gone to the Urban Forester in May of 1992 and said that he would like to put screening on the site plan in addition to what was already shown, and asked if he could do that. He said that the County Forester said that he would have to follow exactly what was on the site plan; otherwise, the County Forester could not check off that the site plan had been completed, nor could she refund the money she was holding. He said that when he returned from his trip on July 7, there was a check waiting for him for the fee, plus interest. He believed that the Urban Forester had come out to see that the trees had been planted, so she checked it off and returned the

money. Mr. Conner said he believed that he knew someone who could create the proper conditions to adequately screen the parking lot.

Mrs. Thonen asked why 10 parking spaces should be required by a home professional office. Ms. Greenleaf said that there was no specific requirement in the Zoning Ordinance for a home professional office; it is determined by the BZA for the particular use, based on the patients, etc. She said it was staff's position that the applicant did not need 10 spaces for the number of patients he sees. Ms. Kelsey said that, when the application originated in 1983, the issue may not have been addressed, as there had been no staff report in 1983. When subsequently reviewed, staff probably picked up the original number of parking spaces. Chairman DiGiulian asked if staff ever had voiced objection to the number of parking spaces in the subsequent hearings and Ms. Kelsey said that she did not believe that the records would show that staff had, because there was adequate screening; it was picked up now because of inadequate screening and problems with grading.

Mr. Conner said that on July 26, 1983, when the BZA approved the special use permit, approval item 4 was the total number of parking spaces provided for this use shall be 10. Further stating that one parking space of the standard handicap size shall be for handicap use, that space being the closest to the structure. Mr. Conner said it was a standard requirement at that time. In answer to a question from Mrs. Thonen, Mr. Conner said that he was reading from Attachment 2 which was part of the staff report, along with a copy of the application.

Mrs. Harris said that she would like to bring the focus back to the screening. Mr. Conner asked to finish his suggestion, stating that Dr. Buckis would like to keep the parking lot the way it is, he does not need 10 spaces, except Mr. Conner referred to Condition 12, which reads: "Evergreen trees of a minimum of 8 feet in height shall be planted along the reduced area, etc." He suggested that the Development Conditions in the previous applications be substituted: "Existing vegetation shall remain and additional planting shall be provided where necessary to ensure that the parking area is screened from adjacent properties and from West Ox Road at the determination of the Director, Department of Environmental Management." Mrs. Harris said that she would change that wording now to read not only from West Ox Road, but also from Camberley Forest Drive and Mr. Conner said that would be no problem. Mr. Hammack questioned the ability of the applicant to comply with a request for screening from West Ox Road. Mrs. Harris said that in the area of the sidewalk easement much of the vegetation had been denuded and she believed new planting was required, as well as along the side of the property at Camberley Forest Drive. Mr. Conner said that, when the Forester was out to the site with Ms. Kelsey and him, he suggested either a retaining wall, or building it up, or putting a hedge on the top; his preference was to put a hedge on top and other plantings with a good chance of survival. Mrs. Thonen said that she did know that many times berms were built up and planting done on the berms, raising the plantings to an effective screening height.

Mrs. Harris questioned how the BZA could be assured that the required screening had been accomplished. Ms. Kelsey said that a condition could be imposed to the effect that the site plan would not be approved until the landscape plan had been approved by the BZA. Ms. Kelsey said that she had to differ from Mr. Conner as to what the Forester had said. Chairman DiGiulian said he believed that ultimate approval of the screening should be the responsibility of the Urban Forester.

Mr. Kelley raised a question about Condition 11 concerning the term of five years and asked that it be amended to allow the Zoning Administrator to allow a couple of five-year extensions, unless the property were sold.

Mrs. Thonen said she believed that it could be sold and taken over by another dentist. Chairman DiGiulian deferred to Ms. Kelsey for an answer. Ms. Kelsey said that, if the special permit is granted to the applicant only and the applicant is Dr. Buckis, it would not be transferable.

Mr. Hammack made a motion to grant SP 92-Y-023 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions, as amended and contained in the Resolution. The Conditions affected were 7, 11, and 12.

Ms. Greenleaf asked for a clarification from Mr. Hammack regarding Condition 12: In leaving it up to the Forester, is it your intent to allow the Forester to require anything that would enable the trees to survive; i.e., a retaining wall or building up a berm. She said she asked this in the event of a request for an interpretation. Mr. Hammack said that a retaining wall is not shown on the plat and was not a part of the original development condition. He said he did not know why the Urban Forester and Dr. Buckis' expert could not figure out something that will grow on a slope.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-023 by DAVID C. BUCKIS, D.D.S., under Section 3-103 of the Zoning Ordinance to allow home professional office (dental), on property located at 3238

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West Ox Road, Tax Map Reference 35-4((14))18, 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 July 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-1.
3. The area of the lot is 2.018 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 8-907 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 Land Design Consultants dated February 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 site at any one time, including the applicant, shall be three (3). There shall be a maximum of two (2) customers at any one time.
6. The hours of operation shall be limited to 7:30 A.M. to 5:30 P.M., Monday through Friday.
7. There shall be a maximum of ten (10) parking spaces for Home Professional office use and a minimum of two parking spaces for the residential use as shown on the special permit plat. All parking shall be on site. The parking for the residential portion of the dwelling shall be as shown on the special permit plat.
8. The home professional office shall occupy no more than fourteen hundred (1400) square feet of the basement of the dwelling.
9. The sign for the home professional office shall be relocated to Camberley Forest Drive and shall not a maximum of four (4) square feet and shall not be lighted.
10. The drainfield shall be relocated out of the right-of-way for West Ox Road at such time as West Ox Road is widened or upon demand from the Virginia Department of Transportation (VDOT)
11. This permit shall automatically expire without notice, five (5) years from the final date of approval, with authority granted in the Zoning Administrator to give two extensions of five (5) years each if there are no complaints or violations.
12. Sufficient evergreen trees a minimum of eight (8) feet in height and other appropriate vegetation shall be planted between the reduced parking area and Camberley Forest Drive for the purpose of providing a solid screen of the parking area from view of Camberley Forest Drive and West Ox Road and the residential properties across Camberley Forest Drive. The existing vegetation shall remain and supplemental planting shall be provided on both sides of the entrance into the parking lot. The size, amount, and species of these trees shall be as determined by the County Urban Forestry Branch, DEM. Dead or dying trees shall be replaced as determined by the Urban Forester.

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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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. 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 July 22, 1992. 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 12:15 p.m.

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

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

SUBMITTED: September 29, 1992

APPROVED: October 6, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 21, 1992. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Robert Kelley; and James Pammel. Chairman John DiGiulian and Paul Hammack was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:00 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 277, July 21, 1992, (Tape 1), Scheduled case of:

8:00 P.M. CHANTILLY HIGHLANDS HOMES ASSOCIATION, INC., SPA 82-C-053-1, appl. under Sect. 3-303 of the Zoning Ordinance to amend SP 82-C-053 for community recreation facilities to allow building addition, playground equipment and additional parking spaces on approx. 2.94 acs., located at 3225 Kinross Ct., zoned R-3, Sully District, Tax Map 35-1(1)25A.

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 engineer, Gregory J. Budnik, P.E., with GJB Engineering, Inc., 8445 Canyon Oak Drive, Springfield, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Carol Dickey. She called the BZA's attention to the background of the application contained in the staff report and the revised plat. Ms. Kelsey noted a letter dated July 21, 1992, from the Office of Transportation (OT) addressing the last of the outstanding issues. She said based on the resolution of the transportation issue and the revised plat staff recommended approval of the request.

Joe Marina, 3203 Kilmurnen Court, Herndon, Virginia, said he moved into Chantilly Highlands in April 1990, in January 1991 he was elected to the Board of Directors for a three term, and in January 1992 he was elected to a one year as President of the Association. Mr. Marina outlined the process the Board of Directors had explored in trying to ascertain the most feasible and economical way to construct the community center. He said several proposals were put out in a newsletter to the community and meetings were held to allow the citizens an opportunity for input into the process. Mr. Marina asked the BZA to grant the request.

In response to questions from Mrs. Harris, Mr. Marina replied that on occasion there would be a committee meeting or function that might extend late in the evening, that was the reasoning behind requesting that the hours of operation extend to midnight. He added that if a major party were scheduled to be held at the community center and there appeared to be a parking conflict, the pool would be closed.

Following a discussion between Mrs. Harris, staff, and Mr. Marina regarding the number of people that might be classified as a large gathering, Mr. Marina agreed with Mrs. Harris' suggestion of 50.

Vice Chairman Ribble called for speakers in support of the application and the following came forward.

Mr. Budnik commended staff for working with the applicant to resolve the outstanding issues especially at a time when the staff coordinator assigned to the case was leaving. He said the applicant did not have a shared parking situation and had both uses parked concurrently in the 57 parking spaces. Mr. Budnik said 17 spaces are assigned to the community center based on an occupancy load of 50 people, which is the fire code limit for the building; 30 spaces are designated for the pool; and 8 spaces for the tennis courts. He said landscaping has been added, at the request of homeowners, and there will no parking in the rear of the property, also at the homeowners request. Mr. Budnik added that the parking situation could change if the Department of Environmental Management (DEM) requires that the parking be relocated.

With respect to the development conditions, Mr. Budnik said the Board of Directors had noticed a conflict in the hours that the pool was currently operating and the hours of operation noted in the development conditions. Mr. Budnik said the Board was unaware that the pool should not be opening until 9:00 a.m. He asked that the Condition be modified to reflect "8:00 a.m."

Vice Chairman Ribble said the hours of operation could not be changed since the request had not been included as part of the application. Ms. Kelsey agreed.

Jeff Parnes, 31530 Ramess Court, Herndon, Virginia, said he had lived in the community since 1985 and actively supported the proposed community center. He commented on the development conditions and asked for a clarification as to whether or not the lifeguards were included in the maximum number of employees allowed on the site. Mr. Parnes expressed concern with having to cut back on the number of lifeguards, for safety reasons.

Vice Chairman Ribble asked staff for an interpretation. Ms. Kelsey suggested that the citizen proceed with his presentation while staff prepared a response.

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Mr. Parnes continued by asking if it was standard County policy to require that an Association make a request prior to holding a pool party. He asked if there had been complaints filed against the Association.

Vice Chairman Ribble said it appeared no complaints had been filed. Mrs. Thonen said it was a standard County policy.

Mr. Parnes asked if this was still necessary since there have been no complaints filed.

Mrs. Harris pointed out this was a development condition approved in 1984 and it was not going to be changed. She added that every pool follows the same condition.

Ms. Kelsey responded to an earlier question from the BZA by stating the number of employees on site at any one time reflected in the development conditions dealt only with regular employees.

Charles Gardner, 13649 Dornock Court, Herndon, Virginia, said he had been very active in the association and that he believed the association had gone beyond the County requirements in working very closely with the homeowners in the development. Mr. Gardner said he supported the request as it had been submitted to the BZA but would not support any modifications. He said the association is very concerned with beautification since the neighborhood is very old and would like the community center to add to the development. Mr. Gardner supported the parking plan.

Borden Collyer, 13228 Caroline Court, Herndon, Virginia, owner of Lot 17, immediately adjacent to the development also supported the proposed parking plan. He asked that the open space remain intact.

There were no speakers in opposition to the request and Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant the request subject for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 14, 1992. She modified Condition Number 6 to read:

Community Center: 8:00 a.m. to midnight

Large Community Center Parties and Functions attended by more than 50 people shall not be held at the same time as the regular hours of the swimming pool. . . .

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-C-053-1 by CHANTILLY HIGHLANDS HOMES ASSOCIATION, INC., under Section 3-303 of the Zoning Ordinance to amend SP 82-C-053 for community recreation facilities to allow building addition, playground equipment and additional parking spaces, on property located at 3225 Kinross Circle, Tax Map Reference 35-1((1))25A, 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 July 21, 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 2.94 acres.
4. There was ample testimony indicating that the applicant, staff, and the citizens have worked very hard on the application and seem to have resolved all the outstanding issues.
5. It is going to be a good use of land to have the community center.
6. The community center will indeed add a "missing link" in the community that can be used, not only for public functions, but for the volunteer board.
7. The screening and parking problems have been adequately resolved.

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 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) indicated on the special permit amendment plat prepared by GJB Engineering, Inc. dated February 10, 1992 as revised through July 13, 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 site at any one time shall be three (3).
6. The hours of operation shall be limited to:  
  
Swimming Pool: 9:00 a.m. to 9:00 p.m.  
Tennis Courts: 9:00 a.m. to 9:00 p.m.  
Community Center: 8:00 a.m. to midnight  
Large Community Center Parties and Functions attended by more than 50 people shall not be held at the same time as the regular hours of the swimming pool. The regular swimming pool hours may be reduced to accommodate community center functions.
7. The number of parking spaces and the geometrics of the layout of the parking lot shall meet Zoning Ordinance and Public Facilities Manual requirements as determined by the Department of Environmental Management (DEM) and shall be as shown on the approved plat or as shown on Alternative B included as page 4 of these development conditions. The DEM reduction which has been approved is contingent upon there being an adequate number of parking spaces to accommodate the use and if there is not a sufficient number as determined by the Zoning Administrator, then additional parking shall be provided in the location shown on Alternative B noted above. All parking shall be on site.
8. After-hours parties for the swimming pool shall be governed by the following:
  - o Limited to six (6) per season,
  - o Limited to Friday, Saturday and pre-holiday evenings,
  - o Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed,
  - o Shall not extend beyond 12:00 midnight,
  - o 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,
  - o 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 extended-hour party or for the first one at the beginning of a swim season, Requests shall be approved only if there are no pending violations of the conditions of the Special Permit,  
Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.
9. The tennis court lights shall be on standards which do not exceed twenty (20) feet in height. 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 if deemed necessary by DEM.
10. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The use of loudspeakers shall be limited to the swim team for official meets and functions only and shall not be used by members for private parties. The maximum decibel level of the loudspeakers shall not exceed 55 dBA.
11. Transitional Screening 1 shall be modified along the northern, eastern and western lot lines to allow the existing vegetation to satisfy the requirement. Transitional Screening 1 shall be modified along the southern lot line to allow a 25 foot wide area of landscaping, the type, size and location of which to be approved by the Urban Forestry Branch, to satisfy the requirement. The barrier requirement shall be modified along all lot lines to allow the existing pool fencing to satisfy the requirement.

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12. The Arborvitae trees that are to be displaced during the construction of the community center shall be replanted to screening areas of the site.
13. The community center shall be architecturally compatible with the existing bathhouse, including building materials and colors, as determined by DEM.
14. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:
  - o All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.
  - o If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.
15. The maximum number of family memberships shall be 960.
16. 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 except for those shown on the Special Permit plat. The sanitary sewer line may be maintained within the easement with minimal disturbance.

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 construction has begun and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to begin 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 5-0. Chairman DiGiulian 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 July 29, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 280, July 21, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ROBERT L. SCHMIDT, SP 92-D-014, 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 (tennis court and warm-up cage fence) to remain 3.7 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 1.0044 acs., located at 6620 Fletcher La., zoned R-1, Dranesville District, Tax Map 21-4(1)27.

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. Robert Schmidt, 6620 Fletcher Lane, McLean, replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report prepared by Bernadette Bettard. He said since the Zoning Ordinance requires a 20 foot minimum side yard in the R-1 District, the applicant was requesting approval of a special permit to modify the minimum side yard by 16.3 feet. Mr. Riegler called the BZA's attention to the background of the application contained on pages 2 and 3 of the staff report.



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In response to a question from Mrs. Harris, Mr. Rfegle replied that the triangular portion noted on the plat serves as a warm up area.

Mr. Schmidt said, although he believed staff's recommendation was a fair one, he would not like to construct the fence in a way that would harm the large tree that sets directly on the lot line. He said the dwelling on the lot most affected sets back 51 feet from the corner of the tennis court. (Mr. Schmidt submitted additional photographs to the BZA.) He said the vegetation between the property lines is bamboo, which is already over 10 feet in height and will continue to grow. Mr. Schmidt said he did not object to constructing the fence but asked that he be allowed to stop the fence at the tree, rather than remove the tree. He called the BZA's attention to letters in support of the tennis court from his neighbors. Mr. Schmidt said he had discussed the tennis court with his neighbors prior to construction, including the neighbor who had filed the complaint.

Mrs. Harris asked the applicant to explain the purpose of the tennis warm up area. Mr. Schmidt explained that he has ten children, with five still at home, and the cage was set up to allow all to participate. Mrs. Harris asked why it could not be done at the other end of the property. Mr. Schmidt said a swimming pool was going to be constructed in that area.

There were no speakers and Vice Chairman closed the public hearing.

Mr. Pammel said he had visited the property and suggested that the trees on the property needed to be replaced and there appeared to be a drain stopped up near the driveway. He agreed with the applicant that stopping the fence just short of the tree will serve the intended purpose. Mr. Pammel then made a motion to grant the request subject to the Development Conditions contained in the staff report dated May 26, 1992, with Condition Number 3 modified to read:

A 6.0 high board on board fence shall be provided along the eastern lot line to a point 45.0 feet from the rear lot line to terminate at the existing large evergreen tree.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-D-014 by ROBERT L. SCHMIDT, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow accessory structure (tennis court and warm-up cage fence) to remain 3.7 feet from side lot line, on property located at 6620 Fletcher Lane, Tax Map Reference 21-4(1)27, 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 July 21, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and 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:

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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 approved 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 Harold A. Logan dated December 5, 1991 and approved with this application, as qualified by these development conditions.
3. A 6.0 high board on board fence shall be provided along the eastern lot line to a point 45.0 feet from the rear lot line to terminate at the existing large evergreen tree.
4. All existing vegetation shall remain as currently situated on 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. 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 by compliance with these development conditions. The Board of Zoning Appeals may grant additional time to establish the use 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 4-1 with Mrs. Harris voting nay. Chairman DiGiulian 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 July 29, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 282, July 21, 1992, (Tape 1), Scheduled case of:

- 8:00 P.M. CORNERSTONE CHURCH OF CHRIST BIBLEWAY WORLD WIDE, SP 92-V-029, appl. under Sect. 3-303 of the Zoning Ordinance to allow church and related facilities and waiver of the dustless surface, on approx. 28,980 sq. ft., located at 7900 Fordson Rd., zoned R-3, Mount Vernon District, Tax Map 102-1((1))63. (CONCURRENT WITH VC 92-V-049. OTH GRANTED 5/19/92)
- 8:00 P.M. CORNERSTONE CHURCH OF CHRIST BIBLEWAY WORLD WIDE, VC 92-V-049, appl. under Sect. 18-401 of the Zoning Ordinance to allow structure to remain 24.8 ft. from street line of a corner lot and 19.6 ft. from other street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), on approx. 28,980 sq. ft., located at 7900 Fordson Rd., zoned R-3, Mount Vernon District, Tax Map 102-1((1))63. (CONCURRENT WITH SP 92-V-029. OTH GRANTED 5/19/92)

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. Al Stith, 5602 Bloomfield Drive, #202, Alexandria, Virginia, replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He said the applicant was proposing to establish a 120 seat church in an existing dwelling which contains 4,506 square feet. Mr. Riegler said the applicant was also requesting a modification to the dustless surface requirement in favor of a gravel parking area. He said the companion variance was to allow the existing structure to remain 24.8 feet and 19.6 feet, respectively, from the two front lot lines, where 30 feet is required. Mr. Riegler said, from a land use perspective, it was staff's belief that the use would be in harmony with the Comprehensive Plan for three reasons. First, there is no enlargement of the dwelling proposed. Secondly, the site is recommended in the Comprehensive Plan for single family attached dwellings at a density of 5 to 8 dwelling units per acre, which is a greater intensity than the development presently on the site. Thirdly, the surrounding uses include a church, commercial retail uses, and high density apartment uses, all developed at a greater intensity than the subject property is proposed to be developed with the church. Mr. Riegler said based on the recommendations of the Plan and the nature of the intensity of the surrounding uses, and if the visual impacts

attributable to the parking area are mitigated, staff recommended approval. With regard to the parking area, he said the Proposed Development Conditions have significant requirements for placing a hedge and several street trees along both Fordson Road and Sherwood Hall Lane. He said staff believed these measurements were important as it is a visible site at the terminus of the two streets, and will have an important role in the development and redevelopment in Gum Springs.

Mr. Stith commended staff for their support and assistance during the application process. He said the church had been worshipping in the Gum Springs area for over six years in a Masonic Hall. In January 1992, the church purchased the subject property with the intentions of using the dwelling as a worship facility. Mr. Stith said the church would comply with all development conditions contained in the staff report.

Vice Chairman Ribble called Mr. Stith's attention to the memorandum from Michael J. Scheurer, Director, Housing Development Division, concerning the dustless surface and transitional screening. Mr. Stith said he had read the memorandum. Mr. Riegler said in staff's opinion the maintenance requirements included in the development conditions would address Mr. Scheurer's concerns.

There was no further discussion and Vice Chairman Ribble called for speakers in support of the request.

Dan Moon, President, Gum Springs Civic Association, came forward and submitted a letter supporting the request into the record. He said the Association would, however, oppose any dwelling units remaining on the property with the exception of a parsonage.

In response to a question from Mrs. Harris, Mr. Moon replied that up to this point the house has been used as a boarding house and is being used in that capacity now.

Arthur Cotton, Jr., 8211 Russell Road, Alexandria, Virginia, pastor of the church, said he believed the church was in harmony with and working with the community. Pastor Cotton said the church has established various programs to assist families in the community and is actively involved with the youth of the community. He said he serves on the Gum Springs Development Center Board and tries to support all community programs.

Mrs. Harris asked the speaker to comment on Mr. Moon's concerns about the dwelling being used only as a parsonage. Pastor Cotton said the dwelling was presently being used as a rooming house for senior citizens of the community. He added that some of the rooms were still being rented for a nominal fee until such time as the dwelling is converted into a church.

Mr. Stith said the dwelling would not become a church for quite some time and the applicant would like the rooming house to continue until that occurs.

The BZA, staff, and the applicant discussed the legality of the rooming house continuing if the applicant's request was granted. Mr. Riegler assured the BZA that the dwelling would not become a church until the Non-Residential Use Permit was issued to the applicant.

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out to the applicant that a single family dwelling is restricted to one single family, two roomers or boarders.

Norris Mills, 1434 Cottonwood Court, Woodbridge, Virginia, spoke in support of the request and said he had been a member of the church for three years.

There were no speakers in opposition and Vice Chairman Ribble closed the public hearing.

Mrs. Thonen noted that the application was filed on May 14, 1992, and that she believed the applications were being turned around very quickly. Staff agreed.

Mr. Kelley made a motion to grant SP 92-V-029 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 14, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-V-029 by CORNERSTONE CHURCH OF CHRIST BIBLEWAY WORLD WIDE, under Section 3-303 of the Zoning Ordinance to allow church and related facilities and waiver of the dustless surface, on property located at 7900 Fordson Road, Tax Map Reference 102-1((1))63, 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 July 21, 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 28,980 square feet.
4. This is a very appropriate use of the site.
5. The church will keep the property in good repair, will upgrade the property by planting trees, and will make the site look as nice as it has the potential to be.

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 8-903 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 dated March 18, 1992 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 seats in the main area of worship shall be 120.
6. A minimum of 30 parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.
7. All existing vegetation on the site not directly impacted by the location of the parking area shall be retained. Included in this requirement shall be the vegetation along the southwestern lot line and in the area northeast of the structure. In the event any of the trees required to be preserved, as part of this condition, die following construction of the parking area, they shall be replaced with trees of a similar species. Any replacement deciduous trees shall have a minimum caliper of 2 1/2 inches; evergreen trees shall be least six (6) feet in height as may be acceptable to the Urban Forestry Branch, Department of Environmental Management (DEM). The preservation of existing trees along the southwestern lot line shall be retained and shall be deemed to fulfill the requirement for Transitional Screening 1 along this lot line.
8. The six (6) foot high board on board fence shown along the southwestern lot line shall be installed and shall be deemed to fulfill the barrier requirement along this lot line.
9. In order to mitigate visual impacts associated with the parking area the following landscaping shall be installed: Along the north side of the parking area parallel to Sherwood Hall Lane landscaping to include ten (10) deciduous trees and a planted hedge shall be installed. Along the southeast side of the parking area parallel to Fordson Road landscaping to include five (5) deciduous trees and planted hedge shall be installed. All trees used to fulfill this requirement shall have a caliper of two and one half (2 1/2) inches. Each hedge shall have a planted height of four (4) feet. All plantings governed by this condition shall be subject the review and approval of the Urban Forestry Branch, DEM. The plantings required pursuant to this development condition shall be deemed to fulfill the barrier requirement along the northern lot line.
10. To soften visual impacts relating to the use of the structure as a church, foundation plantings shall be placed along the northern, eastern, and southern sides of the structure. The number and species of these plantings shall be as determined by the Urban Forestry Branch, DEM.

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11. To prevent gravel from being discharged into Fordson Road, the entrance to the parking area shall be paved into the site to a point 25 feet from the right-of-way line of Fordson Road.

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 unevenness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

13. The gravel parking surface shall be continued for a term as specified by the Zoning Ordinance.

14. The existing driveway entrance located on Fordson Road, in the northeastern portion of the site shall be removed.

15. The stormwater management pond shown on the Plat shall be designed to Best Management Practice (BMP) standards as determined feasible by DEM at site plan review.

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 5-0. Chairman DiGiulian 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 July 29, 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 92-V-049 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 14, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-049 by CORNERSTONE CHURCH OF CHRIST BIBLEWAY WORLD WIDE, under Section 18-401 of the Zoning Ordinance to allow structure to remain 24.8 feet from street line of a corner lot and 19.6 feet from other street line of a corner lot, on property located at 7900 Fordson Road, Tax Map Reference 102-1((1))63, 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 July 21, 1992; and

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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 28,980 square feet.
4. The applicant has met the required standards, in particular the triangular shape of the lot.
5. The widening of Sherwood Hall Road has necessitated the need for the variance.
6. The request is not for the applicant's convenience but due to the physical conditions where the property is located.

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 specified church structure shown on the plat prepared by Alexandria Surveys dated March 18, 1992, submitted with this application and not transferable to other land.

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 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 5-0. Chairman DiGiulian 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 July 21, 1992. This date shall be deemed to be the final approval date of this variance.

Page 287, July 21, 1992, (Tape 1), ACTION ITEM:

Approval of July 14, 1992 Resolutions

Mrs. Thonen made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion. Mr. Pamme! asked that the spelling of his name be corrected in the next to last paragraph on page 2 of YC 92-S-048. The motion carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 287, July 21, 1992, (Tape 1), Action Item:

Approval of Minutes for April 23, May 12, and June 2, 1992

Mr. Pamme! made a motion to approve the minutes as submitted. Mrs. Thonen seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 287, July 21, 1992, (Tape 1), Action Item:

Scheduling of Hans J. Schmidt Appeal

Mrs. Thonen made a motion to schedule the appeal for September 29, 1992, at 10:15 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 287, July 21, 1992, (Tape 1), Action Item:

Out of Turn Hearing Request  
Jon Mills, SP 92-Y-045

Mr. Kelley made a motion to deny the applicant's request for an out of turn hearing. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

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Page 287, July 21, 1992, (Tape 1), Action Item:

Poor Clares, SPA 82-V-052-2

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board of Zoning Appeals that staff had prepared two packages, one for July 28, 1992 and one for July 30, 1992. She called the BZA's attention to a specific letter contained in the July 28th package from Timothy A. Berkoff concerning Poor Clare's application. A brief discussion took place among the BZA members regarding Mr. Berkoff's letter.

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Page 287, July 21, 1992, (Tape 1), Information Item:

July 28 and July 30, 1992 Resolutions

Jane Kelsey, Chief, Special Permit and Variance Branch, explained to the Board of Zoning Appeals that staff might experience some difficulty in returning the Resolutions for those two meetings due to staff moving into its new location. She said that she believed the Resolutions from July 28th could be returned without too much difficulty, but that July 30th could not be. Ms. Kelsey said the WANG equipment would be turned off on July 28 and it was unclear as to when it would be accessible at the new location. The BZA voiced no objections to the July 30th resolutions not being brought back to them.

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Page 287, July 21, 1992, (Tape 1), Information Item:

The BZA discussed with Jane Kelsey, Chief, Special Permit and Variance Branch, the status of the Board of Zoning Appeals relocating to the new Government Center. Vice Chairman Ribble suggested that the discussion be held in abeyance until such time as the information from Barbara Byron, Director, Zoning Evaluation Division, was available to the BZA and a full Board was present.

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As there was no other business to come before the Board, the meeting was adjourned at 9:20 p.m.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John Ribble  
John Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: September 8, 1992

APPROVED: September 15, 1992



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 23, 1992. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian and Mary Thonen were absent from the meeting.

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Vice Chairman Ribble called the meeting to order at 9:10 a.m. 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 289, July 23, 1992, (Tape 1), Scheduled case of:

9:00 A.M. MR. AND MRS. EARLE BURGESS, VC 92-D-046, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of ramp 0.0 ft. from front lot line (30 ft. min. front yard required by Sect. 3-307), on approx. 11,348 sq. ft., located at 6610 Jerry Pl., zoned R-3, Dranesville District, Tax Map 40-2((21))39. (OTH GRANTED 5/19/92. DEF. FROM 7/14/92 - NOTICES NOT IN ORDER)

Vice Chairman Ribble stated that there had been a question regarding the notices.

After a brief discussion it was the consensus of the BZA that the notices were in order.

Mr. Kelley made a motion that the notification requirements had been met and that the notices were in order. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

Vice Chairman Ribble called the applicants' agent 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.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicants were requesting approval to construct a wheelchair ramp 0.0 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, the applicants were requesting a variance of 30 feet to the minimum front yard.

The applicants' agent, Mitchel Jones, 1214 Kelley Street, Vienna, Virginia, addressed the BZA. He stated that his justifications were contained in the staff report and submitted photographs to the BZA. He explained that the applicants' ramp would be similar to the one depicted in the photographs.

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

Mrs. Harris made a motion to grant VC 92-D-046 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 7, 1992, with the modifications 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 92-D-046 by MR. AND MRS. EARLE BURGESS, under Section 18-401 of the Zoning Ordinance to allow construction of ramp 0.0 feet from front lot line, on property located at 6610 Jerry Place, Tax Map Reference 40-2((21))39, 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 July 23, 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 11,348 square feet.
4. There is a necessity for wheelchair accessibility by one of the applicants.
5. The exceptional topographic conditions of the property have caused the need for a stairway to ingress and egress the house.
6. The Zoning Ordinance was written to insure the health, safety, and welfare of the people.
7. In order to afford easy ingress and egress to the house, a wheelchair ramp should be constructed.
8. The granting of the variance would not produce any hardship or be detrimental to the neighbors.
9. The granting of the variance would not change the characteristics 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:

1. This variance is approved for the location and the specified addition shown on the plat prepared by Walter Phillips dated December 29, 1965 and revised by Scott L. Wallace revised May 5, 1992, submitted with this application and not transferable to other land. This variance is approved for the applicant only and shall be entered into the Land Records.
2. If required by the Department of Environmental Management, a Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 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 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 290, July 23, 1992, (Tape 1), Scheduled case of:

9:00 A.M. MAURICE R. ST. GEORGE, VC 92-V-053, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached garage 2.0 ft. from side lot line and 2.0 ft. from rear lot line (12 ft. min. side yard required by Sect. 3-307, 14 ft. min. rear yard required by Sect. 10-104), on approx. 10,646 sq. ft., located at 8414 Crossley Pl., zoned R-3, Mount Vernon District, Tax Map 102-4((5))1518.

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. St. George replied that it was.

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Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicant was requesting a variance to allow the construction of a 14 foot high detached garage 2.0 feet from the side yard and 2.0 feet from the rear lot line. The Zoning Ordinance requires a minimum 12 foot side yard and a minimum 14 foot rear yard; therefore, the applicant was requesting a variance of 10 feet to the minimum side yard and a variance of 12 feet to the minimum rear yard requirements, respectively.

The applicant, Maurice R. St. George, 8414 Crossley Place, Alexandria, Virginia, addressed the BZA. He stated that he was retiring and would like to construct a garage/workshop. Mr. St. George explained that there was no place on the property that a garage could be built by-right. He stated that the drainage easement on the north side of the property precluded the construction of a garage in that location. In summary, Mr. St. George stated that the neighbors supported the application and asked the BZA to grant the request.

In response to questions from the BZA, Mr. St. George said that the size of the garage was dictated by its proximity to the house. He explained that in order to maneuver two cars in the garage, it would have to be the requested width. Mr. St. George said that a tree would have to be removed and a large section of the yard would have to be paved, if the access to the garage was redesigned. He stated that although there were many attached garages in the area, he did not know of any detached garages. He noted that his work area required space.

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

In response to Mr. Kelley's question as to whether a one car garage with a workshop would be acceptable, Mr. St. George said it would be if the garage remained in the location depicted in the plat.

Mr. Kelley made a motion to grant-in-part VC 92-V-053. Mr. Hammack seconded the motion which failed by a vote of 2-3 with Mr. Kelley and Mr. Hammack voting aye; Vice Chairman Ribble; Mrs. Harris; and Mr. Pammel voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

It is noted that four affirmative votes are required to approve a variance.

NOTE: A reconsideration was granted and the case will be heard on October 15, 1992 at 10:20 a.m.

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Page 291, July 23, 1992, (Tape 1), Scheduled case of:

9:10 A.M. JOHN W. JACOBS, VC 92-S-033, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of deck 13.8 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 8,416 sq. ft., located at 7604 Maritime La., zoned R-3 (cluster), Springfield District, Tax Map 97-2((3))621.

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. Jacobs replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicant was requesting a variance to allow enclosure of an existing deck 13.8 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 25 feet; therefore, the applicant was requesting a variance of 11.2 feet to the minimum side yard requirement.

The applicant, John W. Jacobs, 7604 Maritime Lane, Springfield, Virginia, addressed the BZA. He stated that the screened porch would provide comfort and privacy for his family and noted that he and his son were allergic to bug bites. Mr. Jacobs said that there were other similar additions in the area and the proposed addition would conform to other structures in the neighborhood. He stated that the neighbors, as well as the Lake Forest Community Association, supported the request. In summary, Mr. Jacobs stated that the application would be in harmony with the intended spirit of the Zoning Ordinance and asked the BZA to grant the request.

In response to Mrs. Harris' question as to whether the enclosure could be moved so that it would require a lesser variance, Mr. Jacobs said that it would not be practical. He used the viewgraph to depict the houses in the immediate area that required similar variances for screened porches.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

John Young, 7605 Cervantes Court, Springfield, Virginia, addressed the BZA. He stated that he was an abutting neighbor and supported the request. He explained that he did not know if a variance had been granted on his property because the screened porch was already in existence when he purchased the house. Mr. Young noted that the property was well screened and said his only concerns were that the trees be preserved and the screened porch not protrude any further into the rear yard than the existing deck.

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There being no further speakers to the request, Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant VC 92-S-033. Vice Chairman Ribble seconded the motion which failed by a vote of 3-2 with Vice Chairman Ribble, Mr. Hammack, and Mr. Kelley voting aye; Mrs. Harris and Mr. Pammel voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

It is noted that four affirmative votes are required to approve a variance.

NOTE: A reconsideration was granted and the case will be heard on October 15, 1992 at 10:15 a.m.

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MAURICE R. ST. GEORGE, VC 92-V-053

Mrs. Harris stated that Maurice R. St. George had requested a reconsideration of VC 92-V-053.

The applicant, Maurice R. St. George, 8414 Crossley Place, Alexandria, Virginia, came to the podium and addressed the BZA. He stated that he would like the opportunity to modify the application and requested a reconsideration.

Mrs. Harris stated that there were mitigating circumstances in the closeness of the vote that warranted a reconsideration. Mrs. Harris made a motion to grant a reconsideration for VC 92-V-053.

Vice Chairman Ribble noted that Mrs. Harris was on the prevailing side.

After a brief discussion it was the consensus of the BZA to caution the applicant that the modification must be significant.

Mr. Kelley seconded the motion which carried by a vote of 4-1 with Vice Chairman Ribble voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

Ms. Anderson suggested a date and time of October 15, 1992 at 10:00 a.m.

Mr. Hammack made a motion to schedule the reconsideration on the suggested date and time. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

Mr. Pammel stated that he would like a specific list of the power tools that the applicant would be using in his craft activities. Mr. St. George said that due to the BZA concerns, he would not put the power tools in the garage.

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JOHN W. JACOBS, VC 92-S-033

In response to a question from Mr. Jacobs, Vice Chairman Ribble called him back to the podium.

The applicant, John W. Jacobs, 7604 Maritime Lane, Springfield, Virginia, returned to the podium and addressed the BZA. He stated that he believed that while his application had merit, he did not present it well and asked for a reconsideration.

Vice Chairman Ribble noted that a member of the prevailing side must make the motion.

Mr. Pammel made a motion to grant a reconsideration for VC 92-S-033. Mr. Kelley seconded the motion which carried by a vote of 4-1 with Mrs. Harris voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

Ms. Anderson suggested a date and time of October 15, 1992 at 10:15 a.m.

Mr. Pammel made a motion to schedule the reconsideration on the suggested date and time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

The BZA cautioned Mr. Jacobs that a modification to his application was necessary.

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Page 292, July 23, 1992, (Tape 1), Scheduled case of:

9:20 A.M. ROBERT E. SCHULZ AND DALE E. SCHULZ, VC 92-B-054, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition 4.5 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 10,858 sq. ft., located at 5615 Yorkshire St., zoned R-3, Braddock District, Tax Map 79-1(6)563.

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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. Schulz replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicants were requesting a variance to allow a two car garage addition 4.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicants were requesting a variance of 7.5 feet to the minimum side yard requirement.

The applicant, Robert E. Schulz, 5515 Yorkshire Street, Springfield, Virginia, addressed the BZA. He stated that the narrow lot, as well as the placement of the house on the lot, had caused the need for the variance. He noted that because the garage would be angled, its nearness to the lot line would vary from 4.5 to 8 feet. Mr. Schulz said that the most affected neighbor's house was located approximately 20 to 25 feet from the contiguous lot line. He stated that the garage was needed because of his growing family and because Yorkshire Street has become a cut through to Kings Park. He explained that the traffic volume had increased so drastically that vehicle safety has become a problem. In summary, Mr. Schulz said that the garage would be aesthetically pleasing.

In response to Mr. Kelley's question as to whether the existing carport was used to house cars, Mr. Schulz said it was.

In response to Vice Chairman Ribble's question regarding the shed that was built on the storm sewer easement, Ms. Anderson stated that a property owner placed it there at their own risk.

Mr. Pammel noted that the 8.2 foot high shed encroached into the minimum side yard and asked if that presented a problem. Ms. Anderson said that it did not. It is noted that the shed is less than 8.5 feet, thus can be located any place in the side or rear yards.

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

Mrs. Harris made a motion to grant VC 92-B-054 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 14, 1992, with the addition of Condition 4 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 92-B-054 by ROBERT E. SCHULZ AND DALE E. SCHULZ, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition 4.5 feet from side lot line, on property located at 5515 Yorkshire Street, Tax Map Reference 79-1((6))563, 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 July 23, 1992; and

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

1. The applicant are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,858 square feet.
4. Although the subject property is uniform, an extraordinary condition exists.
5. The house is skewed on the property.
6. The 10 foot storm sewer easement to the south of the property restricts both the placement of the house and the placement of a garage.
7. The strict application of the Zoning Ordinance would effectively prohibit the reasonable use of the property.
8. There is no other location on the property where a garage could be located.
9. The request is for a 20 foot by 20 foot minimal size garage.
10. The granting of the variance would not change the Zoning characteristic of 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

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- 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 garage addition shown on the plat (prepared by Dove and Associates, dated May 14, 1976 as revised through May 12, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.
3. The garage addition shall be architecturally compatible with the existing structure.
4. The area between the garage and the lot line on the northern side of the property shall be revegetated.

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 construction has commenced and has 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 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 4-1 with Mr. Hammack voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 294, July 23, 1992, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. ERIC H. SCHEIDER, VC 92-P-050, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 18.25 ft. from side lot line, detached accessory structure 5.0 ft. from side lot line, and chimney 16.0 ft. from side lot line, (20 ft. min. side yard required by Sect. 3-107, and 17 ft. min. side yard required for chimney by Sect. 2-412), on approx. 20,000 sq. ft., located at 8725 Cherry Drive, zoned R-1, Providence District, Tax Map 49-3((6))119, 120.

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. Scheider replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant was requesting variances to allow a second story addition above an existing garage 18.25 feet from the eastern side lot line; to allow a chimney 16.0 feet from the eastern side lot line; and to allow an accessory structure 5 feet from the side lot line. Ms. Anderson said that the Zoning Ordinance requires a minimum 20 foot side yard with a 3 foot permitted extension for a chimney; therefore, the applicant was requesting variances of 17.5 feet, 1 foot, and 5 feet, respectively.

The applicant's wife, Debra W. Scheider, 8725 Cherry Drive, Fairfax, Virginia, addressed the BZA. She stated that the neighbors had been given specific detail of the addition and presented a petition of support from them. She used the viewgraph to show the existing dwelling and to depict the addition.

The applicant, Eric H. Scheider, 8725 Cherry Drive, Fairfax, Virginia, addressed the BZA. He stated that the addition would enhance the area and would be architecturally and aesthetically pleasing. He explained that the first level would be used as a family room and the second story addition would be used as the master bedroom. Mr. Scheider said that the 50 year old cape cod style house was too small for his growing family.

Ms. Scheider stated that the property, which had been purchased in 1985, had exceptional narrowness and is twice as deep as it is wide. She stated that the strict application of the Zoning Ordinance would produce an undue hardship; there would be no detrimental impact on the neighbors; there is no other practical location for the addition; and no trees would have to be removed. Ms. Scheider said that the swimming pool, the need for an open play area for the children, and the need for easy access to unload hobby shop materials precluded the detached structure from being centered in the yard. She noted that many of the neighbors had detached structures.

Mr. Scheider used the viewgraph to point out the lots in the area that have detached structures and noted that Lot 132 had been granted a variance.

In response to Chairman Ribble's question as to whether the other detached structures had been granted variances, Mr. Scheider stated that they had been constructed prior to the 1974 Zoning Ordinance.

In summary Ms. Scheider stated that the neighbors supported the request. She said that the detached structure would house the pool equipment, would increase the value of the property, would be in harmony with the area, and would be aesthetically pleasing.

In response to questions from the BZA, Mr. Scheider stated that although one of his neighbors, Mr. Wheeler, supported that addition, he would not support the detached structure. Mr. Scheider stated that he is a civil engineer and had put in a great deal of time and energy planning the addition and detached structure. He expressed his belief that the proposed application would provide the best possible use of the land. Mr. Scheider said that both he and his wife would use the detached structure as a woodwork and pottery workshop.

There being no speakers in support of the request, Vice Chairman Ribble called for speakers in opposition and the following citizen came forward.

John Wheeler, 8729 Cherry Drive, Fairfax, Virginia, addressed the BZA. He stated that he would be the most affected neighbor because his property adjoins the applicant's property. He expressed his support for the addition, but stated that the detached structure should be placed within the guidelines of the Zoning Ordinance. Mr. Wheeler stated that a detached structure placed in the middle of the yard would destroy the character of the neighborhood.

There being no further speakers, Vice Chairman Ribble called for rebuttal.

Mr. Scheider stated that the 10 foot power easement would restrict the placement of the detached structure to the rear of the yard and explained that it would also mean the three large trees would have to be removed. He said that he had consulted with Mr. Wheeler before submitting the application and had modified the plans in an attempt to appease him. He stated that although Mr. Wheeler had originally indicated that he would support the request; he had changed his mind.

There being no further speakers, Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant-in-part VC 92-P-050 for the reasons reflected in the Resolution and subject to the proposed development conditions contained in the staff report dated July 14, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-050 by ERIC H. SCHEIDER, under Section 18-401 of the Zoning Ordinance to allow construction of addition 18.25 feet from side lot line, detached accessory structure 5.0 feet from side lot line, and chimney 16.0 feet from side lot line. (THE BZA GRANTED A VARIANCE TO ALLOW CONSTRUCTION OF ADDITION 18.25 FEET FROM SIDE LOT LINE AND CHIMNEY 16.0 FEET FROM SIDE LOT LINE) on property located at 8725 Cherry Drive, Tax Map Reference 49-3((6))119, 120, Mr. Pammel 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 July 23, 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-1.
3. The area of the lot is 20,000 square feet.
4. The application meets the standards necessary for the granting of a variance to allow the existing structure to remain with a second floor addition above and to allow the proposed chimney 16.0 feet from side lot line.
5. The applicant has not presented significant evidence to support the request for a detached structure. There is flexibility within the open area to relocate the detached structure.
6. The applicant could not meet the Zoning Ordinance requirements because the 20,000 square foot lot is substandard.

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 the specified second story addition and chimney addition shown on the revised plat prepared by David B. Matthews, dated July 31, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 construction 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 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 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 297, July 23, 1992, (Tape 2), Scheduled case of:

9:40 A.M. MARIO AND PATRICIA REBELO, VC 92-Y-052, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (screened porch) 17.9 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 9,336 sq. ft., located at 6864 Compton Heights Ct., zoned R-3, Sully District, Tax Map 65-4((5))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. Rebelo replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicants were requesting a variance to allow a screened porch addition to be located 17.9 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicants were requesting a variance of 7.1 feet from the rear lot line.

The applicant, Mario Rebelo, 6864 Compton Heights Circle, Clifton, Virginia, addressed the BZA. He stated that the topographical conditions on the shallow lot had caused the need for the variance. He explained that the steep hill all but precluded the use of the backyard. Mr. Rebelo stated that he had foreseen problems. He said that when he had requested the builder place the house closer to the front lot line, the builder had refused. In summary, Mr. Rebelo said that the neighbors supported the application and asked the BZA to grant the request.

In response to Mrs. Harris' question as to why the builder had not conceded to the request, Mr. Rebelo said it was because of the time and expense involved. He stated that although a door to the outside already existed, there was no deck or porch in existence. In response to Mrs. Harris' question regarding the structure on the adjoining lot, Mr. Rebelo stated that his addition would not protrude any further into the backyard than the neighbor's structure.

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

Mrs. Harris made a motion to grant VC 92-Y-052 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 14 1992.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-052 by MARIO AND PATRICIA REBELO, under Section 18-401 of the Zoning Ordinance to allow addition (screened porch) 17.9 feet from rear lot line, on property located at 6864 Compton Heights Circle, Tax Map Reference 65-4((5))31, 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 July 23, 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 9,336 square feet.
4. The rear yard of the subject property has an exceptional topographic condition.
5. The placement of the house, so far back on the lot, has caused the need for the variance.
6. The request is reasonable.
7. The applicant had requested that the builder place the house on the lot so that the screened porch could be constructed by-right. Due to financial considerations, the builder refused to comply with the request.
8. The granting of the variance would not set a precedent because there are many other houses in the area with similar screened porches or additions.
9. The addition would not change the character of the area, would not be detrimental to the neighborhood, and would not conflict with the intended spirit of the Zoning Ordinance.

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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 specified screened porch addition shown on the plat prepared by Design Consultants dated May 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 construction 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 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 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 298, July 23, 1992, (Tape 2), Scheduled case of:

9:50 A.M. IRA AND ROSA MCKOY, SP 92-M-033, appl. under B-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 8.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-303), on approx. 11,942 sq. ft., located at 6230 Parkhill Dr., zoned R-3, Mason District, Tax Map 61-3(9)47.

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. McKoy replied that it was.

Denise James, Staff Coordinator, Zoning Evaluation Division, presented the staff report. She stated that the applicants were requesting a special permit for a building in error to allow an addition to remain 8 feet from the side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, the applicants were requesting a special permit of 4 feet from the side lot line. Ms. James explained that the contractor, Kevin Olsen, had enclosed a previously existing carport.

The applicants' agent, Kevin Olsen, 1185 Autumnhaze Court, Herndon, Virginia, addressed the BZA. He stated that he had not intended to construct the addition without a permit. He explained that originally the project had been instigated when the applicants noticed the wood which supported the glass panes was rotten. He noted that it also had been necessary to relocate the electrical meter. He said that it was only after requesting an inspection, that he was informed that the structure behind the carport had only been approved as a screened porch not for a closed addition. Mr. Olsen stated that the previous owner had added the addition. He noted that the current owner had purchased the property in good faith and had presumed that the Zoning Ordinance had been complied with. In summary, he said that he assumed all responsibility for the error and asked the BZA to grant the request.

In response to Mrs. Harris' question as to whether staff had been accommodating, he stated that they had. He explained that although he had been a contractor for many years, he had not been familiar with the variance procedure. He said that he had been under the false assumption that a variance would pertain to the entire structure.

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

Mr. Kelley made a motion to grant SP 92-M-033 for the reasons reflected in the Resolution and subject to the development conditions dated July 7, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-M-033 by IRA AND ROSA MCKOY, 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 8.0 feet from side lot line, on property located at 6230 Parkhill Drive, Tax Map Reference 61-3(19)47, 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 July 23, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and 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 had no reason to know there was a Zoning Ordinance violation on the property.
- I. The applicants' agent's explanation of the error was believable.

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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 attached 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 Rice Associates dated July 2, 1987) approved with this application, as qualified by these development conditions.
3. A Building Permit shall be obtained and final inspections approved for the enclosed carport.

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 permits 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 a building permit has been obtained and construction has commenced. The Board of Zoning Appeals may grant additional time to establish the use 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 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 300, July 23, 1992, (Tape 2), Scheduled case of:

10:00 A.M. MARK WINANS, SP 92-Y-034, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow porch addition to remain 16.5 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 8,867 sq. ft., located at 13842 Springstone Dr., zoned R-3 (Cluster), Sully District, Tax Map 65-2(7)211.

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. Winans replied that it was.

Denise James, Staff Coordinator, Zoning Evaluation Division, presented the staff report. She stated that the applicant was requesting a special permit for a building in error to allow an enclosed deck to be located 16.5 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot side yard; therefore, the applicant was requesting a special permit of 8.5 feet from the rear lot line. Ms. James explained that a building permit had been issued to the previous owner for an open deck, but he had constructed an enclosed addition.

The applicant, Mark Winans, 13842 Springstone Drive, Clifton, Virginia, addressed the BZA. He stated that he had been new to the area when he purchased the property. Mr. Winans said it was only when he attempted to obtain a permit to reinforce the open deck portion so that it would be able to accommodate a hot tub, that he was informed the screened porch was in violation. He noted that he then applied for a special permit and asked the BZA to grant the request.

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

Mr. Hammack made a motion to grant SP 92-Y-034 subject to the development conditions dated July 7, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-034 by MARK WINANS, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow porch addition to remain 16.5 feet from rear lot line, on property located at 13842 Springstone Drive, Tax Map Reference 65-2((7))211, 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 July 23, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and 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 attached 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 Terry Land Measurement, Inc., dated September 6, 1992 and recertified on May 28, 1992) approved with this application, as qualified by these development conditions.
3. A Building Permit shall be obtained and final inspections approved for the enclosed screened 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 permits 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 a building permit has been obtained and construction commenced. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with

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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. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 302, July 23, 1992, (Tape 2), Scheduled case of:

10:15 A.M. DRANESVILLE CHURCH OF THE BRETHREN, SPA 84-D-068, appl. under Sects. 3-103, 8-914, and 8-915 of the Zoning Ordinance to amend SP 84-D-068 for church and related facilities to permit offices, classrooms, and deck addition to existing house; waiver of dustless surface; and reduction to minimum yard requirements based on error in building location to allow trailer to remain 17.8 ft. from side lot line (20 ft. min. side yard required by Sect. 3-103), on approx. 1.18 acs., located at 11500 Leesburg Pike, zoned R-1, Dranesville District, Tax Map 11-2((1))20; 6-4((1))82.

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. Runyon replied that it was.

Denise James, Staff Coordinator, Zoning Evaluation Division, presented the staff report. She stated that the applicant was requesting several amendments to the original application. She said the applicant was requesting the addition of Lot 82, which contained approximately 18,268 square feet, to be utilized for classroom use and the approval of a deck addition to the accessory building located on Lot 82. Ms. James stated that the applicant was also requesting an increase in the number of seats in the sanctuary from 87 to 108 with a corresponding increase in the number of parking spaces from 29 to 31. She noted the applicant was also requesting the continued use of a classroom trailer in its current location 17.8 feet from the side lot line when 20 feet is required by the Zoning Ordinance. Ms. James further noted that the applicant was requesting a waiver of the dustless surface requirement for the gravel parking lot; a waiver of the barrier requirement; and, a modification of transitional screening in favor of the existing landscaping.

In summary, Ms. James stated that there were no outstanding land use, environmental, or transportation issues with the application and noted that the applicant was in agreement with the development conditions. She said that staff recommended approval of SPA 84-D-068 subject to the development conditions contained in Appendix 1 of the staff report dated July 14, 1992. Ms. James noted that a letter of approval from the Great Falls Citizens Association had been submitted to the BZA.

The applicant's agent, Charles E. Runyon, with the firm of Runyon, Dudley, Anderson, Associates, Inc. 10650 Main Street, Fairfax, Virginia, addressed the BZA. He stated that the church was established in the 1920's and the applicant would like to bring the special permit up-to-date. He noted that the need for the temporary trailer for classroom use was the reason the application was before the BZA.

Mr. Runyon stated that the only reservations the applicant had were with regard to Conditions 4 and 7. He explained that Condition 4, which required a site plan, would cost the church between \$15,000 to \$20,000. Mr. Runyon said that the church would be required to obtain the site plan because Condition 7 required additional screening which would be accomplished by the planting of trees. He noted that even a waiver of the site plan would be burdensome. Mr. Runyon said he would like to have the applicant exempt from both the site plan requirement and the need for the Urban Forestry Branch approval.

Mr. Runyon referred to the Great Fall Citizens Association recommendation for approval and asked if the BZA had received the letter. Mrs. Harris said the BZA had indeed received it and noted that Mr. Kelley wished to frame the letter of approval because it was a first.

In response to Mr. Kelley's question regarding the cars that use the site as a cut through, Mr. Runyon said that although the church had a sign prohibiting such traffic, the citizens ignore it. He said the only alternative would be to lock the entrance gate which would impact on the congregation.

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

Mr. Pammel made a motion to grant SPA 84-D-068 subject to the development conditions contained in the staff report dated July 14, 1992 with the following modifications: Condition 4 shall be waived, and the end paragraph in Condition 7 shall be deleted.

Ms. James noted that Condition 4 was a Zoning Ordinance requirement.

Mr. Hammack made a motion to modify Condition 4 to read, "The BZA recommends that the site plan requirement be waived." The maker of the motion accepted the modification.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen 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 84-D-068 by DRANESVILLE CHURCH OF THE BREthern, under Section 3-103, 8-914, and 8-915 of the Zoning Ordinance to amend SP 84-D-068 for church and related facilities to permit offices, classrooms, and deck addition to existing house; waiver of dustless surface; and reduction to minimum yard requirements based on error in building location to allow trailer to remain 17.8 feet from side lot line, on property located at 11500 Leesburg Pike, Tax Map Reference 11-2(1)20 and 6-4(1)82, 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 July 23, 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-1.
3. The area of the lot is 1.18 acres.
4. The application meets 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 8-305, 8-915, and 8-914 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 Runyon, Dudley, Anderson, Associates, Inc. dated April 24, 1992 revised through May 12, 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. The BZA recommends that the site plan requirement be waived.
5. The maximum number of seats for the main church sanctuary shall be limited to a maximum of 108.
6. Thirty-one (31) parking spaces shall be provided as shown on the special permit plat.
7. The barrier requirement shall be waived and transitional screening shall be modified to allow existing trees and vegetation to meet the screening requirement with the following supplemental landscape plantings:

In order to adequately screen the trailer from the adjacent property, a minimum of ten (10) evergreen trees six (6) feet in height shall be planted around the sides and rear of the existing trailer;

In order to further soften the visual impact of the trailer from Route 7, five (5) evergreen trees six (6) feet in height shall be planted between the eastern edge of septic drainfield and the western edge of the driveway.

8. Dedication to 114 feet from centerline of Leesburg Pike (Route 7) for public street right-of-way shall be provided on demand by the Board of Supervisors or the Virginia

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Department of Transportation (VDOT) based on an approved road project for the planned improvements to Route 7. All ancillary easements shall also be provided as needed.

9. The temporary classroom trailer shall be limited to a term of three (3) years from the date of approval of this special permit amendment. Administrative extensions to the expiration of the three (3) year term may be requested from and approved by the Zoning Administrator. Such requests shall be in writing prior to the expiration of the term and approval shall be based on satisfactory performance of these development conditions as determined by the Zoning Administrator.
10. The gravel parking lot shall be limited to a term of five (5) years from the date of approval of this special permit amendment and shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM). These practices should include but not be limited to the following:

- Travel speeds in the parking areas shall be limited to 10 mph or less.
- During dry periods, application of water shall be made in order to control dust.
- Routine maintenance shall be performed to prevent surface unevenness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.
- Runoff shall be channeled away from and around the parking areas.
- The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of stone surface.

11. This special permit shall not be valid unless the Zoning Administrator permits the existing church building to remain 19.8 feet from the side lot line pursuant to Sect. 2-419 of the Zoning Ordinance or until a variance for the church is obtained from the BZA.

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 and new Non-Residential Use Permits issued. 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 Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 304, July 23, 1992, (Tape 2), Scheduled case of:

10:30 A.M. ST. MATTHEWS UNITED METHODIST CHURCH, SPA 80-A-087-4, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 80-A-087 for church and related facilities, nursery school and child care center to allow increase in hours and increase in maximum daily enrollment, on approx. 5.32 acs., located at 8617 Little River Turnpike, zoned R-1, Braddock District, Tax Map 59-3(10)13 thru 19, 22 thru 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. Kaykendall replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting an amendment to the existing special permit to allow an increase in the maximum daily enrollment for the nursery school/child care center and an increase in the hours for the center. Ms. Greenlief said that the center had previously been approved in 1965 for 70 children per day and the applicant wished to increase the enrollment to a maximum



of 99 children per day. She noted that the applicant wished to extend the hours of operation to 9:00 a.m. to 4:00 p.m. in order to allow an afternoon session. Ms. Greenleaf pointed out that the total daily enrollment would still not exceed 99 children per day. She stated that staff believed the application met all the applicable standards; therefore, staff recommended approval of SPA 80-A-087-4 subject to the development conditions in Appendix 1 of the staff report.

The applicant's agent, William B. Kaydental, 9139 Santayana Drive, Fairfax, Virginia, addressed the BZA. He stated that the applicant would like an increase in the hours of operation and an increase in the number of children. He noted that there would be no physical changes to the facilities. He said that the traffic concerns expressed by the neighbors had been resolved. He explained that the applicant would channel the car through the parking lot so that they would not create a backup on the street.

In response to Mrs. Harris' question regarding the development conditions, Mr. Kaydental stated that the applicant had agreed to all of them.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Margaret Desko, a church member and volunteer worker at the child care center, addressed the BZA and said she would answer any questions the members might have. The BZA members did not have any questions.

There being no further speakers in support and no speakers in opposition, Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant SPA 80-A-087-4 for the reason reflected in the Resolution and subject to the development condition dated July 14, 1992.

Mr. Pammel remarked that the application had been received by the staff on May 18, 1992 and had been processed and approved within a very short time frame.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-A-087-4 by ST. MATTHEWS UNITED METHODIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend, SP 80-A-087 for church and related facilities, nursery school and child care center to allow increase in hours and increase in maximum daily enrollment on property located at 8677 Little River Turnpike, Tax Map Reference 59-3(10)13 thru 19, 22 thru 28, 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 July 23, 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-1.
3. The area of the lot is 5.32 acres.
4. The application meets 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 8-914 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 Deputy Land Surveying, Inc., stamped received by the Office of Comprehensive Planning on May 14, 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. The hours of operation for the nursery school/child care center shall be limited to 9:00 A.M. to 4:00 P.M., Monday through Friday.
5. The maximum daily enrollment for the nursery school/child care center shall be limited to ninety-nine (99) children.
6. The maximum number of children utilizing the play area at any one time shall be 43.
7. The maximum seating capacity in the main area of worship for the church shall be limited to a total of 470 seats.
8. There shall be a minimum of 118 parking spaces provided for the church use and a minimum of 19 parking spaces provided for the nursery school/child care center as shown on the special permit plat. All parking shall be on site.
9. Transitional Screening shall be provided as follows:
  - o Transitional Screening 1 shall be provided and maintained along the southern lot line with a modification to 17 feet in width in the area of the existing parking lot and the parking lot addition. An appropriate reduction in the number of plantings required in Transitional Screening 1 may be made in this 17 foot wide area as determined by the Urban Forestry Branch.
  - o The transitional screening yard along the western lot line shall be modified to be planted between the existing asphalt parking area and the lot line, the nearest point being approximately 9 feet at the south end of the property on the west side; to be tapered out to 25 feet on the north end of the property. The tapered area shall be supplemented with additional plantings as required by the Urban Forestry Branch to reduce the impact on the adjacent properties because of the reduction in the transitional screening. To be included in this area shall be an evergreen hedge the length of the parking lot, the intent to be to screen the parking lot from the adjacent residences. The required and supplemental screening shall be in that strip between the existing edge of pavement of the parking lot and the property line.
  - o The existing vegetation along the eastern and northern lot lines shall be deemed to satisfy the transitional screening requirement.
10. The barrier requirement shall be waived along all lot lines.
11. The limits of clearing and grading established by the tree preservation plan reviewed and approved by the Urban Forestry Branch at the time of site plan review subsequent to the approval of SPA 80-A-087-3 shall be honored.
12. Landscaping and building foundation plantings required at the time of site plan review subsequent to the approval of SPA 80-A-087-3 shall be maintained.
13. Right-of-way shall be provided for a right-turn lane along Little River Turnpike and dedicated in fee simple to the Board of Supervisors.
14. The stormwater detention pond approved during site plan review subsequent to the approval of SPA 80-A-087-3 shall be maintained.

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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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 Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this special permit.

10:45 A.M. EDWARD G. AND BERNADINE A. JERNIGAN, VC 92-P-063, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of carport 2.1 ft. from side lot line (7 ft. min. side yard required by Sects. 3-307 and 2-412), on approx. 10,501 sq. ft., located at 2431 Rockbridge St., zoned R-3, Providence District, Tax Map 39-3((16))159.

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. Jernigan replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicants were requesting a variance to allow a carport 2.4 feet from the southern side lot line. Ms. Anderson said that although the Zoning Ordinance requires a minimum 12 foot side yard, Section 2-412 allows for a 5 foot extension of a carport. Therefore, the applicant was requesting a variance of 2.9 feet to the minimum side yard requirement.

The applicant, Edward G. Jernigan, 2431 Rockbridge Street, Vienna, Virginia, addressed the BZA. He said that they had lived in the house for 30 years and now needed a carport because of failing health. Mr. Jernigan explained that the narrow lot, along with the sewer easement, precluded the placing of the carport in any other location.

In response to Mrs. Harris' question as to why the request was for a 32 foot long carport, Mr. Jernigan stated that it was because of architectural consideration. He explained it would be constructed so that the roof of the carport would match the existing roof line of the house. Mr. Jernigan noted that in order to accommodate the car, the structure would have to be at least 28 feet long. He said that it was the aesthetic considerations that prompted him to extend the carport to 32 feet.

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

Mrs. Harris made a motion to grant VC 92-P-063 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 14, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-063 by EDWARD G. AND BERNADINE A. JERNIGAN, under Section 18-401 of the Zoning Ordinance to allow construction of carport 2.1 feet from side lot line, on property located at 2431 Rockbridge Street, Tax Map Reference 39-3((16))159, 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 July 23, 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 10,501 square feet.
4. The property has unusual characteristics in that the rear lot line has an unusual configuration.
5. There is a 15 foot storm water easement to the north of the property.
6. The granting of the variance will not be detrimental to the adjacent property owners.
7. The variance will be in harmony with the intended spirit and 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:

1. This variance is approved for the location and the specified carport addition shown on the plat prepared by Alexandria Surveys, Inc., dated May 20, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The carport 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 construction 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 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 and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 308, July 23, 1992, (Tape 2), Scheduled case of:

10:55 A.M. KEVIN J. AND SYLVIA F. MCGREEVY, VC 92-P-064, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition 24.8 ft. from front lot line of corner lot (40 ft. min. front yard required by Sect. 3-107), and to allow 7 ft. high fence to remain in front yards of corner lot (4 ft. max. height allowed by Sect. 10-104) on approx. 30,440 sq. ft., located at 2161 Chain Bridge Rd., zoned R-1, HC, Providence District, Tax Map 39-1((4))11.

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. McGreevy replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicants were requesting a variance to allow a garage addition 24.8 from the front lot line. The Zoning Ordinance requires a minimum 40 foot front yard; therefore, the applicants were requesting a variance of 15.2 feet to the minimum front yard requirement. Ms. Anderson stated that the applicants were also requesting a variance to allow a 7 foot high fence to be located in the front yard of Horse Shoe Drive. The Zoning Ordinance allows a 4 foot maximum fence height in the front yard; therefore, the applicants were requesting a 3 foot variance. She noted that the request for the fence was inadvertently left out of the staff report.

The applicant, Kevin J. McGreevy, 2161 Chain Bridge Road, Vienna, Virginia, addressed the BZA. He stated that having two front yards greatly restricted the location of the addition and put him at a disadvantage not shared by the neighbors. Mr. McGreevy said that the character of the neighborhood would not be changed by the variance. In summary, he expressed

his belief that the addition would be beneficial to the neighborhood and would be architecturally compatible with the surrounding structures.

In response to Mrs. Harris' question as to why the garage could not be placed on the Chain Bridge Road side of the existing structure, Mr. McGreevy explained that it would not be aesthetically pleasing and noted that there was no entrance on that side of the house. He further explained that many trees would have to be removed if the addition were placed on that side of the house.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Douglas Gehley, 1969 Horse Shoe Drive, Vienna, Virginia, addressed the BZA and said that the applicants had bought the property in 1980. Mr. Gehley went on to explain that the applicants had completely renovated the previously condemned structure. He noted that the proposed location was the only practical site for the addition.

The co-applicant, Sylvia F. McGreevy, 2161 Chain Bridge Road, Vienna, Virginia, addressed the BZA. She stated that if the proposed addition were to be relocated on the Chain Bridge side of the property, the large Magnolia tree would have to be removed.

There being no further speakers in support and no speakers in opposition, Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to grant VC 92-P-064 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated July 14, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-064 by KEVIN J. AND SYLVIA F. MCGREEVY, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition 24.8 feet from front lot line of corner lot and to allow 7 foot high fence to remain in front yards of corner lot, on property located at 2161 Chain Bridge Road, Tax Map Reference 39-1((4))11, 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 July 23, 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-1, HC.
3. The area of the lot is 30,440 square feet.
4. The applicant has done an extraordinary job in restoring the condemned property.
5. The lot has two front yards.
6. If the addition were placed on the Chain Bridge Road side of the property, trees would have to be removed and it would not be architecturally compatible with the original structure.
7. The strict application of the Zoning Ordinance would create an undue hardship and would effectively prohibit and unreasonably restrict the reasonable use of the property.

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 of the garage addition shown on the plat prepared by Douglas E. Gehley, dated May 28, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage 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 construction 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 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 4-1 with Mrs. Harris voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 31, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 310, July 23, 1992, (Tape 2), Information Item:

Request for Date and Time  
Steven D. Yoder and Barbara B. Yoder Appeal

Mr. Pammel made a motion to schedule the appeal for October 6, 1992, at 10:15 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 310, July 23, 1992, (Tape 2), Information Item:

Intent-to-Defer  
M. A. Moienamin and Ahmad Moienamin Appeal, A 92-P-011

Mr. Pammel made a motion to issue an intent-to-defer A 92-P-011 scheduled for July 30, 1992. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 310, July 23, 1992, (Tape 2), Scheduled case of:

Intent-to-Defer  
Brian P. and Susan H. Dion Appeal, A 92-M-008

Mr. Pammel and Mrs. Harris made a motion to issue an intent-to-defer A 92-P-011 scheduled for July 28, 1992. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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July 28, 1992. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Chairman DiGfulian and Mrs. Thonen absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:37 a.m.

  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

  
John F. Ribble, III, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: October 13, 1992

APPROVED: October 20, 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, July 28, 1992. The following Board Members were present: Chairman John DiGiulian; Marthe Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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Chairman DiGiulian called the meeting to order at 9:10 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 313, July 28, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ALVIN S. AND DEBORAH SPITZER, VC 92-S-065, 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. 8,400 sq. ft., located at 9504 Yardarm La., zoned R-3 (Cluster), Springfield District, Tax Map 88-3(3)403.

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. Spitzer replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that there is a major Virginia Power easement to the rear of the property, behind the proposed addition for which a 7.4 foot variance was being requested.

Applicant Alvin S. Spitzer, 9504 Yardarm Lane, Burke, Virginia, presented the statement of justification, stating that the addition would be a screened-in porch on the upper deck at the rear of the property.

Mr. Pammel asked Mr. Spitzer if there was anything unusual about the property that would justify the variance. Mr. Spitzer said that the rear of the property was the only place he could build the deck because the lot was too shallow on the sides and he did not want a screened-in porch in the front yard.

Mr. Ribble said he remembered the statement of justification stating that the lot was exceptionally narrow and exceptionally shallow, creating an extraordinary situation.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 92-S-065 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 21, 1992.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-065 by ALVIN S. AND DEBORAH SPITZER, under Section 18-401 of the Zoning Ordinance to allow addition 17.6 ft. from rear lot line, on property located at 9504 Yardarm La., Tax Map Reference 88-3(3)403, 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 July 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 (cluster).
3. The area of the lot is 8,400 square feet.
4. The house is located at the edge of the cul-de-sac and sited to the rear of the property, thereby making the property extremely shallow.
5. There really is no other place on the property where an addition of this type 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 of a screened porch addition in the location shown on the plat as "Upper Deck", prepared by Kaplan & Associates, dated May 12, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The porch 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 construction 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 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. 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 August 5, 1992. This date shall be deemed to be the final approval date of this variance.

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Page <sup>314</sup> 314, July 28, 1992, (Tape 1), Scheduled case of:

9:10 A.M. BALMORAL GOLF CORPORATION AND FIRST BALMORAL CORPORATION, SP 92-S-026, appl. under Sects. 3-C03, 8-603, 8-606 of the Zoning Ordinance to allow commercial golf course and accessory uses such as swimming pool, tennis courts, bath house, snack bar, club house with an eating establishment and other related facilities, on approx. 233.03 acres, located on Union Mill Rd., Compton Rd., Champions Wy., Regal Prince Ct., Lady Alice Ct., and Strolling Minstrel Ct., zoned R-C, WSP0D, Springfield District, Tax Maps 74-2((5))A1, 1, pt. 2, pt. 3, pt. 11A, pt. 12A, pt. 13A, pt. 14, pt. 15, pt. 22, pt. 23, pt. 24, pt. 25, pt. 27, pt. 101A, pt. 102A, pt. 103A, pt. 104A, pt. 110, 111, 112, 113, 114, 115, 116, 117; 74-4((2))pt. 28, pt. 33A, pt. 93A, pt. 94A, pt. 95A, pt. 96A, pt. 97A, pt. 98A, pt. 99A, pt. 100A, 105A, 106A, 107A, 108A, 109A, pt. 118, pt. 119, pt. 120, pt. 121, pt. 122, 123, 124, pt. 125.

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. McDermott replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the applicant was requesting a modification of the transitional screening requirement to allow the existing trees to satisfy the planting requirement within the required 35 feet of transitional screening; they were also requesting a modification of the barrier requirement for a 4 foot high fence, to allow a 6 foot high black chain link fence. Mrs. Anderson said that an 8 foot wide equestrian trail would be provided around the entire facility, except in

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the southern portion, where the equestrian trail would be on the adjacent lots. She said that the Board of Supervisors had approved the rezoning the previous evening for the cluster subdivision to the south, to allow 182 single family detached dwellings. Mrs. Anderson said that the applicant had purchased a five-acre parcel at the intersection of Compton and Union Mill Roads. In order to provide an improved intersection, in conjunction with the spine road that will serve the subject site and the residential development; it will become a regular four-legged intersection.

Mrs. Anderson said that the applicant had agreed to retain a qualified archaeologist to perform archaeological studies because of known historical sites on the property; the applicant had indicated a desire to design the golf course to preserve the more significant historical sites.

Mrs. Anderson said that staff recommended approval of the special permit.

Francis A. McDermott, attorney with Hunton & Williams, 3050 Chain Bridge Road, Fairfax, Virginia, represented the applicant and presented the statement of justification. Mr. McDermott said that the case had been in the process for 6 years. He said that William A. Moran, of NV Land originally and now of Elm Street Development, was present and had been working with the citizens in the area, going back to the beginning. Mr. McDermott said that, at the time of the original hearing when they were denied by the Board, they had the support of all of the umbrella citizen groups and what he would equate to about 10,000 to 12,000 households. He said that the current application is the result of a settlement agreement arrived at between the applicant and the Board of Supervisors (BOS) on October 14, 1991, when the BOS directed the staff to expedite the process for both the Special Exception, the Special Permit, and the Plan Amendment. Mr. McDermott said that, in addition to what Mrs. Anderson had covered, the Plan Amendment was also adopted by the BOS the previous evening, prior to the approval of the rezoning portion of the application. He said that the golf course use has been encouraged and sought by the neighbors for a long time. Mr. McDermott said there is substantial archaeological, environmental and other resource protection measures in both applications. He urged the BZA's approval and said that he believed the application was doing more toward improving than potentially detracting from the surrounding environs.

With respect to the improvements at the intersection, Mr. McDermott said that the land area was acquired at a cost of \$500,000 and the improvement itself will cost, roughly, \$500,000, perhaps more. He said that any land area left over would be conveyed to the County and not utilized by the developer.

Mrs. Harris said that the intersection referred to by Mr. McDermott was a terrible intersection and she was happy to hear that the applicant planned to "clean it up."

Mr. Hammack asked staff about the 200 parking spaces and said that he believed that, if the golf course were operated as a commercial enterprise, it would require more parking than if it were operated as a club. He asked if staff had any statistics or backup for the differences in the way the numbers were arrived at. Mrs. Harris said that she believed the additional requirement might be because of the club house facilities that would be a part of the operation. Mr. Hammack believed the intensity of the facility would be the same if it were deemed a commercial facility.

Mr. McDermott said that, if there were a clubhouse use, there would be quite a few more functions within the clubhouse than if it were a commercial use, which would have less clubhouse facilities and social events than a private club. He said the difference in the activities would be the social functions related to the clubhouse use. Mr. Hammack said he could not envision a nice clubhouse functioning commercially not being used for weddings and functions of the same nature as a clubhouse type of operation. Mr. McDermott said that one would not invest the same amount of money into a commercial facility as into a private facility.

In answer to a question from Mr. Kelley, Mr. McDermott said that it was not known at this time whether the facility would be public or private.

Mr. Kelley asked Mr. McDermott if the residents of the 182 proposed dwellings would be buying memberships along with their property. Mr. McDermott said that had originally been the intent with the first application, before it went to the courts. Mr. Kelley alluded to the proximity of the Twin Lakes public golf course and a couple of other private courses in relatively close proximity.

Mr. Hammack asked Mr. McDermott if he had read the Proposed Development Conditions and asked if he was in agreement with them. Mr. McDermott said that he had discussed them with staff over a period of time and he found them to be as last discussed with Mrs. Anderson, so he would be in agreement with them. Mr. Hammack asked Mrs. Anderson if his understanding that the development would be phased over ten years was correct and the Development Conditions said that the use must be established within 30 months. He wanted to know if the BZA could avoid the type of appeal that had arisen in the past when one part of the use had not been established because it had to go through other steps in the process. Mr. Hammack wanted to know if it was necessary to give the applicant ten years to establish the use or if 30 months would be sufficient. Mrs. Anderson said that she believed that the phasing over ten years

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was for the entire project. She said that if the BZA would care to give the applicant additional time of 48 months instead of 30 months to establish the use, it would be very helpful. Mr. McDermott agreed that it would be very helpful, because it is a golf course use and the beginning could be defined as the preliminary grading work to provide for placement of the golf course, which was the subject of an appeal recently brought before the BZA. A discussion ensued about this concept and the wisdom of allowing more time to establish the use without the applicant having to request an extension.

Mrs. Anderson asked the BZA members to turn to Condition 14 in the staff report and the last paragraph stating the applicant had 30 months in which to commence construction, which meant they had to get their site plan, their first building permit, and have footings in and inspected, all of which was required to be done within 30 months. She said that, Condition 14 then allows the applicant to phase in the development over ten years.

Mr. McDermott said that, for a golf course use, no footings would be used. He said that the use would be begun with a rough grading plan and the golf course use could be started without erecting a structure. Mrs. Anderson read from Condition 14: "...that the construction of the accessory uses such as the clubhouse, pool, and tennis courts, and their associated parking, may be phased over a ten year period from the approval of the special permit, provided, however, that the entire golf course with associated parking, transitional screening, and stormwater management for the entire site and all road improvements shall be provided in the first phase before the issuance of any Non-Residential Use Permit. Road improvements shall be provided as set forth elsewhere in these conditions...." The building permit, the grading plan, the construction permit for the site plan approval and construction of the parking, the provision of the transitional screening and construction of the stormwater management facility, must all be done before the applicant can get the Non-Residential Use Permit.

Mr. Hammack asked if the applicant would be required to put in the clubhouse footers. Mrs. Anderson said that the clubhouse would be part of the latter phases.

Speaking in favor of the application was: the President of the Compton Road Civic Association, who is also the President of the Western Fairfax Citizens Association, representing 35 homeowners. She said they had worked for the application for six years and the applicant had met all of their concerns.

Mrs. Harris asked Mr. McDermott where the entrance to the facility would be. She envisioned it at the crest of the hill. Mr. McDermott said that the final engineering had not been done, but the entrance has been sited by Dewberry & Davis, engineers for the applicant, and the applicant had been very sensitive to the site distance issue surrounding the entrance, given the nature of the existing problems. Mrs. Harris said she was referring to the entrance off Compton Road and asked if there was any possibility of shaving the hill where it appears that the entrance will be, so that the sight distance problem would be ameliorated. Mr. McDermott said that Mr. Moran had confirmed that, with respect to the eastern entrance, there would have to be a lowering of the crest, and referred to the care with which the proffers had been written for that entrance. He said that a permit from Virginia Department of Transportation (VDOT) would be required and the indication was that they would need to shave the hill.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 92-S-026 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 21, 1992, as amended. Mr. Kelley pointed out that the applicant and staff worked closely together as evidenced by the report, and they also had obtained the necessary approvals from the BOS. He said he did not remember seeing a much cleaner application than this one and he complimented both the applicant and staff.

The amendment to the Development Conditions made by Mr. Kelley was to allow the applicant 60 months to commence construction, instead of 30 months.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-S-026 by BALMORAL GOLF CORPORATION AND FIRST BALMORAL CORPORATION, under Sections 3-C03, 8-603, and 8-606 of the Zoning Ordinance to allow commercial golf course and accessory uses such as swimming pool, tennis courts, bath house, snack bar, club house with an eating establishment and other related facilities, on property located on Union Mill Rd., Compton Rd., Champions Wy., Regal Prince Ct., Lady Alice Ct., and Strolling Minstrel Ct., Tax Map Reference 74-2((5))A1, 1, pt. 2, pt. 3, pt. 11A, pt. 12A, pt. 13A, pt. 14, pt. 15, pt. 22, pt. 23, pt. 24, pt. 25, pt. 27, pt. 101A, pt. 102A, pt. 103A, pt. 104A, pt. 110, 111, 112, 113, 114, 115, 116, 117; 74-4((2))pt. 28, pt. 33A, pt. 93A, pt. 94A, pt. 95A, pt. 96A, pt. 97A, pt. 98A, pt. 99A, pt. 100A, 105A, 106A, 107A, 108A, 109A, pt. 118, pt. 119, pt. 120, pt. 121, pt. 122, 123, 124, pt. 125, 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 July 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-C, WSP0D.
3. The area of the lot is 233.03 acres.
4. The applicant worked very closely with staff, as evidenced by the report.
5. The necessary approval was obtained from the Board of Supervisors.
6. The maker of the motion did not remember ever seeing a cleaner application than this for a golf course, arrived at through the coordination of the applicant and staff.

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 and 8-606 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 applicants, Balmoral Golf Corporation and First Balmoral Corporation, and may be transferred to another owner or lessee, provided that the owner or lessee submits in writing to the Board of Zoning Appeals, prior to the issuance of a Non-Residential Use Permit, a commitment to comply with the following conditions. This approval 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 entitled "Balmoral", prepared by Dewberry & Davis/Leigh A. Conrad & Assoc., Inc., dated April 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 for a Commercial Golf Course and related facilities 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 (SP) plat by Dewberry & Davis/Leigh A. Conrad & Assoc., Inc., dated April 27, 1992, and these development conditions.
5. Subject to the approval of an amendment to the Comprehensive Plan, the property shall be served by public water as approved by the Fairfax County Water Authority and a private septic system as approved by the Fairfax County Health Department. If the applicant should prefer to not provide public water, the golf course may be developed with private wells as approved by the Fairfax County Health Department. Any private wells and/or septic fields shall be located on the property so as not to interfere with or disturb any vegetation within the thirty-five foot transitional screening yard, not to reduce the 97 acres of undisturbed forest land, not to disturb any cemetery, nor shall they disturb any historically significant site identified by the County's heritage resources/heritage preservation staff as to remain undisturbed. If a private septic system is not approved by the Fairfax County Health Department to serve this site, this special permit shall be deemed to be null and void.
6. If operated as a country club, the maximum number of memberships shall be 1200 and a maximum of 300 parking spaces shall be provided. If operated as a commercial pay-and-play golf course with accessory uses, there shall be a maximum of 200 parking spaces, notwithstanding the representation shown on the Special Permit Plat. All parking for this use shall be on site. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.
7. Notwithstanding the representation on the Special Permit Plat, there shall be no more than 50 employees on site at any one time for the pay-and-play golf course and parking shall be provided in accordance with the Zoning Ordinance.
8. A six (6) foot high chain link fence with black wire shall be provided around the entire golf course, shall be located between the golf course and the transitional screening yard, and shall fulfill the barrier requirements of the Zoning Ordinance.

The existing trees within the transitional screening yard shall be preserved to provide screening along the periphery of the area of the golf course as approved by the Urban Forestry Branch of the Department of Environmental Management (DEM), and shall fulfill the transitional screening requirements of the Zoning Ordinance. The transitional screening area shall be thirty-five (35) feet wide along the southern lot line adjacent to the cluster subdivision lots and shall be forty-three (43) feet wide along all other lot lines of the golf course. An eight-foot wide equestrian trail shall be provided within the transitional screening yard but in no event shall trees be removed for the construction of the trail. A public access easement for the equestrian trail shall be recorded in the land records of Fairfax County prior to site plan approval.

9. Proper pool cleaning procedures shall be implemented. Pool waters not discharged through the pool's filter system shall be properly neutralized prior to being discharged during seasonal draining and/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.
10. A limits of clearing and grading and a tree preservation plan to include any monarch and/or specimen trees shall be submitted to the Fairfax County Urban Forestry Branch for review and approval prior to Site Plan approval. These plans shall provide for tree preservation and protection to the satisfaction of the Urban Forestry Branch. Within the approximately 233.03 acre golf course, clubhouse and drainfield area, as designated on the SP Plat, a minimum of 97 acres of forest land, excluding any area within the Virginia Power easement, shall be preserved as wooded open space outside of the limits of clearing and grading. The applicant shall have the right to clear underneath the trees (the understory) within preservation areas and to provide understory plantings, subject to the approval of the Urban Forestry Branch, DEM.
11. The applicant shall have the right to modify the golf course layout, contingent upon the preservation of monarch and/or specimen trees identified by the Urban Forestry Branch, DEM, the provision of 97 acres of forest land and the transitional screening yards; the applicant shall have the right to modify the footprints and locations of the buildings shown so long as they are located within the building envelope formed by the boundaries of the buildings shown on the plat, do not exceed a maximum of 50,000 gross square feet, and the minimum distances to lot lines remain as shown on the plat; and the applicant shall have the right to modify the parking lot shown on the SP Plat so long as (1) any additional spaces are located adjacent to the spaces shown on the Plat and are no closer than 75 feet to any lot line and (2) any reduction of spaces are utilized as landscaped open space.
12. All exterior lights shall be shielded, if necessary, to prevent the projection of light or glare onto adjacent properties and roadways. If parking lot lighting is installed, such lighting shall be the low intensity type on standards not to exceed twelve (12) feet in height and shielded as described above. If tennis court lights are provided, they shall not exceed 22 feet in height, shall be shielded as described, and shall shut off automatically by 11:00 p.m. There shall be no illumination of the eighteen-hole golf course.
13. The hours of operation shall be limited to the following:  
  
Golf Course: Dawn to dusk.  
Swimming Pool: 7:00 a.m. to 10:00 p.m.  
Club house facilities: 6:00 a.m. to 1:00 a.m.
14. The construction of the accessory uses such as the clubhouse, pool, and tennis courts and their associated parking may be phased over a ten (10) year period from the approval of this special permit; provided, however, that the entire golf course with associated parking, transitional screening and stormwater management for the entire site, and all road improvements shall be provided in the first phase before the issuance of the Non-Residential Use Permit. Road improvements shall be provided as set forth elsewhere in these conditions.
15. The applicant shall prepare a management plan for the application of fertilizers, herbicides and pesticides which shall be reviewed, approved and monitored by the Northern Virginia Soil and Water Conservation District. This plan shall be designed to control/manage the application of fertilizer, herbicides and other chemicals to protect water quality in the Occoquan Watershed and to encourage the application of fertilizers primarily during the fall months of the year when impacts of nutrients in the reservoir are less severe.

16. For one year preceding the initiation of grading, or, if construction is scheduled to occur sooner than one year from the date of final approval of this special permit, then, beginning within thirty (30) days following approval of this special permit; for the period of construction on the site; and for two (2) years following the issuance of the Non-Residential Use Permit for the golf course, water quality grab samples shall be obtained during each of the four seasons of the year from Johnny Moore Creek at locations immediately upstream and downstream of the golf course drainage area. The samples shall be analyzed to determine the presence and concentration of specific herbicides and pesticides being applied to the golf course and to determine if the goals of the Management Plan and the water quality regulations of the County, State and Federal governments are being met. The sample collection and testing protocol shall be submitted to the Fairfax County Health Department for review and approval prior to initiation. The water quality grab samples shall be obtained from Johnny More Creek at the locations indicated on the SP Plat during each of the four seasons of the year and the results provided to the Fairfax County Health Department and the Environmental Branch of OCP.
17. In order to prevent groundwater contamination, all surfaces used for chemicals, machines, vehicle storage or cleaning and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile liner designed to remove contaminants and pollutants. A written maintenance plan for the system shall be developed. The catchment system design and the maintenance plan for this system shall be approved by the Department of Environmental Management (DEM). In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premises. The emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.
18. If underground storage tanks (USTs) will be utilized for the storage of petroleum products or other hazardous materials, the regulations of the Environmental Protection Agency (EPA) shall be followed.
19. Wetland areas of the golf course, as designated by the Director, DEM, at the time of site plan approval or final grading plan approval, shall be preserved within the limits of clearing and grading and shall be shown on the site plan and final grading plan as wetlands preservation areas. These wetland areas may be designed as golf course hazard areas (features of the golf course designed to challenge play but not to include tees, greens or manicured fairways), and shall be maintained to preserve the wetlands. A written wetland/habitat conservation plan shall be developed and approved by the Office of Comprehensive Planning and DEM prior to site plan approval to specifically address the golf course operational management of these designated wetland areas to ensure these areas are managed to function as natural wetlands within the golf course and that they will remain as wetland preservation areas for the life of the golf course. Approval from the Army Corps of Engineers shall be obtained, if necessary, for impacts to the wetlands areas on site.
20. Stormwater management Best Management Practices (BMPs) in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual and that meet the requirements of the Chesapeake Bay Preservation Ordinance shall be provided if determined to be needed by the Director, DEM. Stormwater management ponds may be wet or dry as determined by the Director, DEM. If approved by the Director, DEM, BMP ponds located outside of the boundaries of the special permit may be used to satisfy this requirement.
21. The applicant shall retain a qualified archaeologist to perform Phase I and Phase II level archaeological studies within the areas to be cleared and graded (buildings, roads, golf course, drainfield, etc.) and to oversee any contracted or grant-funded studies that may be done as determined by the heritage resources/historic preservation staff of Fairfax County. The responsibilities of the applicant's archaeologist shall be as set forth in a written agreement between the applicant and the Fairfax County heritage resources/historic preservation staff. The Fairfax County heritage resources/historic preservation staff shall have access to the site, at their own risk, before and during clearing and grading of the property, provided that they do not interfere with or delay the applicant's construction schedule.
22. All cemeteries and burial places, including those currently known, as well as those that may be discovered during construction, which are located outside of the public open space shall be preserved in outlots as approved by the Director, DEM. The cemeteries shall be fenced with a suitable enclosure such as a stone wall or wrought iron fence as approved by DEM. Two cemeteries are known to exist within the area of the proposed golf course; one is located adjacent to Union Mill Road between the proposed 2nd tee and the 16th green and the other is near the proposed 13th tee as shown on the SP Plat. If any other burial sites are encountered during development, work in that area shall cease and required procedures taken to notify Fairfax County authorities. In addition, the Director of the Office of Comprehensive Planning shall be notified and the applicant shall secure the necessary permits to remove any remains or shall protect such areas in outlots as outlined above.

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23. To protect all sites identified as historically significant sites on the SP Plat, those sites shall be enclosed with temporary construction fencing prior to and during any construction activity within 100 feet of such sites.
24. Union Mill Road shall be realigned at Compton Road to align with the proposed spine road. The construction shall be to a standard as required by VDOT and as generally shown in Exhibit A. The associated right-of-way for Compton and Union Mill Roads shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval for the golf course, if not before. If deemed necessary by VDOT, the applicant shall provide a new driveway for the lot at Tax Map 74-2 ((1)) 9. The design and construction of the intersection and driveway shall be as approved by DEM and VDOT and shall be provided by the applicant prior to the issuance of the Non-Residential Use Permit for the golf course. Any portion of parcel 74-2((1))10A not required for the intersection realignment shall be dedicated to the Board of Supervisors.
25. The realigned Union Mill Road/Compton Road intersection shall be constructed with right and left turn deceleration lanes on all approaches. This construction will be to a standard as required by VDOT and as generally shown on Exhibit B.
26. The applicant will use best efforts to acquire any off-site right-of-way which may be needed for the realignment of Union Mill Road at its intersection with Compton Road and the spine road. In the event the applicant is unable to acquire needed right-of-way, the applicant shall request that the County acquire the right-of-way by means of its condemnation powers at applicant's expense. It is understood that the County shall be under no obligation to do so. It is further understood that the applicant's request will not be considered until it is forwarded, in writing, to the Director, Land Acquisition Division, Department of Public Works, accompanied by: (1) plats, plans and profiles showing the necessary right-of-way property; (2) an independent appraisal, by an appraiser not an employee of the County, of the value of land taken; (3) a sixty (60) year title search certificate of the right-of-way property to be acquired; and (4) funds, to be held in escrow, in an amount equal to the appraised value of the property to be acquired, including damages, and the cost of acquisition, including attorneys fees. It is also understood that in the event the property owner of the right-of-way property to be acquired is awarded more than the appraised value of the property in a condemnation suit, the amount of the award and any damages to the residue, in excess of the funds held in escrow, shall be paid to the County by the applicant within fifteen (15) days of said award. If the County elects not to use its powers of eminent domain to acquire right-of-way that is required for the site to be determined at the time of posting by a construction cost estimator approved by the County Executive or his designee). The above appraisal and estimate shall be at applicant's expense.
27. Ancillary easements, deemed necessary for road improvement purposes by DEM or VDOT, shall be provided for Compton Road and Union Mill Road along the full frontage of the property upon demand by the Director, DEM or VDOT.
28. Right-of-way along the site's frontage on Compton Road shall be dedicated to 45 feet from centerline. Dedication of right-of-way to 57 feet from centerline shall be provided in the area of the right turn deceleration lane. The right-of-way shall be dedicated to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or upon demand by Fairfax County, whichever first occurs.
29. The spine road from Compton Road southward to the golf course entrance shall be constructed within 52 feet of right-of-way to PFM public street standards for a two-lane roadway generally as shown on the SP Plat and shall be dedicated in fee simple to the Board of Supervisors prior to the issuance of any Non-Residential Use Permit.
30. Approval shall be obtained from VDOT for all entrances to the site. All streets and turn lanes shall be designed and constructed in accordance with VDOT standards.
31. Prior to the issuance of the Non-Residential Use Permit, the applicant shall initiate a request for the abandonment/vacation of existing Union Mill Road in the area of the realigned intersection of Union Mill and Compton Roads. The applicant shall provide cash or other surety acceptable to the Director, DEM sufficient to cover the cost of the scarification and revegetation of this abandoned/vacated area prior to the issuance of the Non-Residential Use Permit for the golf course.
32. Cash or other surety acceptable to the Director, DEM sufficient to cover the cost of design, equipment and installation, as determined by VDOT, of a traffic signal at the realigned intersection of Compton, Union Mill, and the spine road shall be provided by the applicant prior to the issuance of the Non-Residential Use Permit (Non-RUP) for the golf course, unless such funds previously have been provided pursuant to the proffers accepted with RZ 92-W-007. In the event this signal has been installed by others, other than the developer of RZ 92-W-007, prior to the issuance of such Non-RUP, then the cost of the design, equipment and installation of the traffic signal shall be paid to DEM prior to the issuance of the Non-RUP, for reimbursement to VDOT or the County, whichever paid for the traffic signal. The



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applicant shall have no further obligation to fund signalization of this intersection if the County has not requested the signal or YDOT warrants have not been met within two years after the issuance of the last Residential Use Permit approved pursuant to RZ 92-M-007 or the Non-Residential Use Permit for the golf course, whichever shall occur later, in which event Applicant's aforesaid cash or other surety shall be released to the applicant.

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, sixty (60) months after the date of approval 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 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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 321, July 28, 1992, (Tape 142), Scheduled cases of:

9:15 A.M. GEORGE MASON UNIVERSITY CATHOLIC CAMPUS MINISTRY, SP 92-B-016, appl. under Sects. 3-102 and 8-301 of the Zoning Ordinance to allow chapel on approx. 88,380 s.f., located at 4521 Roberts Road, zoned R-1, Braddock District, Tax Map 68-2((1))18, 19, 20. (CONCURRENT WITH VC 92-B-069)

9:15 A.M. GEORGE MASON UNIVERSITY CATHOLIC CAMPUS MINISTRY, VC 92-B-069, appl. under Sect. 18-401 of the Zoning Ordinance to allow structure to remain 13.7 ft. from front lot line (40 ft. min. front yard required by Sect. 3-107), on approx. 88,380 s.f., located at 4521 Roberts Road, zoned R-1, Braddock District, Tax Map 68-2((1))18, 19, 20. (CONCURRENT WITH SP 92-B-016)

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. Smith replied that it was.

Regina Murray, Staff Coordinator, presented the staff report, stating that the existing residential structure located on Parcel 20 will be used as an accessory residence or rectory for the chaplain. She said that the proposed chapel would also include offices, a large meeting room, and a lounge which will be used in conjunction with the church use.

Ms. Murray said that, due to dedication of right-of-way along the Roberts Road frontage of the site to accommodate road widening and a right turn deceleration lane, the front yard setback for the existing residential structure will be reduced from 33.7 feet to 13.7 feet; the applicant was requesting concurrent approval of a variance to the front yard setback requirement of the R-1 District, to allow the existing residential structure to remain 13.7 feet from the front lot line, representing a variance of 26.3 feet.

Ms. Murray said that a modification of the transitional screening requirement along the southern boundary and a modification of the barrier requirement along all lot lines in favor of that shown on the special permit plat have been requested by the applicant.

Ms. Murray said that, with development and conformance with the special permit and variance plat and the Proposed Development Conditions which provide for adequate screening and protection from noise and glare, the proposed use will be in harmony with the recommendations of the Comprehensive Plan regarding compatibility with potential development of existing areas. Staff, therefore, recommended approval of the applications.

Mr. Pammel asked Ms. Murray about Development Condition 10, where it states: "...in the event that any of the 39 off-site parking..." and asked if it should be 124 instead of 35. Ms. Murray said that the applicant is required to provide a minimum of 76 parking spaces on site; they have noted that they will have a total of 124 available, 39 of which would be on site; however, in order to meet the minimum parking space requirement the applicant must have at least 35 additional parking spaces, and they have been given approval for additional parking spaces over the guaranteed 35 off site, although they will have more.

Mrs. Harris referred to a letter from Charles Shaw and Clarice Anderson about detention water runoff for Lot 134A to the north and asked Ms. Murray if that had been addressed by the Development Conditions. Ms. Murray said that it had been addressed in the applicant's

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revised plan of June 12, 1992, showing that the storm runoff would be accommodated by a pipe into a storm sewer and staff believed that would as much as the applicant can do at this stage. Ms. Murray said that it will be finally engineered and signed off at the time of site plan review.

Thomas W. Smith, III, with the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, represented the applicant, stating that he had three more letters to submit to the BZA in support of the applications. He said that the proposed use of the chapel was to serve the George Mason University community; it is not a typical parish within the Catholic Church; it does not have parish status; it will not cater to families; there will be no child education; it will not administer all of the sacraments nor have infant baptism.

Mr. Smith said that the chapel will be located on Roberts Road on three parcels of property: Parcels 18, 19, and 20. As originally submitted, the application only included two parcels of property: Parcels 19 and 20. He said they have added Parcel 18 which currently has a fraternity house located on it and the structure will be removed. He said that the chapel will contain 294 seats and will have a gross floor area of 5,568 square feet, for an Floor Area Ratio (FAR) of 0.08; the FAR permitted under the Ordinance is 0.15. Mr. Smith advised that the existing house on Parcel 20 will remain and is the residence of a full-time chaplain who will continue to live in the existing house. He said the chaplain, Father Robert C. Cilinski, was present.

Mr. Smith said there is an existing 30 foot wide prescriptive easement for Roberts Road, owned by the Catholic Campus Ministry in fee simple, which will be dedicated to the County; they will dedicate an additional 20 feet of right-of-way for Roberts Road. The applicant will also add a deceleration lane, extending the pavement from 15 feet to 19 feet from centerline.

Mr. Smith said that the applicant did not have an exceptions to the Development Conditions except for Condition 10, which states in part, "...If the minimum parking requirements of the use cannot be satisfied, the number of seats in the church shall be reduced to comply with the Zoning Ordinance requirements..." He said he believed the requirements of the Ordinance were being met, in that permission for off-site parking had been granted to the applicant by the University. Mr. Smith said that the author of the letter was present: Stanley E. Taylor, Associate Vice President of the University. To the extent that the church should ever lose that permission from the state run university, the Zoning Administrator would then require the applicant to take out some of the seats. Mr. Smith also said they disagreed with the last sentence which required the County Attorney to approve any agreement between the two entities because he did not believe it was necessary for the County to have to approve an agreement between a state run university and the chapel. He said that, if the BZA saw fit to include that sentence, they would ask to have the word "permanent" removed. He noted that staff did not object to removal of the word "permanent," but did object to removing the last sentence. Mr. Smith said that the state does not grant permanent agreements to use facilities.

Mr. Smith said that they were proposing a stormwater drainage system which is a 60 inch corrugated metal detention pipe, located on the eastern boundary of the parking lot, approximately 260 feet long, and will drain in the northeast corner of the property, down to the creek. He said they had met with representatives of Department of Environmental Management (DEM), who had approved of their plan.

Mr. Smith distributed an architectural rendering to the BZA members, which he said is compatible with the residential neighborhood and a good transition between the University and the neighborhood.

Father Cilinski came forward and said that he had served at George Mason for the past six years and lived in the existing residence for which the applicant was seeking a variance. He said the house was built in 1910 and was a homestead of some of the neighbors and considered very special by them. Father Cilinski said the students and staff at the University had long dreamed of having a chapel instead of a classroom, from which they would not be bumped for other activities, along with having an environment conducive to the intent of the chapel. Father Cilinski spoke at length of the spiritual significance of having the chapel, as well as the existing good relationship between the worshipping students and the neighbors.

Others speaking in favor of the chapel were: Mr. Taylor, previously mentioned as an officer of the University; John Powderly, II, 3301 Highland Lane, Fairfax, Virginia; Hortensia Cadenas, 4601 Tapestry Drive, Fairfax, Virginia; Robert J. Hickey, Jr., 10114 Glenmore Road, Fairfax, Virginia; Alex L. Martin, 4609 Roberts Road, Fairfax, Virginia; and K. Bruce Miller, 4525 Roberts Road, Fairfax, Virginia. The comments included the fact that the chapel would be run by students who would be grateful to finally have their own chapel; the reconfirmation of the University's commitment to the chapel; many neighbors with nothing but kind comments and best wishes for the acceptance of the application for the chapel and the variance application.

Stating that they did not object to the church but expressing concerns were: Charles Shaw, 4705 Tapestry Drive, Fairfax, Virginia; Bob Robbins, 4617 Roberts Road, Fairfax, Virginia; Guy Jerakis, adjacent to Lot 18, which is the fraternity property just acquired by the church. The issues mentioned were that a screening fence was required at the parking lot

level to ameliorate glare, drainage overflow and runoff, erosion, lack of consistency with the Comprehensive Plan, setting of a precedent, noise of the students going to and from the chapel and installation of a barrier to screen the noise, insufficient trees being left in place and immaturity of new trees, increase of impervious surfaces, the height of the steeple, and the possibility of the chapel becoming a parish.

Mr. Smith addressed the concerns, stating that they will have a 25 foot buffer to prevent glare, with added shrubbery along the parking lot. He did not believe that installing another fence was appropriate. Mr. Smith said that he had already addressed traffic which he believed would be improved substantially with the number of curb cuts and they do meet the sight distance requirements; the number of people using the property was stated to be 35 to allay those concerns; the height of the chapel complies with the Ordinance and with the bulk requirements. Mr. Smith said that he had never before heard from Mr. Jarakis, even though they had sent numerous types of notices out to the community, and he had no idea there was any opposition. Mr. Smith said that there was not an existing house located on Mr. Jarakis' property north of the applicant's property; there is a house located on the property next to Mr. Jarakis' property, owned by the Andersons, and they have submitted a letter in support of the applications. Mr. Smith repeated the tree planting plan and said that, if there was any concern about drainage, Tony Moore was present and could address any questions.

Mrs. Thonen told Mr. Smith that it appeared the fence was going along the entire eastern side; whereas, in listening to him speak she had believed it was only going part of the way. Mr. Smith said that there is an existing fence on the eastern boundary that goes about 1/3 to half way along and they will extend it along the entire eastern boundary. He said they will install shrubbery along the parking lot which will not extend along the entire length of the parking lot and they would agree to extend it further if it would contribute to mitigating the glare of headlights. Mr. Smith said that they would not put a fence on the northern border.

Mrs. Harris said that, according to the testimony and a site visit, there is a significant drop from the subject property to the adjoining properties. In answer to her question about the height of the fence and its effect in screening headlights, Mr. Smith said that the fence on the eastern property line is not intended to screen headlights. He said that they will screen that area with 25 feet of transitional screening consisting of large evergreens with an ultimate height of 40 feet, located every ten feet; and mid-sized evergreens with an ultimate height of 20 to 40 feet, located every 5 feet; in addition to that, they will install a row of shrubbery along the parking lot, which will be high enough to block out any headlights because they would be on top of the slope. Mrs. Harris said that she was not convinced and asked Mr. Smith if they had considered putting a low wall around the parking lot to specifically screen the headlights. Mr. Smith said they were reluctant to do that because they do not want to fence off 25 feet of the property. He said he understands that the land slopes down, but the canopy of the evergreens will certainly seal the headlights, in addition to a row of thick shrubbery, of a height agreed upon, along the entire length of the parking lot, to ensure they would block any headlights.

Mr. Smith said that the variance application was being submitted to clarify the relationship between the existing house and Roberts Road; there is currently a setback of 33.7 feet; as a result of the dedication, the setback will be 13.7 feet. The house was constructed in 1910 which predates the Ordinance, so it is a lawful non-conforming use.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said that he would first like to note the very positive contribution that the Ministry has made to the George Mason University, as well as to the community and that is verified by letters received by the BZA members earlier, which he asked to have incorporated into the record, specifically the one from the Juvenile Detention Center and the other two letters. He said there was a great deal of volunteerism taking place and it working to the benefit of the overall community, which is a very positive aspect of this particular ministry.

Mr. Pammel made a motion to grant SP 92-B-016, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 21, 1992, as amended. The Conditions amended were 10, 11 and 14, adding Conditions 15 and 16, as may be found in the Resolution in their amended state.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-B-016 by GEORGE MASON UNIVERSITY CATHOLIC CAMPUS MINISTRY, under Sections 3-102 and 8-301 of the Zoning Ordinance to allow chapel, on property located at 4521 Roberts Road, Tax Map Reference 68-2(1)18, 19, 20, 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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 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-1.
3. The area of the lot is 88,380 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 and 18-404 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 Architects Group Practice) and dated June 12, 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 The Architects Group Practice dated June 12, 1992.
5. The maximum number of seats in the chapel shall be limited to 294.
6. Transitional screening and barriers shall be provided along the eastern, southern, and northern lot lines as depicted on the Special Permit/Variance (SP/VC) Plat. Where encroachment by the parking lot turnaround area exists along the southern lot line, where the full width of plantings cannot be provided, the width shall be modified and plantings shall be provided outside of this area as shown on the SP/VC Plat. The nature and amount of all plantings on site shall be provided as determined by the Urban Forestry Branch, Department of Environmental Management (DEM).
7. Erosion and sedimentation control measures shall be used during on-site construction to protect streams and storm sewers from excessive erosion due to construction activities, as determined by DEM at site plan review. A minimum of 80% sediment trapping efficiencies shall be achieved on site. In the event siltation fencing is used during grading and construction activities the fencing shall be 100% oversized.
8. The entrance to the site shall be designed to provide adequate sight distance as determined by VDOT at the time of site plan review .
9. The applicant shall secure permission from VDOT prior to locating the proposed pedestrian facilities associated with the pedestrian plaza within the Roberts Road right-of-way. In the event permission is granted by VDOT, the applicant shall be responsible for the maintenance of the aforesaid pedestrian facilities. In the event permission is not granted and/or a private maintenance agreement cannot be reached, any pavers shown within the right-of-way shall be removed.
10. A total of thirty-nine (39) parking spaces shall be provided on-site as shown on the SP/VC Plat. In the event any of the 35 off-site parking spaces allocated for the proposed use become unavailable in the future, the applicant shall submit documentation to the Zoning Administrator which demonstrates that the minimum parking requirements for the use are satisfied as determined by the Zoning Administrator. Prior to site plan approval, an agreement shall be submitted in acceptable form which assures availability of the off-site parking spaces.
11. A pedestrian walkway shall be provided along Shenandoah Drive to Roberts Road prior to the issuance of a Non-Residential Use Permit for the proposed chapel in order to provide pedestrian access from the off-site parking area to the site. Appropriate warnings for pedestrian traffic on Roberts Road shall be provided by signs and/or flashing lights, subject to VDOT approval.

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12. Right-of-way up to thirty-five (35) feet from the centerline of Roberts Road along the Roberts Road frontage of the site shall be dedicated to the Board of Supervisors, in fee simple, at the time of site plan approval or within sixty (60) days upon demand by DEM or VDOT, whichever first occurs. The applicant shall construct frontage improvements as determined by VDOT including curb, gutter, and a right-turn/deceleration lane as depicted on the SP/VC Plat dated June 12, 1992.
13. 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.
14. All proposed signs on-site shall conform to the provisions of Chapter 12, Signs of the Zoning Ordinance.
15. Off-site water runoff shall comply with all County Ordinances after development.
16. A solid hedge, a minimum of four (4) feet in height, shall be placed along the edge of the parking lot adjacent to the eastern lot 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 unless 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 church and related facilities use has been established by compliance with these development conditions. The Board of Zoning Appeals may grant additional time to establish the use 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 August 5, 1992. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel made a motion to grant VC 92-B-069, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 21, 1992.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-069 by GEORGE MASON UNIVERSITY CATHOLIC CAMPUS MINISTRY, under Section 18-401 of the Zoning Ordinance to allow structure to remain 13.7 ft. from front lot line, on property located at 4527 Roberts Road, Tax Map Reference 68-2(1)18, 19, 20, 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 July 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-1.
3. The area of the lot is 88,380 square feet.
4. The required additional right-of-way for Roberts Road places the existing structure, which was constructed in 1910, within 13.7 feet of the lot line; therefore, required compliance would result in a demonstrable hardship, approaching confiscation.

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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 existing residential dwelling shown on the plat prepared by Architects Group Practice revised through dated June 12, 1992 and 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, 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 7-0.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1992. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:40 a.m. and reconvened at 10:50 a.m.

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Page 326, July 28, 1992, (Tape 2), Scheduled case of:

9:30 A.M. LARGENT'S GREAT FALLS STABLES, INC., SP 92-D-028, appl. under Sect. 3-E03 of the Zoning Ordinance to allow riding and boarding stable, on approx. 52.96 acs., located at 10001 Arnon Chapel Rd., zoned R-E, Dranesville District, Tax Map 8-3(1)pt. 19Y, pt. 19Z, pt. 24V, pt. 24Z, pt. 42V, pt. 42Z.

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. Johnson replied that it was.

Lorrie Kirst, Staff Coordinator, presented the staff report, stating that the stables have been in operation for over twenty years; the most recent special permit expired in 1984; the applicant is requesting legitimization of the existing application, with no change in use or

additional structures proposed. Ms. Kirst said that, because of a conversation she had with the applicant a few moments ago, she would like to recommend a few changes to the Proposed Development Conditions, based on previous misinterpretation by staff of the statement of justification.

Ms. Kirst referred to Proposed Development Condition 5, referencing a maximum of 45 students present at any one time for riding lessons; she said the number should be changed from 45 to 15. Chairman DiGiulian asked what the reason was for this request and Ms. Kirst said it was her understanding that reference was made in the statement of justification to three sessions of 15 students and she interpreted that to be three times fifteen, which is 45. In her conversation with the applicant, she learned that the total number of students at one time actually is 15.

Ms. Kirst referred to Proposed Development Condition 12, adding the phrase, "...if required by VDOT..." and leaving the remaining language the same. She said the rationale was that there is an existing entrance.

Ms. Kirst referred to Condition 14, regarding the number of parking spaces, changing the number from 76 to 46, based on the revision to the number of students in Condition 5.

Mrs. Harris asked Ms. Kirst if there would be any riding shows or competitions and Ms. Kirst said that perhaps the applicant could address that directly.

Stephen S. Johnson, 10000 Arnon Chapel Road, Great Falls, Virginia, said he was the owner, and stated that staff had provided an accurate summary. He said the reason for being before the BZA was to request a renewal of an application which had been approved on three prior occasions. He said it expired and was not renewed because they had been advised not to take any further steps until they were instructed to do so, when the Agriculture & Forestry District went into effect in 1985. He said they had only recently received instructions to renew the application. Mr. Johnson said the confusion in the figures arose out of the calculations and figures he used in arriving at the parking requirement. He said that, in reviewing the standards set forth in the Ordinance, there was no clear direction about what the standards should be for this kind of a facility; the only standard used is for a normal commercial operation. He said he had based the requirement on the maximum load on the facility or the number of people present at any one hour. He said they limit the number of classes offered to three per hour and, recently, they have reduced that to two per hour; the average attendance runs between 5 and 8 in a group, so the average hourly participation is about 15.

Mr. Johnson said they had a schooling show in the spring and, occasionally, they have one-day combined training events; in those instances they provide parking adjacent to the show area, out of the parking lot area; these occur about three times per year.

Mrs. Harris said that the number of students would need to be stated as an absolute because they could not deal in averages. Mr. Johnson said that was very difficult to do. Mr. Hamneck said he would like to approach the issue in a different way: with the 44 existing parking spaces, was there ever any problem with accommodating all persons on site and Mr. Johnson said they never was any problem. Chairman DiGiulian said that, if the number of persons on site were to be limited, it should be the total number of persons on site and not the total number of students, referring to Mr. Johnson's statement that someone could stop by just to pet a horse. Chairman DiGiulian said he considered the number of parking spaces on site to be adequate, except for the three times a year when there were riding shows.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, asked for clarification of the fact that the site plan said 76 parking spaces and asked if the applicant could address that. Mr. Johnson said that was the very first site plan, when the facility was first developed in 1970; that site plan also showed a larger building than is currently on the site and called for an additional 4,000 square foot building which was never constructed. It was his opinion that the developers believed that, since they had scaled the entire facility down, they didn't require 76 spaces. Mr. Johnson said that the plan before the BZA said 44 parking spaces, which was the number approved on two prior occasions.

Larry Barnett, 9930 Arnon Chapel Road, Great Falls, Virginia, directly across from the Great Falls Sports Center entrance and the parking lot, said that he was very familiar with the adequacy of the existing parking. He said that, in the two years that he owned his property, he had never seen parking to have been a problem, the parking lot has never been more than half full at any given time, with the exception of the shows. Mr. Barnett said the facility made great neighbors and he would like to see them remain.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 92-D-028, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 14, 1992, as amended: Condition 5 - change wording to "A maximum of 45 persons shall be present on site at any time, except for the three times a year when there are horse shows." Condition 12 - change wording to start with, "If required by VDOT, the entrances into Arnon Chapel Road..." and drop "...if required by VDOT..." Condition 14 - change wording to read 44 automobiles instead of 76, and adding that all parking shall be on site.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-D-028 by LARGENT'S GREAT FALLS STABLES, INC., under Section 3-E03 of the Zoning Ordinance to allow riding and boarding stable, on property located at 10001 Arnon Chapel Rd., Tax Map Reference 8-3(1)pt. 19V, pt. 19Z, pt. 24V, pt. 24Z, pt. 42V, pt. 42Z, 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 July 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-E.
3. The area of the lot is 52.96 acres.
4. The use has been in existence since 1970.
5. It is a beautifully maintained riding area and serves Fairfax County by providing riding lessons and is well-connected with the riding trails in the area.
6. This is a very good use of the property under the Comprehensive Plan.
7. The traffic is not a burden to either Arnon Chapel Road or Walker Road.
8. The land use issues have been well-resolved with the Development Conditions.

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 18-404 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 uses(s) indicated on the special permit plat, entitled "Largent's Great Falls Stable" prepared by Gordon Associates and dated May 1, 1992, 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 hours of operation shall be limited to between the hours of 8:30 a.m. and 9:00 p.m., seven days a week.
5. A maximum of 45 persons shall be present at any one time except at the time of the three horse shows.
6. An eight-week riding lesson day camp for children ages 8-14 may be operated Monday through Friday during the months of July and August. The hours of operation of the riding lesson day camp shall be limited to between the hours of 9:00 a.m. to 5:00 p.m.
7. A maximum of eight employees shall be on the site at any one time.
8. A Soil and Water Conservation Plan shall be prepared based on the recommendations of the Northern Virginia Soil and Water Conservation District. The recommendations contained in this Conservation Plan shall be adhered to and implemented. A copy of the Conservation Plan shall be submitted to the Zoning Administrator prior to February 10, 1993.
9. The maximum number of horses maintained on site shall be 80 unless a lesser number is approved in conjunction with the Soil and Water Conservation Plan referred to in (7) above.
10. The freestanding sign located adjacent to the entrance on Arnon Chapel Road may remain provided that it complies with the provisions of Article 12, including the obtainment of the necessary sign permits.



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11. The riding ring light shall be on standards which do not exceed twenty (20) feet in height. 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. The use of lighting for the outdoor riding ring shall be limited to the months of October through March and between the hours of 4:30 p.m. and 9:00 p.m.
12. If required by the Virginia Department of Transportation (VDOT), the entrance onto Arnon Chapel Road shall meet the VDOT entrance standards.
13. A method approved by the Health Department to dispose of manure shall be used.
14. The existing parking lot shall be expanded in order to accommodate a minimum of 44 automobiles and the largest number of van/trailers expected on the site at any one time. Any additional parking areas shall have a minimum setback of 25 feet from all property boundaries. All parking shall be 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.

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 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 6-0. Mr. Ribble 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 5, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 329, July 28, 1992, (Tape 2), Scheduled case of:

Mrs. Thonen advised that a member of the Board of Supervisors from the Mt. Vernon District, who is also a former member of the Board of Zoning Appeals, (BZA) was present and asked that he be recognized. The BZA members welcomed Gerald Hyland.

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Page 329, July 28, 1992, (Tape 2), Scheduled case of:

9:45 A.M. VULCAN ANNUAL REVIEW

Mr. Hammack said that he had read the report and it was almost a glowing report and it appeared that Vulcan Quarry met or exceeded all applicable County Standards. He asked the other members if they found any areas which did not comply.

Greg Riegler, Staff Coordinator, said that Mr. Hammack was correct and that it was staff's opinion that Vulcan Quarry was in compliance with all conditions imposed and all other applicable requirements. He said that he wished to make the BZA aware that the applicant had a plan underway to expand the quarry to the north and that a special permit application will come before the BZA this fall. Mr. Riegler advised that the applicant's agent, Mr. Anderson, was present if the BZA had any specific questions about the current operation of the quarry.

Mr. Pammel referred to the Air Pollution Control Division section and remarked that the 1991 mean TSP levels were 62.4 which actually is above the standard of 60; although, technically you could say they comply, he did want to point that out. Mr. Riegler said that he believed the control analysis covered it.

Mr. Hammack referred to ug/m<sup>3</sup> and asked what ug represented. Mr. Riegler said that it was a measuring increment used by Air Control personnel

Mr. Hammack made a motion to accept the 1991 Annual Report for Vulcan Quarry. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 330, July 28, 1992, (Tape 2), Scheduled case of:

10:00 A.M. THOMAS J. ROTHER APPEAL, A 92-M-010, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant's retail sales operation occupies more than 40% of the above-ground gross floor area of the establishment in violation of Par. 4 of Sect. 5-505 of the Zoning Ordinance, on approx. 7,242 acres., located at 5576 General Washington Dr., zoned I-5, Mason District, Tax Map 81-1((9))27.

Mrs. Harris advised that the Board of Zoning Appeals had a letter requesting a deferral. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that this appeal was very similar to another appeal scheduled for October 6 and recommended that this appeal be scheduled for the same date, at 10:15 a.m. Mr. Kelley so moved; Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 330, July 28, 1992, (Tape 2), Scheduled case of:

10:15 A.M. BRIAN P. AND SUSAN H. DIOM APPEAL, A 92-M-008, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the determination of the Director of the Department of Environmental Management that the appellants' proposed "Gift Lot" subdivision of Lot 35 of the Fairland Subdivision must comply with certain provisions of Chapter 101 of the County Code, the Subdivision Ordinance, and the Public Facilities Manual, on approx. 52,916 sq. ft., located at 5021 Grafton St., zoned R-2, Mason District, Tax Map 72-3((3))35.

Mrs. Thonen advised that a request for deferral had been sent to the Board of Zoning Appeals. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the reason for the request was that the appellant believed they could work out their problem without coming before the Board. She said she had discussed this with the Zoning Administrator and the appellant and they had agreed to defer to November 10, 1992 at 10:00 a.m. Mrs. Thonen so moved. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 330, July 28, 1992, (Tape 2), Action Item:

Approval of Resolutions from July 21, 1992 Hearing

Mr. Hammack made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris and Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 330, July 28, 1992, (Tape 2), Action Item:

Approval of Minutes from May 5, 1992 Hearing

Mr. Pammel made a motion to approve the minutes, subject to one correction on page 26, fourth paragraph from the bottom, third line from bottom of paragraph, eighth word, "year" should be "years."

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

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Page 330, July 28, 1992, (Tape 2), Action Item:

Memo from Barbara A. Byron  
Regarding Requests for Out-of-turn Hearings

Mrs. Thonen asked if Ms. Byron was aware that the Board was scheduling out-of-turn hearings in order that specific cases be heard before the August recess. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that Mr. Kelley had made a motion some time ago that he would allow staff the flexibility of placing an application on either agenda that might be able to accommodate that particular hearing, which gave staff the flexibility of scheduling a case for one out of three hearing dates.

Chairman DiGiulian said that his personal opinion was that the Board had to retain the right to be able to grant a hearing within less than sixty days, even though they would try not to have to do that. Members of the Board voiced support of Chairman DiGiulian's statement.

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Page 33/, July 28, 1992, (Tape 2), Action Item:

Request for Out-of-turn Hearing  
E.J.W. Enterprises T/A Embassy6 School, SPA 82-C-078

Mr. Pammel made a motion to deny the request. Mrs. Thonen seconded the motion because, she said, staff had a lot to do on this application. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 33/, July 28, 1992, (Tape 2), Action Item:

Request for Date and Time  
Mary Lieu Nguyen Appeal

Mr. Pammel acknowledged that the Zoning Administrator's office had indicated that the application had been timely filed. For that reason, he moved that a time be set for 10:00 a.m. on October 13, 1992. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble was 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 11:30.

Geri B. Bepko

Geri B. Bepko, Substitute Clerk  
Board of Zoning Appeals

John P. DiGiuliano

John DiGiuliano, Chairman  
Board of Zoning Appeals

SUBMITTED: October 27, 1992

APPROVED: November 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 July 30, 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.

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Vice Chairman Ribble 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 Vice Chairman Ribble called for the first scheduled case.

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Page 333, July 30, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT L. AND WILMA W. BIDWELL, VC 92-V-055, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport 7.5 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407), on approx. 11,112 sq. ft., located at 6503 Bluebill La., zoned R-4, Mt. Vernon District, Tax Map 93-1((26))(1)16.

Vice Chairman Ribble said staff had advised him that the applicant had been present in the Board Room but had to leave. Mrs. Harris made a motion to pass over the case until such time as the applicant returned. Mrs. Thonen seconded the motion which passed by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 333, July 30, 1992, (Tape 1), Action Item:

Approval of July 23, 1992 Resolutions

Mrs. Thonen made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 333, July 30 1992, (Tape 1), Action Item:

Unity of Fairfax of the Daily Word, SPA 73-P-007-3  
Additional Time Request

Mrs. Harris made a motion to grant the applicant's request. Mrs. Thonen seconded the motion which passed by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting. The new expiration date is June 29, 1992.

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Page 333, July 30, 1992, (Tape 1), Action Item:

Forthway Center for Advanced Studies, Inc., SPA 78-C-307-1  
Additional Time Request

Mr. Pammel made a motion to grant the applicant's request. Mrs. Harris and Mrs. Thonen seconded the motion which passed by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting. The new expiration date is June 20, 1994.

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The BZA recessed at 9:15 a.m. since the applicant in the first case had not yet arrived. The BZA reconvened at 9:25 a.m.

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ROBERT L. AND WILMA W. BIDWELL, VC 92-V-055

Since the applicant had now arrived in the Board Room, the BZA proceeded with his case.

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. Bidwell replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report. She said the applicants were requesting a variance of 2.5 feet in order to enclose an existing carport 7.5 feet from the northern side lot line.

Robert Bidwell, 6503 Bluebill Lane, Alexandria, Virginia, said there is over 25 feet between his and his neighbor's house and the neighbor supports the request. Mr. Bidwell agreed with all the development conditions.

Vice Chairman Ribble said the statement of justification submitted with the application noted that the lot had converging lot lines toward the front of the lot and there is no other place to construct a garage. Mr. Bidwell said that was correct.

There were no speakers to address the request and Vice Chairman Ribble 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 July 23, 1992. The BZA waived the eight day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-055 by ROBERT L. AND WILMA W. BIDWELL, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport 7.5 feet from side lot line, on property located at 6503 Bluebell Lane, Tax Map Reference 93-1((26))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 July 30, 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-4.
3. The area of the lot is 11,112 square feet.
4. The applicant has presented testimony that the criteria for a variance of the nine standards has been met, specifically the irregular shape of the property.
5. The property lines taper to a narrower frontage and expand out to a greater width in the rear, thus necessitating the need for the variance of this particular side of the property.
6. This is the only place that such a carport could be located.
7. The applicant is merely requesting to enclose an existing carport.
8. There is a drop off in the rear of the property which would prohibit putting any kind of garage in the rear portion of the lot.

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 location of the specific carport enclosure shown on the plat (prepared by Polins, Weyant and Hamm, dated April 21, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.
3. The 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 construction has commenced and has 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 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 and Mrs. Thonen seconded the motion which carried by a vote of 5-0. Mr. Hammack was 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 July 30, 1992. The Board waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 335, July 30, 1992, (Tape 1), Scheduled case of:

9:30 A.M. THOMAS J. AND GRETCHEN A. BOYLAND, VC 92-M-059, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of covered porch 26.9 ft. from front lot line and 8 ft. from side lot line (30 ft. min. front yard required and 12 ft. min side yard required by Sect. 3-307), on approx. 8,100 sq. ft., located at 3047 Heather La., zoned R-3, Mason District, Tax Map 51-4((2))(F)13.

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. Thomas and Gretchen Boyland, 3047 Heather Lane, Falls Church, replied that it was.

Vice Chairman Ribble noted that Ron Derrickson, Planning Technician, had pointed out there was a designation on the plat which stipulated that the plat was not to be used for zoning purposes.

Robby Robinson, Staff Coordinator with the Rezoning and Special Exception Branch, noted that Mr. Metacia, the applicant's surveyor, had come to staff's office, crossed out the notation, and initialed the change. (Mr. Robinson submitted a copy of the plat to the BZA.)

Mr. Robinson presented the staff report. He said the applicants were requesting a variance from the minimum front and side yards in order to construct a front porch to be located 26.9 feet from the front lot line and 8 feet from the side lot line. Mr. Robinson said the Zoning Ordinance requires a setback of 30 feet from the front lot line and 12 feet from the side lot line, thus the applicants were requesting a variance of 3.1 feet and 4 feet, respectively.

In response to a question from Mr. Pammel, Mr. Robinson replied the garage was built prior to 1978 and at that time the garage could be 1.5 feet from the side lot line.

Mr. Boyland said he and his wife would like to construct an open air front porch to maintain the market value of their property, to provide additional living space, and to add to the charm of the neighborhood. He said the design would be in line with the existing 1941 structure.

Vice Chairman Ribble noted that the statement of justification submitted with the applicant noted that the lot was shallow and narrow. Mr. Boyland said since there is a structure that is built off the side it appeared that at one point it had not been considered inappropriate to be that far out. He added that moving the lines both in the front and on the side they believed made the lot unusually shallow.

In response to a question from Mrs. Harris, Mr. Boyland said all the houses are constructed the same distance from the front lot line. He added there is another house with a similar porch on the corner of the street that extends out on to Heather Lane in the same direction that they were proposing.

Mr. Kelley asked if it was an open air porch and Mr. Boyland said it was a screened porch.

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Mrs. Harris asked the applicant to address the hardship issue. Mr. Boyland said he did not know that it produced a hardship, but it would be impractical to construct a smaller porch.

Mrs. Thonen asked if the porch would be any closer to the street than the existing concrete slab. Mr. Boyland said the porch would be approximately 1.5 feet closer.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mrs. Thonen 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 July 23, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application YC 92-M-059 by THOMAS J. AND GRETCHEN A. BOYLAND, under Section 18-407 of the Zoning Ordinance to allow construction of covered porch 26.9 feet from front lot line and 8 feet from side lot line, on property located at 3047 Heather Lane, Tax Map Reference 51-4((2))(F)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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 30, 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 8,100 square feet.
4. The house was built in 1941 and was built at such an angle that it does not meet the side setbacks now and there is no documentation that the house did not meet the side setbacks at the time of construction.
5. There is no other place to construct the porch without a variance.
6. The applicants should be allowed the full use of their property.
7. The porch will be open, thus will not impact the neighbors.
8. The property was bought in good faith and the property is narrow.
9. Since it is an individual request, it will not require a change in the Zoning Ordinance.
10. The strict application of the Ordinance will effectively prohibit or restrict the use of the property.
11. The applicant's request is minimal since it is only 3.1 feet for the front setback and 4.0 feet for the side setback.
12. If the porch had been constructed at the time of the house, a variance would not be needed.
13. The lot is very shallow and if the house had been sited properly a variance would not be needed.
14. The lot is substandard and there will no further encroachment into the side yard.

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 porch shown on the plat prepared by Louis J. Matacic, dated April 28, 1992, and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and all final approvals shall also be obtained.
3. The architectural style and building materials shall be compatible with the existing structure.

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 construction has commenced and has 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 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 4-1 with Mrs. Harris voting nay. Mr. Hammack was 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 August 5, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 337, July 30, 1992, (Tape 1), Scheduled case of:

9:40 A.M. JOHN T. PETRO, JR., VC 92-D-060, appl. under Sect. 18-401 of the Zoning Ordinance to allow an 11 ft. high detached shed/workshop 2.0 ft. from side lot line and 2.0 ft. from rear lot line (10 ft. min. side yard required by Sect. 3-407, 11 ft. min. rear yard required by Sect. 10-104), on approx. 70,400 sq. ft., located at 6637 Fisher Ave., zoned R-4, Dranesville District, Tax Map 40-4((5))79.

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

Robby Robinson, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. He said the applicant was proposing to construct a 11 foot high detached shed/workshop 2.0 feet from the side and rear lot line resulting in variances of 9.0 feet and 8.0 feet, respectively. He said the dwelling on Lot 71 is 95 feet from the shared lot line.

John Petro, 6637 Fisher Avenue, Falls Church, Virginia, said he planned to replace an existing shed and it was the only practical location. He said he had landscaped around the spot in order to minimize the appearance in the back yard. Mr. Petro said he would like to use part of the shed for storage and relocate his workshop from the house to the shed.

In response to questions from the BZA, Mr. Petro said the existing shed is 8 x 8. He said he used flammable substances in his woodworking, which was the reason for wanting to relocate the workshop to the shed. Mr. Petro said he cannot move the shed to the middle of the yard because of the raised flower bed gardens.

A discussion took place between the BZA and Mr. Petro about reducing the height of the shed in order to eliminate the need for the variance to the rear lot line.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to deny the request as she believed that the lot is very regularly shaped with no exceptional topographical problems or size changes. She said the house is located dead center in the lot well within the building restriction lines. Mrs. Harris said she believed the shed could be located in a different location and require a lesser variance to either the rear or the side and could be reduced in height to eliminate the need for the rear variance. Mr. Pammel seconded the motion.

Mr. Kelley said he would offer a substitute motion reducing the height of the shed to 8 feet taking away the need for the variance to the rear lot line and reducing the overall size of the shed to 12 x 18. He said the height of the shed did not concern him.

Following a discussion among the BZA members regarding the height of the shed, Mr. Kelley called the applicant back to the podium. Mr. Petro said the height would allow him to construct the loft, which was not critical but would be nice to have. He added that the lot has a slight grade and the step down box gardens show the grade.

Mr. Kelley suggested granting a 12 x 18 shed with 6 feet coming off the left side thereby eliminating the variance to the rear lot line and lowering the height to 8.5 feet. He said the modifications would require only a 2 foot variance. Mrs. Harris withdrew her motion.

Mrs. Thonen seconded Mr. Kelley's motion to grant in part the applicant's request.

Marilyn Anderson, Assistant Branch Chief, informed the BZA that if the applicant planned to use the structure for more than storage, he would need a variance if the structure was more than 7 feet high.

Mr. Kelley withdrew the substitute motion.

Mrs. Thonen asked staff for a clarification. Mrs. Anderson said there were two separate provisions in the Zoning Ordinance dealing with freestanding structures. She then read Paragraphs 10 and 11 of Section 10-104 to the BZA.

Mrs. Harris called for the question.

Mr. Kelley made a motion to defer the case to allow time for further research. Mrs. Thonen seconded the motion for a deferral. Mr. Kelley said this would allow the applicant time to possibly redesign the shed and submit a revised plat. The motion carried by a vote of 3-2 with Vice Chairman Ribble, Mrs. Thonen, and Mr. Kelley voting aye. Mrs. Harris and Mr. Pammel voted nay. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

Mrs. Anderson suggested October 6, 1992, at 10:00 a.m. Mr. Petro agreed.

Hearing no objection, Vice Chairman Ribble so ordered.

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Mr. Hammack arrived.

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Page 338, July 30, 1992, (Tape 1), Scheduled case of:

9:50 A.M. RODOLFO C. AND EVANGELINE A. SINON, VC 92-P-061, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 19.5 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 8,513 sq. ft., located at 9714 Water Oak Dr., zoned R-3 (Cluster), Providence District, Tax Map 48-3((34))15.

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. and Mrs. Sinon replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicants were proposing to enclose an existing deck for a sunroom 19.5 feet from the rear lot line, thus the applicants were requesting a variance of 5.5 feet. Ms. Greenlief said the dwelling on Lot 1 is approximately 40 feet from the shared lot line.

Evangeline Sinon, 9714 Water Oak Drive, Fairfax, Virginia, said they were requesting approval of a variance to construct the sunroom because she is allergic to bees. Mrs. Sinon said there is no other place to construct the sunroom.

There were no speakers to the request and Vice Chairman Ribble closed the public hearing.

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 July 23, 1992.

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Mr. Pamme said he could not support the motion because he believed that the addition could be constructed at the rear of the garage and extend perhaps 1 foot less than the applicants were requesting. He said it would be very easy to provide an entrance from the existing doorway; therefore, he did not believe there was a hardship.

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**MOTION TO GRANT FAILED**  
**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 92-P-061 by RODOLFO C. AND EVANGELINE A. SINON, under Section 18-401 of the Zoning Ordinance to allow construction of addition 19.5 feet from rear lot line, on property located at 9714 Water Oak Drive, Tax Map Reference 48-3(34)15, 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 July 30, 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(Cluster).
3. The area of the lot is 8,513 square feet.
4. The applicants presented testimony showing compliance with the nine required standards.
5. There is no other location on the house to construct the sunroom.
6. The variance is a minimal request.
7. The house is sited to the middle rear half of the property creating a shallow lot line.
8. The addition will not impact the house to the rear since the house is located 39 feet from the shared lot line leaving 60 feet between the houses.

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 location and the specified addition shown on the plat prepared by RC Fields, Jr. and Associates, dated February 14, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The enclosure 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 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 FAILED by a vote of 2-4 with Mr. Hammack and Mr. Kelley voting aye; Mrs. Harris, Mrs. Thonen, Mr. Pammel, and Vice Chairman Ribble 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 August 5, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 340, July 30, 1992, (Tape 1), Scheduled case of:

10:00 A.M. M. A. MOIENANIN AND AHMAD MOIENANIN APPEAL, A 92-P-011, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that before an office use can be established on appellant's property, the conditions imposed in the approval of Special Exception, SE 91-P-007, must be met, which includes site plan approval, on approx. 1.33 acs., located at 2923, 2925, 2927, and 2929 Gallows Rd., zoned I-5, Providence District, Tax Map 49-4((3))2,3,4,5.

Marilyn Anderson, Assistant Branch Chief, informed the BZA that the appellant was requesting a deferral. Mrs. Harris made a motion to defer the appeal for approximately six months. Mr. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 340, July 30, 1992, (Tape 1), Information Item:

Mr. Hammack informed the BZA that he had talked with Brian McCormack, attorney for the BZA, with regard to the Reston Inn and Conference Center Opinion Letter issued by the Circuit Court. He said Mr. McCormack had advised him that because of the nature of the opinion no order had been entered. It was Mr. McCormack's belief that there might be a joint motion, with all parties involved, for the Judge to reconsider his decision. Mr. Hammack said the attorneys believe that the Judge may have made an erroneous decision.

Vice Chairman Ribble said he believed that the Judge had not understood the issue. Mr. Pammel agreed.

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Page 340, July 30, 1992, (Tape 1), Scheduled case of:

10:15 A.M. BURKE PRESBYTERIAN CHURCH PRESCHOOL, SP 92-B-037, appl. under Sect. 5-303 of the Zoning Ordinance to allow nursery school, on approx. 4.7 acres, located at 5690 Oak Leather Dr., zoned I-3, Braddock District, Tax Map 77-1((1))68.

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. Egan replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report. She said on December 5, 1990, the BZA approved SP 89-S-047 for a nursery school to continue operation within the Burke Presbyterian Church. Mrs. Anderson said the approval was conditioned on a maximum daily enrollment of 48 children with 71 parking spaces being provided for both the church and the child care facility. She said 84 spaces are required for the two uses; however, the

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Zoning Administrator's agent has ruled that the applicant must seek and obtain approval of a shared parking agreement under Section 11-102 of the Zoning Ordinance. Mrs. Anderson said the shared parking agreement has not yet been submitted to the Department of Environmental Management (DEM) or has it been approved by the Board of Supervisors. She said the special permit expired without the applicant seeking additional time from the BZA to establish the use. The new special permit approval is to seek approval of the same use as was previously approved with the same development conditions. In closing, Mrs. Anderson said staff continued to recommend approval of the request.

In response to questions from Mrs. Harris, Mrs. Anderson replied that the shared parking agreement had to be obtained prior to the applicant receiving a Non-Residential Use Permit (NONRUP). She said the applicant needed the BZA's approval for the use before the Board of Supervisors would act on the shared parking agreement.

Jane Kelsey, Chief, Special Permit and Variance Branch, arrived at the Board Room.

Mrs. Anderson said she would prefer Ms. Kelsey respond to Mrs. Harris' questions since she had written the staff report.

Ms. Kelsey explained that during the previous public hearing the BZA had not believed it was necessary for the applicant to obtain a formal shared parking agreement with the church. However, the Zoning Ordinance does not give the BZA the flexibility to relieve the applicant of the requirement, thus the application for shared parking was delayed. Following an interpretation by the Zoning Administrator, the applicant proceeded to try to obtain a shared parking agreement but during the process the special permit expired. Ms. Kelsey said the applicant had gone to the wrong board for approval of additional time and had been under the impression that the additional time had been approved.

Mrs. Harris asked if it was correct that the applicant could not get the shared parking agreement without the approval of the special permit. Ms. Kelsey said that was correct.

Elizabeth Egan, 11470 Meath Drive, Fairfax, Virginia, said they had proceeded in good faith to try to have the parking study done but since the center is a nonprofit organization, it did not have the \$6,000 to initiate the parking study. She said it was her understanding that it was the Board of Supervisors' intention to waive the fee for the shared parking review.

Following a discussion between Mrs. Thonen and staff, Ms. Kelsey said there was sufficient parking for the two uses. She said applicants do have the right to go to the Board of Supervisors to request a reduction in parking.

There were no speakers to the request and Vice Chairman Ribble 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 July 21, 1992.

Mr. Pammet suggested the following change to Development Condition Number 11:

The seventy-one (71) parking spaces provided on the site plan dated September 1, 1989, shall be deemed to satisfy the requirements of the Code subject to a shared parking agreement approved by the Board of Supervisors.

Mrs. Harris agreed.

The BZA also waived the eight day time limitation.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-B-037 by BURKE PRESBYTERIAN CHURCH PRESCHOOL, under Section 5-303 of the Zoning Ordinance to allow nursery school of the Zoning Ordinance, on property located at 5690 Oak Leather Drive, Tax Map Reference 77-11(1)68, 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 July 30, 1992; and

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

1. The applicant is the owner of the land.

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2. The present zoning is I-3.
3. The area of the lot is 4.7 acres.
4. The granting of the special permit will allow the reinstatement of a use that has been in existence for some time.
5. Due to a bureaucratic mixup, the applicant had to have the special permit reinstated.
6. There will be no changes from the previously approved special permit.
7. The use is well within the Comprehensive Plan and will not generate any more traffic.

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 5-503 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 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 Ross, France & Ratliff, Ltd. dated September 1, 1989 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 hours of operation for this facility shall be limited to 9:00 a.m. to 1:00 p.m., Monday through Friday.
5. The outdoor play area shall be approximately 8,400 square feet in size and shall be enclosed by a fence at least 3 ft. in height. The number of children using the play area at any one time shall be in strict conformance with the provisions of Sect. 8-305 of the Zoning Ordinance and meet requirements as designated by the County Health Department.
6. The maximum number of employees at the child care center at any one time shall not exceed 15 (fifteen).
7. Existing vegetation along all lot lines shall be deemed to satisfy the Transitional Screening 1 requirement and the barrier requirements. The barrier requirement along the eastern, northeastern and southern boundaries of the site shall be waived.
8. The maximum daily enrollment shall not exceed 48 children.
9. Signs shall be provided at the two one-way entrances to indicate the direction of the traffic flow. All signs shall conform with Article 12 of the Zoning Ordinance.
10. The existing three (3) foot sidewalk is deemed to satisfy the requirement for a trail.
11. The seventy-one (71) parking spaces provided on the site plan dated September 1, 1989, shall be deemed to satisfy the requirements of the Code subject to a shared parking agreement approved by the Board of Supervisors.

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-six (36) months after the approval date\* of the Special Permit unless the activity authorized has been established and is diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the 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 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 July 30, 1992. The Board waived the eight day waiting period. This date shall be deemed to be the final approval date of this special permit.

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10:30 A.M. JOSEPH C. DYER, VC 92-V-066, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of deck stairs 3.8 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 16,509 sq. ft., located at 912 Emerald Dr., zoned R-3, Mt. Vernon District, Tax Map 111-2((6))(22)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. Dyer replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report. She said the applicant was requesting a 8.2 foot variance to the minimum side yard requirement to allow deck stairs 3.8 feet from the western side lot line.

Joseph C. Dyer, 912 Emerald Drive, Alexandria, Virginia, said following discussions with contractors he decided to build a 24 x 12 deck. He said the deck would run from the northwest corner of the existing house in order to provide access to the deck from the kitchen. Mr. Dyer said during conversations with the contractor it was determined that the deck could not be attached to the building because the second floor overhangs the first floor by approximately 7 foot, therefore it would be a freestanding structure. Mr. Dyer said the contractor recommended putting a series of 6 x 6 posts at 8 foot centers, both at the front and rear of the deck. He said to do this would have created a problem with the sliding doors that go from the downstairs in addition to the downstairs windows. To alleviate the problem, he said the contractor proposed running stairs along the brick wall that separates the patio from the front of the house.

There were no speakers to the request and Vice Chairman Ribble closed the public hearing.

Mr. Kelley 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 July 23, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-066 by JOSEPH C. DYER, under Section 18-401 of the Zoning Ordinance to allow construction of deck stairs 3.8 feet from side lot line, on property located at 912 Emerald Drive, Tax Map Reference 111-2((6))(22)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 July 30, 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 16,509 square feet.
4. The applicant has satisfied the requirements for a variance.
5. The applicant's request is unusual.
6. There is a hardship because of the construction constraints noted in the applicant's testimony.
7. The granting of the variance will alleviate a hardship and will not be detrimental to other properties.
8. The character of the zoning district will not be changed by granting the request.
9. The property does have unusual topographic considerations as the property slopes from the front of the property where the front steps are at a grade and then there is a drop of one story to the rear.
10. There is a drop in elevation in the pool and patio 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.

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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 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 deck stairs shown on the plat prepared by Alexandria Surveys, Inc., dated May 21, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 construction 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 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. Mrs. Harris was 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 August 5, 1992. This date shall be deemed to be the final approval date of this variance.

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10:40 A.M. JON W. LESSNER, SP 92-L-038, 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) to remain 0.6 ft. from rear lot line and 6.6 feet from side lot line (25 ft. min. rear yard and 15 ft. min. side yard required by Sect. 3-203), on approx. 21,972 sq. ft., located at 5117 Pole Rd., zoned R-2, Lee District, Tax Map 101-3((17))11.

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. Furey replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report. She said the applicant was requesting a special permit to allow a 512 square foot, 13.3 foot high shed, to be located 6.6 feet from the western side lot line and 0.6 feet from the rear lot line. The minimum side yard requirement is 8 feet, therefore the amount of error is 1.4 feet. The minimum rear yard requirement is 13.3 feet, therefore the amount of error is 12.7 feet. Mrs. Anderson said the shed was constructed by the previous owner approximately 40 years ago and the applicant had purchased the property approximately 15 years ago.

Mr. Furey emphasized the fact that the shed has been on the property for 40 years, 20 years in the present configuration. He said when the applicant purchased the property he was unaware there was a problem and when he recently learned that a portion of the wall was encroaching on the neighbor's property he voluntarily reconfigured the wall. Mr. Furey said the property to the rear of the lot is a large parcel of land and the house is located at the front of the property, which is a good distance from the shed. He said if the applicant was required to relocate the shed it would be a severe hardship because it is a block building built on a concrete pad, therefore it could not be moved but would require demolition. Mr. Furey said there have been no changes in the use of the shed.



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Vice Chairman Ribble pointed out that the speaker was not listed on the affidavit. Mr. Fuery said that was correct but the applicant was present if the BZA had any questions. Vice Chairman Ribble asked the speaker to state his name and address for the record. The speaker complied with the request and stated his name was Roger Fuery and he resided at 2501 London Dairy Road, Alexandria, Virginia.

Vice Chairman Ribble called the applicant to the podium and asked him to confirm that Mr. Fuery's remarks were correct.

Jon W. Lessner, 5117 Pole Road, Alexandria, Virginia, confirmed the representation by Mr. Fuery. He pointed out when his neighbor complained about his having replaced the roof on the existing shed.

In response to a question from Mrs. Thonen, Mr. Lessner replied that his property was located on the west side of Route 1.

There were no speakers to the request and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant the applicant's request subject to the development conditions contained in the staff report dated July 23, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-L-038 by JON W. LESSNER, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow accessory structure (shed) to remain 0.6 feet from rear lot line and 6.6 feet from side lot line, on property located at 5117 Pole Road, Tax Map Reference 101-3{(17)}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 July 30, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and 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:

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1. This special permit is approved for the location and the specified shed 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 Rice Associates, dated December 31, 1991) approved with this application, as qualified by these development conditions.
3. A building permit and all required inspections 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. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mrs. Thonen seconded the motion which carried by a vote of 5-0. Mrs. Harris was 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 August 5, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 346, July 30, 1992, (Tape 2), Scheduled case of:

10:50 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. DEF. FROM 2/11/92 FOR APPLICANT AND BUILDER TO BE PRESENT AND FOR ADDITIONAL DOCUMENTATION FROM BUILDER. DEF. FROM 4/14/92 AND 6/30/93 FOR STAFF TO SUBPOENA BUILDER).

Vice Chairman Ribble asked staff if the contractor had been subpoenaed. Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that the County Attorney's office had informed her that the contractor had been served. Vice Chairman Ribble polled the audience to determine if the contractor was present and no one replied.

Mr. Hammack asked if the subpoena had both the date and time of the public hearing. Ms. Kelsey replied that it did. In response to a question from Mr. Hammack about the type of service used, Ms. Kelsey suggested that perhaps the BZA would like to recess while she talked with the County Attorney's office. Mr. Hammack said it really did not matter as he was willing to make a motion to direct the County Attorney's office to issue a Rule to Show Cause Order.

Ms. Kelsey informed the BZA that the Process Server was now present in the Board Room and had submitted to staff a copy of the affidavit which had been served in person on the contractor after a fourth attempt. In response to a question from Mr. Hammack, Ms. Kelsey said the affidavit was dated July 27, 1992, at 9:41 a.m.

Mr. Hammack made a motion to request the County Attorney's office to issue a Rule to Show Cause Order against the contractor and to defer the case. He asked staff for a date and time. Ms. Kelsey said she was not sure how long the process would take and asked the BZA for guidance. Mr. Hammack suggested an October date. Mr. Pammel seconded the motion.

Vice Chairman Ribble asked the applicant if this was agreeable. Ms. Kelsey suggested October 13, 1992.

The applicant's agent, Dewey La, 6764 Bison Street, Springfield, Virginia, said this was the third deferral and reluctantly agreed to another deferral. The BZA and Mr. La discussed the importance of having the contractor present.

The motion passed by a vote of 5-0. Mrs. Harris was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 346, July 30, 1992, (Tape 2), Information Item:

July 28, 1992, Resolutions

Jane Kelsey, Chief, Special Permit and Variance Branch, submitted the resolutions from the July 28th meeting to the BZA. She reminded the BZA that because staff had moved on July 29th, the WANG equipment was still not functioning, therefore the resolutions for July 30th might not be brought back to the BZA. The members did not express any concern.

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As there was no other business to come before the Board, the meeting was adjourned at 11:03 a.m.

  
Betsy S. Hyatt, Clerk  
Board of Zoning Appeals

  
John Ribble, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: September 29, 1992

APPROVED: October 6, 1992

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Q/AMK

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on August 4, 1992. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; and James Pammel. Chairman John DiGulian and Robert Kelley were absent from the meeting.

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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 349, August 4, 1992, (Tape 1), Scheduled case of:

9:00 A.M. MOUNT VERNON K OF C CLUB, INC., VC 92-L-070, appl. under Sect. 16-401 of the Zoning Ordinance to allow building to remain 7.5 ft. from front lot line and 8 ft. high fence to remain on site (40 ft. min. front yard required by Sect. 4-807), on approx. 2.373 acs., located at 8592 Richmond Hwy., zoned R-2, C-8, Lee District, Tax Map 101-3(1)63.

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. Williams replied that it was.

Mary Ann Godfrey, Staff Coordinator, Zoning Evaluation Division, presented the staff report. She stated that a special exception to allow construction of an addition containing 5,265 square feet at the rear of the existing building and to amend the hours of operation had been approved by the Board of Supervisors on July 23, 1992. She noted that the approval was subject to the development conditions which included the requirement to obtain approval of variances to both the minimal front yard and the fence height requirements.

She stated that the applicant was requesting a variance to allow an existing structure to remain 7.5 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, the applicant was requesting a variance of 32.5 feet to the minimum front yard requirement. Ms. Godfrey stated that the applicant was also requesting a variance to allow an 8 foot high fence to remain around the sides and rear of the site. The Zoning Ordinance allows a 7 foot high fence; therefore, the applicant was requesting a variance of 1 foot.

Ms. Godfrey explained that the 7.5 foot front yard was the result of dedication for a service drive which was approved in the 1970's after construction of the existing building. She noted that the service drive has not been built. She further explained that the 8 foot fence had been constructed approximately 10 years ago following approval of a special exception to allow an addition to the original structure. Ms. Godfrey noted that although the addition was never constructed, the fence and other site improvements had been completed. She said that although the approved special exception plat showed a fence 6 feet in height along both the sides and rear of the site, the height of the fence had been increased from 6 to 8 feet in order to accommodate the request of citizen groups in the area.

In summary, Ms. Godfrey stated that copies of the Planning Commission minutes had been submitted to the BZA at the request of the Lee District Commissioner, Carl L. Sell, Jr.

The applicant's agent, Edwin J. Williams, Jr., 2102 Lakeshire Drive, Alexandria, Virginia, addressed the BZA. He stated that the Knights of Columbus was an organization that was dedicated exclusively to charity. Mr. Williams said that the applicant was seeking regress of two situations that were not of their making. He explained that the need for the front yard variance was caused by Fairfax County's insistence on land dedication for Route 1. He further explained that the applicant had, at the request of the community, installed the 8 foot high fence.

In summary, Mr. Williams stated that the granting of the variances would have no detrimental impact on the area, the neighbors supported the request, and asked the BZA to grant the request.

In response to Mrs. Thonen's question regarding landscaping of the front yard, Mr. Williams stated that the landscaping requirements had been included in the special exception development conditions. Mrs. Thonen expressed her interest in the beautification of the Route 1 corridor.

The BZA had a brief discussion regarding the widening of Route 1.

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

Mr. Pammel complimented staff on the thorough staff report and the articulate presentation.

Mr. Pammel made a motion to grant VC 92-L-070 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 28, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-070 by MOUNT VERNON K OF C CLUB, INC., under Section 18-401 of the Zoning Ordinance to allow building to remain 7.5 feet from front lot line and 8 feet high fence to remain on site, on property located at 8592 Richmond Highway, Tax Map Reference 101-3(1)63, 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 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-2 and C-8.
3. The area of the lot is 2.373 acres.
4. The application meets the necessary standards for the granting of a variance.
5. The property, the front yard setback results from dedications that were required of the owners of the property thereby bringing about the situation where the structure is only 7.5 feet from the property line.
6. Although the 8 foot fence was built in violation of the Zoning Ordinance, it was through no fault of the owners or the developers.
7. The fences were a requirement of the special exception and the error was not caught by the County prior to the installation of the fence.
8. To require the removal of the fence or the building, would impose an undue hardship to 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 of the principal structure and 8.0 foot high fence shown on the plat prepared by Alexandria Surveys, Inc., dated February 3, 1992, revised May 20, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 construction 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 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 4-0-1 with Mr. Hammack abstaining. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 351, August 4, 1992, (Tape 1), Scheduled case of:

10:30 A.M. JAMES M. SHANGLE, JR., JEFFERY A. CLENONS, JAMES M. SHANGLE AND JOYCE A. SHANGLE, YC 92-Y-058, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 4 lots into 3 lots, proposed Lot 2 having lot width of 135 ft. (200 ft. min. lot width required by Sect. 3-E06), on approx. 6.4602 ac. located at 10627 Hunters Valley Dr., zoned R-E, Sully District, Tax Map 37-1((3))3A, 5, D, C3.

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. Runyon replied that it was.

Vice Chairman Ribble stated that there had been a question concerning the notification requirements. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that unfortunately the notices had not been submitted to the Clerk; therefore, the Clerk could not verify that the notification requirements had been met. Ms. Kelsey also noted that a request for deferral had been submitted to the BZA by concerned citizens.

Vice Chairman Ribble called the applicants' agent, Charles Runyon, with the firm of Runyon, Dudley, Anderson, Association, Inc. 10650 Main Street, Fairfax, Virginia, to the podium. Mr. Runyon stated that he was sure the notification requirements had been met. He explained that the Clerk's office had been in the process of moving and that there had been a problem with the communications between his office and the Clerk's office.

Mr. Runyon stated that if the concerned citizens wanted the deferral to study the covenant, it was an old issue. He noted that the issue had been broached approximately eighteen months ago and the citizens have had ample time to study the covenant. Mr. Runyon stated that he would prefer to have the notification receipts verified and proceed with the hearing.

Vice Chairman Ribble called for speakers to the deferral and the following citizen came forward.

Tim Price, 10628 Hunters Valley Road, Oakton, Virginia, addressed the BZA and stated that he had requested the deferral. Mr. Price said that he represented the neighbors and expressed his interest in the covenant issue. Mrs. Harris explained that the covenant issue was a civil matter and was not within the realm of the BZA. She explained to Mr. Price that the BZA could only consider the variance standards. Mr. Price requested a deferral based on the lack of verification of the notification requirements and because the applicant had not met the variance requirements.

Mrs. Thonen made a motion to defer YC 92-Y-058 to October 6, 1992 at 10:30 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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9:20 A.M. WOLF TRAP FOUNDATION, SPONSORING ORGANIZATION (BIG APPLE CIRCUS), SP 92-C-039, appl. under Sects. 6-303 and 8-915, of the Zoning Ordinance to allow Group 8 Temporary Use for a Circus, which will exceed the 21-day limitation; and a waiver of the dustless surface requirement, on approx. 14.48 acs., located in Reston Town Center, zoned PRC, Centreville District, Tax Map 17-1(1)pt. 12E; 17-3(1)pt. 3A, pt. 3B; pt. Bluemont Wy. future right of way.

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. Walters replied that it was.

Greg Chase, Staff Coordinator, Zoning Evaluation Division, presented the staff report. He stated that the applicant was requesting approval of a special permit to allow a Group 8 Temporary Use for a circus, which will exceed the 21-day limitation, and a waiver of the dustless surface requirement. Mr. Chase noted that the circus would hold an estimated 28 performances within 19 days, not to exceed 2 performances per day to occur annually between September 1 and November 1. In summary, he stated that staff believed that the application met all the Zoning Ordinance requirements and would be in conformance with the Comprehensive Plan. Therefore, staff recommended approval subject to the proposed development conditions contained in the staff report dated July 28, 1992.

The applicant's agent, John E. Theilacker, 10911 Holland Drive, Reston, Virginia, with the firm of William H. Gordon Associates, Inc., 4501 Daly Drive, Chantilly, Virginia, addressed the BZA. He stated that the Wolftrap Foundation had sponsored the non-profit, traditional, one-ring circus. Mr. Theilacker noted that the circus had already received a 21 day permit, therefore would be able to advertise. He explained that the circus had no home facilities or office space; consequently, the permit would include load-in, performances, and load-out activities. Mr. Theilacker said although it was the circus' first year in the northern Virginia area, it planned to return each year; therefore, the applicant was requesting the special permit to be in effect for a five year period. He noted that should the Reston Land Corporation decide to develop the site anytime within the five years, the special permit would no longer be valid. Mr. Theilacker stated that although the applicant would abide by the proposed development conditions, he would like a clarification of Condition 10 which related to the dustless surface requirement. He explained that the applicant intended to use the grass surface for the majority of its operations and would install gravel only for the required fire lane and to alleviate mud holes in the parking area. He said that the applicant would prefer not to cover the entire parking area with gravel. Mr. Theilacker thanked Supervisor Dix, staff, and the Board of Zoning Appeals for their cooperation and for expediting the application.

In response to Mr. Hammack's question regarding the total number of performances, Mr. Chase stated that although staff included the information based on the maximum number of performances per day, a new condition could be added that would specify the total number of performances.

In response to Mrs. Harris' question as to whether administrative approval could be granted for a period exceeding the five year term, Mr. Chase stated that it could be done.

Mr. Hammack expressed his concern regarding the impact that may be imposed on the neighbors. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that a condition could be included which would allow administrative approval if no substantiated complaints or violations have been received, but reminded the BZA that the property was directly adjacent to the Reston Towne Center.

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

Mrs. Thonen made a motion to grant SP 92-C-039 subject to the development conditions contained in the staff report dated July 28, 1992 with a modification to Condition 11 as reflected in the Resolution.

Mrs. Harris seconded the motion.

Mr. Hammack made a motion to amend Condition 7 to include, "There shall be a maximum of 28 performances within a 19 day period with a maximum of two performances per day within a 60 day period."

After brief discussion regarding the number of performances the circus would be allowed, the BZA noted that the circus would be a one-ring performance with no side shows.

Mr. Pammel seconded the amended motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

Mr. Pammel made a motion to amend Condition 10 to include, "Gravel shall be restricted to the fire lanes."

Mr. Hammack seconded the amended motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

Vice Chairman Ribble called for a vote for the main motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-C-039 by WOLF TRAP FOUNDATION, SPONSORING ORGANIZATION (BIG APPLE CIRCUS), under Sections 6-303 and 8-915 of the Zoning Ordinance to allow Group 8 Temporary Use for a Circus, which will exceed the 21-day limitation; and a waiver of the dustless surface requirement, on property located in Reston Town Center, Tax Map Reference 17-1(1)pt. 12E; 17-3(1)pt. 3A, pt. 3B; pt. Bluemont Way future right-of-way, 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 4, 1992; and

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

1. The applicant is the lessee of the property.
2. The present zoning is PRC.
3. The area of the lot is 14.48 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 8-801, 8-305, 8-915, and 6-303 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 William H. Gordon Associates, Inc. dated 6/4/92 and revised 7/9/92, 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 location of the temporary circus use at the subject site shall be limited to a time period between September 1 and November 1, annually, including all site preparation and restoration time before and after the circus performances.
5. The maximum number of seats sold per performance shall not exceed 1,980.
6. The maximum number of employees and performers associated with this use (Big Apple Circus) shall be limited to 140 on-site at any one time. In addition, an adequate number of police officers or security guards shall be provided by the applicant for each performance to provide safety and traffic control for off-site traffic direction and on-site parking coordination.
7. Hours of operation for performances shall be limited to 10:00 a.m. until 12:00 midnight. There shall be a maximum of two performances per day. There shall be a maximum of 28 performances within a 19 day period with a maximum of two performances per day within a 60 day period.
8. The applicant shall provide an adequate number of parking spaces to accommodate 1,980 patrons and shall provide a minimum of 597 spaces. All parking shall be on-site and shall be clearly designated. Alternate parking spaces for buses shall be clearly designated and shall be adequately separated from private vehicle parking to preserve adequate sight distance for private vehicles. Parking attendants shall be stationed in the parking lot to direct and assure parking consistent with the approved site plan.
9. There shall be no carnival rides or games operated on-site.
10. The parking and driveway 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:

Gravel shall be restricted to the fire lanes.

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

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

Runoff shall be channeled away from and 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 surface.

Routine maintenance shall be performed to prevent surface unevenness and wear-through of subsoil exposure.

11. The use shall be limited to five years from the date of approval by the Board of Zoning Appeals. The Zoning Administrator will have the authority to grant a five year extension if there has been no substantiated complaints or violations related to the use. However, the use shall cease prior to that time if the site is developed in accordance with the proffered Conceptual Development Plan, accepted by the Board of Supervisors pursuant to the approval of PCA 85-C-088-3, for Reston Town Center (Sheet 1 of 5) dated September 1989 and revised through June 1990, as prepared by Reston Land Corporation.
12. All trash and debris shall be contained on the lot and must be removed daily. The entire lot used by the circus must be free and clear of all debris within 24 hours after the closing of the event.
13. All noise, including music, must not exceed a 60 dBA reading at the property line.
14. The circus shall not include bingo games and/or raffles.
15. The sanitary facilities shall be approved by the Health Department.
16. Any signs, banners or advertising must have prior approval from the Zoning Enforcement Branch. For further information, please contact 324-1300.
17. A carnival, circus, side show, dog and pony show, trained animal show, menagerie or any other show, exhibition or performance similar thereto shall procure a County license in accordance with the provisions of Chapter 25 of the County Code and, if animals are to be involved, a permit from the Department of Animal Control in accordance with the provisions of Chapter 41 of the County Code.

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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 354, August 4, 1992, (Tape 1), Scheduled case of:

- 9:30 A.M. SYDENSTRICKER UNITED METHODIST CHURCH, SPA 78-S-264-5, appl. under Sect. 3-103 of the Zoning Ordinance to amend S-264-78 for church and related facilities, nursery school and child care center to amend hours, maximum enrollment, and number of employees, on approx. 4.90 acs., located at 8508 Hoopes Rd., zoned R-1, Springfield District, Tax Map 89-3({1})15. (CONCURRENT WITH VC 92-S-079)
- 9:30 A.M. SYDENSTRICKER UNITED METHODIST CHURCH, VC 92-S-079, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling to remain 25 ft. from a front lot line (40 ft. minimum front yard required by Sect. 3-107), on approx. 4.90 acs., located at 7230 Sydenstricker Rd. and 8508 Hoopes Rd., zoned R-1, Springfield District, Tax Map 89-3({1})15. (CONCURRENT WITH SPA 78-S-264-5)

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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. Larson replied that it was.

Greg Chase, Staff Coordinator, Zoning Evaluation Division, presented the staff report. He stated that the applicant was requesting an amendment to SP 78-S-264 to allow an increase in maximum daily enrollment of a nursery school and child care center, an increase in the number of employees, and an increase in the hours of operation. He noted that no new construction or improvements to the site were proposed.

Mr. Chase stated that the applicant was also requesting approval of VC 92-S-079 to allow an existing dwelling to remain 25 feet from the front lot line. He noted that the Zoning Ordinance requires a minimum 40 foot front yard; therefore, the applicant was requesting a variance of 15 feet to the minimum front yard requirement.

Mr. Chase stated that staff recommended approval of SPA 78-S-264-5 subject to the development conditions contained in the staff report dated July 28, 1992 with the exception of Development Condition 4 which deals with the site plan requirement. He explained that since no new construction was being proposed, a building permit was not necessary; therefore, the condition was irrelevant.

The applicant's agent, Janice L. Larson, 9015 Golden Leaf Court, Springfield, Virginia, addressed the BZA and expressed her appreciation to staff for their assistance in processing the application. Ms. Larson stated that the applicant would like to expand the existing nursery school and child care center to include an afternoon session. She explained that the applicant wished to expand the hours of operation from 8:30 a.m. to 4:00 p.m. and to increase the number of employees from 15 to 21. In summary, Ms. Larson stated that the applicant would comply with the development conditions and asked the BZA to approve the request.

In response to Mr. Hammack's question regarding the letter concerning the drainage problem, Ms. Larson stated that she had not seen the letter. Staff provided her with a copy of the letter.

Ms. Larson stated that the applicant was also requesting a variance to allow the existing dwelling to remain at a distance of 25 feet from the lot line. She explained that the BZA's prior approval for the church required land dedication for a right-of-way and also included a condition which required approval of a variance for the dwelling to remain. She noted that the variance would have to be approved before the applicant could occupy the nearly completed addition, and asked the BZA to grant the request.

Mrs. Harris noted that in a previous approval on October 16, 1984, Development Condition 14 required the applicant to correct any drainage problems. Ms. Larson stated the applicant had complied with the Department of Environmental Management's recommendation that the site be cleaned annually, or as necessary. She expressed her belief that any current drainage problems would be alleviated when construction was completed and landscaping installed. Ms. Larson stated that the engineers had installed silt fences between the church and the residences. Mrs. Harris expressed her concern regarding the issue and stated that an additional condition, which addressed the drainage problems, should be added to the development conditions.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Pastor of Sydenstricker United Methodist Church, Edward H. Wright, 8521 Nooes Road, Springfield, Virginia, addressed the BZA. He stated that the site plan had been developed within the requirements of the County. Pastor Wright said that the applicant had tried, and would continue to try, to be a good neighbor. He explained that the church served not only its own congregation, but permitted many community organizations to use its facilities. In summary, Pastor Wright stated that the church was not aware of the drainage problem and would cooperate with the appropriate County agency to rectify the situation.

In response to Vice Chairman Ribble's question regarding the letter, Pastor Wright stated that the issue had not been addressed because he had not received a copy of the letter.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that although Conditions 13 and 14 addressed the drainage problems, they did not address the septic system problem referenced in the letter. Mr. Hammack stated it was his belief that the letter referred to the storm drainage problem and not the septic system field.

Pastor Wright stated that the issue of concern was not a septic field, but was a drainage pond. He explained that part of the problem was that the houses received drainage from their own street and from houses located on higher land.

In response to Mr. Pammel's question regarding the sewer system, Pastor Wright confirmed that the property was served by public sewerage.

There being no further speakers in support and no speakers in opposition, Vice Chairman Ribble closed the public hearing.

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Mrs. Harris made a motion to grant SPA 78-S-264-5 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 28, 1992, with the deletion of proposed Condition 4.

Mrs. Thonen seconded the motion.

Mr. Hammack made a motion to amend Development Condition 13 to include, "There shall be no exacerbation of off-site runoff of stormwater associated with the use on the site." Mr. Pammel seconded the amended motion.

The maker of the motion accepted the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 78-S-264-5 by SYDENSTRICKER UNITED METHODIST CHURCH, under Section 3-102 of the Zoning Ordinance to amend S-264-78 for church and related facilities, nursery school and child care center to amend hours, maximum enrollment, and number of employees, on property located at 8508 Hooes Road, Tax Map Reference 89-3(1)15. 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 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-1.
3. The area of the lot is 4.90 acres.
4. The applicant has presented testimony that demonstrates the need for the nursery school to increase to two sessions.
5. The nursery school hours, 8:30 a.m. to 4:00 p.m., Monday through Friday, fall outside the peak rush hour period.
6. There will be no building addition to the church.
7. Because there will be two sessions, there would be adequate circulation within the parking lot.

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 is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Harold A. Logan Associates, P.C. which is dated 5/19/92, 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 seating capacity for the main place of worship shall be limited to 300 seats.
5. The number of parking spaces shall be 99. All parking spaces shall be on site as shown on the SP Plat.
6. There shall be no church parking in the driveway adjacent to the structure used for the Sunday school rooms. The driveway shall be for the use of the parsonage only.
7. The existing vegetation shall be retained and used to satisfy the Transitional Screening and Barrier as defined by the County Urban Forester.

- 8. The barrier requirement shall be waived.
- 9. All signs on the property shall conform with Article 12 of the Zoning Ordinance.
- 10. Right-of-way to 30 feet from existing centerline of Hooes Road and to 45 feet from existing Sydenstricker Road along the entire property frontage necessary for public street purposes shall be dedicated and shall convey to the Board of Supervisors in fee simple upon thirty days notice from Fairfax County or the Virginia Department of Transportation. Ancillary temporary easements shall be provided to facilitate these improvements.
- 11. Temporary slope easements shall be provided along the Hooes Road frontage to facilitate road improvements. Temporary slope easements shall be provided along Sydenstricker Road consistent with the VDOT plans for the Springfield Bypass.
- 12. The applicant shall take all necessary actions to correct any drainage deficiencies as determined by the Director, DEM. There shall be no exacerbation of off-site runoff of stormwater associated with the use on the site.
- 13. The applicant shall perform routine maintenance on the existing drainage and detention facilities as follows: that it shall clean out sediment and debris from the six (6) foot detention to pond and swale behind Lot 122 and that it should cut weeds and remove cuttings from the pond between Lots 123 and 124 and that this maintenance function shall be performed annually or as often as required in order to minimize the off site drainage impact.
- 14. The combined maximum daily enrollment of the nursery school and child care program shall be ninety-nine (99) children.
- 15. The hours of operation for the nursery school/child care program shall be limited to 8:30 a.m. to 4:00 p.m., Monday through Friday.
- 16. A six foot wide Type I trail within a ten foot wide public access easement shall be provided along the southwest side of Sydenstricker Road and along the frontage of Hooes Road for the entire frontage of the property. Construction may be deferred at the discretion of the Department of Environmental management (DEM).
- 17. Approval of a variance to the front yard requirement on the Sydenstricker Road frontage of the property shall be obtained from the Board of Zoning within six months of the approval of this application to allow the existing dwelling located on the property on the Sydenstricker Road frontage to remain within the required front yard of the property. If such approval is not granted within this period the dwelling shall be removed.

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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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 5-0 with Chairman DiGulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1992. 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 92-S-079 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 28, 1992.

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**COUNTY OF FAIRFAX, VIRGINIA**  
**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 92-S-079 by SYDENSTRICKER UNITED METHODIST CHURCH, under Section 18-401 of the Zoning Ordinance to allow dwelling to remain 25 feet from a front lot line, on property located at 7230 Sydenstricker Road and 8508 Hooes Road, Tax Map Reference

89-3(1)15, 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 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-1.
3. The area of the lot is 4.90 acres.
4. The extraordinary situation is that this house has come into the need for a variance not due to the location of the house but due to the location of various dedications by the property owners.
5. The granting of the variance will not have a detrimental impact on the Zoning Ordinance.
6. The granting of the variance will clearly alleviate a hardship.
7. The authorization of the variance will not be of substantial detriment to any adjacent properties or 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:
  - 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 addition shown on the plat (prepared by Harold A. Logan, Assoc., dated April 11, 1991) submitted with this application and is not transferable to other land.

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. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1992. This date shall be deemed to be the final approval date of this variance.

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Page <sup>359</sup> August 4, 1992, (Tape 1), Scheduled case of:

9:40 A.M. ACCOTINK UNITARIAN UNIVERSALIST CHURCH, SPA 85-S-083-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 85-S-083 for church and related facilities, to allow change in building footprint, building location, and parking, on approx. 10.78 acs., located at 10125 Pohick Rd., zoned R-1, Springfield District, Tax Map 87-2((1))26.

Vice Chairman Ribble 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. Fontneau replied that it was.

Greg Chase, Staff Coordinator, Zoning Evaluation Division, presented the staff report. He stated that the applicant was requesting an amendment to allow a change in the building footprint, building location, and parking. Mr. Chase explained that there would be no increase in building size, church seats, or parking associated with the application. In summary, he stated that staff believed the application met the Zoning Ordinance requirements and would be in conformance with the Comprehensive Plan. Therefore, staff recommended approval subject to the development conditions contained in the staff report dated July 28, 1992.

The applicant's representative, Peter B. Fontneau, Chairman of the Building Steering Committee, 7578 Vogels Way, Springfield, Virginia, addressed the BZA. He thanked staff for their cooperation and noted that he had been working on the project for the past 7 years. Mr. Fontneau said that the applicant is cognizant of and had agreed to the development conditions contained in the staff report. He explained that the applicant would like to amend the 1986 special permit plat to delete a 14,000 square foot conceptual building. He noted that the revised plat would depict a project that the church could afford to build.

Mr. Fontneau stated that the applicant plans to commence construction within one year and had already submitted the site plans for review. He explained that the special permit would resolve the building footprint issue and asked the BZA to grant the request.

In response to Mr. Hammack's question regarding the changes to the revised footprint, Mr. Fontneau stated that the plans for a 14,000 square foot building had been revised to reflect an 8,000 square foot building. He stated that the building and parking lots are in the same approximate location as on the original plat.

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

Mr. Hammack made a motion to grant SPA 85-S-083-1 subject to the development conditions contained in the staff report dated July 28, 1992.

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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-083-1 by ACCOTINK UNITARIAN UNIVERSALIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 85-S-083 for church and related facilities, to allow change in building footprint, building location, and parking, on property located at 10125 Pohick Road, Tax Map Reference 87-2((1))26, 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 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-1.
3. The area of the lot is 10.78 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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Gannett Fleming, Inc. which is dated 5/29/92 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 use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The seating capacity of the main worship area shall not exceed 200.
6. There shall be fifty-one (51) parking spaces, including four (4) handicapped spaces.
7. Existing vegetation shall be deemed to satisfy the transitional screening requirements along the rear and northern property lines. In the area adjacent to Lot 27 on the southern boundary, existing vegetation shall be supplemented to provide screening equivalent to Transitional screening 1. On the front property line, a twenty-five (25) foot planting strip shall be required to adequately screen the church parking area from residential properties across Pohick Road. The degree and nature of required plantings shall be determined by the County Urban Forester.
8. The applicant shall work with the County Urban Forester to determine the boundaries for tree clearance before approval of a building permit or undertaking any site clearance or construction activity. Existing trees shall be preserved except where removal is necessary to accommodate construction.
9. Interior parking lot landscaping shall be provided in accordance with Article 13.
10. Right-of-way up to thirty (30) feet from the centerline of Pohick Road shall be dedicated to the Board of Supervisors, in fee simple, along the entire Pohick Road frontage of the site and all ancillary easements along the Pohick Road frontage of the site shall be conveyed to the Board of Supervisors at the at the time of site plan approval or within 60 days upon demand of DEM or VDOT, whichever first occurs. The applicant also shall construct a right turn deceleration lane within this dedicated area.
11. The entrance to the site shall be designed to provide adequate site distance as required by VDOT.
12. Pursuant to the Virginia Code Section of 10.1-1700 et seq., at the time of site plan review, an Open Space Easement to the Board of Supervisors shall be recorded among the land records of Fairfax County. The easement shall run with the life of this Special Permit. The easement shall include a strip of land 150 feet wide, centered on Opposum Branch Stream, and extending across the width of the property. The exact location of the boundary shall be determined at the time of site plan review by the Department of Environmental Management in coordination with OCP. There shall be no clearing of any vegetation within this area, except for dead and dying trees and a pedestrian bridge and a trail to and from it which shall be located within this easement.
13. A sign may be erected in accordance with the provisions of Article 12, Signs.
14. Erosion and sediment controls conforming to the policies, guidelines and specifications contained in Article 11 of the Public Facilities Manual, Chapter 104 of the County Code, and the Virginia Erosion and Sediment Control Handbook shall be required.
15. Best Management Practices (BMP) designed to protect the Burke Lake watersheds as determined by the Director of the Department of Environmental Management shall be provided.



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16. Should future access from Pohick Road to new Burke Lake Road be constructed as currently proposed along the property's northern boundary, transitional screening yards shall be provided outside the dedicated area and the grading and construction easements. Existing vegetation shall be deemed to satisfy the transitional screening 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 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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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 Chairman DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 361, August 4, 1992, (Tape 1), Scheduled case of:

9:50 A.M. KENNETH F. STRUNK, VC 92-B-057, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 6.7 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,340 sq. ft., located at 7419 Chatham St., zoned R-3, Braddock District, Tax Map 80-1((2))(18)15.

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. Strunk replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, comprised of the following information, for Carol Dickey who is no longer with the Office of Comprehensive Planning.

He stated that the applicant was requesting approval of a variance to allow a garage and sunroom addition 6.7 feet from the side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, the applicant was requesting a variance of 5.3 feet from the side lot line.

The applicant, Kenneth F. Strunk, 7419 Chatham Street, Springfield, Virginia, addressed the BZA. He stated that his disability had caused an extraordinary situation. Mr. Strunk explained that the garage addition would provide protection against inclement weather. He noted that a 15 foot wide garage would be necessary in order to accommodate the wheelchair. Mr. Strunk said that as his disability worsens, the wheelchair will become his principal means for mobility. In summary, Mr. Strunk noted that the neighbors supported the request and asked the BZA to grant the variance.

In response to Vice Chairman Ribble's question regarding the concrete driveway, Mr. Strunk stated that the proposed garage would be constructed on the existing concrete slab. He explained that the property's topographic condition precluded the garage addition from being located anywhere else on the lot.

In response to Mr. Hammack's question regarding the addition, Mr. Strunk stated that the plans included a second story which would provide two additional bedrooms for his family. He explained that because of his medical condition, he would have to modify the existing house so that it could accommodate his wheelchair.

In response to Mrs. Harris' question as to why the sunroom could not be reconfigured so that it would not require a variance, Mr. Strunk stated that it was because of the need for a handicap bathroom and the desire to preserve part of the existing patio. Mrs. Harris expressed her concern regarding the largeness of the variance.

In response to Mrs. Thonen's question as to whether the size of the sunroom could be reduced, Mr. Strunk stated that the sunroom would only be 16 feet long.

In response to Mrs. Harris' question regarding the size of the variance, Mr. Strunk explained that he needed the second story bedrooms because his condition will require the conversion of the downstairs bedrooms. He stated that his finances were limited and the proposal before the BZA was the best possible plan.

Page 362, August 4, 1992, (Tape 1), KENNETH F. STRUNK, VC 92-B-057, continued from Page 361

In response to Mr. Hammack's question regarding the second story addition, Mr. Strunk stated that the second story addition would be built over part of the garage and over the sunroom. He noted that the storage space was needed because the existing house has only two bedrooms and no basement.

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

Mr. Pammel made a motion to deny VC 92-B-057. He explained that the BZA consistently resisted granting such large variances.

Mr. Hammack seconded the motion.

After a brief discussion, it was the consensus of the BZA to defer decision to allow the applicant time to revise the application.

Mr. Pammel withdrew his motion.

Mrs. Harris made a motion to defer decision to October 27, 1992 at 9:00 a.m.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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The BZA recessed at 10:40 a.m. and reconvened at 10:45 a.m.

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Page 362, August 4, 1992, (Tape 2), Scheduled case of:

10:00 A.M. RESTON PROPERTY INVESTORS LIMITED PARTNERSHIP, SPA 80-C-091-1, appl. under Sects. 5-503 and 8-500 of the Zoning Ordinance to amend SP 80-C-091 for commercial recreation use, (commercial tennis, similar courts, roller skating facilities and related facilities) to allow change of use to commercial recreation use (skating and Health Club and related facilities), increase of membership, parking spaces, and change of applicant, on approx. 4.75 ac., located at 1800 Michael Faraday Court, zoned I-5, Centreville District, Tax Map 18-3((5))9.

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. Fox replied that it was.

The applicant's attorney, Stephen K. Fox, with the law firm of Miles and Stockbridge, Fair Oaks Plaza, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, addressed the BZA. He stated that his client would like a deferral so that outstanding transportation issues could be resolved.

Lori Greenlief, Staff Coordinator, addressed the BZA and stated that staff would concur with the deferral. She expressed her belief that additional engineering input would be needed in order to resolve the matter.

There being no speakers to the deferral, Vice Chairman Ribble asked for a deferral date.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and suggested a date and time of September 15, 1992, at 10:15 a.m.

Mrs. Thonen made a motion to defer SPA 80-C-091-4 to the suggested date and time. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

Mrs. Harris noted that a new plat may be needed and the revised plat should be submitted to the BZA well before the public hearing date.

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Page 362, August 4, 1992, (Tape 2), Scheduled case of:

10:10 A.M. PARADISO, INC., VC 92-L-074, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 13.2 ft. from front lot line (40 ft. min. front yard required by Sect. 4-507), on approx. 2.5571 acs., located at 6124 Franconia Rd., zoned C-5, HC, Lee District, Tax Map 81-3((4))2A,3. (OTH GRANTED 6/30/92)

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. Speziale replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He stated that in order to provide additional year round seating, the applicant would like to enclose an existing patio 13.2 feet from the front lot line. The Zoning Ordinance requires a 40 foot minimum front yard; therefore, a 26.8 foot variance to the front yard was requested. Mr. Riegler noted that there would be no expansion to the existing footprint relative to the front lot line.

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In response to Mrs. Harris' question regarding an increase in seating, Mr. Riegler confirmed that the enclosure would provide additional seating. He noted that the parking requirements had been met.

The applicant, Salvatore Speziale, 9452 Lapstrake Lane, Burke, Virginia, addressed the BZA. He stated that the 1930's masonry and wood building fronted Franconia Road along the south and is flanked by the entry and exit driveways along the east and west and is complimented by parking on the north. He explained that the variance was necessary because of the dedication of land which was required when Franconia Road was widened.

Mr. Speziale said that he would like to enclose the existing patio because of the need for additional seating. He noted the adjacent gasoline station and said that the enclosure would also provide relief from the gasoline odor. Mr. Speziale explained that the proposed location was the only feasible site for the addition and asked the BZA to grant the request.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Guillemo Pinzen, 2031 Mayflower Drive, Lake Ridge, Virginia, addressed the BZA. He stated that he was an architectural designer and when he could not find employment within his field, the applicant had provided him with a job. He explained that the restaurant not only provided employment opportunities, but provided handicapped facilities and a family type atmosphere for the community.

There being no further speakers in support, Vice Chairman Ribble called for speakers in opposition and the follow citizen came forward.

Giovanni L. Coratolo, owner of Port of Italy Restaurant, 6148 Franconia Road, Alexandria, Virginia, addressed the BZA. He stated that the substantial expansion of the restaurant would change the character of the area and would also cause a detrimental impact on his business. Mr. Coratolo said that when establishing his own business, he had to comply with all County requirements and expressed his belief that the applicant should also adhere to the Zoning Ordinance. He stated that the addition would double the seating capacity and allow the premises to be used as a nightclub. In summary, Mr. Coratolo noted the safety factors and asked the BZA to deny the request.

In response to Mrs. Harris' question regarding the nightclub issue, Mr. Coratolo said that it had been published in the paper that Paradiso was very interested in providing a facility for dancing. Mrs. Harris explained that the applicant must adhere to the site plan which did not include dancing.

Mr. Riegler stated that the development conditions do not regulate the interior use of the space.

In response to questions from the BZA regarding the roof extension, Mr. Pinzen stated that part of a wall would have to be added and the roof extended in order to enclose the area. He explained that the cement slab has been in existence since the 1930's.

Vice Chairman Ribble called for rebuttal and Mr. Speziale returned to the podium.

Mr. Speziale said that in addition to being the owner of Port of Italy, Mr. Coratolo was also the past President of the Restaurant Associate and currently sits on the Board of Directors.

He expressed his belief that the two restaurants complimented each other because Mr. Coratolo's restaurant had a sports type atmosphere and Paradiso catered to families and children.

In response to Mrs. Harris' question regarding the difference in requirement if the restaurant installed a dance floor, Mr. Riegler stated that the parking requirement associated with the application had been calculated for restaurant use. He noted that the Non Residential Use Permit would also stipulate the uses.

Mrs. Thonen stated that when she investigated the application, she not only talked to the neighbors, but had talked to the applicant. She explained that she had been informed that the application was for a sit down area and no mention of dancing was made. She expressed her concern regarding the expansion and said it should be limited to the existing patio area. Mrs. Thonen stated that she believed that the existing parking was adequate for the use.

Vice Chairman Ribble closed the public hearing.

Mrs. Thonen made a motion to grant-in-part VC 92-L-074 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 28, 1992. She noted that a revised plat would be required.

Mr. Riegler noted that the BZA would not meet again until September and suggested that staff either submit the plat to one of the BZA members or be granted the authority to certify the plat's correctness.

Mrs. Thonen made a motion to grant staff the authority to sign the revised plat. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian

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and Mr. Kelley absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-074 by PARADISO, INC., under Section 18-401 of the Zoning Ordinance to allow addition 13.2 feet from front lot line (THE BOARD GRANTED A VARIANCE TO ALLOW A 16 FOOT WIDE ADDITION 13.2 FEET FROM FRONT LOT LINE), on property located at 6124 Franconia Road, Tax Map Reference 81-3((4))2A, 3, 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 4, 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 C-5 and HC.
3. The area of the lot is 2.5571 acres.
4. On two or three occasions since 1931, land has been taken from the property in order to widen the original narrow two-lane road into the existing three-lane road.
5. The hardship was due to the dedication of land and was not of the applicant's own doing.
6. The neighbors support the request.
7. There is easy access to the parking lot.
8. The parking lot is adequate for the use.
9. The aged building is unique because of where it is located.
10. There is no other location on the property on which to place 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-IN-PART with the following limitations:

1. This variance is approved for the location of the addition shown on the revised plat prepared by Guinness Designs dated June 1, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 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.

Note: The Board of Zoning Appeals' decision does not become final for eight (8) days after the hearing unless the BZA waives this requirement. A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the final Resolution is approved.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 12, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 365, August 4, 1992, (Tape 2), Information Item:

Approval of Resolutions from July 28, 1992 Hearing

Mrs. Thonen made a motion for the approval of the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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Page 365, August 4, 1992, (Tape 2), Information Item:

Intent-to-Defer  
St. Mark's Catholic Church Appeal, A 92-C-021

Mr. Pamme! made a motion to issue an intent-to-defer A 92-C-021 scheduled for September 15, 1992. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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Page 365, August 4, 1992, (Tapes 2), Action Item:

Request for Approval for Revise Plat  
Erik H. Scheider, VC 92-P-050

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that she would verify that the plat reflected the BZA's approval.

Mr. Pamme! made a motion to approve the plat as submitted. Mrs. Harris and Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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Page 365, August 4, 1992, (Tape 2), Information Item:

Request for Additional Time  
Sleepy Hollow Preschool Inc. and St. Alban's Church, SPA 81-M-008-1  
Tax Map Reference 60-4((1))10

Mrs. Harris a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting. The new expiration date will be November 30, 1992.

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Page 366, August 4, 1992, (Tape 2), Information Item:

Out-of-Turn Hearing  
Graham Road United Methodist Church, SPA 91-P-040

Mr. Pammel made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

The BZA instructed staff to schedule the hearing for sometime in September 1992.

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Page 366, August 4, 1992, (Tape 2), Information Item:

Out-of-Turn Hearing  
Peter Piper Preschool-Lynda K. O'Bryan, SPA 75-D-081

Mrs. Harris made a motion to grant the request.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and expressed her concern regarding the complexity of the case.

Mrs. Harris asked staff to schedule the case for sometime in October 1992.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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Page 366, August 4, 1992, (Tape 2), Scheduled case of:

Interpretation Letter  
Fairfax Church of Christ, SPA 86-C-022-1

Mrs. Harris expressed her support for Barbara A. Byron, Director, Zoning Evaluation Division, OCP's, interpretation concerning the special permit. She noted that although the applicant had received approval for two single-wide trailers and one double-wide trailer, they had attempted to install three double-wide trailers. The BZA members agreed with her.

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Page 366, August 4, 1992, (Tape 2), Scheduled case of:

Memorandum from Barbara A. Byron  
Feasibility of Board of Zoning Appeals Meetings  
in Governmental Center


The Board of Zoning Appeals was in receipt of a memorandum from Barbara A. Byron, Director, Zoning Evaluation Division, OCP, dated July 27, 1992, which addressed the feasibility of the BZA using the Board Room at the Government Center. Mr. Pammel stated that he would like to have a full board discussion regarding the issue on September 15, 1992.

Vice Chairman Ribble asked staff to schedule the discussion as an after agenda item.

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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 Ribble, III, Vice Chairman  
Board of Zoning Appeals

SUBMITTED: October 13, 1992

APPROVED: October 20, 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 September 15, 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 9:12 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 367, September 15, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ST. MARK'S APPEAL, A 91-C-021, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed termination of Gerken Avenue with a cul-de-sac on the appellant's property is not in conformance with the development conditions imposed by the BZA in the approval of SPA 81-C-081-3, on approx. 19.5154 acres located at 9970 Vale road, zoned R-1, Centreville District, Tax Map 37-4(1)42. (DEF. FROM 4/14/92 AT APPLICANT'S REQUEST. NOTICES NEED TO BE DONE.)

Vice Chairman Ribble noted that the Board of Zoning Appeals (BZA) had issued an intent to defer A 91-C-021 on August 4, 1992.

Greg Riegle, Staff Coordinator, informed the BZA that the church's site plan had been approved and an approved entrance permit, therefore the appellant had indicated that the appeal might be withdrawn within one month. He suggested that the BZA defer the case long enough to allow the appellant time to finalize the paper work.

Marilyn Anderson, Assistant Branch Chief, recommended December 8, 1992, at 9:15 a.m.

Mrs. Thonen made a motion to defer the case to the date and time suggested by staff. 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 367, September 15, 1992, (Tape 1), Scheduled case of:

9:00 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. (DEFERRED FROM 11/12/91 AT APPLICANT'S REQUEST. DEFERRED FROM 1/14/92 AND 4/9/92 AT APPLICANT'S REQUEST)

Mrs. Harris made a motion to allow the applicant to withdraw VC 91-V-077. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 367, September 15, 1992, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES WESLEY UNITED METHODIST CHURCH/NORTHERN VIRGINIA CHRISTIAN CHILD CARE CENTER, INC., SPA 77-D-047-1, 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. (DEF. FROM 3/3/92 FOR ADDITIONAL INFORMATION. DEF. FROM 6/9/92 FOR ADDITIONAL INFORMATION)

Marilyn Anderson, Assistant Branch Chief, called the BZA's attention to a letter from the applicant requesting a deferral. She said this would give the applicant an opportunity to resolve an outstanding issue with the Department of Environmental Management (DEM). She recommended November 19, 1992, at 9:00 a.m.

Mrs. Harris made a motion to defer the case to the date and time suggested by staff. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 367, September 15, 1992, (Tape 1), Scheduled case of:

9:15 A.M. SANDRA WILLWERTH, SP 92-P-015, appl. under Sect. 3-103 of the Zoning Ordinance to allow kennel with ancillary veterinary hospital, on approx. 1.01261 acs., located at 8801 Lee Hwy., zoned R-1, HC, Providence District, Tax Map 49-3(1)5. (DEF. FROM 6/9/92 FOR NOTICES)

Marilyn Anderson, Assistant Branch Chief, suggested a deferral date of January 19, 1993, at 9:15 a.m.

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Mr. Hammack made a motion to defer the case to the date and time suggested by staff. 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 348, September 15, 1992, (Tape 1), Information Item:

Scheduling of Date and Time  
Michael C. McGuire Appeal

Marilyn Anderson, Assistant Branch Chief, informed the BZA that William Shoup, Deputy Zoning Administrator, had planned to be present during the discussion but was not yet present in the Board Room. It was the consensus of the BZA to pass over the item until Mr. Shoup was present.

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Page 348, September 15, 1992, (Tape 1), Information Item:

Chantilly Bible Church, SPA 85-C-023-1  
Additional Time

Mr. Pammel made a motion to grant the applicant's request. Mr. Hammack seconded the motion which passed by a vote of 5-0. Mrs. Harris was not present for the vote. Chairman DiGiulian was absent from the meeting. The new expiration date is August 3, 1993.

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Page 348, September 15, 1992, (Tape 1), Information Item:

Nantua Swim and Tennis Club, SPA 81-P-089-1  
Out of Turn Hearing

Marilyn Anderson, Assistant Branch Chief, said the case could be moved up one week to October 20, 1992, but it would require the applicant to proceed rather quickly with the notification to the surrounding property owners. Vice Chairman Ribble noted that a letter had been received from the Supervisor of the Providence District supporting the out of turn hearing request.

Mr. Hammack said he would abstain from the discussion since he was a member of the Club. In response to a question from Vice Chairman Ribble, he explained the request would basically only involve renovations with little change in the footprint. Mr. Hammack added that the Club was anxious to proceed.

Mr. Pammel made a motion to grant the applicant's request and schedule the case for October 20, 1992, at 8:00 p.m. Mr. Kelley seconded the motion which passed by a vote of 5-0-1 with Mr. Hammack abstaining. Chairman DiGiulian was absent from the meeting.

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Page 348, September 15, 1992, (Tape 1), Information Item:

Approval of Minutes for June 23, June 30, and July 21, 1992

Mr. Pammel made a motion to approve the minutes as submitted. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 348, September 15, 1992, (Tape 1), Information Item:

Hampton and Marinda Barnes, VC 90-P-039  
Additional Time

Mr. Pammel made a motion to grant the applicant's request. Mrs. Thonen and Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date is January 11, 1994.

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Page 348, September 15, 1992, (Tape 1), Information Item:

Intent to Defer Golf Ventures, SP 92-S-032

Mr. Pammel made a motion to issue an intent to defer SP 92-S-032.

Marilyn Anderson, Assistant Branch Chief, said the applicant had indicated they would be



submitting revised plans, but staff had not yet received them. She suggested November 19, 1992, at 9:15 a.m. which would allow staff sufficient time to review the new submission.

Mrs. Thonen and Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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The BZA recessed at 9:27 a.m. and reconvened at 9:37 a.m.

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Page 369, September 15, 1992, (Tape 1), Scheduled case of:

9:30 A.M. HARRIS S. AMMERMAN, SP 92-V-031, appl. under Sects. 3-103 and 8-915 of the Zoning Ordinance to allow riding and boarding stable and waiver of the dustless surface, on approx. 6.16 acs., located at 9305 Penwill Dr., zoned R-1, Mount Vernon District, Tax Map 106-4((1))23, 25; 106-3((1))pt. 4B. (CONCURRENT WITH VC 92-V-051)

9:30 A.M. HARRIS S. AMMERMAN, VC 92-V-051, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling to remain 0.3 ft. from front lot line and to allow dwelling to remain on same lot with barn which is the principal structure (40 ft. min. front yard required by Sect. 3-107 and no dwelling permitted on same lot with any other principal building by Sect. 2-501), on approx. 6.16 acs., located at 9305 Penwill Dr., zoned R-1, Mount Vernon District, Tax Map 106-4((1))23, 25; 106-3((1))pt. 4B. (CONCURRENT WITH SP 92-V-031)

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, Larry McDermott, with Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Greg Riegla, Staff Coordinator, presented the staff report. He said the applicant was proposing to operate a boarding stable with a maximum of 17 horses in the existing barn on the site, there would be no horse shows, and the animals would not be available for rent.

Mr. Riegla said there was a companion variance application consisting of two parts. The first part would permit the existing dwelling to remain 0.3 feet from the front lot line formed by Penneywell Drive, where 40 feet is required. The second part would allow the existing dwelling to remain on the same lot as the barn, which is the principal structure for the proposed stable. He explained that Section 2-501 of the Zoning Ordinance states that a dwelling unit may not be on the same lot with another principal structure. Mr. Riegla said staff believed that the bulk and mass of the development is residential in character and is compatible with the established development pattern, which is recommended in the Comprehensive Plan. He said the applicant has agreed to remove horse manure on a monthly basis as recommended by staff for environmental reasons, and accordingly for the reasons stated in the staff report, he said staff recommended approval.

Mr. Riegla called the BZA's attention to documents distributed at the beginning at the public hearing which included a revised affidavit, revised development conditions, and a letter from the adjoining neighbor. He said on page 3 of the neighbor's letter there were suggested development conditions, but staff believed that the established Zoning Enforcement procedures would address any problems that might arise.

In response to a question from Mrs. Harris, Mr. Riegla replied that both tax map numbers was the subject property, but that a portion of the property could be leased, with the applicant still maintaining control of the property.

Mr. Hammack asked staff to show the contiguous boundary between the lots on the viewgraph and Mr. Riegla did so.

Mr. McDermott said he believed the proposed location was ideal for the use. He said the trespass issue on Lot 52D had been addressed in the development conditions and the applicant had agreed to erect a fence.

Mrs. Harris asked the speaker to explain the sub-leasing issue. Mr. McDermott said there was a 30 year lease between Vulcan Quarry and the applicant, which basically gives the applicant ownership and restricts the use of the property only to exercising the horses. He added there can be no clearing and no structures can be built on the leased property. Mr. McDermott said he did not believe that sub-leasing was prohibited. He said the applicant owns Lots 23, 24, and 25, which houses the dwelling unit and the barn.

Mr. Hammack asked who owned the horses. Mr. McDermott said some of the horses were owned by the applicant and lessee and some were boarded on the site by private individuals.

Vice Chairman Ribble called for speakers in support.

Ann Malcom, 3927 Barcroft Mews Court, Falls Church, Virginia, said her family owns parcels 52, Lots A through D, which consists of approximately 22 acres and was originally purchased by her great grandmother in 1916. She said the applicant had been kind enough to include in the development conditions, at her request, the erection of the fence and the "no trespass" signs. Ms. Malcom asked that the proposed use, if granted, be subject to an annual review. She pointed out there is an unrestricted road, which is adjacent to the Lorton Reformatory, and that she planned to pursue the trespassing issue in that area as well.

There were no speakers in opposition to the request and Vice Chairman Ribble closed the public hearing.

Mrs. Harris again expressed concern with the leasing issue and questioned if there should be documentation to substantiate that the sub-lessee agreed to abide by the development conditions. Mr. Riegle pointed out that as part of the filing of the application staff had requested that the applicant provide documentation showing that the applicant had the right to use the Vulcan property. He said a lease is contained in the file.

A discussion took place among the BZA members as to the legality of the lease. Mr. McDermott said the applicant controls all the property, including the leased property.

There was no further discussion, and Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant VC 92-V-051 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated September 8, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-051 by HARRIS S. ANMERMAN, under Section 18-401 of the Zoning Ordinance to allow dwelling to remain 0.3 feet from front lot line and to allow dwelling to remain on same lot with barn which is the principal structure, on property located at 9305 Peniwill Drive, Tax Map Reference 106-4((1))23, 25 and 106-3((1))pt. 4B, 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 15, 1992; and

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

1. The applicant is the owner of Lots 23 and 25 and lessee of part of Lot 4B.
2. The present zoning is R-1.
3. The area of the lot is 6.16 acres.
4. The applicant has satisfied the nine standards required for a variance, in particular the property has been there for quite some time and the structures were built before the applicable provisions of the Zoning Ordinance in effect today.

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 use and location and the specified dwelling and barn shown on the plat prepared by Dewberry and Davis dated April 29, 1992, submitted with this application and not transferable to other land.

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 construction 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 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 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 September 23, 1992. 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 SP 92-V-031 subject to the revised development conditions dated September 14, 1992, distributed to the BZA at the public hearing. He said he would like to modify Condition Number 12 to reflect the approval for five (5) years with the Zoning Administrator having the authority to renew the approval for one additional five (5) year term.

Mr. Riegle asked if that renewal would be contingent on there having been no complaints filed with the County.

Mr. Pammel proposed adding a Condition Number 15 to read: "On an annual basis beginning on the anniversary date of this approval, the Zoning Administrator will provide the Board of Zoning Appeals with a report indicating the nature of any complaints, if any, which may have been filed with the Office of the Zoning Administrator and/or Zoning Enforcement Branch. This report will indicate how the complaints have been resolved."

The amendment died for the lack of a second.

Mrs. Harris said she did not believe the change in term would be beneficial in the trespassing issue.

Following a discussion among the BZA with respect to reducing the term, Mr. Hammack withdrew the modification to Condition Number 12.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-V-031 by HARRIS S. AMMERMAN, under Sections 3-103 and 8-915 of the Zoning Ordinance to allow riding and boarding stable and waiver of the dustless surface, on property located at 9305 Penwill Drive, Tax Map Reference 106-4(1)23, 25 and 106-3(1)pt. 4B, 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 15, 1992; and

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

1. The applicant is the owner of Lots 23 and 25 and lessee of part of Lot 48.
2. The present zoning is R-1.
3. The area of the lot is 6.16 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 and 8-609 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, entitled "Ammerman Boarding Stable" prepared by Dewberry and Davis and dated April 29, 1992, 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 horse shows conducted in conjunction with this approval.
6. Animal waste shall be removed from the site on a monthly basis.
7. The maximum number of horses kept on the site shall be seventeen (17) and none of the horses boarded on the site shall be made available for rental.
8. A minimum of ten (10) parking spaces shall be provided.
9. 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.

10. The gravel parking surface shall be continued for a term as specified by the Zoning Ordinance.
11. The existing vegetation, including that which lies immediately south of Pennwill Drive, shall be preserved, and shall be deemed to fulfill the requirements for Transitional Screening 1 along all lot lines. The Barrier requirement shall be waived along all lot lines.
12. This use shall be approved for a period of ten (10) years from the date of approval of this special permit.
13. None of the horses kept on the site shall be ridden on Lots 51, 52A, 52B, 52C, 52D.
14. A two (2) strand metal post wire fence will be installed along the property line as shown on the drawing received by OCP on September 14, 1992. Such fence shall be installed within ninety days of the approval of this Special Permit. In the event a building permit is issued for the construction of a single family detached dwelling unit on parcel 106-4 (1) 52D and this special permit is still valid, the applicant

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will replace the wire fence with a split rail fence along the common property line with Lot 52D.

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 and 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 6-0. 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 September 23, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 373, September 15, 1992, (Tape 1), Scheduled case of:

9:40 A.M. THE SPRINGFIELD CONGREGATION OF JEHOVAH'S WITNESSES, SP 92-L-036, appl. under Sect. 3-303 of the Zoning Ordinance to allow church and related facilities, on approx. 55,073 sq. ft., located at 3427 Buckman Rd., zoned R-3, HC, Lee District, Tax Map 101-2((5))(2)15.

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. Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Ehrlich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Regina Murray, Staff Coordinator with the Zoning Evaluation Division, presented the staff report. She said the applicant was requesting approval of a special permit in order to construct a 240 seat church and related facilities, including a chapel consisting of 4,780 square feet, and a caretaker's apartment within the proposed structure. Ms. Murray said full congregation meetings will be held on Thursday evenings and Sunday mornings and the applicant was requesting a modification of the transitional screening and barrier requirements in favor of that shown on the plat. Ms. Murray said staff had concluded that the request was in harmony with the Comprehensive Plan and met the standards for special permit approval specified in Section 8-006 of the Zoning Ordinance. She added that it was staff's opinion that the potentially negative impacts associated with the proposed use adjacent to an established residential community could be adequately mitigated with the Proposed Development Conditions contained in the Addendum distributed to the BZA at the public hearing.

The applicant's representative, Keith Martin, said the proposed church will be a two story structure with a maximum 24 foot building height with a seating capacity of 240. The structure will consist of 4,780 square feet equating to a 0.09 Floor Area Ratio (FAR). He displayed a demographic study prepared by the applicant showing where the existing parishioners reside. Mr. Martin said the special permit plat shows 71 parking spaces, where only 60 are required. He requested an amendment to Development Condition Number 5 to provide the applicant some flexibility to meet both the Zoning Ordinance and the Public Facilities Manual requirements with regard to the stormwater management pond. Mr. Martin said the site has been designed to face the commercially zoned property, the 4,200 square foot dry pond would serve the site in the southern corner of the property, the special permit plat had been revised to show full transitional screening and barrier along the western lot line next to the Jones and Kern property, and the existing vegetation would remain along the northwest, southwest, and western lot lines. He added that there are no objections from the neighbors, and the parking lot lighting would be limited to 12 feet in height with shields to prevent glare. In closing, Mr. Martin agreed with all the Development Conditions with the modification to Condition Number 5.

In response to a question from Mrs. Harris, Mr. Martin replied that the structure would be a single floor building.

There were no speakers to the request and Vice Chairman Ribble closed the public hearing.

Mr. Pamme! made a motion to grant SP 92-L-036 subject to the revised development conditions dated September 14, 1992 with a modification to Condition Number 5 and the addition of Condition Number 11 as noted 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 92-L-036 by THE SPRINGFIELD CONGREGATION OF JEHOVAH'S WITNESSES, under Section 18-401 of the Zoning Ordinance to allow church and related facilities, on property located at 3427 Buckman Road, Tax Map Reference 101-2((5))(2)15, 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 15, 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, HC.
3. The area of the lot is 55,073 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 8-303 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 William E. Whitenhill) and revised through July 14, 1992 and received by the Office of Comprehensive Planning on September 4, 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 for a church and related facilities 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 prepared by William E. Whitenhill as revised through July 14, 1992 and received by the Office of Comprehensive Planning September 4, 1992.
5. The maximum number of seats in the chapel shall be limited to 240 and a Minimum of 60 and a Maximum of 71 parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.
6. Transitional screening and barriers shall be modified along the western, southern, and northern lot lines to that shown on the Special Permit Plat. Where encroachment by the proposed stormwater management pond exists along the southern lot line, where the full width of plantings cannot be provided, the width shall be modified and plantings shall be provided outside of this area as shown on the SP Plat. The exact species, location, and amount of all plantings on site shall be provided as determined by the Urban Forestry Branch, Department of Environmental Management (DEM).
7. The entrance to the site and the exit from the site shall be designed to provide adequate sight distance as determined by VDOT at the time of site plan review.
8. Right-of-way up to thirty-five (35) feet from the centerline of Buckman Road along the entire Buckman Road frontage of the site shall be dedicated to the Board of Supervisors, in fee simple, at the time of site plan approval or within sixty (60) days upon demand by DEM or VDOT, whichever first occurs. The applicant shall construct frontage improvements as determined by VDOT including curb and gutter as depicted on the SP Plat dated July 14, 1992 and received by the Office of Comprehensive Planning on September 4, 1992.
9. 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.

10. All proposed signs on-site shall conform to the provisions of Chapter 12, Signs, of the Zoning Ordinance.
11. The applicant is required to process the application through the Geotechnical Committee for purposes of determining soil stability in the area. The Board of Zoning Appeals waived the filing fee.

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 unless 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. Thonen 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 September 23, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 375, September 15, 1992, (Tapes 2-3), Scheduled case of:

10:00 A.M. JAMES L. HOHMAN APPEAL, A 92-V-013, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's approval of a 1.2 foot administrative reduction in minimum side yard requirement to allow an existing shed to remain on property located at 2514 Culpeper Rd., on approx. 18,116 sq. ft., zoned R-3, Mount Vernon District, Tax Map 102-3((11))(7)20.

William Shoup, Deputy Zoning Administrator, said the owners and occupants of 2514 Culpeper Road are Edwin L. and Jean A. Ebbert. The appellant, Mr. Hohman, is the owner of the adjoining property and was appealing Mr. Shoup's approval of a 1.2 foot reduction to the minimum yard requirement to allow a storage shed to remain. Mr. Shoup said the appeal stemmed from construction by the Ebbert's involving a new carport and shed addition, and the subsequent approval of a reduction to the minimum side requirement based on an error in location. He said Section 2-419 of the Zoning Ordinance gives the Zoning Administrator the authority to grant such reductions, when there is an error in location that involves a measurement of less than 10 percent. Mr. Shoup used the viewgraph to show a house location plat dated 1963 showing the carport that was part of the original construction. He said sometime subsequent to 1963 a shed was constructed at the rear of the carport. Mr. Shoup said the Ebbert's have indicated the shed that existed at the time they purchased the property was in poor condition and in the early '70's they replaced the shed. He said at issue was the construction that began in November of 1991, which included a new carport and the replacement of the existing shed. He then displayed a second viewgraph showing the renovations. Mr. Shoup said the carport is located 7.2 feet from the side lot line, with a minimum side yard of 12 feet required, but carports are permitted to extend 5 feet into the side yard; therefore, the 7.2 foot location is in accordance with the Zoning Ordinance. He said at issue is the shed at the rear of the carport, which does encroach into the side yard by a small amount. Mr. Shoup said the carport extension was subsequent to an approved building permit; however, the shed additions were undertaken by the Ebbert's when they realized that the previously existing shed could not be repaired. After they were notified by the Zoning Inspector that the shed at the rear of the carport did encroach into the side yard, the Ebbert's filed for the administrative reduction. Mr. Shoup said after reviewing the appropriate criteria he approved the reduction on May 22, 1992.

James L. Hohman, 2512 Culpeper Road, Alexandria, Virginia, said the appeal did not deal only with the 1.2 foot administrative reduction, but also dealt with the improper application of the Zoning Ordinance and the denial of his rights with respect to the Ordinance. He said Mr. Shoup's September 8, 1992 letter was not an accurate representation of the appeal because it omitted several points of the appeal. Mr. Hohman asked the BZA to read the letters dated September 1, 1992, and June 15, 1992, prior to making its decision.

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The BZA assured Mr. Hohman that all letters received had been reviewed.

Mr. Hohman said under Section 2-419 of the Zoning Ordinance describes reductions in minimum side yard requirements and lists seven provisions, all which must be met, before such a reduction can be granted. He said one provision stipulates that a reduction may be approved when a non-compliance was the result of an error in the location of a building subsequent to the issuance of a building permit, if such was required. Mr. Hohman said Mr. Ebbert did not have a building permit, therefore the provision had not been satisfied. He said the previous shed was also a violation because it had been built without obtaining a building permit. Mr. Hohman said the concealment of these two building permit violations is inexcusable in staff's summary, since it is the key point of the appeal.

Secondly, he said the Section also stipulates that the reduction will not be detrimental to the use and enjoyment of other property in the immediate vicinity, which the shed is since it is adjacent to his patio and porch. Mr. Hohman said he did not believe that the BZA would grant a variance if the directly affected neighbor voiced opposition during the variance process.

Thirdly, Mr. Hohman said the Section also states that the administrative reduction may be granted, when to enforce compliance would cause unreasonable hardship to the owner, and he did not believe that it would.

In closing, he asked the BZA to consider the spirit of the Ordinance and the right of the landowner to object to a directly adjacent encroachment. He asked the BZA to overrule the Zoning Administrator's determination and require the removal of the shed.

Mr. Kelley said that it did not appear to him that the speaker's view would change, even if the shed was in compliance. Mr. Hohman said the closer the shed is to the lot line, the more his property is impacted.

In response to a question from Mrs. Thonen, Mr. Hohman replied that when he purchased his property the previous owner told him that Mr. Ebbert had attempted to buy an additional strip of land to construct the addition. He added that Mr. Ebbert had also approached him about buying land, but he was not interested. Mr. Hohman said he purchased the property four years ago.

Mrs. Harris asked why the speaker was suggesting that the entire shed be removed when only a small portion was in violation. Mr. Hohman said the entire structure violated the definition of a carport contained in the Zoning Ordinance.

Diane Hohman, 2512 Culpeper Road, Alexandria, Virginia, also spoke in support of the appeal and reiterated her husband's comments. (She submitted photographs to the BZA for its review.)

In rebuttal, Mr. Shoup said that although Mr. Ebbert did not obtain a building permit, he believed that did not preclude staff from granting an administrative reduction. He said each request is reviewed on an individual basis.

Mrs. Harris asked what the side yard requirement would be if the shed was free-standing, and would it have needed a building permit. Mr. Shoup said it would depend on the dimensions of the shed. He said he did not believe that the Department of Environmental Management (DEM) required a building permit if the shed is less than 150 square feet. Mr. Shoup said that since the shed is higher than 7 feet, it would have to meet the 12 foot side yard requirement. He added that there was actually two separate sheds and if the smaller shed is not over 7 feet in height, it could be placed right up to the lot line. (Mr. Shoup corrected the height to 8.5 feet.)

In response to a question from Vice Chairman Ribble, Mr. Shoup replied that staff had considered the "good faith" issue and believed there was no evidence to indicate that the error had resulted from a lack of good faith by the Ebbert's.

Mr. Hammeck expressed concern about the lack of a building permit initially and as to why staff had not issued a violation to the Ebbert's. Mr. Shoup said that once the Ebbert's were notified of the problem, they obtained Building Plan approval from DEM and started the process to obtain approval of an administrative reduction. He indicated that the previous shed at the back of the carport was erected in 1972, and at that time a homeowner could have such an enclosure on the back of a carport.

Mr. Hohman submitted photographs showing that the previous structure was attached, and as such, did need a permit; therefore, it was a violation. He called the BZA's attention to the increased size and scope of the new structure. Mr. Hohman said he did not believe the Ebbert's had acted in good faith. He pointed out the Ebbert's had also been cited for having a compost pile in their back yard.

Vice Chairman Ribble closed the public hearing.

Mrs. Thonen said the carport is allowed to extend 5 feet into the side yard under the Zoning Ordinance, and the BZA does not have the authority to change the Ordinance. She added that the Zoning Administrator has the power to administratively approve a reduction in the



setbacks if the reduction does not exceed 10 percent. Mrs. Thonen then made a motion to uphold the Zoning Administrator's position. Mrs. Harris seconded the motion.

Mr. Pammel said he was concerned with several aspects of the case and after reading the criteria dealing with the administrative review and the process, he could not support the motion.

The BZA discussed in great detail the various aspects of the appeal.

The motion carried by a vote of 4-2 with Vice Chairman Ribble, Mrs. Harris, Mrs. Thonen, and Mr. Kelley voting aye; Mr. Hammack and Mr. Pammel voting nay. Chairman DiGiulian was absent from the meeting.

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The BZA recessed at 9:27 a.m. and reconvened at 9:37 a.m.

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Page 377, September 15, 1992, (Tape 3), Scheduled case of:

10:15 A.M. RESTON PROPERTY INVESTORS LIMITED PARTNERSHIP, SPA 80-C-091-1, appl. under Sects. 5-503 and 8-500 of the Zoning Ordinance to amend SP 80-C-091 for commercial recreation use, (commercial tennis, similar courts, roller skating facilities and related facilities) to allow change of use to commercial recreation use (skating and Health Club and related facilities), increase of membership, parking spaces, and change of applicant, on approx. 4.75 ac., located at 1800 Michael Faraday Court, zoned I-5, Centreville District, Tax Map 18-3((5))9. (DEF. FROM 8/4/92 TO RESOLVE OUTSTANDING ISSUES)

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. Stephen Fox, attorney with the law firm of Miles & Stockbridge, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report. She said the applicant was requesting an amendment to the use to allow skating rinks, and miscellaneous courts (which will include roller blading, soccer, volleyball, and basketball); to increase the number of patrons and parking spaces; and, to change the permittee. The applicant was proposing to implement the changes in two phases. Phase I would increase the number of patrons from 313 to 324, increase the gross floor area from 66,387 square feet to 79,750 square feet, and restriping of the parking lot to accommodate 120 spaces. Phase II would add an additional 93 parking spaces for a total of 213 and increase the patrons to 603. Mrs. Anderson said the hours of operation were proposed to be 24 hours a day, 7 days a week. She said the development conditions propose a modification to the transitional screening to allow the landscaping shown on the plat to satisfy the Transitional Screening 2 requirement; a waiver of the barrier requirement adjacent to Lot 15; and, a requirement and a modification to the transitional screening requirement to allow the existing vegetation along the southern lot line to remain, where the land slopes downward to the bike trail.

Mrs. Anderson said staff's primary concern with the application involves the increased traffic turns at the intersection of Sunset and Michael Faraday Court, but believed that it could be resolved with the construction of a left turn lane and a right turn taper on Sunset Hills Road. She said the applicant objected to the condition, but staff did not believe that the General Standards of the Zoning Ordinance would be satisfied unless the safety concern was resolved. Mrs. Anderson said Bob Owolabi, with the Office of Transportation, was present to respond to any questions the BZA might have.

In closing, Mrs. Anderson said the request was in harmony with the Comprehensive Plan, and if the proposed development conditions were met, the request would comply with the Zoning Ordinance; therefore, staff recommended approval subject to the development conditions being implemented.

In response to a question from Mrs. Thonen, Mr. Owolabi said there were four reasons which justified requiring the road improvements: 1) the existing average daily traffic, 2) the increased traffic making it difficult for people to enter the site would create a safety hazard, 3) the left turn lane was part of the proffers when an office building complex was approved for the site, and 4) after reviewing the Virginia Department of Transportation standards it was determined that the left turn lane was necessary.

Mrs. Harris asked why the left turn was not constructed. Mr. Owolabi said the office building had never been constructed. Mrs. Harris asked if it was the same property owner. Mr. Owolabi said that it was.

Mr. Hammack asked how the traffic from the new use compared to that generated by the prior use. Mr. Owolabi called the BZA's attention to page 5 of the staff report and briefly discussed the differences.

Mrs. Harris said she would like to know exactly how many people the ice skating rink could accommodate every hour and how many cars would be generated if the facility was packed every hour, every day. Mrs. Thonen said she knew that the ice rink in Mount Vernon was not used to that extreme and that she believed that staff had to look at the figures on all rinks, not just one.

The applicant's attorney, Mr. Fox, said he believed it was important to understand some of the background of the facility in order to evaluate the special permit application. He said while he recognized the primary issue dealt with transportation, he said what the applicant is doing is not really a change in land use. Mr. Fox said in the 1970's the facility was used by the Reston Skate Way as a roller skating rink. In 1985 or 1986, he said the facility was leased to the Reston Homeowners Association who used it as their community health facility. Mr. Fox said in 1990 the owner of the property pursued a Proffered Condition Amendment (PCA), which was approved for 155,000 square feet of office space. As part of that application, there were proffers for right and left turn lanes onto Michael Faraday from Sunset Hills Road, as well as a contribution to signalization of the intersection at Sunset Hills and Michael Faraday. He said he believed the important issue before the BZA was that the proposed office use under the I-5 zoning district, in no way compares from a trip generation standpoint to the applicant's request. Mr. Fox said the peak hours for the skating facility is totally different from the office peak. (He called the BZA's attention to the traffic study contained in the staff report.)

Mr. Fox said the application was deferred from August 4th to allow time for further investigation as to whether or not right and left turn lanes could be striped within the existing right-of-way, and there is not. He said the facility on Pickett Road is overly crowded and the facility in Mount Vernon was very removed from most County residents. Mr. Fox said the request was in keeping with the needs of the community, it meets the Zoning Ordinance, it is something that the owners want to do, and it is a facility that is needed in the County.

Mrs. Harris said she agreed with the speaker's belief that the facility was a well anticipated use, and because of this it was necessary to make every effort to ensure the children's safety. Mr. Fox said the traffic report clearly shows that the daily two way traffic for the old use was 1,138 trips and the proposed ice rink will generate 1,270 trips. He said he did not believe this was a significant difference.

The applicant, Marc Bettius, came forward and explained that the proffer was not done pursuant to a rezoning and the applicant had by-right zoning under I-4 for office space. He said the local Supervisor discussed with the applicant as to whether or not the use would be continued for recreation, and the applicant indicated that the use would continue. Following those discussions, he said a decision was made collectively that recreational use for this property was necessary and appropriate for Reston and to make the property available to the citizens of Reston. Mr. Bettius said back during the "office boom" period there was a lot of pressure to develop office buildings on the site, but the applicant continued the recreational use for the community. He said the Proffered Condition Amendment did not get the applicant anything, except a number of conditions that he would have to fulfill. Mr. Bettius said the issue of the intersection would be dealt with as such time as office buildings are constructed. The applicant said he does not own the land but if he did he would be willing to dedicate, and he was only trying to provide a facility that the County was financially unable to provide. Mr. Bettius said if the BZA imposes the condition regarding the intersection, which would require power lines to be relocated, it would cost such an exorbitant amount of money which would make the project financially infeasible. He said he had a 7 year old that would be using the ice rink and that he did not believe that there is a safety factor with entering/exiting the site.

Mrs. Thonen said it was her understanding that high tension wires could not be relocated. Mr. Bettius said it involved a very lengthy process.

Mrs. Harris said she believed there was a nexus and asked if the applicant had investigated the possibility of installing a traffic light. Mr. Bettius said he would be agreeable to the BZA reviewing the application in two years in order to determine if a traffic light is necessary. He gave the BZA his word that if a problem did develop, he would be willing to install a traffic light.

Mr. Kelley said if a term is placed on the use the application would not be "bankable." Mr. Fox said even if the applicant would commit to fund a traffic signal, it was not within the applicant's control because it is a VDOT warrant requirement; therefore, any language would have to be subject to the intersection meeting VDOT warrants.

Ronald Weber distributed a handout to the BZA and said he was appearing as a private citizen and also on behalf of the Reston Community Association. He discussed with the BZA a traffic count contained in the handout, which he had conducted on his own. Mr. Weber pointed out that he presently worked for the National Transportation Safety Board and that he did not believe there was a safety issue.

In response to a question from Mrs. Harris, Mr. Weber replied there are sufficient gaps to make a left turn in front of opposing traffic. He said the problem is at the intersection at Wiehle Avenue, approximately 2,000 feet to the west, and to the east where the road is two lane rather than four.

Doug Kennedy, 12609 Harper Drive, Fairfax, Virginia, a professional traffic engineer, discussed staff's traffic analysis contained in Appendix 6 with the BZA. He said he believed the daily traffic count was too high and that the turn lanes were not necessary.

Bryan Stuart, a partner in the project, said there is a bike trail located adjacent to where the right turn lane would be located. He pointed out that the owners of a previous skating rink and bowling alley were not required to construct turn lanes; therefore, this applicant should not be.

Richard Werheim, co-owner of Hockey Plus, a retail supplier of skating equipment and accessories, located in Fairfax City, and also a General Partner in the project, said the applicant was trying to provide a family facility that the County was not financially able to do.

There were no speakers in opposition to the request, and Vice Chairman Ribble closed the public hearing.

Mr. Kelley asked staff for comments. Ms. Anderson said staff agreed that it was a good use but pointed out that the applicant was proposing to double the number of patrons, thus doubling the amount of traffic.

Mr. Owolabi said that traffic engineering, at this level, was not a science, but an art and that the trip generation all depends on an individual perception. He said staff was not saying that the traffic generation from the proposed use is the issue, but that the existing daily traffic on Sunset Hills Road is. Mr. Owolabi added that with 11 cars per minute passing the site, there would not be a sufficient gap for the cars to enter the site.

Mr. Hammack made a motion to grant SPA 80-C-091-1 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated July 28, 1992. Mr. Hammack modified Condition Number 7 to read:

"There shall be a traffic study conducted by the Fairfax County Office of Transportation for appropriate length study periods for a term of one year following the reopening of this facility and a report made back to the Board of Zoning Appeals to determine whether any signalization at the intersection of Michael Faraday Court and Sunset Hills Road would be required, and subject to VDOT approval, whether the applicant shall be required to pay for the installation of a traffic signal at that intersection or an appropriate share of signalization, if and when it becomes necessary."

Mrs. Harris seconded the motion.

Mr. Kelley said he did not believe the BZA had the authority to direct staff to conduct such a study.

Mrs. Thonen said she would like to add the following to Condition 7: "The applicant shall provide a pro rata contribution, not to exceed \$20,000, towards signalization of the intersection of Sunset Hills Road and Michael Faraday Court, if it becomes necessary."

Following a discussion among the BZA members, Mr. Hammack amended Condition Number 7 as reflected in the Resolution.

Mr. Pammel said he had a substitute motion which was comparable to Mr. Hammack's, but with the deletion of Condition Number 7. Mr. Hammack withdrew his motion. Mr. Hammack and Mrs. Thonen accepted the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-C-091-1 by RESTON PROPERTY INVESTORS LIMITED PARTNERSHIP, under Sections 5-503 and 8-500 of the Zoning Ordinance to amend SP 80-C-091 for commercial recreation use, (commercial tennis, similar courts, roller skating facilities and related facilities) to allow change of use to commercial recreation use (skating and Health Club and related facilities), increase of membership, parking spaces, and change of applicant, on property located at 1800 Michael Faraday Court, Tax Map Reference 18-3((5))9, 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 15, 1992; 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 I-5.
3. The area of the lot is 4.75 acres.
4. Testimony was presented which indicated that the requirements for the right and left turn lanes were generated by the existing development in the area and not by the applicant's use, thus would preclude the BZA from requiring the applicant to provide any right or left turn.
5. The league use of the property tends to flatten out the use over a long period of time.
6. The change in use will not result in a significant increase in the amount of trips generated.
7. The application is a good 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 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 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 ~~Deputy Land Surveying, Inc.~~ <sup>led Revised 2/24/97</sup> ~~Greenhorn & Mera, Inc.~~ <sup>dated 5-21-92</sup> ~~approved with this application, as qualified by these development conditions.~~ <sup>revised through 6-19-92</sup>
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 patrons at any one time shall be limited to 324 in Phase I and a total of 603 in Phase II.
5. There shall be 120 parking spaces provided in Phase I and 213 parking spaces provided in Phase II as shown on the special permit plat.
6. Transitional Screening shall be modified along the northern lot line adjacent to Lot 15 to allow the landscaping shown on the special permit plat to satisfy the requirement. Barrier H shall be modified along the southern lot line to allow the existing vegetation to satisfy the requirement. The barrier requirement along the northern lot line adjacent to Lot 15 shall be waived.
7. Parking lot lighting shall be approved by the Architectural Review Board of Reston Land Corporation.
8. If additional on-site stormwater management area is required at the time of site plan review, it shall be provided without altering the parking, road, building or landscaping as shown on the special permit plat.

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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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 substitute 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 September 23, 1992. This date shall be deemed to be the final approval date of this special permit.

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10:30 A.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. (DEF. FROM 1/21/92 and 4/23/92 AT APPLICANT'S REQUEST)

Vice Chairman Ribble said the BZA had received a deferral request. Marilyn Anderson, Assistant Branch Chief, suggested December 8, 1992, at 9:00 a.m. Hearing no objection the Chair so moved.

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Scheduling of Date and Time  
Michael C. McGuire Appeal

(The BZA had passed over this item earlier in the public hearing to allow William Shoup, Deputy Zoning Administrator, to be present.)

Mr. Shoup said the issue of the appeal involved a request to construct an addition to an existing detached garage and by letter dated June 18, 1992, Ms. Melinda Artman, Deputy Zoning Administrator, Plan Review Branch, notified the appellant that the proposed addition would not be permitted. He said the appeal was filed on August 3, 1992, which was outside the requirements set forth in the State Code and the Zoning Ordinance, thus staff did not believe the appeal was timely filed and should not be accepted. Mr. Shoup said staff had notified the appellant of staff's negative recommendation, but the appellant was unable to be present and had submitted a written rebuttal dated August 28, 1992.

In response to a question from Mrs. Harris, Mr. Shoup replied that the appellant had indicated that it was difficult for him to take off work in order to be present.

A discussion took place among the BZA members as to whether or not the appeal was timely filed. The BZA did express concern with the length of time involved between the date on the letter and the date stamped by the post office.

Mr. Pammel made a motion that the BZA uphold the Zoning Administrator's determination that the appeal was not timely filed. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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RIVER BEND COUNTRY CLUB  
Special Permit Amendment, SPA 82-D-101-4

Vice Chairman Ribble stated that the attorney for the applicant, River Bend Country Club, had written him a letter stating that the Club was having some problems locating the temporary trailers that were planned to be used while the renovation of the Clubhouse was underway. He stated that originally the Club had planned to place the trailers on the golf driving range, but because the County required that they place their septic field in that location, they have to move them elsewhere. The only place the Club can put them is on the parking lot and approximately 63 parking spaces will be used for these trailers. Vice Chairman Ribble said it seemed that this is reasonable under the circumstances.

Mr. Kelley moved that the Board of Zoning Appeals inform the Zoning Administrator, or her duly authorized agent, that it believed that the proposal to permit the River Bend Country Club to utilize sixty-three (63) parking spaces to support temporary trailers to house office space, golf club storage, golf professional shop, cart storage, and limited temporary food service during the period of demolition and reconstruction of the clubhouse is in substantial conformance with the BZA's approval of the Special Permit, SPA 82-D-101-4, and should be approved administratively.

Mr. Hammack seconded the motion and which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Ms. Kelsey suggested that Vice Chairman Ribble advise the Club representative that he should address his request to Barbara A. Byron, Office of Comprehensive Planning, and that his request would be responded to as soon as possible.

Mr. Ribble indicated that he would do that immediately.

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As there was no other business to come before the Board, the meeting was adjourned at 12:33 p.m.

Betsy S. Devitt  
Betsy S. Devitt, Clerk  
Board of Zoning Appeals

John F. Ribble  
Vice Chairman John Ribble  
Board of Zoning Appeals

SUBMITTED: November 5, 1992

APPROVED: November 10, 1992



The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on September 22, 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 8:05 p.m. and Mrs. Thonen gave the invocation.

Chairman DiGiulian asked if there were any Board Matters to bring before the Board of Zoning Appeals (BZA) and Mr. Kelley said that there were.

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Page 383, September 22, 1992, (Tape 1), Board Matter:

Mr. Kelley advised that John H. Rust, Jr., Esquire, with the firm of Rust, Rust & Silver, 4165 Chain Bridge Road, Fairfax, Virginia, was present and wished to request that the BZA consider deferral of two appeals which were scheduled to be heard on September 29, 1992, when he would be out of town.

Mr. Rust came to the podium and requested that appeals A 92-P-004, Ruth S. Baker, Trustee & Emmanuel A. Baker, Jr., Trustee, & Fairfax Radiology Consultants and A 92-P-005, Ruth S. Baker, Trustee, & Emmanuel A. Baker, Jr., Trustee, be deferred because he could not be present on September 29, 1992.

William E. Shoup, Deputy Zoning Administrator, was present and stated that the Zoning Administrator's office had no objection to the deferral.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the BZA that the date of October 27, 1992, at 9:15 a.m. would be a good date.

Mr. Kelley made a motion to issue an Intent to Defer. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

There were no further Board Matters to bring before the Board. Chairman DiGiulian announced the order in which the cases would be heard and called for the first scheduled case.

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Page 383, September 22, 1992, (Tape 1), Scheduled case of:

8:00 P.M. LEO T. THIBODEAU AND MARY E. THIBODEAU, VC 92-P-062, 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 20 ft. (80 ft. min. lot width required by Sect. 3-306), on approx. 44,431 sq. ft. located at 2638 Kirklyn St., zoned R-3, Providence District, Tax Map 49-2((6))13D.

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. Runyon replied that it was.

Regina Murray, Staff Coordinator, presented the statement of justification, stating that staff did not believe the application met all of the requirements for the reasons set forth in the staff report. She said that the absence of a variance would not produce undue hardship as defined by the Code and would not restrict all reasonable use of the land.

Charles E. Runyon, of Runyon, Dudley, Anderson, Associates, Inc., 10650 Main Street, Fairfax, Virginia, came to the podium to represent the applicants, stating that, originally, Kirklyn Street ran from Shreve Road to Martha's Lane and the subject dwelling was constructed and oriented to Kirklyn Street. He said that the dwelling had a Kirklyn Street address because of the way it was set up on the lot. Mr. Riegler said there were several other parcels on the road, which is not a public road and had never been taken into the system, which was the reason why the applicants were before the Board. Mr. Runyon said that vacation had taken place of that portion of Kirklyn Road contiguous to the applicants' property, from the northern part of the property to Martha's Lane. He said that the applicants had built a driveway off of Martha's Lane, but their address is still Kirklyn Street, creating a great of confusion for anyone seeking to find the applicants' property. He said the Comprehensive Plan recommends a density of 2 to 3 dwelling units per acre for this property and the staff report states that the applicants' property does not conform to standards regarding hardship, whereas the property contained only 1 dwelling unit; if the request were granted the density would be 1.96, which is still lower than the maximum density allowed. Mr. Runyon said that, had Kirklyn Street not been vacated, it would not have been necessary for the applicants to seek a variance, nor to request permission for the pipestem driveway to preserve some very old trees on the property which would have to be taken down if the applicants accessed through Kirklyn Street. Mr. Runyon said neighbors had complained about visitors frequently coming to their house on Kirklyn Street, seeking access to the applicants' property. He submitted that they were requesting permission to build a pipestem off of Martha's Lane and getting a Martha's Lane address. Mr. Runyon argued that the applicants' property configuration was in keeping with other lots in the subdivision.

Mr. Runyon referred the Board to page 6 of the staff report and quoted in part, "...the resubdivision would create a lot configuration that is compatible with the surrounding neighborhood development pattern...." This was later found to have been an error.

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Mrs. Harris said that there appeared to be enough space between the easement and said she believed they could exit from the main house to Kirklyn Street. Mr. Runyon said that one reason not to do so was to save the trees he had mentioned earlier, and the other reason was that Kirklyn Street had become a vacated street and was not a public street. He said the only way to solve the problem was to get a variance.

Mr. Hammack asked Mr. Runyon if he had discussed the plat with the owner of Lot 1A on Martha's Lane. Mr. Runyon said he had not; the lots had been subdivided about the same time as the vacation of Kirklyn Street had taken place. In answer to a question from Mrs. Harris, Mr. Runyon said that Outlot A is a little sliver that was apparently utilized to provide access, with Mr. Thibodeau's permission.

Margaret and Ralph Chatham, 2631 Kirklyn Street, Falls Church, Virginia, were present to address the application. Mrs. Chatham came to podium stating that they had no objection to which way the BZA ruled on the application; they just wished to eliminate the nuisance of having people coming to their house, looking for the Thibodeau house which had a Kirklyn Street address but is actually accessed through Martha's Lane. They requested that either the address be changed or access be established from Kirklyn Street. She said that they really did not appreciate having people knocking at their door, blocking their driveway in order to walk to the Thibodeau house or occasionally even trying to drive onto the Thibodeau property from their driveway.

In answer to a question from Mr. Hammack, Mrs. Chatham said that her address is 2631 Kirklyn Street. Mr. Chatham came to the podium and further explained the relative locations of the two properties and the location of the trees referred to by Mr. Runyon. Mr. and Mrs. Chatham said they could not locate the trees on the map.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, apologized for the error in the Appendix of the staff report, previously referred to, when Mr. Runyon read from the staff report, "...the resubdivision would create a lot configuration that is compatible with the surrounding neighborhood development pattern...." This was later found to have been an error. Staff reported that a subsequent memo, correcting this error had been written and had inadvertently been left out of the staff report. Staff read from the superseding corrected memo that staff considered the configuration not to be compatible. A lengthy discussion ensued during which the BZA members closely examined the issue of the two memos and questioned staff extensively.

The second memo was made available to Mr. Runyon and Ms. Kelsey read the pertinent information into the record, stating that, "...the resubdivision would create a lot configuration that is unlike the surrounding neighborhood development pattern. Approval of the variance would result in the creation of a pipestem lot in an area that is characterized solely by conventional lots..." and "... staff had suggested that the application be withdrawn." In answer to a question from Mrs. Harris, Ms. Kelsey explained that the revised memo was from Bruce Douglas, Chief, Environment and Development Review, dated September 3, 1992. Ms. Kelsey explained that the first memo was reviewed and, when it was found that the memo did not reflect staff's position as developed at the staffing session, the revised memo was written to correct the error, but it was inadvertently left out of the staff report.

Mr. Pammel said that, before rebuttal, he wanted to give the Chathams an opportunity to comment, since they were a party of interest.

Mr. Hammack said he would like to read the revised memo and perhaps Mr. Runyon also would like to read it; Mr. Runyon said that he already had read the revised memo.

Mr. Chatham said he did not believe that a pipestem was incompatible with the area and that there are at least two other pipestems in the area; he proceeded to point them out on the viewgraph.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 92-P-062 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 15, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-062 by LEO T. THIBODEAU AND MARY E. THIBODEAU, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed lot 1 having lot width of 20 ft., on property located at 2638 Kirklyn St., Tax Map Reference 49-2((6))13D and 49-2((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 September 22, 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 44,431 square feet.
4. The shape of the property is unusual, and the situation or condition of the property being located at the end of a street that has been partly vacated, with the orientation toward the vacated street and the actual access off Martha's Lane, is enough of a hardship to justify granting the variance.
5. There is no real opposition to the application and the ingress and egress off Martha's Lane makes good sense.
6. Granting the variance will result in less density than under the existing zoning.

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 130 into two (2) lots as shown on the plat prepared by Runyon, Dudley, Anderson Associates, Inc. and dated September 4, 1992.
2. The driveway to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

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 subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision 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. 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 September 30, 1992. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. CHRISTIAN FELLOWSHIP CHURCH, SPA 82-D-066-4, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 82-D-066-3 for church and related facilities and day care center to permit trailers to remain, building expansion, and steeple, on approx. 7.54 acs., located at 10237 Leesburg Pi., zoned R-1, Centreville District, Tax Map 18-2((7))A,B,C.

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. Houston replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that the applicant was requesting an amendment to the special permit to allow a redesign of the existing structure. He said a second story is proposed to be added and a small building addition to the south. The result would be a two-story addition, front to back; the building would also be slightly longer. Mr. Riegler said that the architecture of the structure would change significantly as a result of this application; the rendering is an appendix to the staff report. He said that the existing structure was not compatible with the surrounding low density development. Staff believed that the new materials and improved architecture would generate an improved and more compatible appearance; while the height is increased, the height as viewed from Leesburg Pike is not increased; the front of the building is 28 feet and that will now be a uniform height from front to back. Mr. Riegler said that a turn lane is proposed to be added at the median break at Colvin Forest Drive, which is another longstanding issue in that traffic wishing to travel westbound on Leesburg Pike is forced to make a U-turn, the volume of traffic has exceeded the existing storage capacity of the turn lane and has blocked travel aisles to Leesburg Pike. He said the applicant had committed to provide an extended turn lane which more than doubles the length of the existing turn lane and, in the opinion of the Office of Transportation, will now allow safe travel on Leesburg Pike. Mr. Riegler said, that with the installation of grass pavers in the parking area between Leesburg Pike and the structure, it is staff's belief that a more residential appearance will result.

Mr. Riegler said that staff recommended approval of this application, subject to the revised Proposed Development Conditions dated September 21, 1992.

David S. Houston, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, represented the applicant, stating that he had appeared before the BZA four or five times to represent the applicant. He said that the two most controversial occasions involved a different location that the church had proposed to move to, further up Route 7. Mr. Houston said the church membership had now stabilized, the applicant had worked with the neighbors and had become a better neighbor. The other property owned by the applicant was being readied for sale by the applicant.

Mr. Houston described the addition before the Board, stating that the intent was to make the church look more like a church and provide the meeting room space, classroom space, and ancillary facilities that will allow the church to conduct its mission all on site, in an appropriate, first class manner. Mr. Houston said that he would like to have the applicant's architect, Thomas Kerns, make a short presentation on the applicant's proposed modifications.

Mr. Houston said that there would be no other changes, such as an increase in sanctuary seating, since the membership has stabilized.

Thomas Kerns of the Kerns Group Architects, P.C., 666 11th Street, N.W., Washington, D.C., came to the podium, stating that he concurred with a lot of staff's comments and only wished to reinforce a few of the design goals: to reduce the mass and increase the aesthetic appearance of the project. He said that one way they would be able to do that would be to collect the people into an east facing porch about 10 feet wide, terminating at the steeple. He said that they had created brick gable forms that reinforce and draw the flow of people to the entrances of the sanctuary and to the new addition in the back. Mr. Kerns said that a one-story covered arbor would be placed in front of the existing church that will further soften the mass of the two-story wall toward Route 7. He went on to describe the design further: asphalt shingled roof which will also help hide the existing roof top's mechanical systems that presently are very visible. He said the goal was to make this facility look much more like a church and the steeple helps in that respect.

Mr. Houston said that the pastor and members of the church were present but would not speak; instead, he asked for a show of hands. He said that he was happy to have staff's support for the first time.

In opposition to the application, Charles Steinmetz, 1304 Tulip Poplar Lane, Vienna, Virginia, came to the podium to state that he was a contiguous property owner and that the neighborhood had had a rocky relationship with the church over the years. He said that the current liaisons had tried to work with the neighbors over the last several months, attempting to satisfy their concerns. Mr. Steinmetz said that he was speaking on his own behalf, not for the homeowners association in the area. He said that he had come before the Board in opposition on many occasions; he had opposed and would continue to oppose any expansion of the subject property which would intensify its use, upon which Mr. Steinmetz went on to elaborate in great detail.

In reply to Mr. Steinmetz' objection to intensification, Mr. Houston said that the main sanctuary was not increasing in size and its use on Sundays was not increasing. The submitted floor plans show that the addition will have meeting rooms, Sunday school rooms, and a large recreation room to serve the existing day care center; he believed that any

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church had different types of activities during the week. He said that they were typical and would like to put those activities into larger classrooms that are not cramped, as well as to provide future flexibility to change the types of programs that go on as the needs of the church change.

Mr. Pammel noted the staff report stated that the facility has a Floor Area Ratio (FAR) of 0.144, which is almost at the maximum of the 0.15 permitted, so the applicant could not expand any further unless they acquire additional land.

A lengthy discussion ensued regarding Condition 14 and the result is reflected in the Resolution.

Mrs. Harris made a motion to grant SPA 82-D-066-4 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions contained in the staff report dated September 21, 1992, as amended and shown in the Resolution. The Conditions reflecting changes are 8 and 14; Condition 17 was added.

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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-066-4 by CHRISTIAN FELLOWSHIP CHURCH, under Section 3-103 of the Zoning Ordinance to amend SPA 82-D-066-3 for church and related facilities and day care center to permit trailers to remain, building expansion, and steeple, on property located at 10237 Leesburg Pl., Tax Map Reference 18-2((7))A, B, C, 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 22, 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-1.
3. The area of the lot is 7.54 acres.
4. The improvements planned by the church will improve the flow of traffic.
5. The landscaping will be totally improved.
6. The appearance of the structure will be more church-like.
7. Much has been done between 1985 and now and there is hope that everyone has learned how to get along with each other.
8. An initial concern about the increase in bulk resulted in actual realization that it would allow the church to grow without any future increase in bulk, allowing the church to better serve the congregation.
9. The interior landscaping is good and will really soften the look from Route 7.
10. This is a good application and more landscaping should be provided around the edge of the new playground.
11. The application, in general, meets the Comprehensive Plan.
12. The new application will fit in better with the 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 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 Richard O. Spencer dated April 28, 1992 revised through July 28, 1992 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 general conformance with the approved Special Permit plat, and these development conditions.
5. The maximum number of seats in the main area of worship shall be 794.
6. The maximum daily enrollment for the child care center shall not exceed 99 students.
7. The number of children using the outdoor play area shall not exceed 66 at any one time.
8. 386 parking spaces shall be provided on site. This number may be reduced at the time of site plan review if necessary to accommodate required landscaping or any other public improvement provided that a minimum of 218 spaces shall be provided in accordance with the minimum parking requirements contained in the Zoning Ordinance. The 36 parking spaces presently located parallel to Leesburg Pike shall be reconstructed with grass pavers and shall only be used on special occasions and Sunday's when all other spaces are occupied. All parking shall be on site.
9. The use of the three trailers is approved for a term not to exceed three (3) years from the date of approval of this application; however, within one month following the issuance of a Non-Residential Use Permit for the building addition, the three (3) temporary trailers shall be removed irrespective of the three year term.
10. Screening and landscaping shall be preserved and provided as shown on the landscape plan prepared by Richard O' Spencer dated April 28, 1992, revised through July 28, 1992, and shall be deemed to fulfill the applicable transitional screening and barrier requirements with the following modifications.

Supplemental plantings as necessary to meet the requirement for Transitional Screening 1 shall be placed along the eastern lot line in the area extending 200 feet to the south from the northern lot line. Emphasis shall be placed on using evergreen plantings to fulfill this requirement as may be acceptable to the Urban Forester.

An additional 15 trees shall be placed along the building foundation to further lessen potential visual impacts attributable to the structure. These trees shall have a minimum caliper of two (2) inches. Emphasis shall be placed on the northern, eastern and western sides of the structure. However, to ensure survivability, the specific placement of these trees shall be at the discretion of the Urban Forestry Branch. If it is determined that the architecture or design of the building cannot accommodate all of the trees required by this condition, the remaining trees shall be used to further reduce visual impacts in the area between the structure and Leesburg Pike, at locations to be determined by the Urban Forestry Branch.

Each of the hedges shown on either side of the parking area constructed with grass pavers and the boxwood hedge in front of the principal structure shall have a planted height of four (4) feet and shall be maintained so as to have a minimum height of four (4) feet. The deciduous trees shown along the western edge of the parking area between the structure and Leesburg Pike shall have a caliper of at least 2 inches. The boxwood hedge shown on the special permit plat may be replaced with an evergreen hedge having a minimum planted height of four (4) feet if determined feasible by the Urban Forestry Branch, DEM.

Species of trees used to fulfill all of these requirements shall be as determined by the Urban Forestry Branch, DEM.

11. Parking lot lights for the Lot C shall be no higher than eight (8) feet and shall be directed on site.
12. No buses shall be stored on the site.
13. The church shall be reconstructed in general conformance with the architectural rendering prepared by Kerns Group Architects P.C. received by DCP on May 20, 1992. Minor alterations shall be permitted if necessary for architectural or engineering purposes. The addition shall only be used to house classroom/meeting room spaces, a fellowship hall, a kitchen, restrooms, administrative spaces, and any necessary maintenance or mechanical rooms.
14. With the exception of one Sunday service in the fellowship hall, if necessary, which should be staggered in order not to begin at the same time as the services in the main sanctuary.
15. The existing left turn taper leading from Leesburg Pike to the median break at Colvin Forest Drive shall be extended to provide an additional 100 feet of storage capacity. This improvement shall be provided prior to the issuance of the Non-Rup for the approved building addition. Such construction shall be in accordance with the ultimate design standards of VDOT.

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16. To ensure safety for motorists on the church property, raised curbs or landscaped islands shall be constructed along the two (2) parking spaces on Lot B which directly abut the northern and southern side of the travel aisle which connects Lot B with the southernmost parking spaces on Lot C.
17. A row of evergreen trees shall be provided along the southern edge of the playground, to the satisfaction of the Urban Forestry Branch.

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 September 30, 1992. This date shall be deemed to be the final approval date of this special permit.

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The Board took a five minute recess

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Page <sup>389</sup> 389, September 22, 1992, (Tape 2), Scheduled case of:

8:00 P.M. NATIONAL TIRE WHOLESALE APPEAL, A 92-P-014, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that appellant's Vehicle Light Service Establishment has direct access to Prosperity Avenue and therefore does not comply with Par. 1 of Sect. 5-505 of the Zoning Ordinance, on approx. 2.61 acs., located at 2943 and 2989 Prosperity Ave., zoned I-5, Providence District, Tax Map 49-3(1)100C.

Keith C. Martin, Esquire, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, represented the appellant.

William E. Shoup, Deputy Zoning Administrator, presented the staff report, stating that Prosperity Avenue is a minor arterial road and it had been determined that the appellant's use did not comply with Par. 1 of Sect. 5-505 of the Zoning Ordinance. Mr. Shoup said that National Tire Wholesale (NTW) occupies a wing of one of two buildings located on the subject property which is known as the Dewey Business Park. He said that uses such as the appellant's are permitted by right when they satisfy the criteria of Par. 1 of Section 5-505 of the Zoning Ordinance, subparagraph B, stating that the use must not have frontage or direct access to a street that is defined in the adopted Comprehensive Plan as a major or minor arterial road; Prosperity Avenue is defined as a minor arterial road. He noted that the question at issue here is not frontage, but direct access. Mr. Shoup said it is staff's position that, to satisfy the criteria for no direct access, there must be a non-arterial public or private street intervening between the use and the arterial road. He said it was staff's judgment that such an intervening street serves to filter the traffic flow from the use and the internal development traffic flow from the arterial road. Mr. Shoup staff's position was that this would be in keeping with the intent to regulate the high traffic-generating uses.

Chairman DiGiulian asked Mr. Shoup if there were two separate parcels of land involved or just two buildings. Mr. Shoup said that there are two parcels; the parcel on which NTW is located is 100C and the other parcel is 100B; but it is all a unified development under one site plan. Chairman DiGiulian asked, if the easement which was used to get to Prosperity Avenue was a public street, would that then be an example of non-direct access. Mr. Shoup said that, if it met the criteria of a street, the answer would be yes. As it stands, access is through a travelway in the parking lot that serves the office building which is located in the front, and then directly through the travelway back to the NTW site. Mr. Shoup said it had been determined that the travelway constitutes direct access.

Mr. Martin said that the appeal hinges on the interpretation of the word "direct" as interpreted by the Zoning Administrator. He said that the facts were that NTW space sits approximately 370 feet from the Prosperity Avenue right-of-way; to access NTW from Prosperity Avenue, a car must cross the office building travelway, approximately seven rows of parking serving the office building and at least five other tenants within the business park, take a

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left turn from the use, then take a right turn back into the bay area on the back side of the building. He said there was a travelway along Prosperity Avenue which was designed to provide access to the lots which are contiguous to the subject property on the north and south, which would potentially serve as the service drive, which he believed was an intervening road. Mr. Martin believed that the history of the Zoning Ordinance Section was silent on the word "direct," and quoted a dictionary definition: proceeding from one point to another in time or space without deviation or interruption. He argued that there was a deviation of going through a multitude of intervening uses serving multiple properties and multiple tenants, before reaching the use. Mr. Martin said that the appellant had a use without an individual curb cut, and shares a curb cut with at least six other uses, a use that is separated from the major arterial by 370 feet, with intervening parking lots and travelways, from a shared curb cut. He claimed that the use was successfully operating in the business park since 1980. He requested a liberal interpretation of the Ordinance provision because he did not believe that the legislative history was there to support a strict interpretation of direct access.

Mr. Pammel asked Mr. Martin if there was any other access to the facility and he replied that there was not. Mrs. Harris said that she would be willing to accept Mr. Martin's argument if the definition of the Zoning Ordinance had not said that the use could not have frontage or direct access, which she said he omitted from his argument. Mrs. Harris said that she had visited the site that day and saw that the parking situation was uncontainable, more so because there was no intervening road to alleviate the parking situation.

Chairman DiGiuliano asked Mr. Martin if the property consisted of two separate and distinct parcels of land and he replied there were two separate tax parcels on a unified site plan.

Speaking in opposition was George P. Doss, Jr., Esquire, 108 N. Washington Street, Alexandria, Virginia, stating that he represented a contiguous neighbor of the appellant, Werner's Corvettes, 2987 Prosperity Avenue, Fairfax, Virginia. Mr. Doss had submitted letters and pictures which were included in the staff report. In addition, Mr. Doss said that the appellant had not been candid in its approach, having obtained their Occupancy Permit when the development was new, at which time it was based on a 60-40 warehouse/sale of tires. He said that, sometime after having received the Occupancy Permit, as stated in the staff memorandum, they changed the character of their business operation. He said that, in addition to mounting and balancing tires, they began performing work on struts, shock absorbers, replacement of ball joints, tie rods, and for some time now have had a \$100,000 front and alignment machine in one of the bays without having permission to even operate there. Mr. Doss raised the question of the value of the personal property on the appellant's site. Mr. Doss said that, after changing the character of their operation, they also acquired the fourth bay, which is contiguous to his client, and which is used for alignment. Mr. Doss said that the appellant has cars going out of that bay at an average of one every 25 minutes. He submitted pictures to the BZA showing the high volume of traffic generated by NTN in doing what he termed "illegal work," without a permit. He said they have consistently taken up all of the parking available in the development, they have consistently blocked the thoroughway, or travelway; thus, blocking the movement of autos, and leaving so little room that fire engines and emergency equipment could not get through, if the need arose.

Mr. Doss further submitted to the BZA a Dewberry & Davis plat showing that a portion of the parking recently had been assigned to the Postal Service, leaving very little available parking. He went into great detail in describing the congestion in the park caused by the appellant and impacting upon the six other establishments in the park.

Mr. Doss said that Dewberry & Davis, the landlord, in 1986 told his client before they moved in, that they absolutely could not conduct the kind of activity now being conducted by the appellant. He said that his client agreed and did not pursue that type of operation; whereas, Dewberry & Davis was now supporting the appellant. He said that, when his client applied for a permit, Dewberry & Davis gave him a plat of the parking and said that the County did not have the plat and did not know that they had the extra parking. He said his client took the plat to the County and received an Occupancy Permit. Mr. Doss said that particular extra parking, as well as other designated areas, now were assigned to the Postal Service, leaving his client with very little parking, and putting his client's business in jeopardy.

Mr. Shoup said that the parking lot and travelway which Mr. Martin suggested served as an intervening feature, does not serve to satisfy the requirement of the Ordinance and is not in keeping with the intent of the provision. Regarding the history of the provision, the staff report back in 1978, when the Zoning Ordinance provision was adopted, was silent with regard to direct access; but subsequent interpretation has consistently required an intervening non-arterial road. He said that, where the appellant made reference to page 6 and the discussion on curb cuts, the purpose was to delineate between the two parts of Par. B; the one addressing frontage intended to preclude direct curb cuts onto the arterial; but the provision goes on to address direct access and it is staff's opinion that means more than just frontage.

Mr. Martin, in rebuttal, said that he did not believe there was direct access; he believed the intent of the Section was to prevent individual curb cuts for vehicles served by light service establishment; although the other tenant's testimony was compelling, he believed it was irrelevant to this issue. He asked for the Board's favorable consideration.

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There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel said that the testimony was interesting in this case and it illustrated one point: what began as a wholesale establishment with retail sales grew over a period of years into something else and the intensity and development has increased with the growth of the facility. He said that he was in complete agreement with the Zoning Administrator in that it is a vehicle light service establishment.

Mr. Pammel made a motion that the appeal be denied and that the Board uphold the interpretation of the Zoning Administrator with respect to direct access. He further pointed out that the only access to the site is the access being discussed and that, in his opinion, is direct access, with no other access. He said that a special exception by the Board of Supervisors would be required as a result of his motion.

Mr. Hammack seconded the motion, which carried by a vote of 7-0, and the decision of the Zoning Administrator was upheld. The decision became final on September 29, 1992.

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Page 391, September 22, 1992, (Tape 2), Scheduled case of:

8:00 P.M. MANSION HOUSE CLUB, INC., SPA 77-V-247, appl. under Sects. 3-203 and 8-915 of the Zoning Ordinance to amend SP 77-V-247 for swim and tennis club to permit building additions, change in hours of operation, reconfiguration of parking spaces, modification to security guard condition, and waiver of dustless surface requirement, on approx. 5.0435 acs., located at 9321 Old Mt. Vernon Hwy., zoned R-2, Mount Vernon District, Tax Map 110-4(1)90.

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. McCallum replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report, stating that the applicant wished to amend the previous special permit approval to allow a small pool house addition, add a small deck, modify the hours governing the swimming pool and tennis courts, and change the development condition concerning security arrangements at the Club. Mr. Riegler said that, with the implementation of the Proposed Development Conditions, staff recommended approval of this special permit amendment.

In answer to a question from Mr. Hammack regarding the hours of operation and their impact on neighbors, Mr. Riegler stated that the contiguous property owners would be 25 feet from the lot line and there is some high quality vegetation that appears to have been there since the Club was constructed. Mr. Ribble said that he knew that the Club had done good landscaping. Mr. Riegler said that the present application was a hybrid developed between the applicant and staff since the initial request; he stated that the result was a higher level of regulation.

Mr. Riegler noted that revised Proposed Development Conditions had been distributed to the BZA. He stated that the only substantial change allowed the applicant to use either a roving security guard or an electronic system. Mr. Riegler said that the applicant had seen the revised Development Conditions and it was his understanding that they were in agreement.

Mr. Kelley questioned Condition 6 and the reference to week-night parties, stating that he knew there were several property owners who are several hundred yards away and he did not know why they should be allowed to impact a week-night party taking place so far away that it would not impact upon them. Mr. Riegler said that the language was taken from the policy that had been adopted for all of these types of facilities by the BZA. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that Mr. Riegler was not associated with the County at the time the Policy was adopted. She said that the policy went back to 1978 and, when Supervisor Gerald Hyland was on the BZA, he wanted the policy amended in order to protect the neighbors of two separate clubs that wanted to have graduation parties. She said that she had reviewed the current application against that policy.

In answer to a question from Mr. Kelley, Mr. Riegler said that there had been no complaints about the applicant's operation.

Neil D. McCallum, President of the Mansion House Club, Inc., 9301 Allwood Court, Alexandria, Virginia, represented the applicant, stating that the Club is 25 years old and has been an asset to the Mt. Vernon community. He said that the Club now requires a lot of work and the amendment application would allow them to more easily renovate the facility in the present economic climate. Mr. McCallum said that the applicant would like to have the renovation completed by May, in time for the next pool season.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 77-V-247-1 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions dated September 22, 1992, with a change in Development Condition 6, which is reflected in the Resolution.

Mr. Kelley made a motion to waive 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 Amendment Application SPA 77-V-247-1 by MANSION HOUSE CLUB, under Sections 3-203 and 8-915 of the Zoning Ordinance to amend SP 77-V-247, on property located at 9321 Old Mt. Vernon Hwy., Tax Map Reference 110-4(1)9D, 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 22, 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 5.0435 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 Joe Keaton dated March 1992, revised through June 2, 1992 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 56 parking spaces provided for the swim and tennis club. All parking shall be on site. At such time as the third tennis court is constructed the six parking spaces located on the north side of the travel aisle shall be relocated to the area east of the third tennis court.
5. The hours of operation shall be limited as follows:

Swimming Pools:	8:00 a.m. to 9:00 p.m.
Tennis Courts:	8:00 a.m. to 10:00 p.m.

These hours shall apply throughout the entire year.

6. After-hours parties for the Mansion House Club Inc. shall be governed by the following:

Limited to six (6 per season),  
Limited to Friday, Saturday and pre-holiday evenings,  
Weeknight parties limited to three (3) per year, provided there are no unresolved violations,  
Shall not extend beyond 12:00 midnight,  
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 extended-hour party or for the first one at the beginning of a swim season.

Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.

Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.



7. Lighting on the tennis courts are not to exceed 15 feet in height.
8. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The maximum decibel level of the loudspeakers shall not exceed 55 dBA.
9. The existing vegetation shown on the plat shall be maintained and shall be deemed to fulfill the requirements for transitional screening along all lot lines.
10. The barrier requirement shall be waived along all lot lines.
11. The maximum number of family memberships shall be 350, and 50 special memberships.
12. Rip rap or other appropriate measures as determined by DEM at the time of site plan or site plan waiver review shall be provided to prevent erosion in the gully located behind the swimming pool pump house.
13. To prevent unauthorized entry to the clubhouse, security shall be provided year around. This system shall consist of include a roving security guard or appropriate electronic systems.
14. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:

All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

15. The existing gravel drive 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.
16. The gravel parking surface shall be continued for a term as specified by 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 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 construction has begun, and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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 7-0.

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Mr. Kelley made a motion to waive the eight-day waiting period. 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 September 22, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 394, September 22, 1992, (Tape 2), Action Item:

Approval of Resolutions from September 15, 1992 Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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Page 394, September 22, 1992, (Tape 2), Action Item:

Request for Out-of-Turn Hearing  
Linda A. Frittz and Richard D. Komer  
VC 92-M-098

Mr. Kelley made a motion to deny the request because of the lack of a compelling reason to grant. 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 394, September 22, 1992, (Tape 2), Action Item:

Request for Out-of-Turn Hearing  
George A. & Eustathia C. Zacharias, VC 92-V-101

Mr. Pammel made a motion to grant this request. 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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Page 394, September 22, 1992, (Tape 2), Action Item:

Request for Out-of-Turn Hearing  
Nancy P. Parnell  
Application Pending

Chairman DiGiulian said that he had received a letter from Nancy P. Parnell, 6529 Delia Drive, Alexandria, Virginia, requesting an out-of-turn hearing and a waiver of the plat. Mrs. Thonen made a motion to grant the out-of-turn hearing because the applicant had prepared for the acceptance of the application to the extent that the living quarters were reduced to a state of not being comfortable to live in. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Harris was not present for the vote. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the application had not yet been accepted. Chairman DiGiulian said that Ms. Parnell found it difficult to comply with some of the submitting requirements and he requested waiving everything but the pertinent information, such as the setback, etc. The scheduled public hearing date is October 27, 1992, or the next available hearing date which will allow sufficient time to meet the legal requirements of notification and advertising, and providing that the variance plat has been accepted by that date.

Mrs. Thonen said that she believed it should be up to staff to decide what could be waived and Ms. Kelsey said that it was her understanding that it was the consensus of the Board to recommend that staff waive everything but the essentials, such as the distance from the lot line to wherever the structure sits.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 <sup>p</sup>.m.

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

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

SUBMITTED: November 5, 1992

APPROVED: November 10, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on September 24, 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.

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Vice Chairman Ribble 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 Vice Chairman Ribble called for the first scheduled case.

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Page 38, September 24, 1992, (Tape 1), Scheduled case of:

9:00 A.M. RUDOLPH A. PETTINATO, VC 92-B-056, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 16.4 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 10,532 sq. ft., located at 8444 Chapelwood Ct., zoned R-3, Braddock District, Tax Map 70-1((23))16. (DEF. FROM 7/9/92)

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. Pettinato replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicant was requesting a variance to allow a sunroom addition 16.4 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicant was requesting a variance of 8.6 feet to the minimum rear yard requirement. Ms. Anderson stated that in February 8, 1993, the BZA granted a variance to allow the enclosure of a carport 8.1 feet from the side lot line.

The applicant, Rudolph A. Pettinato, 8444 Chapelwood Court, Annandale, Virginia, addressed the BZA. He stated that the proposed sunroom would be a screened and glassed enclosure. Mr. Pettinato stated the size of the lot precluded the construction of the addition any other place on the property. He noted that his lot was the smallest lot in the subdivision and that the property backed up to a cemetery. Mr. Pettinato stated that he had constructed the deck without a building permit because he had received erroneous information when he applied for a building permit. He explained he had been informed that in order to build the 2 foot high deck, he would need a variance. In summary, Mr. Pettinato stated that the sunroom would have no detrimental impact of the neighborhood and asked the BZA to approve the request.

In response to Mrs. Thonen's question regarding the location of an existing shed, Mr. Pettinato stated that the shed met the Zoning Ordinance requirements.

There being no speakers to the request, Vice Chairman Ribble closed the public hearing. Mr. Pammel made a motion to grant VC 92-B-056 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 23, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-056 by RUDOLPH A. PETTINATO, under Section 18-401 of the Zoning Ordinance to allow construction of addition 16.4 feet from rear lot line, on property located at 8444 Chapelwood Court, Tax Map Reference 70-1((23))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 September 24, 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 10,532 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The lot is unusually small and extremely shallow.
6. There is no other place on the lot where the sun porch addition could be located.
7. There are topographic considerations with the property sloping steeply upward toward the rear of the property.
8. There is an existing brick retaining wall located just beyond where the proposed porch would be located.
9. The placement of the structure so far from the front lot line has 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.
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 specified addition shown on the plat (prepared by Peter R. Moran, Land Surveyor, dated April 6, 1992) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing structure.

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 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 4-0 with Mrs. Harris and Mr. Hammack 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 October 2, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 396, September 24, 1992, (Tape 1), Scheduled case of:

9:10 A.M. RICHARD A. AND BARBARA BECKER FARISHIAN, VC 92-D-071, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.5 ft. from side lot line and deck 9.4 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 40,982 sq. ft., located at 7724 Canal Ct., zoned R-1, Dranesville District, Tax Map 20-4((3)18.

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. Reilly replied that it was. She stated she had mistakenly used Barbara Becker Farishian's professional name and asked, should the BZA grant the request, that the "Becker" be dropped.

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In response to Vice Chairman's question as to how the title of the property read, Ms. Reilly said it reflected the owners as Richard and Barbara Farishian.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the BZA and introduced David Hunter, Staff Coordinator, to the BZA. Vice Chairman Ribble welcomed Mr. Hunter.

Mr. Hunter presented the staff report. He stated that the applicant was requesting approval of a variance to allow a solar heated sunspace/greenhouse addition 4.5 and a deck 9.4 feet from the side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, the applicant was requesting a variance of 15.5 feet and 10.6 feet to the minimum rear yard requirements respectively. He noted that the addition would be approximately 150 feet from the existing dwelling on adjacent Lot 9 to the southwest.

The applicants' agent, Melanie Reilly, with the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, McLean, Virginia, addressed the BZA and submitted photographs of the site. She explained that the drainage fields had dictated the placement of the structure on the property and had ultimately caused the need for the variance. Ms. Reilly stated that the applicant would like to have an addition and a deck off the back of the existing structure. She said that the need for the southern exposure, the exceptional topographical condition, and the septic field had mandated the request for the variance. In summary, Ms. Reilly noted that the hardship was not shared by other properties in the subdivision; the mature trees would be preserved, and the addition would be 150 feet from the closest dwelling.

In response to Mr. Kelley's question as to the use of the addition, Ms. Reilly stated that the addition would be used as a greenhouse and would also house a counter-current lap pool which would allow, through the heating of the water, the room to retain heat in the winter.

In response to Mrs. Thonen's question as to why the addition could not be placed elsewhere on the lot, Ms. Reilly stated that if placed to the rear of the house, the sunroom would not have the proper sun exposure. Ms. Reilly stated that the architect and the builder have both recommended the proposed site. She noted that the property was well screened and the addition would be approximately 150 feet from the closest neighbor, who supported the request.

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

Mrs. Thonen made a motion to grant VC 92-D-071 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 14, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-071 by RICHARD A. AND BARBARA FARISHIAN, under Section 18-401 of the Zoning Ordinance to allow addition 4.5 feet from side lot line and deck 9.4 feet from side lot line, on property located at 7724 Canal Court, Tax Map Reference 20-4((3))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 September 24, 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-1.
3. The area of the lot is 40,982 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The topographic of the land has caused the need for the variance.
6. The variance would enable the applicant to preserve many mature trees.
7. Compliance with the Zoning Ordinance would create an undue hardship.
8. The lot has a septic field and an unusual shape.
9. The placement of the house on the lot has precluded the addition being located any other place on the property.
10. The addition would be approximately 150 feet from the closest dwelling.
11. The adjoining neighbor most affected by the variance supported the request.

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.

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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 specified addition and roofed deck shown on the plat prepared by Alexandria Surveys, Inc., dated May 13, 1992, revised May 29, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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 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. Pammel seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. Hammack 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 October 2, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 398, September 24, 1992, (Tape 1), Scheduled case of:

9:30 A.M. RANDALL HAIGHT, SP 92-Y-042, appl. under Sect. 3-C03 of the Zoning Ordinance to allow modification to minimum yard requirements for certain R-C Lots to allow addition 12.6 ft. from side lot line for a total of 25.2 ft. (8 ft., with a min. total of 24 ft. required for R-2(C) Lots), on approx. 13,000 sq. ft., located at 6124 Hidden Canyon Rd., zoned R-C, WS, AN, Sully District, Tax Map 53-1((3))6)57.

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. Haight replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the BZA and introduced Susan Langdon, Staff Coordinator, to the BZA. Vice Chairman Ribble welcomed Ms. Langdon.

Ms. Langdon presented the staff report. She stated that the applicant was requesting approval of a special permit to allow a deck addition 12.6 feet from the side lot line. The Zoning Ordinance requires a minimum 20 foot side yard in the R-C District; however, prior to rezoning to the R-C District, the property was zoned R-2 Cluster with a minimum side yard requirement of 8 feet with total side yards of 20 feet. Therefore, the applicant was requesting a modification of 7.4 feet to the minimum side yard requirements in the R-C District. In summary, Ms. Langdon stated that staff believe that the Zoning Ordinance requirement had been met and recommended approval of SP 92-Y-042 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 15, 1992.

The applicant, Randall R. Haight, 6124 Hidden Canyon Road, Centreville, Virginia, addressed the BZA. He stated that when he had bought the house the builder had told him that the deck could be extended; but, had failed to inform him that once the house was bought, the Zoning Ordinance requirements would change. He expressed his belief that the proposed deck would be aesthetically pleasing and would conform with the other decks in the neighborhood.

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

Mr. Kelley made a motion to grant SP 92-Y-042 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 15, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-042 by RANDALL HAIGHT, under Section 3-C03 of the Zoning Ordinance to allow modification to minimum yard requirements for certain R-C lots to allow addition 12.6 feet from side lot line for a total of 25.2 feet, on property located at 6124 Hidden Canyon Road, Tax Map Reference 53-1((3))(6)57, 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 24, 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, AN.
3. The area of the lot is 13,000 square feet.
4. The application meets the necessary standards for the granting of a special permit.
5. The addition would have been permitted under the prior zoning.
6. There has been no opposition to the request.
7. It is appropriate to grant the special permit.
8. The addition will not encroach any further into the side yard than the existing structure.

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 and the specified deck 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 Charles P. Johnson & Associates, P.C., dated October 25, 1991, revised by Randall Haight, dated June 23, 1992, submitted with this application and not transferable to other land.
3. A building permit and all required inspections 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. The applicant shall be responsible for obtaining the required permits through

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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 5-0 with Mr. Hammack 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 October 2, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 400, September 24, 1992, (Tape 1), Information Item:

Request for Intent-to-Defer  
Steven D. Yoder and Barbara B. Yoder Appeal, A 92-Y-015  
Scheduled for October 6, 1992 at 10:00 a.m.

Request for Intent-to-Defer  
Thomas J. Rother Appeal, A 92-M-010  
Scheduled for October 6, 1992 at 10:15 a.m.

Request for Intent-to-Defer  
Furniture Store Appeal, A 92-M-009  
Scheduled for October 6, 1992 at 10:15 a.m.

Mrs. Thonen stated that although she had tried to obtain information regarding the three intent-to-defer cases, she had been unable to contact the concerned citizens. She expressed her belief that the Board of Zoning Appeals (BZA) should defer action on the request until the next public hearing scheduled for September 29, 1992.

Mr. Kelley stated that with the exception of Appeal A 92-M-009, the notification requirement had not been met; therefore, two of the cases could not be heard.

After a brief discussion, it was the consensus of the BZA that action on the information items be deferred.

Mrs. Thonen made a motion to defer any action on the request to September 29, 1992. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman DiGiulian was absent from the meeting.

Mrs. Harris noted that the BZA had a very heavy caseload and the appellants did not present very substantial reasons for their inability to complete the notification requirement.

The BZA expressed its concern regarding the increasing frequency of deferral requests. After a brief discussion, it was the consensus of the BZA to request staff to direct the two appellants, A 92-Y-015 and A 92-M-010, that had not completed the notification requirements to appear before the BZA on September 29, 1992 to speak to the deferrals.

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Page 400, September 24, 1992, (Tape 1), Scheduled case of:

9:40 A.M. J. SHELDON AND SHIRLEY NEIL, VC 92-Y-067, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 8.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 20,000 s.f., located at 8721 Badger Drive, zoned R-2, Mt. Vernon District, Tax Map 170-1((18))(7)17.

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. Neil replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a variance to allow a two-car garage addition 8 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicant was requesting a variance of 7 feet to the minimum side yard requirement. She noted that the adjacent dwelling to the north was approximately 29 feet from the shared lot line.



J. Sheldon Weil, 8721 Badger Drive, Alexandria, Virginia, addressed the BZA. He stated that the placement of the house on the lot precluded the building of the garage addition without a variance. Mr. Weil explained that his wife has had two total hip replacements and the garage would help to ensure her safety during inclement weather. He noted that the neighbors had expressed their support, and asked the BZA to grant the request.

In response to Mrs. Harris' question regarding the need for the garage, Mr. Weil stated that the slippery conditions caused by rain and ice collecting on the driveway created a very dangerous situation for his wife.

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

Mr. Pamme! made a motion to grant-in-part VC 92-V-067 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 17, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-067 by J. SHELDON AND SHIRLEY WEIL, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 8.0 feet from side lot line, (THE BZA GRANTED A 5-FOOT VARIANCE TO ALLOW A GARAGE ADDITION 10 FEET FROM SIDE LOT LINE) on property located at 8721 Badger Drive, Tax Map Reference 110-1(18)(7)17, Mr. Pamme! 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, 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 20,000 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The location of the dwelling in the center of the lot precluded the addition being placed on the north side of the existing structure.
6. Had the dwelling been sited in the center of the lot, a variance would not be needed.

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.

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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 specified garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated August 5, 1986, revised by A. L. Jokl, Engineer, dated October 7, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The garage 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 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 4-1 with Mrs. Harris voting nay. Mr. Hamnack was 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 October 20, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 402, September 24 1992, (Tapes 1 and 2), Scheduled case of:

9:50 A.M. A & K FAMILY RECREATION CENTER, INC., VC 92-M-068, appl. under Sect. 18-401 of the Zoning Ordinance to allow structure to remain 14.0 ft. from front lot line (40 ft. min. front yard required by Sect. 4-607), and to allow fence in excess of 4.0 ft. in height in front yard (4 ft. max. height allowed by Sect. 10-104), on approx. 0.6138 acs., located at 7133 Little River Turnpike, zoned C-6, HC, SC, Mason District, Tax Map 71-1((23))A. (CONCURRENT WITH SP 92-M-040)

9:50 A.M. A & K FAMILY RECREATION CENTER, INC., SP 92-M-040, appl. under Sect. 4-603 of the Zoning Ordinance to allow miniature golf course, on approx. 0.6138 acs., located at 7133 Little River Turnpike, zoned C-6, HC, SC, Mason District, Tax Map 71-1((23))A. (CONCURRENT WITH VC 92-M-068)

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

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the BZA and introduced Catherine Chianese, Senior Staff Coordinator, Zoning Evaluation Division. Vice Chairman Ribble welcomed Ms. Chianese.

Ms. Chianese presented the staff report and said that the applicant was requesting approval of two concurrent applications. She noted that the existing temporary frame structure on the northern end of the property was currently being used as a seasonal plant, pumpkin, and Christmas tree stand. She further noted that the Annandale Plaza shopping center is located to the north, a single family subdivision is located to the south, and the uses to the east and west include an office building and two restaurants.

Ms. Chianese stated that the applicant was requesting approval of a special permit to allow an 18-hole miniature golf course. She explained that the proposed miniature golf course would be constructed in conjunction with a sit-down restaurant and noted that the restaurant is a permitted use in the C-6 Zoning District. Ms. Chianese stated that the hours of operation for both the 18-hole miniature golf course and the 3,200 square foot restaurant would be 11:00 a.m. to 11:00 p.m., seven days a week, with a total number of four employees.

She said the miniature golf course would occupy approximately 9,500 square feet on the southern portion of the property to the rear of the restaurant, and would have a 40 foot wide front yard between the miniature golf course and the southern property boundary. Ms. Chianese noted that the applicant estimated that 50% of the use of the miniature golf course would be incidental to the restaurant and the remaining 50% would be self-generated.

She explained that while vehicular access to both the miniature golf course and restaurant would be provided from Little River Turnpike via the existing service drive, no vehicular access to the property will be provided from John Marr Drive. Ms. Chianese said that a total of 18 parking spaces, which would include 1 accessible parking space and 1 loading space, would be provided for both uses in front of the restaurant.

Ms. Chianese stated that the variance application was a request to allow a fence in excess of 4 feet in height in a front yard. She explained that the fence would consist of brick columns, spaced every 20 feet with wrought iron placed between the columns, and would be constructed around the perimeter of the miniature golf course. She noted that the fence would be placed upon a masonry retaining wall. Ms. Chianese said that due to changes in topography, the height of the proposed fence would vary from 4 to 7 feet.

In regards to landscaping, Ms. Chianese stated that a detailed landscape plan, which would include a mixture of trees and shrubs, would be provided at the time of final site plan submittal.

Ms. Chianese said that in May of 1982 the BZA granted special permit, S 82-M-020, and variance, V 82-M-020, to allow a miniature golf course in conjunction with a restaurant on the subject property. She noted that both the special permit and variance had expired eighteen months after BZA approval because construction of the facility had not commenced.

In summary, Ms. Chianese noted it was staff's analysis that the special permit application would be in harmony with the Comprehensive Plan, met the necessary standards for special permit approval, and also met the Zoning Ordinance requirements. She stated that staff recommended approval of SP 92-M-040 subject to the development conditions contained in the staff report dated September 15, 1992.

Mrs. Thonan referred to a letter submitted to the BZA which indicated that the applicant's parking would not be adequate for the use. Ms. Chianese stated that it was staff's belief that the 18 parking spaces would satisfy the parking requirements.

Mrs. Harris expressed her concern regarding the parking and noted that because the area was very congested, there would be no auxiliary parking available for the use.

In response to a question from the BZA, Ms. Chianese stated that the restaurant would seat 40 patrons.

The applicant's agent, Fred Scott, 6449 Rattle Branch Road, Marshall, Virginia, addressed the BZA. He stated that the applicant was the owner of a nearby restaurant which he planned to close upon the opening of the proposed restaurant and miniature golf course complex. He expressed his belief that the 18 parking spaces would be sufficient because of the clientele. He explained that in the day time hours, a great many of the patrons would come from the nearby office buildings, and noted that the parking was readily available in the evening hours because the offices would be closed by 5:00 p.m. Mr. Scott noted that the requirement for a 40 seat restaurant is 10 parking spaces, and that the auxiliary miniature golf course requirement accounted for the additional 8 parking spaces. He expressed his belief that the parking would be adequate because the restaurant and miniature golf course catered to families; therefore, four or more patrons would be riding in the same vehicle.

Mr. Scott said that the majority of the surrounding businesses had expressed their support. He noted that the neighbors in opposition had complained that a miniature golf course would not be in keeping with the professional downtown Annandale image.

Vice Chairman Ribble noted that the letters in opposition had also expressed their concerns with the traffic congestion in the area.

Vice Chairman Ribble called for speakers in support and the following citizens came forward.

Richard Renzi, 9700 Burke View Court, Burke, Virginia, addressed the BZA. He stated that he was a local businessman and has been a client of the applicant's existing restaurant for many years. He noted that the applicant offered good food at reasonable prices and stated that in his many years of patronizing the restaurant, he has never encountered a parking problem. Mr. Renzi said that he, his wife, and eight children have always been made to feel welcome at the applicant's restaurant. In summary, Mr. Renzi stated that the applicant and his family have served the Annandale community for many years and asked the BZA to grant the request.

In response to Mrs. Harris' question regarding his business, Mr. Renzi stated that he was an insurance agent. He again expressed his belief that the parking would be adequate for the use.

The representative of the Chamber of Commerce, Edward Mooney, 4212 Sleepy Hollow Road, Annandale, addressed the BZA. He stated the business community supported the request and noted that the applicant was a man of good character and was a well respected businessman. He also noted that there was a need for recreational facilities in the Annandale area, and the application had the support of Supervisor Trapnell. In summary, he asked the BZA to support the request.

Vice Chairman Ribble stated that the BZA had received a letter of support from Supervisor Trapnell.

Jennie Kuley, 4100 High Point Court, Annandale, Virginia, addressed the BZA. She stated that she was a waitress in the restaurant and expressed her belief that the miniature golf course would be beneficial to the children in the community.

In response to Mrs. Harris' question regarding car pooling, Ms. Kuley stated that she and the delivery van driver were the only employees that parked at the restaurant. She noted that the other two employees walked to work.

There being no further speakers in support, Vice Chairman Ribble called for speakers in opposition.

John Marco, 7126 Lanier Street, Annandale, Virginia, addressed the BZA. He stated that although he was not against the restaurant, he was very concerned about turning the corridor into another Route 1. He expressed his concern regarding the traffic situation and his belief that the restaurants and businesses in the area added to the problem. He stated that while the restaurant would be acceptable, the miniature golf course, along with the fence, would not. Again, he expressed concern that the area would turn into an area where people did not have to follow guidelines.

Mrs. Thonen stated that contrary to Mr. Marco's belief, Route 1 was being revitalized and the Zoning Ordinance was being enforced.

There being no further speakers to the request, Vice Chairman Ribble called for rebuttal.

Mr. Scott explained that due to the concerns expressed by the community, the original configuration had been revised so that there would be no accessibility from John Marr Drive. He also explained that again to alleviate the community's concerns, a 40 foot buffer along the John Marr Drive's lot line was proposed. Mr. Scott stated that the applicant had the option of expanding the parking lot or installing additional landscaping, and believed that although the additional parking may be beneficial to the business, the landscaping would be more beneficial to the community.

Mr. Scott noted that many business in the northern Virginia area have parking violators towed away. He expressed his belief that if necessary, two additional parking spaces could be provided.

In response to Mrs. Thonen's question regarding the 7 foot high fence, Mr. Scott explained that the fence would be aesthetically pleasing and would help differentiate between the use as a retail facility and a residential property.

Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant SP 92-M-040 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 15, 1992, with the modifications reflected in the Resolution. A new plat which would reflect a minimum of 20 parking spaces will be required before the decision is final.

Mr. Hammack made an amendment to the motion to require a development condition which stated, "All parking shall be on site." Mr. Pammel seconded the amendment to the motion which carried by a vote of 4-2 with Mrs. Thonen and Mr. Kelley voting nay. Chairman DiGiulian 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 Application SP 92-M-040 by A & K FAMILY RECREATION CENTER, INC., under Section 4-603 of the Zoning Ordinance to allow miniature golf course, on property located at 7133 Little River Turnpike, Tax Map Reference 71-1((23))A, 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 24, 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, HC, SC.
3. The area of the lot is .06138 acres.

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4. The testimony given at the public hearing affirmed that family entertainment is needed and wanted in the area.
5. The proposed site is nice and would be an excellent location for the use.
6. The application has been supported by the community and the Mason District Supervisor.

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 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 Polins, Weyant & Hamm, Inc.) and dated September 1991, revised September 9, 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 Polins, Weyant & Hamm Inc., dated September 1991, revised September 9, 1992.
5. The maximum number of employees on site shall be limited to four (4).
6. The hours of operation shall be limited to 11:00 a.m. to 11:00 p.m., seven (7) days a week.
7. A public access easement, to accommodate a five (5) foot wide sidewalk, shall be shown on the final site plan along the Little River Turnpike frontage of the property and such easement shall be provided prior to the time of site plan approval.
8. At the time of final site plan submission to Fairfax County, the site plan, including the final landscape plan, shall be submitted to the Annandale CBD Planning Committee for review for compatibility with the revitalization goals of the Annandale CBD.
9. Any proposed lighting of the miniature golf course shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve feet. The use of lower level lighting is encouraged where feasible.
  - 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.
10. The final Landscape Plan shall be subject to the review and approval of the Urban Forestry Branch. Upon the recommendation of the Urban Forestry Branch, the species of plant materials may be substituted in order to create a more effective screen of the miniature golf course from John Marr Drive.
11. The Transitional Screening requirement shall be modified along the southern lot line, adjacent to John Marr Drive, to allow the landscaping shown on the special permit/variance plat to satisfy the requirement. The Barrier requirement shall be modified to allow the wrought iron fence with brick columns shown on the special permit/variance plat to satisfy the requirement.
12. Ninety-five (95) feet of right-of-way, measured from the centerline of Little River Turnpike along the property frontage, together with an ancillary easement 15 feet in width, shall be dedicated to the County in fee simple. Such dedication shall occur at the time of site plan approval, or upon demand from VDOT or the Department of Environmental Management, whichever occurs first.
13. All proposed signs on-site shall conform to the provisions of Chapter 12, Signs of the Zoning Ordinance.

14. All parking shall be 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 valid unless 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 miniature golf course use has been established by compliance with these development conditions. The Board of Zoning Appeals may grant additional time to establish the use 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. 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 . This date shall be deemed to be the final approval date of this special permit.

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Mrs. Harris made a motion grant VC 92-M-040 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 15, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-068 by A & K FAMILY RECREATION CENTER, INC., under Section 18-401 of the Zoning Ordinance to allow structure to remain 14.0 feet from front lot line and to allow fence in excess of 4.0 feet in height in front yard, on property located at 7133 Little River Turnpike, Tax Map Reference 71-1(23)A, 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 24, 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, HC, SC.
3. The area of the lot is 0.6138 acres.
4. The shallow property has exceptional topographical conditions.
5. The strict application of the Zoning Ordinance would create an undue hardship.
6. The proposed wrought iron fence would protect the property and deter golf balls from being projected off of the property.
7. The Zoning characteristic would not be changed by the fence.
8. The open fence would not deter the enjoyment of the neighbors. Many of the neighbors have wooden fences.
9. The application would be in harmony with the intended spirit of the Zoning Ordinance and will 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 with the following limitations:

1. This variance is approved for a maximum seven (7) foot tall wall/fence to be installed in the front yard on John Mar Drive, as shown on the plat prepared by Polins, Weyant & Hamm, Inc., dated September 1991, revised September 9, 1992, and 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, 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. 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 . This date shall be deemed to be the final approval date of this variance.

NOTE REVISED PLATS HAVE NOT BEEN RECEIVED AS OF NOVEMBER 16, 1992.

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Page 407, September 24 1992, (Tape 2), Scheduled case of:

10:00 A.M. GOLF VENTURES, INC., SP 92-S-032, appl. under Sect. 3-C03 of the Zoning Ordinance to allow golf driving range and commercial golf course, on approx. 47.72 acs., located on Braddock Rd., zoned R-C, WS, Springfield District, Tax Map 56-4((1))31.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals, (BZA). She stated that the BZA had issued an intent to defer SP 92-S-032 to November 19, 1992, at 9:15 a.m.

Mrs. Harris asked if staff had discussed the problems that the applicant was trying to resolve during the staffing process. Ms. Anderson stated that the issues were raised during the staffing process and the applicant was attempting to address them.

The BZA expressed its concerns regarding the number of deferral requests.

Mr. Hammack made a motion to defer SP 92-S-032 to November 19, 1992 at 9:15 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-1 with Mrs. Thonen voting nay. Chairman DiGiulian was absent from the meeting.

There being no speakers to the deferral request, Vice Chairman Ribble proceeded to the next scheduled case.

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10:15 A.M. MONTESSORI SCHOOL OF ALEXANDRIA, INCORPORATED, SPA 80-L-033-3, appl. under Sect. 3-403 of the Zoning Ordinance to amend SP 80-L-033 for child care center and private school of general education to increase enrollment to 99 children, on approx. 3.6293 acs., located at 6300 Florence La., zoned R-4, Lee District, Tax Map 82-4((1))17A, 17B; 82-4((36))A.

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. Salahi replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a special permit amendment in order to amend SPA 80-L-033-1 for a child care center and private school of general education to allow an increase in the maximum daily enrollment to 99 children from the current 75 children. He noted that the maximum number of employees present daily would remain at 12 and the total FAR would be 0.05. He said that no additions to the existing structure were proposed with the application.

Mr. Hunter said that the primary concerns with the current application was the expansion of the proposed non-residential uses within the interior of a single family residential neighborhood. He noted staff was also concerned that the proposed uses would negatively impact the single family residential character of the neighborhood and will further overload the capacity of the local street system. Mr. Hunter stated that staff concluded that the proposed intensification of use, specifically the increase in number of children, would not be in harmony with the recommendations of the Comprehensive Plan, nor would it satisfy the necessary standard.

In conclusion, Mr. Hunter noted that Development Condition 14 previously imposed by the BZA pursuant to approval of SPA 80-L-033-1 and Development Condition Number 16 imposed with SPA 80-L-033-2 had not been satisfied. He explained that the condition limited the number of vehicle trips per day generated by the use to a maximum of 140 and noted the Zoning Evaluation Division, OCP, has recently counted 260 vehicle trips per day associated with the use. He also noted that in 1991, the applicant was cited by Fairfax County for operating in violation of this special permit condition. He stated staff recommends denial of SPA 80-L-033-3.

Mr. Hunter introduced, Bob Owalabi, Transportation Planner, Office of Transportation, and stated that he was present to answer any questions the BZA might have.

In response to Mr. Pammel question regarding the number of vehicle trips per day, Mr. Hunter confirmed that staff recommend a total of 180 vehicle trips per day.

In response to Mrs. Harris' question regarding notification requirements, staff confirmed that the notification requirements had been met.

The applicant, Corrie Salahi, Box 116, Hume, Virginia, addressed the BZA. She stated that the school had been in operation for the past 23 years, had students of a mixed nationality and financial background, and was dedicated to the education of the children. She explained that the increase would allow the school to have one elementary class for children who wish to continue being educated by the Montessori School.

Ms. Salahi stated that although the traffic had become a problem, the school had existed before the area was developed. She expressed her belief that the school had no detrimental impact on the area, and had the neighbors' support. She noted that the property was kept, and would continue to be kept, in excellent condition and asked the BZA to grant the request.

The BZA expressed its concern regarding the inability of the applicant to comply with the development conditions already mandated by the existing special permit. The BZA asked why the applicant believed the school could now comply with the development conditions. Ms. Salahi stated that the school was very sorry for any laxity on their part and expressed her belief that the school would conform to all the mandated standards.

After a brief discussion regarding the applicant's violations and the practicality of the County's allowed vehicle trips per day, it was the consensus of the BZA to ask staff to further investigate the matter.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Robert Redmond, President, Huntington Forest Homeowners Association, 6250 Gentle Lane, Alexandria, Virginia, addressed the BZA and expressed support for the application. He stated that the school was beneficial to the community and the traffic was not a problem.

Mrs. Thonen noted that when she had gone to the school to investigate the matter, she had experienced traffic congestion on Telegraph Road and Florence Lane. Mr. Redmond said that the major problems resulted from cut-through traffic, not from the school's traffic. Mrs. Thonen explained that an applicant must adhere to all development conditions associated with a special permit.

In response to Mr. Hammack's question regarding the increase in the traffic that would be generated by 24 additional students, Mr. Redmond stated that the school was an asset to the neighborhood and traffic has not presented a problem.



Mrs. Thonen expressed her concern regarding the traffic conditions generated by the school and asked for staff's analysis. Mr. Owobabi stated he agreed with the applicant that much of the traffic on Florence Lane was not generated by the school; but, he explained that the staff was concerned the increased enrollment would have a detriment impact on the congested road system. Mr. Owobabi noted that Condition 14 would limit the vehicle trips per day to 180.

In response to Mr. Kelley's question as to whether the existing limitation of 140 vehicle trips per day was reasonable, Mr. Owobabi stated that the increase was based on the reality of the trips generated by child care centers. He explained that based on the research done by the Virginia Transportation Research Council, a child care center was estimated to generate 5 vehicle trips per day per student; therefore, an additional 120 would be needed for the increased enrollment. Mr. Kelley noted that while the BZA had restricted the existing application to 140 vehicle trips per day, staff had stated that a more realistic figure would have been 375 vehicle trips per day. Mr. Owobabi noted that the present road system was severely taxed by the school and recommended carpools or van pools transportation be used in lieu of single family car transportation.

Mrs. Harris noted that although a child care facility may generate 5 vehicle trips per day, per child, the location and traffic situation must be assessed and measures taken to mitigate any detrimental traffic impact on the area.

Mr. Pammel noted that at the previous hearing, the staff had recommended that the school use 3 vans for transporting the children. He said that the applicant had assured the BZA that the traffic problem was under control, but had agreed to use 1 van.

In response to Mr. Kelley's question as to whether Huntington Forest Homeowners Association had registered a complaint, Mr. Redmond said that the Association had expressed its concern at the previous BZA hearing regarding the erosion problems and traffic congestion. He noted that the applicant had mitigated the erosion problem with landscaping, and had also mitigated traffic congestion by widening the driveway.

The Montessori School's Administrator, Jean Adolphi, 1111 Trinity Drive, Alexandria, Virginia, addressed the BZA. She stated that although the school encouraged parents to use carpools or to use the van, they were not in a position to force compliance. Ms. Adolphi explained that the school year had just commenced and parents were unwilling to use carpools until the pre-school age children were comfortable with their surroundings. She expressed her belief that once the children became familiar with their fellow students, the parent would feel more confident about using the van and forming carpools. Ms. Adolphi stated that the school will do everything they can to stress the importance of the issue to the parents.

Mrs. Harris stated that the school must comply with the development conditions and asked Ms. Adolphi whether she thought this was possible. Ms. Adolphi stated the school had been in compliance with the conditions but reminded the BZA that each new school year brings new students who must feel secure with their new surrounding before the parent felt they were ready to carpool.

In response to questions from the BZA, Mr. Hunter noted that Zoning Enforcement had conducted their count of 260 vehicle trips per day on September 17, 1992. He explained that the count published in the staff report was done by the applicant.

In response to a question from Mr. Kelley as to how many new students attended the school, Ms. Adolphi stated there were approximately 20 new students.

Ann Troy, 6820 Salasee Court, Lorton, Virginia, addressed the BZA. She stated that she had two children who attended the school and noted that there was a desperate need for high quality child care center. She expressed her belief that the traffic was not a serious problem and said that the driveway had been widened.

In response to Ms. Troy's question as to how staff arrived at the 140 vehicle trips per day figure, Mr. Owobabi explained that staff computed the vehicle trips generated if the parcel had been developed under the residential use as allowed by-right in the Zoning Ordinance.

Ms. Troy asked if the BZA would consider increasing the vehicle trips per day to a more realistic figure. The BZA noted that the applicant had agreed to the previously imposed development conditions. The BZA noted that the applicant had presented evidence that no vehicle trip counts should be conducted at the beginning of the school year.

There being no speakers in opposition, Vice Chairman Ribble called for discussion.

Mrs. Thonen stated that at the previous public hearing, Mr. Redmond had requested the BZA deny the request until the applicant could meet the standard imposed on the existing special permit.

Mr. Kelley made a motion to defer SPA 80-L-033-3 for approximately 90 days. He stated that the deferral would allow time for the school to establish carpools. He instructed the applicant to monitor on a biweekly bases, and the staff periodically monitor the traffic beginning the middle of October.

In response to Mr. Kelley's question as to whether the deferral would allow the applicant time to establish carpools, the applicant indicated that it would.

After a brief discussion it was the consensus of the BZA that the applicant must realize the existing development conditions must be met before they would be allowed to increase enrollment.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, suggested a date of December 15, 1992 at 8:00 p.m.

Mrs. Harris seconded the motion which carried by a vote 6-0.

Vice Chairman Ribble noted that the public hearing would remain open and additional testimony would be allowed.

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Page 410, September 24, 1992, (Tape 2), Scheduled case of:

10:30 A.M.      MARCUS R. ARTMAN, VC 92-P-073, appl. under Sect. 18-401 of the Zoning Ordinance to allow porch addition 27.2 ft. from front lot line (30 ft. min. front yard required by Sect. 3-407), on approx. 7,200 sq. ft., located at 7314 Poplar Ct., zoned R-4, Providence District, Tax Map 50-3((13))25.

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. Artman replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow a porch addition 27.2 feet from the front lot line. The Zoning Ordinance requires a minimum 30 foot front yard; therefore, the applicant was requesting a variance of 2.8 feet to the minimum front yard requirement. Mr. Hunter stated that the dwellings on Poplar Court range from 35 to 41 feet in setback distance from the front lot line.

In response to Mr. Hammack's question as to whether other properties in the area had variances granted for similar porch, Mr. Hunter stated that although other variances had been granted, there had been no front yard variances granted in the area.

The applicant, Marcus R. Artman, 2919 Rosemary Lane, Falls Church, Virginia, addressed the BZA. He stated that the front porch would provide an aesthetically pleasing and functional addition to the property. Mr. Artman stated that without the variance, the Zoning Ordinance would only allow the building of a 5 foot wide porch.

In response to Mrs. Harris' question as whether the porch would be enclosed, Mr. Artman stated the porch would be open, but would have a banister. He noted that the porch would also have a roof.

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

Mr. Hammack made a motion to grant VC 92-P-073 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 14, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-073 by MARCUS R. ARTMAN, under Section 18-401 of the Zoning Ordinance to allow porch addition 27.2 feet from front lot line, on property located at 7314 Poplar Court, Tax Map Reference 50-3((13))25, 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, 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 7,200 square feet.
4. The application meets the necessary standards for the granting of a variance.

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5. The placement of the house virtually right on the front setback line of the shallow lot has caused the need for the variance.
6. There is no other location to place the front porch.
7. The request would be 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 specified covered deck (Porch) shown on the plat prepared by Donald E. Crotteau, Architect, dated April 13, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The porch 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 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 5-0 with Mr. Pammel 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 October 2, 1992. This date shall be deemed to be the final approval date of this variance.

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As there was no other business to come before the Board, the meeting was adjourned at 12:50 p.m.

Helen C. Darby  
Helen C. Darby, Associate Clerk  
Board of Zoning Appeals

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

SUBMITTED: November 5, 1992

APPROVED: November 10, 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 September 29, 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 413, September 29, 1992, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL AND VIRGINIA W. MAROWITZ, VC 92-N-013, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 3 lots with proposed Lot 3 having lot width of 12 ft. (80 ft. min. lot width required by Sect. 3-306), on approx. 1.56 acres, located at 3109 Sleepy Hollow Rd., zoned R-3, Mason District, Tax Map 51-3(1)15. (DEF. FROM 5/26/92 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. William Hansbarger, 301 Park Avenue, Falls Church, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She said the applicants were requesting a variance to allow a subdivision of the subject property into three lots. Ms. Kelsey added that Section 3-306 of the Zoning Ordinance requires a minimum lot width of 80 feet in the R-3 District, therefore the applicants needed a variance of 68 feet in order to provide a pipestem to the back two lots. She said staff had reviewed the application under Section 18-404 and did not believe that the application met the variance requirements, primarily because the applicants had not shown a hardship since they could have two lots by right. Ms. Kelsey called the BZA's attention to the background contained in the staff report.

Mr. Hansbarger said the applicants purchased the property in good faith approximately 35 years ago. The property immediately to the north of Carolyn and Sleepy Hollow Roads have a storm drainage pipe 60 inches in diameter, which empties the water so that it drains on the applicants' property, and below that there are three 36 inch pipes on the property. He said the applicants would also pipe the water from the 60 inch pipe to the pipes that connect to the south side, which then go into a 72 inch pipe at the corner, which is two lots down. Mr. Hansbarger said the applicants' property is exceptional in size as it has greater depth and width at the street, it is the largest lot in the Sleepy Manor Subdivision, all the rest have been developed under R-17 or R-3 under the current Zoning Ordinance, which allows 2 to 3 lots to the acre. The applicants' were proposing to subdivide into three lots with one lot 36,000 square feet, which would contain the existing dwelling, and two lots in front of the property that would be 15,000 square feet, which would be well above the average lot size. He said this is not a recurring situation in the area as the lots are already developed and the strict application of the Zoning Ordinance would produce an undue hardship. Mr. Hansbarger said since the property is zoned R-3 it was reasonable to expect development in line with the zoning, and to preclude the development would deny the applicants' property the same treatment as the remainder of the subdivision has been accorded. (He submitted a plat to the BZA and discussed how the property would look if it were subdivided into four lots.) Mr. Hansbarger said there would be no detriment to other properties, the applicants would limit the access to one driveway, the zoning district would not be changed, and that he believed the granting of the variance would be in harmony with the intended spirit of the Zoning Ordinance.

In response to questions from Mr. Hammack, Mr. Hansbarger said the plats showed the maximum footprint and that the water flow would be directed into the existing drainage pipes.

Chairman DiGiulian called for speakers in support of the request, and hearing no reply called for speakers in opposition to the request.

Tony Sobral, 3105 Sleepy Hollow Road, Falls Church, Virginia, said he was concerned with the traffic impact from the three driveways, the environmental impact from the pipestem, the applicant has not shown a hardship, and the proposal will require the removal of several trees. He added that the Sleepy Hollow Neighborhood was opposed to the request as noted in the letters dated September 10, 1989, May 16, 1992, May 22, 1992, and September 23, 1992. Mr. Sobral asked the BZA to look closely at the staff report wherein staff said that the application did not meet the standards for the granting of a variance.

Ken Longmyer, 3108 Sleepy Hollow Road, Falls Church, Virginia, said he had lived across the street from the property for 20 years. He said the property is a very beautiful site with great historical significance going back to the Civil War time and contains many large trees, a stream, a spring house, and a civil war house. Mr. Longmyer said it was the aesthetic and historical centerpiece of the Sleepy Hollow and Sleepy Hollow Manor communities. He said when the first application was made he circulated a petition to citizens in both communities, and with one exception, everyone opposed the application. Last spring when the applicants again filed an application, he again circulated a petition. Mr. Longmyer said he did believe that a precedent could be set since there are other large lots in the community.

Mr. Kelley asked the speaker to identify some of the lots. Mr. Longmyer said the lots were not shown on the viewgraph. Ms. Kelsey said the viewgraph did not show the entire community of Sleepy Hollow and Sleepy Hollow Manor.

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Mr. Longmyer also opposed the application based on the traffic impact. (He submitted petitions into the record.)

George Choosey, First Vice President of Sleepy Hollow Citizens Association, said that at a general meeting of the Association on September 23, 1992, the citizens voted unanimously to oppose the application. He said the citizens were particularly concerned with the precedent setting nature, historical, and environmental implications of the granting of the variance. Mr. Choosey said the lots in the Sleepy Hollow section tend to be in the 1 to 4 acre category which could be subdivided. (The speaker submitted documents into the record.)

In rebuttal, Mr. Hansbarger said most of the land in Sleepy Hollow is zoned R-2 and the remainder is zoned R-1. He said he did not believe there were other lots in the vicinity of the subject property that could be subdivided, the traffic impact will be very insignificant, and that the proposal before the BZA is the best possible plan for the property.

In response to a question from Mrs. Harris, Mr. Hansbarger replied that the applicants have never owned the lots on either side of the subject property.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny the application because he did not believe the application had satisfied the hardship requirement, the three driveways was an inadequate design, and the environmental considerations should be addressed. Mrs. Harris seconded the motion.

Mr. Pammel said he believed Mr. Hansbarger had presented a good case and that he believed that it was always difficult for an applicant to prove a hardship. He said he was disturbed that the opposition was based he believed on allowing the applicant to have what they already have, which is small lots and access onto Sleepy Hollow Road. Mr. Pammel said he would support the motion based on the criteria under which the BZA had to make a decision.

Mr. Kelley said he would oppose the motion for the reasons so eloquently stated by Mr. Pammel. Chairman DiGiulian agreed.

The vote was 3-3-1 with Mrs. Harris, Mr. Hammack, and Mr. Pammel voting aye; Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley voting nay; Mr. Ribble abstained from the vote.

**NOTE:** A reconsideration was granted on October 6, 1992, therefore the resolution will not become final until after that public hearing date.

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9:10 A.M. JON MILLS, SP 92-Y-045, appl. under Sect. 3-C03 of the Zoning Ordinance to allow modification to minimum yard requirements to allow addition 8 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07), on approx. 13,866 sq ft., located at 15464 Eagle Tavern La., zoned R-C, Sully District, Tax Map 53-3((4))(3)54.

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. Mills replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting approval of a special permit to permit a reduction to the minimum yard requirements in the R-C District to allow the construction of a deck 8.0 feet from the side lot line, and a room addition 9.0 feet from the side lot line. Section 3-C07 requires a minimum 20 foot side yard, thus the applicant was requesting a modification of 6 feet and 12 feet, respectively. He said the dwelling on adjacent Lot 53 is located 11.2 feet from the shared lot line. Mr. Hunter said staff recommended approval subject to the implementation of the development conditions contained in the staff report.

Jon Mills, 15464 Eagle Tavern Lane, Centreville, Virginia, said he would like to construct a wooden deck and a one room screened porch to be used for entertaining business colleagues. He said there are no objections from the neighbors and Lot 44, located to the rear of his property, is vacant.

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

Mr. Pammel made a motion to grant SP 92-Y-045 for the reasons noted in the Resolution and subject to the Development Conditions 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 SP 92-Y-045 by JON MILLS, under Section 3-C03 of the Zoning Ordinance to allow modification to minimum yard requirements to allow addition 8 feet from

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side lot line, on property located at 15464 Eagle Tavern Lane, Tax Map Reference 53-3(4)(3)54, 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 29, 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.
3. The area of the lot is 13,866 square feet.
4. This is another classic example where there are doors provided in a house that lead to space, and nothing else. (The building plan showed sliding glass doors opening to space.)
5. There should be some type of prohibition from the standpoint of the Department of Environmental Management and building department from approving these types of plans, because they invariably lead to problems.
6. This is a case where the property was developed under the original R-17 or R-2 and the County subsequently changed it to five acre zoning, thus creating the problem before the BZA.

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 and the specified deck and room addition 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 Robert L. Borlin, Jr. Certified Land Surveyor, revised by Jon Mills, July 16, 1992 submitted with this application and not transferable to other land.
3. A building permit and all required inspections 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. The applicant shall be responsible for obtaining the required permits 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 October 7, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 416, September 29, 1992, (Tape 1), Information Item:

Request for Reconsideration for J. Sheldon and Shirley Weil, VC 92-Y-067

Mr. Ribble said he had supported the motion to grant-in-part, but that he had difficulty in granting even that because he did not think that more than a one car garage was in order.

Mrs. Thonen agreed. She made a motion to deny the request for reconsideration. Mr. Ribble seconded the motion which carried by a vote of 7-0.

Page 416, September 29, 1992, (Tape 1), REQUEST FOR RECONSIDERATION FOR J. SHELDON AND SHIRLEY WEIL, VC 92-V-067, continued from Page 415 )

Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicants had discussed with the Staff Coordinator the possibility of the BZA granting a waiver of the 12-month filing requirement.

Following a discussion among the BZA, it was determined that such a motion would not be appropriate since the applicants had not submitted the request in writing.

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Page 416, September 29, 1992, (Tape 1), Information Item:

Approval of Resolutions from September 22, 1992

Mrs. Thonen made a motion to approve the resolutions as submitted. Mrs. Harris second the motion which carried by a vote of 7-0.

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Page 416, September 29, 1992, (Tape 1), Information Item:

Approval of Minutes from May 26 and June 16, 1992 Public Hearings

Mrs. Thonen made a motion to approve the minutes as submitted. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 416, September 29, 1992, (Tape 1), Information Item:

Out of Turn Hearing Request  
Laura Lawler, VC 92-V-105

Mrs. Harris asked staff to elaborate on the applicant's request. Jane Kelsey, Chief, Special Permit and Variance Branch, said the request came in late on September 28th and she had not had time to review the application. She suggested that the BZA pass over the request and allow her time to review the file.

Mrs. Thonen made a motion to deny the request due to the BZA's heavy caseload. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 416, September 29, 1992, (Tape 1), Information Item:

Request to Issue an Intent to Defer  
Ross Rogers, VC 92-D-039

Greg Riegle, Staff Coordinator, said the applicant was requesting a 60 to 90 day deferral in order to allow him time to meet with the community to resolve outstanding issues.

In response to a question from Mr. Pammel, Mr. Riegle replied that the property was located on Utterback Road and the BZA had issued one previous deferral.

Mr. Pammel opposed the deferral as he believed the applicant should have been ready to proceed. Mrs. Harris agreed and added that she did not believe that "dragging out" the application was appropriate. Mr. Hammack agreed there had been adequate for the applicant to time to revise the application.

Chairman DiGiulian and Mr. Kelley said in the past the BZA has welcomed deferral requests to allow the applicant time to work with the community and that they would support the deferral.

The motion to deny the applicant's request failed by a vote of 3-4 with Mrs. Harris, Mrs. Thonen, and Mr. Pammel voting aye; Chairman DiGiulian, Mr. Hammack, Mr. Kelley, and Mr. Ribble voting nay.

Mr. Hammack made a motion to issue an intent to defer the application for 90 days with the stipulation that no further deferrals would be granted. Mr. Kelley seconded the motion which carried by a vote of 6-1. Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Hammack, Mr. Kelley, and Mr. Ribble voting aye; Mr. Pammel voted nay.

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Page 416, September 29, 1992, (Tape 1), Scheduled case of:

9:50 A.M. IFS VIRGINIA, INC. D/B/A MOUNT COMFORT CEMETERY, SPA 83-L-100-2, appl. under Sect. 3-403 of the Zoning Ordinance to amend SP 83-L-100 to replace existing maintenance/administration facility, on approx. 51.21 acres, located at 6600 South Kings Hwy., zoned R-4, Lee District, Tax Map 92-2(1)23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the

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Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, William C. Thomas, Jr., Fagelson, Schonberger, Payne, & Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, replied that it was.

Mary Ann Godfrey, Staff Coordinator with the Zoning Evaluation Division, said the applicant was requesting a special permit amendment to allow the replacement of the existing 1,731 square foot maintenance/administration building with a new structure containing approximately 4,000 square feet in the same general location. She said that with the exception of the addition of some evergreen trees north and west of the crematorium, no other changes were proposed. Ms. Godfrey said staff recommended approval subject to the implementation of the development conditions contained in the staff report.

In response to a question from Mr. Pammel, Ms. Godfrey replied that she had visited the site and had not detected any "fill" problem.

The applicant's attorney, Mr. Thomas, responded to Mr. Pammel's comments. He explained that at approximately the same time the special permit was filed the applicant went through an approved grading plan, which required that some fill be moved. He assured the BZA that all the fill had been graded out into the appropriate areas.

In response to a question from Mr. Pammel with respect to the Environmental Quality Corridor (EQC), Mr. Thomas replied that the cemetery continues to put stabilizing vegetation into the EQC.

Mr. Thomas said the applicant was proposing to replace a number of buildings that had long since out lived their usefulness and that he believed the photographs showed that very clearly. The BZA agreed.

With respect to the development conditions, Mr. Thomas asked that Condition Number 8 be revised to read, ". . . it shall not exceed 25 feet measured to the peak of the roof." He said it was essentially the same building, but that he believed that the revised wording would alleviate any confusion when the site plan was submitted to the Department of Environmental Management (DEM).

In response to a question from Mrs. Thonen, Mr. Thomas said Condition Number 5 was a carry over from a previous approval and that the evergreens were in place.

There were no speakers to address the request, and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SPA 83-L-100-2 for the reasons noted and subject to the Development Conditions as modified in the Resolution.

Mr. Pammel asked that Condition Number 9 be modified to reflect that DEM would ensure all slopes are stabilized.

Following a discussion among the BZA members, it was the BZA's determination that future development conditions, with regard to height, should be written in a way to alleviate creating a problem for DEM when determining the height of the building.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 83-L-100-2 by IFS VIRGINIA, INC., D/B/A MOUNT COMFORT CEMETERY, under Section 3-403 of the Zoning Ordinance to amend SP 83-L-100 to replace existing maintenance/administration facility, on property located at 6600 South Kings Highway, Tax Map Reference 92-2(1)23, 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 29, 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 51.21 acres.
4. The photographs submitted by the applicant show the need for the facility to be replaced.

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 Section 8-203 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, entitled "Mt. Comfort Cemetery, Inc." prepared by Alexandria Surveys, Inc. and dated February 11, 1992, 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 use shall be subject to the provisions set forth in Article 17, Site Plans.
- \* 5. Evergreen plantings, at least six (6) feet in height, shall be provided between the crematorium and mausoleum and adjacent neighborhood to screen these uses from the view of neighboring residences. The exact type and location of the plantings shall be determined by the Director, DEM. The existing vegetation along all other lot lines shall be deemed to satisfy transitional screening and barrier requirements.
- \* 6. The maintenance yard area and road leading to the crematorium shall be paved.
- \* 7. Any signs on the property shall be located in accordance with Article 12, Signs.
8. The height of the proposed maintenance/administration building shall not exceed 25 feet to the tip of the roof.
9. At the time of site plan review and prior to any ground disturbing activity on the site, limits of clearing and grading shall be shown on the site plan which ensure that existing vegetation which provides screening of the cemetery buildings for adjacent single-family neighborhoods is not disturbed. Such limits of clearing and grading shall be approved by the Urban Forestry Branch. Any healthy vegetation deemed important for screening benefits that is damaged or destroyed during construction shall be replaced with an equivalent plant, subject to the review and approval of the Urban Forestry Branch. The Department of Environmental Management (DEM) shall ensure that all steep slopes in the area of the proposed construction are stabilized.
10. All parking for employees shall be provided within designated parking areas. An adequate number of parking spaces shall be provided as determined by the Zoning Administrator.
11. No additional barriers shall be required around the perimeter of the site.
- \*12. The hours of operation shall be 7:30 A.M. to 4:30 P.M., Monday thru Saturday.
- \*13. Should the fill being stored on site encompass more than 5,000 square feet, an approved grading plan shall be obtained. This fill area should be graded and seeded so as not to be a visual adverse impact upon the surrounding neighborhood.
14. Transitional screening requirements around the perimeter of the cemetery site shall be satisfied by existing vegetation.

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 construction has commenced and has 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 6-0 with 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 October 7, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 10:10 a.m. and reconvened at 10:21 a.m.

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Page 419, September 29, 1992, (Tape 1), Scheduled case of:

10:00 A.M. RUTH S. BAKER, TRUSTEE, AND EMMANUEL A. BAKER, JR., TRUSTEE, & FAIRFAX RADIOLOGY CONSULTANTS APPEAL, A 92-P-004, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the representation of the Deputy Zoning Administrator for Permit, Plan Review Branch, that appellant's first parking tabulation submitted in connection with a proposed medical office at 8318 Arlington Boulevard could not be approved by the Department of Environmental Management since the medical office use is an expansion or enlargement of an existing structure or use and parking for the entire structure must comply with current Zoning Ordinance requirements pursuant to Par. 2B of Sect. 11-101, on approx. 70,192 sq. ft., located at 8318 Arlington Blvd., zoned C-3, Providence District, Tax Map 49-3((22))1. (DEF. FROM 6/9/92 AT APPELLANT'S REQUEST. INTENT TO DEFER TO 10/27/92 AT 9:15 A.M. ISSUED 9/22/92)

10:00 A.M. RUTH S. BAKER, TRUSTEE, AND EMMANUEL A. BAKER, JR., TRUSTEE APPEAL, A 92-P-005, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Department of Environmental Management's approval of a second parking tabulation submission in connection with a proposed medical office at 8318 Arlington Boulevard which showed parking for the entire building under current requirements in accordance with Par. 2B of Sect. 11-101 of the Zoning Ordinance on approx. 70,192 sq. ft., located at 8318 Arlington Blvd., zoned C-3, Providence District, Tax Map 49-3((22))1. (DEF. FROM 6/9/92 AT APPELLANT'S REQUEST. INTENT TO DEFER TO 10/27/92 AT 9:15 A.M. ISSUED 9/22/92)

Mrs. Harris said the BZA had issued an intent to defer both appeal application at its September 22, 1992, and asked staff for a date and time. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested October 27, 1992, at 9:15 a.m. Mrs. Harris made a motion to defer A 92-P-004 and A 92-P-005 to the date and time suggested by staff. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

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Page 419, September 29, 1992, (Tapes 1-2), Scheduled case of:

10:15 A.M. HANS J. SCHMIDT APPEAL, A 92-D-016, appl. under sect. 18-301 of the Zoning Ordinance to appeal the determination of the Director of Department of Environmental Management to disapprove a proposed resubdivision of Lots 10A and 10b, Section 1, Langley Forest because it exceeds the maximum density requirement set forth in Sect. 3-108 of the Zoning Ordinance, on approx. 1.8326 acs., located at 901 and 909 Whann Ave., zoned R-1, Dranesville District, Tax Map 21-4((6))10A, 10B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gerald Ritzert, 4117 Chain Bridge Road, Suite 420, Fairfax, Virginia, replied that it was.

Dennis King, Chief, Site Review, Department of Environmental Management (DEM), said the appeal concerns the disapproval of a record plat entitled "Resubdivision of Lot 10A and 10B, Section 1, Langley Forest, dated January 20, 1992." He said the particular plat, Number 1996RP05-1, was contained in the staff report and was submitted for review on April 15, 1992, and disapproved for lack of Code compliance on June 1, 1992. Mr. King said the appellant was claiming that the issues of density, lot width, and lot size was resolved by the BZA in favor of the appellant prior to granting VC 91-D-109 on December 10, 1991. He said in two previous cases, Zane Mason vs. BZA and Louise Mason vs. BZA, the appellants appealed the disapproval of their respective subdivision to the BZA. In each of the appeals, the BZA upheld the DEM decision to deny the Masons respective applications. He said the Masons filed two lawsuits challenging the BZA's decision. On October 18, 1991, Judge Thomas S. Kenney entered a decree dismissing the lawsuits on the grounds that the BZA had no jurisdiction and that the jurisdiction lies with the Circuit Court. Mr. King said Mr. Schmidt's appeal should be denied because the proposed subdivision is subject to the requirements of Chapter 101, Subdivision Provisions of Fairfax County Code, and as with the Masons' appeals, the jurisdiction lies with the Circuit Court. The variance covers the lot width only and the BZA's authority does not extend to review of the decisions made under the Subdivision Ordinance administered to by the Director, DEM. The proposed subdivision of two lots into two lots that do not meet the density requirements of the R-1 District would constitute a violation of Paragraph 1 of Sections 2-308 and 3-108, maximum density of the Zoning Ordinance. Currently, Lot 10B is a conforming lot and 10A is a grandfathered lot under Section 2-405 of the Zoning Ordinance, both lots as they exist are buildable lots.

Mr. Hammack and Mr. King discussed the differences between the Mason appeal and the appeal before the BZA. Mr. King said the BZA had not granted the Masons a variance prior to the DEM disapproval.

Mrs. Harris asked if staff was saying that the zoning district was changed by the granting of the variance. Mr. King said that was correct and that staff had inadvertently failed to point that out during the variance public hearing. Mr. Hammack said since that was part of the criteria that the BZA does have jurisdiction and staff should have raised the issue.

In response to a question from Mrs. Harris as to why the decision was not appealed to the Circuit Court, John Winfield, Deputy Director, Plan Review, DEM, said the variance was granted only for the lot width. He said the primary issue for denial of the plat was that the resubdivision did not meet the density issue.

Mr. King said the zoning district was not changed at the time of the granting of the variance and would be not changed until such time the subdivision took place. He said the BZA granted the variance of the lot width for two lots and the variance had no effect on the subdivision of the land, because the subdivision plan had not been submitted.

Mrs. Harris said she would like to read the minutes of the variance public hearing. Mrs. Thonen said that the fifth finding of fact contained in the resolution states, ". . . will not create any additional density in the subdivision."

A discussion took place between the BZA and staff with respect to the density. Mr. Winfield said the new lots created under the new subdivision would not meet the required density. He said there is a recurring problem and staff was in the process of drafting language to present to the Board of Supervisors.

Mr. Pammel asked if it would be practical and in keeping with the surrounding area for the appellant to build on Lots 10A and 10B as they now exist. Mr. Winfield said not in his opinion.

Mr. Ritzert said he had a prepared statement but based on the BZA's question he would address the density issue, which appeared to be the issue. He said when looking at the subdivision as a whole, density was not an issue.

Mr. Hammack addressed staff and said it had been his understanding that the density of the entire subdivision was used when creating a new subdivision. Mr. Winfield said the plat submitted to staff had not indicated the density for the entire subdivision, only the density for the two lots. He said if the appellant wanted staff to consider the entire subdivision, staff would be willing to do so. Mr. Winfield said there was no longer sufficient staff to perform independent research.

In response to a question from Mrs. Harris about a notation on the plat, Mr. King replied that when the two lots are subdivided they should equal one dwelling unit per acre, which is the density for the R-1 District, and the appellant only has 1.8326 acres.

Mr. Ritzert said the appellant had calculated the density on the subdivision and then at DEM's request had submitted the density based on a lot level. He said the density issue should have been brought forth at the variance public hearing in December, the appellant proceeded with the project based on the BZA's approval and has invested a significant amount of money. Mr. Ritzert asked that the case not be deferred as he believed the equities of the case should be in favor of the appellant.

A discussion took place between the BZA and staff as to what defined a "simple subdivision" and other notations on the plat.

Chairman DiGiulian called for speakers.

Tom Jacobl, represented his parents who owned Lot 13A, and said that the main objective was to alleviate having to construct narrow houses on only one lot, which would be inconsistent with the surrounding neighborhood.

The appellant, Hans Schmidt, said all calculations were requested by DEM in the summer of 1991 and were completed and submitted.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to continue the public hearing to allow the appellant an opportunity to submit additional information to DEM for their review.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested October 15, 1992, at 10:45 a.m. Chairman DiGiulian said he might not be present and asked staff for another date. Ms. Kelsey then suggested October 27, 1992, at 10:15 a.m. Mr. Ribbie seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

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10:30 A.M. CHARLIE S. CHOE AND MOON CHOE, VC 92-D-035, appl. under Sect. 18-401 of the Zoning Ordinance to allow structure to remain 0.0 ft. from rear lot line (20 ft. min. rear yard required by Sect. 4-507), and to allow parking spaces 0.0 ft. from the front lot line adjacent to Old Dominion Dr. (10 ft. min. required by Sect. 11-102), on approx. 14,090 s.f., located at 6271 Old Dominion Dr., zoned C-5, Dranesville District, Tax Map 31-3(1)75. (CONCURRENT WITH SE 92-D-018)

Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant was present but noted that the Planning Commission had deferred the concurrent Special Exception. She said based on that deferral the Special Exception is scheduled to be heard by the Board of Supervisors on October 26, 1992. Ms. Kelsey suggested November 5, 1992, at 10:15 a.m. due to the BZA's heavy caseload.

Chairman DiGiulian asked if that date was agreeable to the applicant, and the applicant said that it was.

Mrs. Harris made a motion to defer VC 92-D-035 to the date and time suggested by staff. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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10:40 A.M. VULCAN MATERIAL COMPANY, SP 92-V-027, appl. under Sect. 3-103 of the Zoning Ordinance to allow stone quarrying, crushing, sales and associated quarrying activities, on approx. 72.2 acres, located on Penwill Dr., zoned R-1, Mount Vernon District, Tax Map 106-3(1)pt. 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. The applicant's attorney, Michael J. Giguere, Esquire, McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, replied that it was.

Mrs. Harris said there was a contiguous property owner present who would like the case deferred for one week.

Chairman DiGiulian asked if the applicant was aware of the request. Mr. Giguere said he was not aware of the request until he arrived at the Board Room, but that the applicant would not agree to a deferral. He said he did not believe the deferral request dealt with a land use issue.

Carlos Montenegro, counsel for Ann Malcolm and her family, said the Malcolms' have been working with the quarry during the past two months and agreed that the issues were not solely land issues. He asked the BZA to keep in mind that the Malcolm family has been on the property for over 70 years and should have some vested right to say something about what happens in the neighborhood. Mr. Montenegro said the Malcolms' had not received a draft proposal from the quarry until Friday afternoon, thus have not worked out all the issues.

Mrs. Thonen said she did not believe the BZA could defer a case unless the issues were based on land use. Mr. Hammack asked what the issues were.

Mr. Montenegro said there is a 50 foot right of way that runs across the Vulcan property. The Malcolms' have subdivided their property to the west and the east of the quarry and believe the applicant's proposal will impact the access to those lots. He said the Malcolms' are asking that Vulcan accommodate their need by constructing a road across the property as closely as possible to the 50 right of way.

In response to a question from Mrs. Harris, Mr. Montenegro replied that the expansion will come up almost to the roadway.

Chairman DiGiulian suggested that the BZA hear the case and then determine whether or not to defer decision.

Greg Riegler, Staff Coordinator, presented the staff report. He said the applicant was proposing to expand an existing stone quarry, there would be new structures, there would be no processing equipment in the expansion area, and all stone removed from the expansion area would be crushed, processed, and sold on the existing quarry property to the south. Mr. Riegler said the plat before the BZA and the proposed development conditions contained in the staff report reflects significant commitments to provide screening and landscaping with a minimum of 200 feet of landscaping along all sides of the property; there will also be a 15 foot high bermed area, which abuts the Penwill Drive right of way; and there are two designated Environmental Quality Corridors (EQC), which will provide an additional area of buffering along the western lot line. In closing, Mr. Riegler said staff recommended approval of SP 92-V-027 for the reasons noted in the staff report and subject to the development conditions, which incorporated all previous development conditions, being implemented.

In response to a question from Mr. Pammel, Mr. Riegler replied that the \$2,000 per acre bond is taken directly from the Zoning Ordinance. He said there is also a restoration plan that is reviewed annually.

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Mr. Giguere said the applicant must submit a report to the BZA annually, the special permit is looked at every five years, making this type of use the most regulated in the County. (He submitted a copy of a support letter into the record.) Mr. Giguere said the quarry has been located at the property for over 40 years without objection and staff has reviewed the site for a number of years and have found it be operated properly. He said the operation and expansion makes sense because it is essentially removed from residences, it is sheltered, it is isolated, and it is in close proximity to the market. Mr. Giguere said the applicant objects to a deferral because there is a disagreement with the Malcolms' over whether the real issue is a land use issue, and the applicant does not believe that it is. He said following meetings early on in the process with Ann Malcolm the applicant attempted to mitigate her concerns by adding buffers to the far side of the property and reduced the size of the expansion. Mr. Giguere said he did not believe that the expansion had any impact on the road, and pointed out there is a 20 foot wide construction easement on either side, as depicted on the plan. He said the Malcolms' have subdivided a lot to the west of the quarry into 14 lots, and are concerned that the County requirements might not allow them to construct a road in the 50 foot wide easement that is satisfactory to develop their property. Mr. Giguere said the applicant has agreed to provide an opportunity, if the County and Virginia Department of Transportation (VDOT) will approve, to expand the easement from 50 to 60 feet. The applicant also agreed to let the applicant remove a sharp curve and offered to give the Malcolms' an easement further to the west if the Malcolms' can find access closer to their property. He said the applicant did stipulate that the easement be approved by the County and VDOT before they relinquished their land. Mr. Giguere said people with the Lorton Federation and the Mount Vernon Council have toured the quarry on more than one occasion and found nothing objectionable. He explained that the applicant has an involvement with the primary contractor that is extending the HOV lanes on I-95 and some of the dirt removed from the subject property will be used for fill on that project; therefore, it was important that the case not be deferred.

A discussion took place between Mr. Pammel, Mr. Giguere, and staff with respect to the restoration plan.

Chairman DiGiulian called for speakers in support and hearing no reply called for speakers in opposition to the request.

Ann Malcolm, 3927 Barcroft News Court, Falls Church, Virginia, said her family owns 22 acres immediately adjacent to property owned by the quarry and 74 acres at the end of the dedicated public street. She said the buffering noted by the applicant is the horse farm, that was heard by the BZA approximately two weeks ago, from which the Malcolms' have experienced trespassing problems. Ms. Malcolm said the origin of Peniwill Drive and the dedicated street was created when Mrs. Wright died in the early '50's and the parcel was subdivided among her four children. She said she has been working with the quarry for a little over a year on various issues, such as noise, vibrations, and landscaping. Ms. Malcolm said there is no landscaping between the plant and her family's property. She said the expansion results from a land purchase made by the applicant within the last three years thus has not been contemplated in the prior reviews by the County and that she believes that it will impact her family's property. Ms. Malcolm asked the BZA to defer the case for one week.

In rebuttal, Mr. Giguere said he believed that the proposal was compatible and assured the BZA that if the request was approved that he would continue to work with the Malcolms' to resolve the issues. He pointed out that the plant will not be relocated, there have been no complaints filed against the quarry, and the Lorton Federation, the Mount Vernon Council, and staff have no objections.

Mrs. Harris said she was satisfied that the issues involved in the case have been well documented and the issues brought up by Ms. Malcolm were not land based; therefore, she would make a decision to deny the request for a deferral. Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

Chairman DiGiulian then closed the public hearing.

Mr. Hammack made a motion to grant SP 92-V-027 for the reasons noted and subject to the Development Conditions contained in the staff report dated September 22, 1992, with Condition Number 10 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 92-V-027 by VULCAN MATERIAL COMPANY, under Section 3-103 of the Zoning Ordinance to allow stone quarrying, crushing, sales and associated quarrying activities, on property located on Peniwill Drive, Tax Map Reference 106-3(1)pt. 4B, 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 29, 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-1.
3. The area of the lot is 72.2 acres.
4. Most of the improvements suggested by the neighbor would be off site and therefore inappropriate to add as part of the development conditions.
5. The BZA encouraged the applicant to continue to work with the neighbor to make the expansion palatable.

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 8-105 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 CTI Consultants, Inc., and Stevenson Engineering Associates, Inc. dated April 10, 1992 and are revised through June 26, 1992 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. Prior to the issuance of a Non-Residential Use Permit the following submissions shall be made to the Department of Environmental Management:

A grading plan shall be submitted for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance. This grading plan shall be engineered so as to preserve existing drainage patterns outside the pit area to the greatest extent possible and shall also reflect an intent to phase clearing and grading to preserve the existing vegetation and prevent excessive erosion.

A landscape plan shall be submitted to the Urban Forestry Branch, DEM for review and approval for the area of the property, except the EQC areas, that is outside the limits of clearing and grading as shown on the special permit plat. This landscape plan shall also contain a tree preservation plan reflecting an intent to preserve existing vegetation to the greatest extent possible along the northeastern and eastern lot lines. If any of the vegetation beyond the outer limits of the clearing and grading lines shown on the approved special permit plat or the approved landscape plan is lost during clearing and grading for the berms, replacement vegetation and/or replacement trees shall be provided. The number, species and location of these trees shall be as determined by the Urban Forestry Branch, DEM. This plan shall detail proposed plantings on the berms which are reflected on the approved special permit plat. The density and species of plantings shall be substantially as shown on the special permit plat subject to approval by the Urban Forestry Branch, DEM. All evergreen trees placed on the berm, at a minimum, shall have a planted height of four (4) feet.

5. This permit is granted for a period of five (5) years from the approval date of SP 92-V-027 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance. However, notwithstanding this five year term, due to the related nature of this site and the property presently governed by SPA 82-V-091-1, the next special permit amendment application to renew SPA 82-V-091-1 shall also include a request to incorporate the 75 acres governed by the approval of this special permit (SP 92-V-027) under a single set of special permit development conditions.
6. The area of stone excavation (i.e. the actual quarry pit area) shall not exceed 37 acres as is shown on the approved special permit plat.
7. After removal of overburden from ten (10) acres or more in the expansion area, and prior to the commencement of any stone excavation in the expansion area, a berm shall be constructed in the eastern portion of the expansion area as shown on the

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special permit plat. Prior to excavation of stone from the expansion area of the property and which is an area that is more than 700 feet north of the southern boundary of the expansion area, the berm adjacent to and south of Penniwill Drive shall be constructed as shown on the special permit plat. All berms shall have a minimum height of fifteen (15) feet as shown on the special permit plat.

8. The EQC shall be substantially as shown on the special permit plat subject to final delineations at the time of grading plan approval. The boundaries of the EQC shown on the special permit plat may be adjusted subject to the approval of DEM and the Environment and Development Review Branch OCP based on factors such as actual field survey, drainage issues, tree or vegetation preservation concerns. The area denoted as an EQC on the approved grading plan shall be permanently marked with orange fencing to ensure grading and earthmoving equipment does not disrupt the EQC. There shall be no clearing, grading, or structures in the area identified as an EQC.
9. The vegetation preserved in the EQC, and provided in and around the berms shall be deemed to fulfill all requirements for Transitional Screening. Species and exact location of trees shall be as determined by the Urban Forestry Branch, DEM. The chainlink fence surrounding the site shall be deemed to fulfill the barrier requirement.
10. A bond of \$2,000 per acre to ensure restoration of the property shall be established for the this site. The permittee shall comply with all requirements of the approved Restoration Plan and amendments thereto.
11. The permittee shall absorb one hundred percent of the cost of enforcement service as determined by the Zoning Administrator.
12. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 0.4 inches per second in the earth at any privately-owned occupied structure not on the quarry property, except not more than one in ten shots can go over 0.4 with the limit being no more than 0.6.
13. The peak overpressure from any blast shall be limited to 0.0092 psi (130dB) at any privately owned occupied structure not on quarry property.
14. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any privately-owned structure not on quarry property.
15. Airborne noise produced by the quarry from sources other than blasting shall not exceed at any privately-owned occupied structure not on quarry property, 58 dBA in residential areas, or 65 dBA in commercial areas.
16. Paved roads and other paved areas within the confines of the quarry will be watered and cleaned with heavy duty cleaning equipment to control dust.
17. All trucks transporting material excavated from the site to any off site location shall be covered.
18. No drilling or blasting shall be performed other than during the hours between 7:00 a.m. and 6:00 p.m. Monday through Saturday. Blasting shall occur only between the hours of 10:00 a.m. and 6:00 p.m. Monday through Friday and all blasts shall be coordinated to wind and other atmospheric conditions in order to minimize as far as possible any adverse effect upon any privately-owned occupied dwellings. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four hours prior to each blast.
19. Two-way communication equipment shall be provided for use by zoning inspectors while conducting site inspections.
20. A copy of water quality data submitted to the Commonwealth of Virginia under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Office of Comprehensive Planning on an annual basis.
21. Penniwill Drive shall only be used for emergency vehicle access.

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 and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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



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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 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 7, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 425, September 29, 1992, (Tape 1), Scheduled case of:

10:55 A.M. GRAHAM ROAD UNITED METHODIST CHURCH, SPA 91-P-040, appl. under Sect. 3-403 of the Zoning Ordinance to amend SP 91-P-040 for church and related facilities and child care center to allow additional playground, on approx. 1.91 acs., 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)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephanie Johnson, 7401 Park Avenue, Falls Church, Virginia, Director of the Graham Road Child Development Center, replied that it was.

Greg Riegler, Staff Coordinator, presented the staff report. He said the applicant was proposing to add an 3,200 square foot additional play area to the site, there will be no changes to the enrollment, and there will be no changes in the seating capacity of the church. Mr. Riegler said although Lot 47A is not part of the special permit application it is owned by the church and is used as a parsonage.

Ms. Johnson agreed with staff's comments and noted that the church sponsors both a preschool and a child care center at the subject site and the child care center is operating at full capacity, thus the request for additional play area. She said there are no objections from the neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SPA 91-P-040 for the reason noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 22, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 91-P-040 by GRAHAM ROAD UNITED METHODIST CHURCH, under Section 3-403 of the Zoning Ordinance to amend SP 91-P-040 for church and related facilities and child care center to allow additional playground, on property located at 2929 Graham Road, Tax Map Reference 50-3((8))48, 47A, 47B; 50-1((7))10, 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 September 29, 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 1.91 acres.
4. The BZA clarified that the operation of all activities of the day care center and child development center are operated by the church.

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.\*

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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 Alexandria Surveys revised through July 13, 1992 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 hours of operation for the existing church operated child care center shall be limited to 9:30 a.m. to 12:00 p.m. Monday through Friday. The maximum number of children in this program shall be limited to 40. A minimum of eight parking spaces shall be required for this use.\*
5. The hours of operation for the Graham Road Child Development Center shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday. The maximum daily enrollment for this child care center shall be limited to 40. Eight parking spaces shall be required for this use.\*
6. A six foot high board on board fence shall be maintained along the southern and western sides of the play area located in the southeastern portion of the site. A six foot high board on board fence shall be provided along the eastern side of the play area located in the northern portion of the site.
7. The points of access to the parking area from Graham Road and Rosemary Lane shall retain the markings as one-way entrances or exits.\*
8. 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.\*
9. The maximum seating capacity in the main area of worship for the church shall be limited to a total of 120 seats with a corresponding minimum of 30 parking spaces as shown on the approved plat. 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.\* Note 6 on the plat referencing a seating capacity of 160 in the church shall be null and void.
10. If not accomplished pursuant to the approval of SP 91-P-040, 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 review which ever comes 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 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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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 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 7, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 11:50 a.m. and reconvened at 11:57 a.m.

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Page 427, September 29, 1992, (Tape 2), Information Item:

Request to Issue an Intent to Defer for  
Steven D. Yoder and Barbara B. Yoder Appeal, A 92-Y-015

(The BZA had deferred action from September 22, 1992, to allow staff time to contact the appellant or their agent to have them present in the Board Room.)

Todd Cregger, attorney with the law firm of Eskovitz, Lazarus, Pittrelli & Cregger, 100 East Street, SE, Vienna, Virginia, took responsibility for the notices not being mailed in a timely manner and said his office does not normally handle zoning cases; therefore, he was unaware of the importance of the notice requirement.

Following a discussion among the BZA members, William E. Shoup, Deputy Zoning Administrator, suggested a deferral date of November 5, 1992, at 10:30 a.m.

Mr. Hammack made a motion to defer to the date and time suggested by staff. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Page 427, September 29, 1992,, (Tape 2), Information Item:

Request to do Intent to Defer for  
Thomas J. Rother Appeal, A 92-M-010

(The BZA had deferred action from September 22, 1992, to allow staff time to contact the appellant or their agent to have them present in the Board Room.)

The appellant, Thomas Rother, 103 Douglas Court, Sterling Virginia, said when he received the Notice Package from the Clerk he tried to individually contact the surrounding property owners and did not understand that he should have contacted the Office of Assessments. He said he had not realized that it might be to his advantage to obtain legal counsel.

William E. Shoup, Deputy Zoning Adminfstrator, pointed out that A 92-M-010 and A 92-M-009 (the next agenda item) was located on the same subject property. He suggested November 5, 1992, at 10:45 a.m.

Mrs. Thonen made a motion to defer to the date and time suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

The BZA said they would not be agreeable to any additional deferrals.

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Page 427, September 29, 1992,, (Tape 2), Information Item:

Request to do Intent to Defer for  
Furniture Store Appeal, A 92-M-009

Mrs. Thonen pointed out that the appeal was deferred in July because the notices were not in order, now the appellant's agent is requesting another deferral based on a pending Zoning Ordinance amendment.

Chairman DiGiulian asked staff if the letter was correct about the pending Zoning Ordinance. William E. Shoup, Deputy Zoning Administrator, said he did not agree that was an option available to the appellant.

Jane Kelsey, Chief, Special Permit and Varfance Branch, said she had contacted Lynne Strobel, attorney for the appellant, and Ms. Strobel had asked that the BZA defer action on the request until she could be present. Ms. Kelsey said staff had not contacted Ms. Strobel to ask that she be present because the notices in A 92-M-009 were in order and the BZA had directed staff to contact the appellants that had not met the notice requirement.

The BZA held any decision with regard to the request to issue an intent to defer in abeyance until October 6, 1992, at which time the case was scheduled to be heard.

Mr. Shoup said the Zoning Administrator had indicated that an amendment might possibly be a resolution, but the issues were too involved and there will not be an amendment forthcoming in the near future.

Mr. Pammel made a motion to proceed with the scheduled public hearing on October 6, 1992, at the time the case was scheduled. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Request to Issue an Intent to Defer  
Ghazala Chughtal, SP 92-D-043

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Jane Kelsey, Chief, Special Permit and Variance Branch, said after learning that staff was recommending denial, the applicant has requested to amend the application from a child care center to a home child care for nine children. She said the applicant has just recently obtained an agent due to a communication problem.

In response to a question from Mrs. Harris, Ms. Kelsey said the application would have to be readvertised because it would come under different standards.

A discussion took place among the BZA with respect to the deferral request.

Ms. Kelsey pointed out that the applicant was operating under a Notice of Violation presently and suggested a deferral date of December 10, 1992.

Mrs. Thonen made a motion to defer the application to December 10, 1992. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble 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 12:20 p.m.

Betsy S. Hurtt

Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman  
Board of Zoning Appeals

SUBMITTED: November 17, 1992

APPROVED: December 1, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 6, 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 9:25 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 429. October 6, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ROSS F. ROGERS, VC 92-D-039, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 6 lots, proposed Lot 1 having lot width of 168.0 ft. (225 ft. min. lot width for corner lot required by Sect. 3-E06) and proposed Lots 2, 3, 5, and 6, having lot width of 5.0 ft. (200 ft. min. lot width required by Sect. 3-E06) on approx. 12.47 acres located on Utterback Store Rd., zoned R-E, Dranesville District, Tax Map 7-1((9))A, B. (DEF. FROM 7/7/92)

Chairman DiGiulian advised that the Board of Zoning Appeals had issued an Intent to Defer VC 92-D-039 on September 29, 1992. Marilyn Anderson, Senior Staff Coordinator, advised that staff suggested deferral to January 19, 1993. Mr. Pammel so moved. 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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Page 429. October 6, 1992, (Tape 1), Scheduled case of:

9:10 A.M. GHAZALA IQBAL CHUGHTAI, SP 92-D-043, appl. under Sect. 3-403 of the Zoning Ordinance to allow child care center, on approx. 8,401 sq. ft., located at 7411 Tfillman Dr., zoned R-4, Dranesville District, Tax Map 30-3((16))41.

Chairman DiGiulian advised that the Board of Zoning Appeals (BZA) had issued an Intent to Defer VC 92-D-039 on September 29, 1992. Mrs. Harris advised that a letter had been received from a representative of the applicant, stating that the applicant was attempting to work out a possible new site for the child care center and that she believed it would benefit the applicant and staff if the BZA deferred this case for a sufficient amount of time. Marilyn Anderson, Senior Staff Coordinator, advised that staff suggested an indefinite deferral since submission of new plats would be required, and the case could be scheduled as soon as the new plats were received. Mrs. Thonen advised that she would prefer that the application be kept on the agenda. At the request of Chairman DiGiulian, the applicant's agent, Marie B. Travesky, 3900 Jermentown Road, Fairfax, Virginia, came to the podium to advise how much of a deferral she believed the applicant would need. She said she assumed they would need about three weeks to submit a new plat to staff, plus the time required by staff to review the plat. Based upon that estimate, Mrs. Anderson suggested a date of December 10, 1992, to which Ms. Travesky agreed. Mrs. Thonen so moved. 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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Page 429. October 6, 1992, (Tape 1), Scheduled case of:

9:20 A.M. DANIEL J. MATT, VC 92-Y-075, appl. under Sect. 18-401 of the Zoning Ordinance to allow deck 0.7 ft. from rear lot line (5 ft. min. rear yard required by Sect. 2-412), on approx. 2,100 s.f., located at 5714 Belcher Farm Dr., zoned PDH-4, Sully District, Tax Map 54-1((17))316.

Chairman DiGiulian noted the agenda stated that the notices were not in order and Mrs. Thonen stated that the Board of Zoning Appeals also had a memo to that effect.

Mr. Matt came to the podium and Chairman DiGiulian asked him to address the issue of the notices only. Mr. Matt referred to notice not having been given to the Sully Station Community Association's Architectural Review Board, and said that he would attempt to get approval from them. Mrs. Harris advised Mr. Matt that he only needed to notify the Association; he did not require their approval for notice purposes. A discussion ensued regarding this issue. Mr. Matt said that he had provided the letter of notification to the Association the previous day and they had stamped it "received." He was advised that twenty days prior notice was required before the hearing. Mr. Matt advised that he also had to go through a similar process with the Architectural Review Board. Mrs. Thonen advised Mr. Matt that the Architectural Review Board requirements had nothing to do with the BZA process.

Chairman DiGiulian ruled that the notices were not in order.

Marilyn Anderson, Senior Staff Coordinator, suggested the date of December 10, 1992 for the hearing and Mrs. Harris so moved. 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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9:30 A.M. THOMAS F. WOODS, JR., VC 92-V-077, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 7.4 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 12,946 s.f., located at 8407 Stockade Dr., zoned R-3, Mt. Vernon District, Tax Map 102-3((16))7.

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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. Woods replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the applicant had amended his original request and was now requesting a lesser variance to construct a garage addition to a distance of 7.4 feet from the side lot line, representing a variance of 4.6 feet. Subsequent to the preparation of the staff report, the applicant submitted a revised plat and a revised standard variance statement. Staff had received a letter from the owner of Lot 6, which was distributed to the BZA members.

Regarding the surrounding uses, Ms. Langdon said that the dwelling on Lot 6 to the north is located approximately 12.2 feet from the shared lot line.

The applicant, Thomas F. Woods, Jr., 8407 Stockade Drive, Alexandria, Virginia, presented the statement of justification and submitted a rendering to the BZA. He said that he had acquired the property in September of 1984 in good faith; the dwelling was built in 1968. Mr. Woods said that the configuration of the lot is extraordinary in that it is not square or rectangular, but is pie-shaped with a 90 foot width in the back and 75 feet across the front.

Mrs. Thonen called attention to a letter of opposition from the next door neighbor on the side where the applicant proposed to build, and Mr. Woods said that he had read the letter.

Mr. Ribble called Mr. Woods attention to the fact that the letters in favor of the request did not specify a two-car garage.

Mrs. Harris said that she questioned the length the applicant was proposing and asked what the small portion behind the carport was being used for. The applicant said it was a stone wall containing a washroom and a furnace/air conditioner. He said he planned to extend the area of the entire building for aesthetic purposes and Mrs. Harris pointed out that it made the variance so much greater. Mr. Woods said that if the BZA objected to it, he would be glad to leave it out. In answer to a question from Mrs. Harris, Mr. Woods said that the length of the house from front to back was 17.4 feet. Mrs. Thonen said that, although extending further back increased the variance, she preferred it because it did not break the roof line, thereby improving the appearance.

Cathy Bunting, 8409 Stockade Drive, Alexandria, Virginia, spoke in favor of the application.

Victor L. Patel, 8405 Stockade Drive, Alexandria, Virginia, spoke in opposition to the application, stating that all three neighbors across the street from him have indicated to him that they are not in favor of the application because of the visual effect. They also believed that the applicant had not met the standards for the variance. Mr. Patel said that Mr. Woods' addition would shade his house.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 92-V-077 because the applicant had presented testimony that he had met the criteria established for a variance, specifically because his lot had an unusual configuration in that the north side lot line tapers from the rear to the front, giving him approximately 80 foot frontage at the building line, which is narrow in terms of trying to locate the proposed addition. The motion failed for lack of a second.

Mrs. Harris made a motion to deny VC 92-V-077 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 92-V-077 by THOMAS F. WOODS, JR., under Section 18-401 of the Zoning Ordinance to allow addition (garage) 7.4 ft. from side lot line, on property located at 8407 Stockade Dr., Tax Map Reference 102-3((16))7, 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 6, 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 12,946 square feet.
4. The property has somewhat unusual lot lines in that it is smaller in the front and larger in the back, but it is still basically rectangular in shape and it is a flat lot.
5. The condition presented by the applicant is not so general and recurring as to formulate a regulation by the Board of Supervisors.
6. The area contains many two-car carports, one-car garages, and one-car carports, and it is believed that approval of this application would change the general nature of the area.
7. Even the modified variance request is extensive in the back area; it would intrude upon the neighbor's yard and no mitigating measures would stop that from happening; and it would change the character of the district because there are no other situations like this that required a variance.
8. The two-car garage referred to across the street was originally a two-car carport which was built with the house and did not require a variance.
9. The granting of this variance would not be in harmony with the intended spirit of the Zoning Ordinance.

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 5-1-1. Mr. Pammel voted nay and Mr. Hammack abstained.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 14, 1992.

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Page 431, October 6, 1992, (Tape 1), Scheduled case of:

9:40 A.M. MINA AND FARROKH FRACYON, VC 92-P-072, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 21,941 sq. ft., located at 10009 Clearfield Ave., zoned R-1, Providence District, Tax Map 38-3(7)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. Fracyon replied that it was.

Mr. Pammel disclosed that his wife and he are part owners of Lot 4 in Oak Valley Estates, located at Oak Valley Drive and Clearfield Avenue, one block removed from the applicants. He said that he would participate in the evaluation of the application.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the applicant proposed to construct a two-story addition to a distance of 15 feet from the side lot line and was requesting a variance of 5.0 feet to the minimum side yard requirement. Regarding surrounding uses, she said the dwelling on adjacent Lot 3 to the east is located approximately 20 feet from the shared side lot line.

The applicant, Farrokh Fracyon, 10009 Clearfield Avenue, Vienna, Virginia, presented the statement of justification, stating that the existing dwelling is located in the middle of the lot and he proposed an addition consisting of a two-car garage and a second story.

Mrs. Harris referred to the statement of justification and the applicants claim of hardship. She said she had seen nothing which indicated hardship, such as unusual topography.

Mr. Fracyon said that, to maintain property values in the neighborhood, a two-car garage is essential. He said the hardship is that the house sits in the middle of the lot; if he were to construct it he would move it to the right and allow space to expand, leaving 24 feet to the property line. He said that his neighbor on the right built a garage in the back yard and they have a lot of asphalt paving, which he would not prefer.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 92-P-072 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 29, 1992.

Mr. Pammel said that the subject subdivision and several others were constructed in the late 50s, at which time the basic zoning was R-1 and consist of 1/2 acre lots; however, the acreage surrounding those subdivisions have larger lots and have developed in recent years at 2 dwellings per acre, R-2 standards, and the side yard requirement for an R-2 District is 15 feet.

Mrs. Harris said that she did not believe that had any bearing on this case. She said that the statement of justification stating that the applicant wanted to bring the house up to the standard of surrounding properties also had no bearing, as his next-door neighbor was faced with the same problem and built the garage in the rear. She said the lot was flat and there was ample space to build a garage in the back; she did not believe there was a justification of hardship on a perfectly rectangular lot, with the dwelling in the center of the lot.

Chairman DiGiulian said that he would support the motion because the house is in the middle of the lot, and there is definitely a hardship when you have R-1 zoning and have to meet the setbacks of an R-2 sized lot; whereas, if it were zoned R-2, only a 15 foot setback would be needed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-072 by MINA AND FARROKH FRACYON, under Section 18-401 of the Zoning Ordinance to allow addition 15 ft. from side lot line, on property located at 10009 Clearfield Ave., Tax Map Reference 38-3(7)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 6, 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-1.
3. The area of the lot is 21,941 square feet.
4. The lot is located in an R-1 area; it is a substandard or small lot for an R-1 area; it is narrow, based upon an R-1 classification; it is the same size as others in the neighborhood, but the real issue is that the applicant desires to raise the roof and put a second story all the way across and add bedrooms over the garage area, which would require the five foot setback, and that satisfies an extraordinary situation or condition in the use of the property.
5. The variance is really minimum, considering the construction proposed.

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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 specified addition shown on the plat prepared by Rice Associates, dated January 28, 1991, revised by Farrokh Fracyon, Architect, dated May 6, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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 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. Pammel 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 became final on October 14, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 433, October 6, 1992, (Tape 1), Scheduled case of:

9:50 A.M. CAMELOT COMMUNITY CLUB, INC., SPA 80-P-024-1, appl. under Sects. 3-203 and 8-915 of the Zoning Ordinance to amend SP 80-P-024 for community swimming pool to allow addition of deck, ramp for handicap access, and waiver of dustless surface requirement, on approx. 6.96 acs., located at 3604 Balin Ct., zoned R-2, Mason District, Tax Map 59-4(1)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. Hollingsworth said that it was.

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Greg Riegler, Staff Coordinator, presented the staff report, stating that the application proposed the addition of three decks adjacent to the swimming pool, and a handicapped ramp. There is no increase in Floor Area Ratio, and staff has long had the belief that the existing structure is the height, bulk, and mass which is compatible with the surrounding residential development. Mr. Riegler pointed out that the site is well buffered with existing vegetation at depths of 25 feet to 200 feet; in staff's opinion, there are no outstanding land issues with this application. He said that there is an Environmental Quality Corridor (EQC) on the property, with steep slopes on the site, coupled with the proximity of the Accotink Creek which runs along the southern boundary; he noted that the parking spaces are in the EQC; however, the parking spaces are gravel, which is the appropriate treatment and, provided the existing vegetation is retained and the parking area is not expanded, it is staff's belief that the application is in harmony with the environmental recommendations as they pertain to preserving the EQC. These issues are addressed in the Proposed Development Conditions. Mr. Riegler said that staff recommended approval.

Deena B. Hollingsworth, 3525 King Arthur Boulevard, Annandale, Virginia, President of Camelot County Club, represented the applicant, stating that the application fairly well outlined what they wished to do. She said that the pool sits on the side of a hill; some of their older members and members who have any type of handicap have difficulty getting to the pool. She said that is the reason they wished to build the ramp and interweave it with the decking, which will provide an opportunity to make use of what little land they have around the pool.

There were no speakers and Chairman DiGiuliano closed the public hearing.

Mrs. Thonen made a motion to grant SPA 80-P-024-1 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 29, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-P-024-1 by CAMELOT COMMUNITY CLUB, INC., under Sections 3-203 and 8-915 of the Zoning Ordinance to amend SP 80-P-024 for community swimming pool to allow addition of deck, ramp for handicap access, and waiver of dustless surface requirement, on property located at 3604 Balin Ct., Tax Map Reference 59-4(1)15, 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 6, 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 6.96 acres.
4. Providing access for the handicapped is very important, as well as being the Federal law.
5. The applicant does not intend to expand anything, only to cause less of a burden to the handicapped and elderly.
6. Staff recommends approval of the dustless surface waiver as water quality is at a premium.

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 Dewberry and Davis dated May 8, 1992 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. The hours of operation for the swimming pool shall be limited to a maximum of 9:00 a.m. to 9:00 p.m.
5. After-hours parties for the swimming pool shall be governed by the following:
  - o Limited to six (6 per season),
  - o Limited to Friday, Saturday and pre-holiday evenings,
  - o Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed,
  - o Shall not extend beyond 12:00 midnight,
  - o 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,
  - o 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 extended-hour party or for the first one at the beginning of a swim season,

Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.

Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.
6. The existing gravel drive and parking area 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.
7. The gravel parking surface shall contain 50 spaces and shall be continued for a term as specified by the Zoning Ordinance.
8. In order to prevent hydrocarbon runoff from entering Accotink Creek, a vegetated filter strip designed and sited as determined by the Department of Environmental Management (DEM) shall be provided between the existing parking area and Accotink Creek. Existing vegetation may be used to fulfill this requirement as may be acceptable to DEM.
9. The EQC shall be as denoted on the approved special permit plat. There shall be no additional clearing, grading or structures in the area denoted as an EQC on the approved special permit plat.
10. There shall be a maximum of 260 members.

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 legally established or construction has started and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. Pammel 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 October 14, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 436, October 6, 1992, (Tape 1), Scheduled case of:

10:00 A.M. JOHN T. PETRO, JR., VC 92-D-060, appl. under Sect. 18-401 of the Zoning Ordinance to allow an 11 ft. high detached shed/workshop 2.0 ft. from side lot line and 2.0 ft. from rear lot line (10 ft. min. side yard required by Sect. 3-407, 11 ft. min. rear yard required by Sect. 10-104), on approx. 10,400 sq. ft., located at 6637 Fisher Ave., zoned R-4, Dranesville District, Tax Map 40-4((5))79. (DEF. FROM 7/30/92 TO ALLOW APPLICANT TIME TO REVISE PLAT)

Chairman DiGiulian advised that the Board of Zoning Appeals (BZA) had a letter from Mr. Petro requesting that he be allowed to withdraw his application. Mrs. Thonen so moved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 436, October 6, 1992, (Tape 1), Scheduled case of:

10:00 A.M. STEVEN D. YODER AND BARBARA B. YODER APPEAL, A 92-Y-015, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the occupancy of a second dwelling unit on the appellant's property does not constitute a servants quarters use and is therefore in violation of the Zoning Ordinance provisions, on approx. 2.0 acs., located at 2431 Sunny Meadow La., zoned R-E, Sully District, Tax Map 37-2((3))8A.

Chairman DiGiulian advised that the Board of Zoning Appeals (BZA) had issued an Intent to Defer on September 29, 1992. Marilyn Anderson, Senior Staff Coordinator, suggested a new hearing date of November 5, 1992 at 10:30 a.m. Mrs. Thonen so moved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 436, October 6, 1992, (Tape 1), Scheduled case of:

10:15 A.M. THOMAS J. ROTHER APPEAL, A 92-M-010, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant's retail sales operation occupies more than 40% of the above-ground gross floor area of the establishment in violation of Par. 4 of Sect. 5-505 of the Zoning Ordinance, on approx. 7.242 acres., located at 5576 General Washington Dr., zoned I-5, Mason District, Tax Map 81-1((9))27. (DEF. FROM 7/28/92 AT APPELLANT'S REQUEST)

Chairman DiGiulian advised that the Board of Zoning Appeals had previously issued an Intent to Defer this appeal. Marilyn Anderson, Senior Staff Coordinator, recommended November 5, 1992 at 10:45 a.m. Mr. Pammel so moved. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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The Board recessed at 10:20 a.m. and reconvened at 10:35 a.m.

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Page 436, October 6, 1992, (Tape 1), Scheduled case of:

10:15 A.M. FURNITURE STORE, A 92-M-009, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant's retail sales operation occupies more than 40% of the above-ground gross floor area of the establishment in violation of Par. 4 of Sect. 5-505 of the Zoning Ordinance, on approx. 7.242 acs., located at 5570 General Washington Dr., zoned I-5, Mason District, Tax Map 81-1((9))27.

Chairman DiGiulian advised that the Board of Zoning Appeals (BZA) had received a request for deferral. Mrs. Thonen stated that the BZA had passed a motion that they would hear this appeal unless the Zoning Administrator submitted a letter saying there was an amendment in the works to change the requirements for the issue.

William E. Shoup, Deputy Zoning Administrator, said that staff was working on an amendment dealing with this issue, but the amendment would not be forthcoming anytime soon. Mrs.

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Thonen asked for a more specific time frame. Mr. Shoup said that he did not anticipate finalization before the end of the year, but he could not predict a specific time. He said the issue is very complicated and would take a great deal of evaluation. Mrs. Thonen made the observation that the appellant could go on operating indefinitely if the BZA continues to defer the appeal, and she did not believe the violation should be allowed to continue.

Mr. Ribble asked what the appellant had been lead to believe. Mr. Shoup said that the Zoning Administrator had met with the appellant and indicated that she would agree to discuss an amendment and see if there was any way of resolving this issue by amendment; however, the more staff looked into the issue, the more they realized that it was not a simple matter of changing a few words to resolve the issue. Mr. Shoup said that the issue is complex and staff was not close to a proposed amendment. He said that staff never indicated that the appellant's problem would be resolved, but they had agreed to research it and possibly resolve it.

Mrs. Thonen said she believed that the appeal should be heard and Mr. Kelley said that he agreed.

Mr. Hammack said he would like to hear what the applicant had to say concerning the amendment process before deciding whether or not to go forward with the hearing.

Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, represented the appellant and provided a chronology of events, including violations, since the opening of the store: The zoning violation was issued on April 14, 1992 and an appeal to that violation was filed on May 8, 1992. On June 3, 1992, there was a site inspection by Jane W. Gwinn, Zoning Administrator, and Mr. Shoup, and a mutual decision was reached to pursue an amendment to the Zoning Ordinance because retail uses are recognized as common occurrences in industrial parks in Fairfax County. On June 16, the BZA granted a deferral of the hearing to October 6, 1992. On July 22, 1992, the appellant submitted a proposal for an amendment to the Fairfax County Zoning Ordinance. She also noted that, on July 27, 1992, the Board of Supervisors (BOS), recognizing this Countywide problem, included retail uses in the "I" Districts as a part of the Zoning Ordinance Work Program. In addition, on August 12, 1992, the appellant coordinated a meeting with Ms. Gwinn, Mr. Congleton and representatives of the National Association of Industrial and Office Parks, to discuss the proposed Zoning Ordinance Amendment, after which the appellant submitted additional information to Ms. Gwinn on September 9, 1992. She said that on October 5, 1992, the BOS discussed the issue of retail uses in Industrial Districts and that the office of Chairman Thomas M. Davis, III, Fairfax County Board of Supervisors, was willing to send a facsimile to the BZA that morning affirming the discussion. Ms. Strobel requested a deferral of three months. She said that, if at that time there was no further progress, the appellant would present his case based upon the existing facts.

Mrs. Harris asked Ms. Strobel what reassurance they had that the BOS would come to any decision. She noted that there was sometimes an extremely long wait before issues of this nature were resolved. Mrs. Harris said that, even if an amendment were proposed in writing, there was no assurance that the BOS would accept it. She stressed that the appellant was in violation of the current Zoning Ordinance and would be allowed to continue for three more months if a deferral were granted.

Mrs. Thonen said she did not believe that the BZA should be voting on what may happen in the future, but rather they should base their vote upon the existing Ordinance.

Mr. Hammack said that he agreed with Mrs. Thonen and asked Ms. Strobel what had actually been approved by the BOS under the Amendment Program for retail uses in "I" Districts. He asked, if that amendment were implemented, would it resolve the problem. Ms. Strobel said that Mr. Shoup was probably better qualified to answer that than she was. She said she believed that an amendment might not be necessary, but rather a clarification or an interpretation of the Ordinance language.

Mrs. Thonen said she believed the Ordinance was very clear on the issue. She said she believed an amendment would not be a simple thing but would require a great deal of study and work by staff and she believed Ms. Gwinn would agree with that.

Mr. Pammel asked Ms. Strobel if there was any reason why she had not or could not apply for commercial zoning and make the use conforming. Ms. Strobel said that the appellant was a lessee of the property and they would need to get the cooperation of all the owners and lessees of the property and she did not believe that could be done easily.

Mr. Pammel referred to the fact that the appellant now was in compliance with the parking standards for an industrial use and not a commercial use, which Ms. Strobel confirmed.

Mr. Kelley asked Mr. Shoup what he thought about the deferral. Mr. Shoup said that staff did not support the deferral request because there is an existing violation and staff did not believe that an amendment was forthcoming soon, if at all.

Mr. Kelley suggested that the BZA defer the appeal until the end of the agenda to see if a letter from Mr. Davis was forthcoming. Mrs. Thonen seconded the suggestion. Mrs. Harris

asked if an amendment would have to go to public hearing and Mrs. Thonen said it would. She said that, since this would seem to be a long and drawn out process, having a letter from Mr. Davis saying that the BOS was looking into the issue was not a stamp of approval, and again stressed the existing violation.

Mrs. Thonen moved to defer this appeal to the end of the agenda so that Ms. Strobel could get a letter from Mr. Davis. An effort began to facilitate the receipt of a letter from Mr. Davis. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

Adam Glickfield, 1812 Wyoming Avenue, N.W., Washington, D.C., represented Marlo Furniture, who he said is in the same Industrial Park as the appellant. He said that his client was in compliance with the I-5 60/40 regulation. Chairman DiGiulian and Mr. Kelley asked Mr. Glickfield to speak only to the deferral. Mr. Glickfield said he did not believe that a deferral was appropriate at this time because the appellant was in non-compliance with the I-5 zoning and it is a competitive disadvantage to the other businesses in the Industrial Park who are in compliance.

Mr. Pammel moved to rescind the previous motion. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Mr. Pammel made a motion to proceed with the hearing. Mrs. Thonen seconded the motion. Mr. Kelley said that he misunderstood Mr. Pammel's previous motion. Mr. Pammel said that he had made a motion to rescind. Mr. Kelley said he did not know that was a motion, he thought it was reinstated because of the speaker that intervened. Mrs. Thonen said that Mr. Pammel's motion was on the floor to go ahead with the hearing.

Mr. Pammel reiterated his motion to go forward with the hearing and Mrs. Thonen seconded the motion again. The vote failed for a lack of four votes: Chairman DiGiulian, Mr. Ribble, Mr. Kelley and Mrs. Harris voted nay.

Mrs. Thonen made a motion to defer the hearing until the end of the agenda. Mrs. Harris seconded the motion. Mr. Hammack said that initially Ms. Gwinn had indicated cooperation with the appellant on getting a change in the zoning. He said he knew that was not always possible, but he would like to give the appellant an opportunity to provide further information, and he would support the motion.

Mr. Kelley made a substitute motion to defer the hearing until the following week. Mrs. Thonen withdrew her motion. Mrs. Thonen made a motion to defer to the following Tuesday, October 13, 1992, at 10:30 a.m. Mr. Kelley seconded the motion. Mrs. Harris asked for a clarification of the deferral. Mr. Kelley said that his intention was to get a letter from the BOS if it is forthcoming and to get copies of various communications, etc. Mr. Kelley said that his request was to defer making a decision on the deferral, which is not what Mrs. Thonen's motion was.

Chairman DiGiulian asked Mr. Kelley to make a new motion. Mr. Kelley said that he moved that the BZA defer for one week the decision on whether or not to defer for a three month period of time. Mr. Ribble seconded the motion.

Mr. Pammel said that, if the case were scheduled for a public hearing that day, all they were discussing was the deferral. He said if that was all they addressed, then a public hearing could not be held next week.

Mr. Kelley made a motion to defer the decision for one week, at which time the BZA would decide whether to defer for a longer period of time or hear the appeal. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 438, October 6, 1992, (Tape 1&2), Scheduled case of:

10:30 A.M. JAMES M. SHANGLE, JR., JEFFERY A. CLEMONS, JAMES M. SHANGLE AND JOYCE A. SHANGLE, VC 92-Y-058, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 4 lots into 3 lots, proposed Lot 2 having lot width of 135 ft. (200 ft. min. lot width required by Sect. 3-E06); on approx. 6.4602 ac. located at 10627 Hunters Valley Dr., zoned R-E, Sully District, Tax Map 37-1(13)3A, 5, D, C3. (DEF. FROM 8/4/92 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. Runyon replied that it was.

Robby Robinson, Staff Coordinator, presented the staff report, stating that the property was currently developed with two single family detached dwellings. He said that the surrounding property was also developed with single family detached dwellings. Mr. Robinson said that, on September 11, 1990, the BZA denied VC 90-C-069, a request by the current applicants to allow subdivision of the subject property into three lots, with Lot C3 at that time having a width of 150.87 feet. He said that the current application differs from the previously denied application in the following manner: The width of the existing lot that fronts on Hunters Valley Road is proposed to be 135 feet; in the previous application it was proposed to be 150 feet. The driveway entrance by the proposed third lot is now located near the

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western boundary of that lot; in application VC 90-C-069 the driveway entrance by the third lot was proposed to be adjacent to the eastern boundary of that lot. The house proposed for construction on the third lot is now located near the central portion of that lot; in the previous application, the house was located near the southwest corner of that lot. Mr. Robinson said Variance Standard 4 requires a finding that strict application of the Zoning Ordinance would produce undue hardship. He said the proposed resubdivision of the existing lots results in a self-imposed hardship which primarily served to increase the number of dwellings permitted. Variance Standard 6 required the finding that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the property. Mr. Robinson said there is currently one dwelling on Lot 3A and one dwelling on Lot 5, and staff believed that the applicants have reasonable use of the subject property.

Charles E. Runyon, 10650 Main Street, Fairfax, Virginia, represented the applicant, stating that the applicant was requesting a variance only for Lot 2, which has an existing dwelling on it. He said that Lots 1 and 3 do comply with the requirement for the 200 foot frontage. He said they could have given Lot 2 more frontage just to reduce the ratio, but they were trying to save as much vegetation and foliage as possible. Mr. Runyon said the parcel is heavily wooded and contains the two existing dwellings. He said that the property is zoned for .2 to .5 dwelling units per acre, which means one unit on two acres or one unit on 5 acres; proposed Lot 1 contains 2.05, Lot 2 contains 2.02, and Lot 3 contains 2.4; therefore, the density is 0.46. Mr. Runyon said that it complied with what the area contained, with several resubdivisions of the original old parcels, Hunters Valley Section I and Section II; the applicant is in Section II. He said that many resubdivisions had taken place since the 1950s. The option to have the variance granted would be to put in a cul-de-sac.

Mr. Runyon said that, if they obtain the variance and do not have to build the cul-de-sac, a significant amount of clearing will result on Lot 1, where the new house would be built; there would be 1.9 acres less clearing if the variance were granted and the public street would be utilized.

Mr. Runyon said that the approved preliminary plan which has been through the Office of Transportation (OT) and Department of Environmental Management (DEM), only requires 25 feet from the center line and it was his hope that the BZA would make the right-of-way 25 feet, which it is presently, and they would agree to give a 15 foot easement to help facilitate the building; if the BZA wished to increase it to 20 feet, they were agreeable, however DEM did not say that was a requirement in their approval for the subdivision into three lots, using the public street.

Mrs. Thonen remarked that the plan before the BZA looked much better than the last one they brought in.

Mrs. Harris asked Mr. Runyon if the applicant on 3A owned C3 and he said yes, they had acquired it about two years ago. She asked if they also owned D, and he said they owned all of the property which was a remainder of all the groups of parcels which had been split off through the years. In answer to another question from Mrs. Harris, Mr. Runyon said that Parcel 9 was owned by someone else. Mrs. Harris said that, if a hardship existed, it would appear to have been caused by the buying of the additional land by the applicant. Mr. Runyon said no. Mrs. Harris asked how someone could buy more land in order to subdivide, thereby requiring a variance to the front yard requirement, and not create a self-imposed hardship. Mr. Runyon said that they had an approved preliminary plan that would provide a public street. He said the hardship was the topography issue and whether they wanted to take away almost two acres of additional clearing and grading in order to accomplish the same result. Mrs. Harris pointed out that the variance would need to be conditioned so that, if not approved, it prohibits all reasonable use of the property. She said that, if they already had a preliminary approved site plan, the variance would not be relieving a condition so grave as to remove all reasonable use of the property.

The following people spoke in opposition to the application: Don Hodsonfelder, 2501 Leeds Road (Lot 4B), Fairfax, Virginia, adjacent to parcel C3; Martha Thomas, 2505 Leeds Road (Lot 4A), Fairfax, Virginia; Josephine Bianci, 10410 Hunters Valley Road, Fairfax, Virginia; and Lincoln Broyhill who lives next door to the Shangles. The opposition had the following concerns: the waiver of the frontage, the variance and the proposed cul-de-sac, for the variance and against the cul-de-sac, there is no hardship involved, setting a precedent, changing the rural character of the community, property values, the property was bought for speculation,

Mr. Pammel told Mr. Hodsonfelder that Mr. Runyon testified that he has an approved preliminary plan for three lots and that he can maintain the rural characteristics by preserving almost two acres of land that would not be graded or denuded. Mr. Hodsonfelder's concern was about who would be responsible for regulating the commitments made by Mr. Runyon.

Mr. Hammack asked Mr. Hodsonfelder: If the applicant could build three dwellings on the site, would he still oppose the plan and rather have a cul-de-sac built there and have two acres of trees cut out. Mr. Hodsonfelder said that, if a third house were going to be built, it should be built according to the Ordinance, to protect the community. He said he believed that a 65 foot variance was excessive and should not be granted and that a precedent should not be set.

Mr. Runyon made his rebuttal by giving a history of the acquisition of the properties held by the people speaking in opposition. He said that the house they were proposing to build would be 120 feet from Mrs. Thomas' house, 100 feet of woods will exist; Mr. Hodsonfelder house is 300 feet from the property line of C3, based on the aerial photo. He said that the plan required innovative measures and the BZA had the opportunity to make a difference in the subdivision. Mr. Runyon said that, at the Association meeting, there was a vote taken and was 9-2 in favor of utilizing the variance as opposed to the cul-de-sac. He said that the people who were opposed were those immediately adjacent to the subject property.

Mrs. Harris asked if the neighbors whom Mr. Runyon had referred to earlier in his rebuttal had required a variance and he said no.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny VC 92-Y-058 for the reasons outlined in the Resolution.

Mr. Pammel made the observation that, if this property is developed according to the preliminary plat with the cul-de-sac, it will surely change the character of the area. He said he knew the proposed plan was permitted by right; however, if it was the intent of the neighbors to preserve the rural character of the area, he believed a better way could be found to address the matter. He agreed with Mrs. Harris that the requirements of the Code are very specific, but he regretted losing almost two acres of natural woodland.

Mrs. Harris commended the neighbors of the applicant for coming forward to oppose a variance to prevent setting a precedent, even if it was not as beneficial to the community.

Chairman DiGiulian said that he would support the motion to deny for the same reasons as he did in 1990; it is basically the same application as far as he was concerned and it is the consolidation of two lots and two unbuildable parcels to create another building lot. He said that, if it can be accomplished under the Zoning Ordinance, that is acceptable; but he said he was reluctant to support that type of application being proposed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-058 by JAMES M. SHANGLE, JR., JEFFERY A. CLEMONS, JAMES M. SHANGLE AND JOYCE A. SHANGLE, under Section 18-401 of the Zoning Ordinance to allow subdivision of 4 lots into 3 lots, proposed Lot 2 having lot width of 135 feet, on property located at 10627 Hunters Valley Dr., Tax Map Reference 37-1((3))3A, 5, D, C3, 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 6, 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-E.
3. The area of the lot is 6.4602 acres.
4. The property has an unusual shape but probably no more unusual than some of the other properties in this area.
5. The property fronts on two public roads, which accounts for the fact that there are two existing houses that have frontage on Hunters Mill Road and Route 2547.
6. The applicant acquired Lot 3A and Lot D two years ago to resubdivide the property into two lots. This represents no hardship. To acquire additional land and then claim a hardship because of street frontage is not approaching confiscation as distinguishable from a special privilege or a convenience.
7. There are many lots within this area which would be prime candidates for variances based on road frontage and a precedent could be set that could change the character of the neighborhood which is very rural.
8. It is very clearly stated in the Ordinance that the granting of a variance will clearly alleviate a hardship approaching confiscation. If the applicant has a preliminary approved site plan which allows for the subdivision to take place without a variance, that is the course of action the applicant legally can take without a 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.



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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 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 October 14, 1992.

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Page 441, October 6, 1992, (Tape 2), Action Item:

Request for Reconsideration  
Daniel & Virginia Marowitz  
YC 92-M-013

Mr. Pammel stated that he had been on the prevailing side on this case the previous week. He said that one of the concerns he had the previous week was that there had been no attempt by the applicants' representative to discuss their proposal with adjacent property owners in the community. Mr. Pammel noted that, in the request for reconsideration, they have indicated that they will undertake that dialogue and, whether or not it proves to be futile, they have requested to come before the Board again with those results. Another reason Mr. Pammel gave was that it was a 3-3 vote, with one member absent. Mr. Pammel moved to grant the reconsideration. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

The hearing for the reconsideration was suggested for January 12, 1992. Mrs. Thonen so moved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 441, October 6, 1992, (Tape 2), Action Item:

Approval of Resolutions from September 29, 1992 Hearing

Mrs. Thonen so moved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page ~~442~~, October 6, 1992, (Tape 2). Action Item:

Approval of Minutes from  
July 7, July 14, and July 30, 1992 Hearings

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the July 14, 1992 minutes required an addition to the appeal, stating that the date of the final decision had been inserted. The minutes were approved by the BZA with the correction.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

*Geri B. Bepko*  
Geri B. Bepko, Substitute Clerk  
Board of Zoning Appeals

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

SUBMITTED: *November 5, 1992*

APPROVED: *November 10, 1992*

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 13, 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 9:00 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 443, October 13, 1992. (Tape 1), Scheduled case of:

9:00 A.M. FELIPA L. UNCIANO APPEAL, A 92-L-012, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant is maintaining five (5) separate dwelling units on property located at 3005 Franklin Street in violation of Sect. 2-501 of the Zoning Ordinance, on approx. 36,750 sq. ft., zoned R-2, Lee District, Tax Map 93-1((2))(2)11, 12.

Chairman DiGiulian 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 3005 Franklin Street, on 36,750 square feet of land, zoned R-Z, Tax Map Reference 93-1((2))(2)11,12. He said that the staff's position was set forth in the staff report dated October 5, 1992 and noted one correction on Page 5, the first sentence should have stated, "Therefore, it is my position that five dwelling units exist on this property in violation of Sect. 2-501 of the Zoning Ordinance."

Mr. Shoup presented the staff's position as summarized in the staff report. He noted that although staff did not physically investigate the primary structure, the appellant agreed that it has more than one dwelling unit. Mr. Shoup said that Sect. 2-501 permitted only one dwelling unit on a lot with some limited exceptions, none of which apply to the subject property. He explained that the issue before the BZA was rather or not the multiple dwelling units constitute a legal nonconforming use, and therefore would be permitted to continue. Mr. Shoup said that there were never any provisions in the Zoning Ordinance to allow for the free-standing dwellings that contain separate dwelling units. He explained that one of the structures had originally been a chicken house and the other a garage.

Mr. Shoup stated that although during a period of time between August 1946 and 1959 when BZA approval of a Special Exception could be obtained to allow the principle structure to be converted to a duplex dwelling in certain circumstances, staff's research of the Zoning Administration's files indicated that no such approval was obtained for the property. He further stated that it was his belief there was no evidence to indicate that the additional dwelling units located on the property were ever legally established, and therefore did not enjoy any non-conforming rights. In summary, Mr. Shoup stated that it was staff's belief that the appellant was in violation of Sect. 2-501 of the Zoning Ordinance.

In response to questions from the BZA, Mr. Shoup stated that although the old assessment records had notations regarding the chicken house and the garage, there were no records as to when the multiple dwelling units were established in the primary dwelling. He said there were no Building Permits issued for any structural alteration in the primary dwelling. He explained that Building Permits had been issued for the additions to the primary dwelling. Mr. Shoup could not explain why the Post Office had issued Postal Boxes for the three dwellings.

The appellant's representative, Melanie Miller Reilly, with the law firm of McGuire, Woods, Battle, and Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, addressed the BZA and submitted a position package and a copy of the advertised multiple listing to the BZA. Ms. Reilly explained that although the case was perplexing, it was very worthwhile. She stated that the three structures were in existence, as advertised in the multiple listing, when the appellant purchased the property in 1978.

Ms. Reilly noted that the Zoning Inspectors had not entered the house, but had merely surveyed the yard. She explained that although there is an apartment in the upper floor of the main structure, there is no apartment in the basement.

Mrs. Harris stated the multiple listing had advertised a basement apartment unit which rented at \$200.00 per month. Ms. Reilly said that although the appellant's son lived in the basement, it was not rented and did not meet the Zoning Ordinance's definition of a dwelling unit.

Ms. Reilly noted that in 1944 the Tax Assessment records indicated that there were three structures on the property. She expressed her belief that although the Fairfax County records do not indicate when the renovations had taken place, some type of approval must have been granted.

In response to Mr. Pammel's question as to how a Building Permit which had been issued for a chicken coop could be construed as approval for a residential unit under the Zoning Ordinance which allowed one dwelling unit per lot, Ms. Reilly stated that she did not know. She expressed her belief that the Building Inspector's notes and Land Assessment and County Tax Record referred to the three structures as dwelling units. Ms. Reilly explained that a

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Building Permit had been issued to add heating and to brick-up the garage doors on one of the accessory structures. She stated that since the 1940's, Fairfax County Building Inspectors, Land Assessors, Real Estate Tax Department, and the Zoning Administrator had all recognized the three structures as dwelling unit.

Mrs. Harris noted that the Fairfax County Records indicated that three structures existed on the property, not dwelling units. Ms. Reilly stated that there were three structures on the property with four dwelling units within the structures. Mrs. Harris stated the County records did not indicate approval of four dwelling units on the property.

Ms. Reilly said that the property provided the main source of income for the elderly appellant the property is well-maintained, the neighbors were in support of the request, and the granting of the variance would not change the character of the neighborhood. In conclusion, Ms. Reilly stated that Fairfax County had collected taxes on the buildings and had acknowledged in the official tax assessment that they were dwelling units.

Mrs. Thonen noted that the issue should have been resolved before the property was purchased and stated that the BZA does not have the authority to change the Zoning Ordinance.

Mrs. Harris noted that had Building Permits been requested for the renovations to the structures, the authorized County officials would have been aware of the Zoning Ordinance violation. She expressed her belief that the former property owner had purposely circumvented the Zoning Administration procedures.

Ms. Reilly again noted that Building Permits had been issued to add a utility room for heating purposes and to brick-in the 2 garage doors. She stated that the use also conformed to the objectives and purpose of Appendix 5 of the Zoning Ordinance. Ms. Reilly also expressed her belief that the use was allowed under Article 15 of the Zoning Ordinance.

There being no speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Shoup stated that the issuance of a Building Permit for the bricking-in of the garage door would not constitute the approval of a residential dwelling unit. He said that the notation "residential garage", could have meant that the description of the building was a garage for residential use. He explained that the 1957 notation on the appraiser card said, "\$430.00 added for converting garage into office and storage." He expressed his belief that the non-conformance provision applied to the appellant. In summary, he stated that the staff had explored all avenues in an attempt to legitimize the use, and found that there were no provisions that would allow the free standing structures to be used as dwelling units, and no options had been exercised to establish accessory units in the main structure. Therefore, the use was a violation of Sect. 2-501 of the Zoning Ordinance.

Chairman DiGiulian closed the public hearing.

Mr. Pammel expressed his belief that the County should have provisions within the Zoning Ordinance that would require "sign-off" when a property is purchased. He said that the Zoning Ordinance is clear and the BZA must provide a judgment based on its interpretation. He stated that the Deputy Zoning Administrator had presented an accurate position and had provided testimony that the units occurred without being in compliance with the Zoning Ordinance. Mr. Pammel made a motion to UPHOLD the Zoning Administrator's determination in Appeal, A 92-L-012. Mrs. Harris seconded the motion which carried by a vote of 5-0-1 with Mr. Kelley not present for the vote and Mr. Hammack abstaining from the vote. The BZA's decision became final on November 4, 1992.

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Page ~~444~~ 444, October 13, 1992, (Tape 1), Scheduled case of:

9:15 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))Q114. (DEF. FROM 2/4/92 TO ALLOW APPLICANT TO BE PRESENT. DEF. FROM 2/11/92 FOR APPLICANT AND BUILDER TO BE PRESENT AND FOR ADDITIONAL DOCUMENTATION FROM BUILDER. DEF. FROM 4/14/92 AND 6/30/93 FOR STAFF TO SUBPOENA BUILDER. DEF. FROM 7/30/92 TO ALLOW COURT TO ISSUE A SHOW CAUSE ORDER.)

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She stated that the applicant's agent was present. Ms. Kelsey noted that the County Attorney had requested in writing that the contractor, Sung Minh Ha, be present at the hearing.

Chairman DiGiulian stated that the County Attorney had provided the BZA with a copy of a letter sent to Mr. Ha. He explained that the letter had informed Mr. Ha that the BZA may seek a mandatory injunction from the Circuit Court. Chairman DiGiulian noted that Mr. Ha was not present.

The applicant's agent, Dewey D. La, 6764 Bison Street, Springfield, Virginia, addressed the BZA. He expressed his concern regarding the delays.

Mr. Hammack stated that the County had been very indulgent of Mr. La and made a motion to defer the public hearing and to ask the County Attorney to seek a mandatory injunction from the Circuit Court, pursuant to the Va. Code §15.1-499 to compel Sung Minh La to appear at the scheduled public hearing.

Mrs. Thonen seconded the motion which carried by a vote of 7-0.

Based on Mr. Hammack's belief that a two week deferral would allow sufficient time to obtain this injunction, Ms. Kelsey suggested a date of October 27, 1992, at 9:00 a.m.

Mrs. Thonen made a motion to defer SP 91-M-068 to the suggested date and time. Mr. Hammack seconded the motion which carried by a vote of 7-0.

The BZA had a brief discussion with Mr. La regarding the necessity of the deferral, after which Mr. La agreed to the deferral. Ms. Kelsey stated that staff would inform Mr. La if there were any change in the hearing date.

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Page 445, October 13, 1992, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM CARTER REYNOLDS, VC 92-V-081, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (detached garage) 2 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 22,743 s.f., located at 7713 Ridgecrest Dr., zoned R-2, Mt. Vernon District, Tax Map 102-2((17))75B.

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. Reynolds replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a variance to allow a 22 foot high detached garage 2 feet from the side lot line. The Zoning ordinance requires a minimum 15 foot side yard; therefore, the applicant was requesting a variance of 13 feet from the side lot line.

The applicant, William Carter Reynolds, 7713 Ridgecrest Drive, Alexandria, Virginia, addressed the BZA. He stated that when he purchased the property, he believed he would be allowed to construct a garage. Mr. Reynolds explained that if the garage was built under the guidelines of the Zoning Ordinance, six trees and a considerable amount of grass would have to be removed. He expressed his belief that the proposed site would have the least environmental impact on the property and asked the BZA to grant the request. In summary, he noted the neighbors supported the request, and that other garages in the area were within a few feet of the side lot line.

In response to Mr. Hammack's question as to whether the other garages had required variance, Mr. Reynolds stated that he did not know. Mr. Hunter noted that Building Permits were issued in 1969 and 1972 for the garages on Parcels 79A and 75A, respectively. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that prior to 1978, the Zoning Ordinance requirements were more lenient for detached accessory structures.

Mr. Ribble said he had visited the site and noted that the pictures did not reflect the topography. Mr. Reynolds stated that the rear of property was heavily wooded with a steep slope down to the George Washington Parkway. He explained that while the northern side of the house was heavily wooded, the proposed site was clear.

In response to Mr. Kelley's question regarding Development Condition 4, Mr. Hunter stated that staff was concerned that the proposed garage would encroach onto the adjacent property. He explained that staff was unaware of any agreement between the two property owners.

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

Mr. Ribble made a motion to grant VC 92-V-081 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 6, 1992, with the deletion of Development Condition 4.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-081 by WILLIAM CARTER REYNOLDS, under Section 18-401 of the Zoning Ordinance to allow addition (detached garage) 2 feet from side lot line, on property located at 7713 Ridgecrest Drive, Tax Map Reference 102-2((17))75B, 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 October 13, 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 22,743 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The extraordinary topographical condition of the steep slope in the backyard of the property has caused the need for the variance.
6. There are other houses on the street with similar garage additions placed as close as 1 foot from the lot line; therefore, the granting of the variance 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 specified detached garage shown on the plat prepared by Schiller and Associates, P.C. dated July 2, 1992 submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The detached garage 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 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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Mr. Kelley seconded the motion which carried by a vote of 6-1 with Mrs. Harris voting nay.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 21, 1992. This date shall be deemed to be the final approval date of this variance.

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Page ~~447~~ 447, October 13, 1992, (Tape 1), Scheduled case of:

9:40 A.M. MARYANN GESLAK, SP 92-Y-044, appl. under Sect. 3-C03 of the Zoning Ordinance to allow modification to minimum yard requirements to allow addition 13.2 ft. from side lot line for a total of 25.4 ft. (8 ft. min. side yard, with a total min. of 24 ft. required by Sect. 3-207), on approx. 11,123 sq. ft., located at 6302 Hidden Canyon Rd., zoned R-C, Sully District, Tax Map 53-4((5))17.

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. Geslak replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a special permit to allow an addition 13.2 feet from the side lot line. The Zoning Ordinance requires a minimum 20 foot side yard in the R-C District; therefore, the applicant was requesting a modification of 6.8 feet to the minimum side yard requirement.

The applicant, Maryann Geslak, 6302 Hidden Canyon Road, Centreville, Virginia, addressed the BZA. She stated that she merely wished to enclose the existing carport.

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

Mr. Hammack made a motion to grant SP 92-Y-044 subject to the development conditions contained in the staff report dated October 6, 1992.

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#### COUNTY OF FAIRFAX, VIRGINIA

#### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-044 by MARYANN GESLAK, under Section 3-C03 of the Zoning Ordinance to allow modification to the minimum yard requirements to allow addition 13.2 feet from side lot line for a total of 25.4 feet, on property located at 6302 Hidden Canyon Road, Tax Map Reference 53-4((5))17, 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 13, 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.
3. The area of the lot is 11,123 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 8-913 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 and the specified addition 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 Alexandria Surveys, Inc., dated November 16, 1990, revised by Maryann Geslak, July 6, 1992 submitted with this application and not transferable to other land.
3. A building permit and all required inspections 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. The applicant shall be responsible for obtaining the required permits through

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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. 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 October 21, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 448, October 13, 1992, (Tape 1 and 2), Scheduled case of:

9:50 A.M. CLARA ANN SHELL, VC 92-B-076, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage) 9.8 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,524 s.f., located at 10925 Roma St., zoned R-3, Braddock District, Tax Map 57-3((7))52.

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. Shell replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicant was requesting approval of a special permit to allow a garage addition 9.82 feet from the side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, the applicant was requesting a variance of 2.2 feet to the minimum side yard requirement. Ms. Kelsey noted that sometime in the future the property owner may wish to use the addition for a purpose other than a garage; therefore, the BZA may wish to change Development Condition 1.

The applicant, Clara Ann Shell, 10925 Roma Street, Fairfax, Virginia, addressed the BZA. She stated that she wished to have a garage addition for safety reasons.

In response to Mrs. Harris' question as to why the garage would have to be 26 foot long, Ms. Shell stated she wanted the garage addition to be flush with the front of the existing house and to also allow access from the garage addition to the enclosed patio. She noted that this would eliminate the need to install a door in the side of the house.

Chairman DiGiulian noted that there were no doors on the side of the house and the length of the garage would allow the applicant access from the garage into the house.

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

Mrs. Thonen made a motion to grant VC 92-B-076 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 6, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-076 by CLARA ANN SHELL, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 9.8 feet from side lot line, on property located at 10925 Roma Street, Tax Map Reference 57-3((7))52, 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 13, 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 11,524 square feet.
4. The request is for a minimum variance.
5. The applicant purchased the property in good faith.



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6. The property had exceptional narrowness at the time of the effective date of the Ordinance.
7. The proposed addition of a garage is not of so general 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.
8. The reasons are not shared generally by the properties in the vicinity
9. The granting of the variance would alleviate the 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 location and the specified addition shown on the plat prepared by Rodney James Shirley, Architect, dated August 6, 1991, revised June 29, 1992, submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The 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 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. 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 October 21, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 450, October 13, 1992, (Tape 2), Scheduled case of:

10:00 A.M. RECONSIDERATION HEARING: RAYMOND E. AND ELIZABETH A. ARNDT, VC 92-L-041, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure and extension of carport to 6 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407), on approx. 12,001 sq. ft., located 6903 Essex Ave., zoned R-4, Lee District, Tax Map 80-4((2))(5)10. (RECONSIDERATION HEARING GRANTED 7/7/92)

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. Oxley replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the application, which had originally been heard and denied on July 7, 1992, had been granted a reconsideration hearing on July 12, 1992. Ms. Kelsey said that the applicants were requesting approval of a variance to allow an addition 6 feet from the side lot line. The Zoning Ordinance requires a minimum 10 foot side yard; therefore, the applicants were requesting a modification of 4 feet to the minimum side yard requirement.

The applicants' attorney, Gregory L. Oxley, with the law firm of Miller and Bucholtz, P.C. 1801 Reston Parkway, Reston, Virginia, addressed the BZA. He submitted a package which included photographs, a petition of approval from the neighbors, and the floor plan and elevation of the proposed addition. Mr. Oxley stated that because of their growing family, the applicants would like to add an addition that would provide living and storage space for the family. He noted that the property is exceptionally narrow and has an exceptional shape. Mr. Oxley explained that the placement of the house on the lot had caused the need for the variance and asked the BZA to grant the request. He said that the addition would conform to the area because there were many other similarly placed additions in the neighborhood.

In response to Mr. Ribble's questions as to whether the additions had required variances, Mr. Oxley stated he did not know. He explained that he had measured 9 or 10 additions and found them to be within 13 to 18 feet from the side lot line.

Mr. Hammack noted that the applicant had wanted to enclose and expand the carport, while the neighbors had merely enclosed their carports. Mr. Oxley expressed his belief that some of the carports were extensive. He expressed his belief that the addition would be aesthetically pleasing and would be architecturally compatible with other structures in the area.

Mrs. Harris asked why the addition could not be constructed by-right. Mr. Oxley explained that because of the layout of the house, the proposed addition would be the most practical.

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

Mr. Pammel made a motion to deny VC 92-L-041 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 92-L-041 by RAYMOND E. AND ELIZABETH A. ARNDT, under Section 18-401 of the Zoning Ordinance to allow enclosure and extension of carport to 6 feet from side lot line, on property located at 6903 Essex Avenue, Tax Map Reference 80-4((2))(5)10, 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 13, 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-4.
3. The area of the lot is 12,001 square feet.
4. Although the case had been granted a reconsideration, there has been no major changes in the application.
5. The encroachment is 4 feet which is more than a minor or incidental variance.
6. The bulk of the addition would be 32 feet and compounds the variance request.
7. The testimony has indicated that a by-right addition could be placed to the rear of the property.

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

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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 and Mr. Hammack seconded the motion which carried by a vote of 4-3 with Mrs. Harris, Mr. Hammack, Mr. Pammel, and Mr. Ribble voting aye; Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 21, 1992.

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Page 451, October 13, 1992, (Tape 2), Scheduled case of:

10:10 A.M. ALVIN C. AND ELLEN L. DEPEW, VC 92-B-080, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition (garage and family room) 10 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 21,914 s.f., located at 4028 Goss Rd., zoned R-1, Braddock District, Tax Map 58-4((12))22.

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. Depew replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant was requesting approval of a variance to allow an addition 10 feet from the side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, the applicants were requesting a modification of 10 feet to the minimum side yard requirement.

In response to questions from the BZA, the applicant, Alvin C. Depew, 4028 Goss Road, Fairfax, Virginia, stated that he had received the two letters in opposition. He said that the existing carport and shed would be removed and a 24 by 50 foot, one story brick and frame addition would be built adjacent to the house.

Mr. Depew addressed the BZA and stated that he had purchased the property in 1985 and would like to add a one story garage and family room to the existing structure. He expressed his belief that the proposed addition would be aesthetically and architecturally pleasing and would not have a detrimental impact on the neighbors. He asked the BZA to grant the request. Mr. Depew noted that the narrowness of the substandard lot had caused the need for the variance.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Everett Paris, 4031 Goss Road, Fairfax, Virginia, addressed the BZA and stated that he had lived in the area for 30 years. He explained that since the applicants purchased the property they had made many improvements, and expressed his support for the request.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Marlene Farnhan, 4024 Goss Road, Fairfax, Virginia, addressed the BZA. She expressed her belief that the request would have a detrimental impact on the area. She noted that while the houses were modest, the lots were large. She stated that the request would set a precedent and asked the BZA to deny the request.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Depew stated that the R-1 zoning of the substandard lot has caused an undue hardship and restricted the building of the addition under the Zoning Ordinance.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny VC 92-B-080 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 92-B-080 by ALVIN C. AND ELLEN L. DEPEW, under Section 18-401 of the Zoning Ordinance to allow addition (garage and family room) 10 feet from side lot line, on property located at 4028 Goss Road, Tax Map Reference 58-4((12))22, 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 13, 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-1.
3. The area of the lot is 21,914 square feet.
4. The rectangular characteristic and topographical conditions of the lot are no different than any other lots in the area.
5. The strict application of the Zoning Ordinance would not produce an undue hardship.
6. The dimension of the proposed addition is similar to, or greater than, the existing structure.
7. The proposed addition could be reconfigured and placed to the back of the house.
8. The 52 by 24 foot variance would be too large.
9. There are no topographical condition which would preclude placing the addition elsewhere on the lot.
10. The granting of the variance would be a special privilege or convenience and would not alleviate a demonstrable hardship approaching confiscation of the property.
11. The variance would cause a substantial detriment to the adjacent properties.

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

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

This decision was officically filed in the office of the Board of Zoning Appeals and became final on October 21, 1992.

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10:20 A.M. E.J.W. ENTERPRISES, T/A THE EMBASSY SCHOOL, SPA 82-C-078, appl. under Sect. 3-103 of the Zoning Ordinance to amend SP 82-C-078 for child care and nursery school facility to allow building addition, change in applicant name, and increase in number of employees, size of parking area and play area, on approx. 4.04 acs., located at 3013 West Ox Rd., zoned R-1, Centreville District, Tax Map 35-2(1)29.

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. Cornacchione replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant was requesting approval of a special permit amendment to construct a 648 square foot addition to the rear of the existing structure and a change in the applicant's name. She noted that the applicant was also requesting an increase in the number of employees, parking spaces, and size of play area. Ms. Kelsey stated that staff recommended approval with the implementation of the development conditions contained in the staff report dated October 6, 1992. She noted that staff also supported the applicant's request for a modification of the screening and barrier requirements with the exception of the eastern lot line. She said that staff recommended that screening be provided to screen the parking area and play area from the adjacent single family lot. Ms. Kelsey noted that the revised development conditions corrected the misnumbering of the conditions.

The applicant, Anne W. Cornacchione, President of the E.J.W. Enterprises, T/A The Embassy School, 3013 West Ox Road, Herndon, Virginia, addressed the BZA. She stated that although she wished to construct an addition, the number of students would not be increased. She explained that the school needed the space to accommodate the before and after school program. Ms. Cornacchione stated that the program was initiated at the request of parents who desperately need good quality care for their school aged children. She said that the well established school provided small classes with qualified teachers. In summary, Ms. Cornacchione stated that the school provided a needed service to the community and asked the BZA to grant the request.

In response to Mr. Hammack's question as to whether she agreed with the proposed development conditions, she indicated that she did.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Phillip Merit, 12133 Westwood Hill Drive, Herndon, Virginia, addressed the BZA and stated that his two children had attended the preschool. He explained that good quality day care for school aged children was very hard to find and asked the BZA to grant the request.

George Jones, 16121 Kennedy Street, Woodbridge, Virginia, addressed the BZA and said he was asked to represent the applicant. He noted that Development Conditions 8 and 9 would present a financial burden to the school and asked that they be deleted.

In response to questions from the BZA, Mr. Jones explained that Ms. Cornacchione had asked him to discuss the development conditions with the BZA.

In response to questions from the BZA, Ms. Kelsey explained that although Development Conditions 8 and 9 were not included in the original special permit, they addressed the normal site plan requirements. She stated she did not know why they were not included in the

previous special permit, but noted that it should have been addressed at the time of site plan approval. Ms. Kelsey explained that staff had inspected the site and found that the issues addressed in Development Conditions 8 and 9 were not adequate.

Mr. Hammack noted that because Conditions 8 and 9 were required by law, the BZA did not have to include them in the development conditions. Ms. Kelsey noted that Conditions 8 and 9 were required by the Site Plan Ordinance. She explained that the applicant must receive Site Plan approval and a Building Permit which would require compliance with Article 17. Ms. Kelsey stated that although the applicant could request a waiver, adequate sight distance and an entrance in accordance with the Virginia Department of Transportation (VDOT) would be required.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

William Root, 3001 West Ox Road, Herndon, Virginia, addressed the BZA. He stated that although the area was zoned residential, there were three commercial establishments within 2,000 feet of each other. He expressed his belief that the special permit allowed the commercial establishment to be taxed under residential rates, the abutting property value decreased, and the use had a detrimental impact on the neighborhood. In summary, Mr. Root asked the BZA to deny the request.

Ruth Swan, 3017 West Ox Road, Herndon, Virginia, addressed the BZA. She stated that although the existing use did not have a detrimental impact, an increase would. She expressed her concern regarding the traffic conditions on the two lane road. In summary, Ms. Swan noted that the use was commercial and asked the BZA to deny the request.

In response to Mrs. Harris' question regarding traffic congestion, Ms. Swan stated the school's driveway had limited site distance and was very dangerous. She explained that because of road conditions, there had been a few accidents in that vicinity. Ms. Swan expressed her belief that special permits for commercial use should not be granted in residential areas.

The BZA noted that the Zoning Ordinance allows the granting of special permit and the Board of Supervisors, not the BZA, had the power to change the Zoning Ordinance.

Patricia Johnson Lanagan, 3015 West Ox Road, Herndon, Virginia, addressed the BZA. She stated the school had been a very good neighbor, but expressed her belief that because of the dangerous traffic conditions, the entrance should be improved.

Chairman DiGiulian called for rebuttal.

Ms. Cornacchione stated that in the eight years of operation, the school had never received a complaint from the neighbors, the school traffic had never been involved in a traffic accident, there would be no increase in the enrollment, and the school provides a safe and secure environment for the children.

Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 82-C-078, subject to the revised development conditions dated October 9, 1992, with the modifications 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 Amendment Application SPA 82-C-078 by E.J.W. ENTERPRISES, T/A THE EMBASSY SCHOOL, under Section 3-103 of the Zoning Ordinance to amend SP 82-C-078 for child care and nursery school facility to allow building addition, change in applicant name, and increase in number of employees, size of parking area and play area, on property located at 3013 West Ox Road, Tax Map Reference 35-2((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 October 13, 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-1.
3. The area of the lot is 4.04 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 8-305 of the Zoning Ordinance.

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

1. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Gilbert M. Glanbinger, Architect, dated April 21, 1976 as revised through July 19, 1992, submitted with this application and not transferable to other land.
2. 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.
3. 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 prepared by Gilbert M. Glanbinger, Architect, dated April 21, 1976 as revised through July 19, 1992, and these development conditions. The BZA has no objection to a site plan waiver.
4. The hours of operation shall be limited to 7:00 A. M. to 6:00 P. M., Monday through Friday.
5. The maximum daily enrollment shall be limited to 80 children.
6. Thirty-two (32) on-site parking spaces shall be provided as shown on the special permit plat.
7. The maximum number of employees shall be 12.
8. A modification of the transitional screening is approved on all lot lines provided ten (10) evergreen trees, 6 to 8 feet in height at time of planting are planted on approximately 10 foot centers along the northeast end of the parking lot to provide a buffer and screening to the adjacent dwelling on Lot 4. The barrier requirement shall be modified to allow the existing fences to satisfy the requirements.
9. Adequate sight distance shall be provided as determined by VDOT.

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. Thonen and 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 October 21, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 11:20 a.m. and reconvened at 11:32 a.m.

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Page ~~455~~ 456, October 13, 1992, (Tape 2 and 3), Scheduled case of:

10:30 A.M. FURNITURE STORE, A 92-M-009, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant's retail sales operation occupies more than 40% of the above-ground gross floor area of the establishment in violation of Par. 4 of Sect. 5-505 of the Zoning Ordinance, on approx. 7.242 acs., located at 5570 General Washington Dr., zoned I-5, Mason District, Tax Map 81-1(9)27. (DEF. FROM 10/6/92 BY BZA)

Chairman DiGiulian noted that the case had been deferred from the October 6, 1992, hearing.

The appellant's representative, Lynn Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, 2200 Clarendon Boulevard, Arlington, Virginia, addressed the BZA. She noted that the case had been deferred so that Chairman Thomas M. Davis, II, could

submit a letter regarding the Board of Supervisors' discussion on the issue of retail uses in industrial districts. Ms. Strobel regretfully announced that the letter had not been forthcoming. She explained that she had not been able to contact the Mason District Supervisor, Christine R. Trapnell, because she had been out of the country. Ms. Strobel expressed her belief that if the appellant were given sufficient time, the issue could be resolved and asked the BZA to grant a deferral.

After a brief discussion with Jane W. Gwinn, Zoning Administrator, regarding a possible Zoning Ordinance amendment of retail uses in industrial districts by the Board of Supervisors, it was the consensus of the BZA to proceed with the public hearing.

Mr. Kelley made a motion to deny the deferral. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

Chairman DiGiulian called for the location of the property and for a staff report.

The Zoning Administrator's representative, William Shoup, Deputy Zoning Administrator, addressed the BZA. He stated that the property which is in the P.S. Business Center, is located at 5570 and 5572 General Washington Drive, on 4,621 square feet, Zoned I-5, Tax Map Reference 81-1((9))27. He explained the center is developed with a grouping of five warehouse/office buildings.

Mr. Shoup stated that the appellant's use, which involves the retail sale of furniture, is contained in two contiguous bays which are designed and arranged as a single unit with one entrance. He noted that although the retail sales is permitted in the retail district under Par. 4 of Sect. 5-505 as an associated use to a warehouse establishment wherein at least 60 percent of the above-ground gross floor area is devoted to warehouse use, 85 percent of the appellant's floor area is devoted to the retail sales. Mr. Shoup said that it was the staff's position that the appellant's use had the appearance of, and functioned as, a retail store with nothing to suggest it was a part of, or subordinate to, a warehouse establishment; therefore, the use does not satisfy the provision of Par.4 of Sect. 5-505.

Mr. Shoup said that while the appellant contends that the separate warehouse spaces leased in the complex should also be considered as part of the establishment, one space which is in the same building is not contiguous to the showroom display sales area, and the other space is in a separate building. He explained that staff believed that the two non-contiguous spaces should not be used as a part of the establishment, nor should it be used to calculate the square footage. Mr. Shoup stated that the intent of the provision was to allow some retail activity in conjunction with the principle use of a warehouse, and noted the retail activity must be subordinate to, and integrated with, the main use of a warehouse. He said that the appellant's use did not comply with these requirements; therefore, it was staff's position that to allow the non-contiguous space to be used to satisfy the 60/40 percentage requirement would not be in keeping with the intent of the Zoning Ordinance. In summary, Mr. Shoup stated that even if the appellant's argument was correct, it did not appear that the square footage, as presented on the Building Permits and the Non Residential Use Permits, resulted in a 60/40 split or would satisfy the criteria.

The appellant's representative, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, 2200 Clarendon Boulevard Arlington, Virginia, addressed the BZA. She presented photographs of the property and expressed her belief that the appellant met the 60/40 percentage requirement. Ms. Strobel stated that the furniture store leases approximately 9,400 square feet of building area with 3,800 square feet of retail use, and 995 square feet of warehouse use at 5570 and 5572 General Washington Drive; and 2,060 square feet of warehouse use at 5582 General Washington Drive; and 2,630 square feet of warehouse use at 5602 General Washington Drive. She explained that the 4,690 square feet of warehouse use represented approximately 60 percent of the total warehouse retail establishment. She noted that "establishment" was not a defined term by the Zoning Ordinance; but it was clear that all of the space leased by the appellant was part of one business establishment. Ms. Strobel said that the premises were leased with a single lease, had one insurance policy, the rent was paid with one check, and all the leased area was one business establishment. She asked the BZA to consider the intent of Sect. 5-505. Ms. Strobel said that land use regulations are used to control land use impact and must be interpreted with a view towards their objective. She noted that the ratio of retail to warehouse area was established to prevent industrial parks from becoming stripped commercial shopping centers. She further noted that industrial parks are not equipped or designed to handle the volumes of traffic generated by pure retail use. She contended that with 60 percent of the total leased area devoted to warehouse use, it would not generate additional traffic nor would it cause a parking problem. Ms. Strobel stated that a favorable ruling would not set a precedent and noted that the Board of Supervisors and the Zoning Administration staff had placed retail uses in industrial parks on the Zoning Ordinance Amendment work program. In summary, she asked the BZA to reverse the Zoning Administrator's determination.

In response to Mr. Hammack's question regarding the establishment of uses within warehouses, Mr. Shoup explained that although there was a provision for retail uses within an industrial district, the appellant's use did not meet the necessary criteria.

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

John Nazor, part-owners of the furniture store addressed the BZA. He said that he had been informed that the establishment would have to be 40/60. He explained that when he had asked



for a definition of the word "establishment", he had been told it meant the place of business. He expressed his belief that all the leased space should be included in the calculations.

In response to Mrs. Harris' question as to why the appellant did not rent contiguous store space in the industrial complex, he explained that the public storage space rent was substantially cheaper.

Steve Schram, Vice President of Marlo's Furniture Store, addressed the BZA. and stated that he supported the Zoning Administrator's determination. He explained that the operation of a retail store in violation of the Zoning Ordinance put the companies that operate within the confines of the regulations at a distinct disadvantage. He expressed his belief that the appellant's intentional disregard of the Zoning Ordinance also impacted traffic patterns, parking provisions, and other important issues which are protected by the Zoning Ordinance. In summary, he asked the BZA to uphold the Zoning Administrator's determination.

In response to Mr. Hammack's question regarding the location of Marlo's Furniture Store, Mr. Schram use the viewgraph to point out the location. Mr. Schram expressed his belief that if a separation were allowed, industrial zones could be turned into a completely retail environment.

Scott Myer, part-owner of the Furniture Store, addressed the BZA. He expressed his belief that the four buildings constitute one business establishment and was in compliance with the Zoning Ordinance.

In response to Mrs. Harris' question regarding the separate retail and warehouse facilities, Mr. Myer explained that although the warehouse space was not contiguous, it was located on the same industrial site.

Adam Glickfield, 1812 Wyoming Avenue, N.W., Washington, D.C., Director of Real Estate for Marlo Furniture, addressed the BZA. He noted that his company had complied with the Zoning Ordinance and had provided the service road. He expressed his belief that the Furniture Store, which was in direct competition with his business, would have a distinct advantage if they were exempt from the Zoning Ordinance requirements.

There being no further speakers to the request, Chairman DiGiulian called for staff comments.

Mr. Shoup explained that if the appellant's point of view were adopted, businesses in the I-5 District would be allowed to have retail uses and develop store fronts to resemble shopping centers at the front of a site as long as there was warehouse space at the rear of the site. He expressed his belief that this would not be in keeping with the Zoning Ordinance.

Mr. Hammack noted that the Zoning Ordinance allowed for retail space in the I-5 District as long as it was at the 60/40 ratio. Mr. Shoup stated that it also had to be contained in one contiguous establishment.

Chairman DiGiulian called for rebuttal.

Ms. Strobel stated that the entire complex was tied together by parking, sidewalks, and was one industrial park. She noted that the retail was only 40 percent of the space leased by the appellant. Ms. Strobel said that it would be impractical to split each of the small bays leased by the appellant into 40 percent retail and 60 percent warehouse use. In summary, Ms. Strobel stated that in order to get established and to be successful, small businesses in Fairfax County must use Industrial Parks.

Mr. Pammel asked if any other business establishments in the Industrial Park lease storage bays and have retail components at the 60/40 ratio. Ms. Strobel stated that although she had inspected the site, she did not know if the businesses met the 60/40 ratio. Mrs. Thonen stated she had investigated the site and all the businesses she had checked did meet the 60/40 ratio.

In response to Mr. Pammel's questions regarding other businesses in the Industrial Park, Mr. Shoup noted that two other businesses in the Industrial Park were in violation. He said that two Non Residential Use Permits (NONRUP) had been issued to the appellant, one for the two contiguous buildings and one for a warehouse bay. He noted that one of warehouse bays did not have a Non-Rup.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to uphold the Zoning Administrator's determination that the appellant's retail sales operation occupies more than 40 percent of the above-ground gross floor area of the establishment in violation of Par. 4 of Sect. 5-505 of the Zoning Ordinance.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

The BZA's decision became final on October 21, 1992.

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11:00 A.M. MARY LIEU NGUYEN APPEAL, A 92-L-017, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's denial of a sign permit for appellant's proposed building-mounted sign because it exceeded the maximum allowable sign area based on the determination that the northern side of the building constituted the building frontage under Sect. 12-106 of the Zoning Ordinance, on approx. 4.71 acs., located at 6691 G Backlick Rd., zoned C-6, Lee District, Tax Map 90-2((1))28.

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Chairman DiGiulian 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 6691 G. Backlick Road, on 4.7111 acres, Zoned C-6, Tax Map Reference 90-2((1))28. He explained the center is developed with five separate buildings.

Mr. Shoup stated that the use, the 5 to 12 Mini Mart, is located in an end unit. He explained that the appellant had requested two sign permits for two building mounted signs. Mr. Shoup stated that under Par. 9 of Sect. 12-203 of the Zoning Ordinance, the allowable sign area for such building mounted signs was 1 1/2 square feet of sign area for each linear foot for each building frontage occupied by the tenant. He explained that since the appellant's space was an end unit, the issue before the BZA was, what constitutes the building frontage. He further explained that Par. 2 of Sect. 12-106 sets forth the provision that governs the determination of building frontage. He noted that after investigating the premises, staff had determined that the northern perimeter wall, which is 31 linear feet in length, was considered to be the primary entrance, and the western wall, which is 60 linear feet in length, was considered to be the secondary entrance. Mr. Shoup stated that based on the provisions of Par. 2 of Sect. 12-106, the northern wall containing the primary entrance was considered to be the building frontage. He further stated that based on the 31 feet of building frontage, the total sign area requested in the two sign permit applications was not in conformance with the Zoning Ordinance. In summary, Mr. Shoup stated that he believed the Zoning Enforcement's determination to deny one of the sign permits was correct.

In response to Mrs. Thonen's question as to whether the site abutted one or two public streets, Mr. Shoup stated that although the shopping center entrance was on Backlick Road, the Mini Mart was located on a service drive.

Chairman DiGiulian noted that the 7-11 in the Brookfield Shopping Center, almost directly across from the site, has a sign that is on Backlick Road. Chairman DiGiulian further noted that the Outback Restaurant had a sign across both the southern and western end of the building. Mr. Shoup stated that the location of a sign on a building was not at issue. A tenant may locate a sign anywhere on their building. He explained that because of the amount of building frontage for the space the Outback Restaurant occupies, the signs are permitted.

Mrs. Thonen asked if the address of the property would determine the frontage, Mr. Shoup stated that the address would not be the determining factor. He explained the wall that contains the primary entrance is considered to be the building frontage and he submitted photographs depicting the double glass door entrance along the northern side of the building which he considers to be the primary entrance. He also noted that the Zoning Administrator's determination was based on the fact that the parking is directly opposite the double glass door, and the cash register's arrangement within the store is oriented to this entrance.

Barbara J. Fried, with Fried Companies, Inc., 6551 Loisdale Court, #900, P.O. Box 215, Springfield, Virginia, addressed the BZA and submitted photographs of the shopping center which had been recently refurbished. She stated that the main entrance was a single door since it lined up with the shopping center across the street. She explained that the shopping center was orientated toward Backlick Road and noted that because the Mini Mart occupied an end unit, the appellant had to pay a higher rent. Ms. Fried said that the sign was in place before the sign permit was issued, but explained that the company who had installed the sign had believed they were in compliance because the previous tenant, which also had 60 linear feet in frontage, was allowed to place a sign on the northern perimeter wall based on a 1986 sign permit. She stated that the western perimeter had an entrance door, faced the main street with a traffic signal in front of the building, and asked the BZA to overturn the Zoning Administrator's determination.

In response to Mr. Hammack's question as to why the 1986 determination had been reversed, Mr. Shoup stated that the configuration was different, and the previous tenant had occupied two bays, and therefore had a larger building frontage along the northern wall than the appellant.

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

Mr. Hammack made a motion to uphold the Zoning Administrator's denial of a sign permit for appellant's proposed building-mounted sign because it exceeded the maximum allowable sign area based on the determination that the northern side of the building constituted the building frontage under Sect. 12-106 of the Zoning Ordinance.

Mr. Pammel seconded the motion which failed by a vote of 2-4 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley and Mr. Ribble voting nay; Mr. Hammack and Mr. Pammel voting aye. Mrs. Harris was not present for the vote.

Mrs. Thonen made a motion to reverse the Zoning Administrator's denial of a sign permit for appellant's proposed building-mounted sign because it exceeded the maximum allowable sign area based on the determination that the northern side of the building constituted the building frontage under Sect. 12-106 of the Zoning Ordinance.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley and Mr. Ribble voting aye; Mr. Hammack and Mr. Pammel voting nay. Mrs. Harris was not present for the vote.

The Board's decision became final on October 21, 1992.

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Page 459, October 13, 1992, (Tape 3), Information Item:

Reconsideration  
Thomas Woods, VC 92-Y-077  
Heard and Denied on October 6, 1992

Mrs. Thonen made a motion to deny a reconsideration for Thomas Woods, VC 92-Y-077.  
Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Pammel not present for the vote.

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Page 459, October 13, 1992, (Tape 3), Information Item:

Approval of Resolutions from October 6, 1992 Hearing

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

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Page 459, October 13, 1992, (Tape 3), Information Item:

Dar Al-Hijrah Mosque, SP 84-M-009

The BZA had a brief discussion regarding the allegation that the Dar Al-Hijrah Mosque was not complying with the development conditions mandated by the Board of Zoning Appeals (BZA) in Special Permit, SP 84-M-009.

Mr. Kelley noted that the Virginia State Legislature had granted the BZA the power to revoke special permits.

The BZA had a brief discussion regarding a special hearing that would allow the applicant and the interested citizens an opportunity to express their concerns regarding the use.

It was the consensus of the BZA to have Zoning Enforcement investigate the alleged violations. The BZA also directed staff to obtain a copy of the recent legislation that would enable the BZA to revoke the special permit.

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As there was no other business to come before the Board, the meeting was adjourned at 1:00 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: December 8, 1992

APPROVED: December 15, 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 15, 1992. The following Board Members were present: Vice Chairman John Ribble; Mary Thonen; Robert Kelley; and, James Pammel. Chairman John DiGiuliano; Martha Harris; 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 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 461, October 15, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT L. KERR AND SANDY R. KERR, SP 92-C-035, appl. under Sect. 3-203 of the Zoning Ordinance to allow home professional office, on approx. 15,448 sq. ft., located at 2634 Wild Cherry Place, zoned R-2 (Cluster), Centreville District, Tax Map 26-3((10))160.

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. Robert L. Kerr, 2634 Wild Cherry Place, Reston, Virginia, replied that it was.

Mary Ann Godfrey, Staff Coordinator with the Zoning Evaluation Division, said the applicants were requesting approval of a special permit in order to continue operation of a home professional office, which has operated in the home since 1984 without a permit. She said the applicants' statement of justification stated that the office is used by Mr. Kerr to operate a consulting business, there is one secretary who works on the premises, and nine employees who work in their own homes and have been provided with the appropriate equipment, and no clients come to the applicants' home. Ms. Godfrey said the applicants have rented office space in Herndon, which is used for meetings with employees. She said staff believed that with the Proposed Development Conditions the proposed use would be in harmony with the Comprehensive Plan and met all applicable Zoning Ordinance requirements; thus, staff recommended approval of the SP 92-C-035 subject to the proposed development conditions.

Mr. Kerr said when he began doing business in 1984 he tried to do everything correctly and had the business incorporated, obtained a business license, and believed that was all that was necessary. He said they were unaware of the requirement for a special permit until Betty Tiches, Senior Zoning Inspector with the Zoning Enforcement Branch, notified them of the requirement in March 1992. He said the type of work that he does is environmental management consulting and the actual work that he performs in the home is computer work and talking to people by telephone. Mr. Kerr says no clients come to the house, the company has nine employees, and there is one part time secretary who comes to the house. He said he does have office space at 620 Herndon Parkway that is fully equipped where people can meet and work together if needed. Mr. Kerr agreed with all the development conditions. He said he chose this type of lifestyle to allow him more time to spend with his family and become more involved with the community.

In response to a question from Mr. Kelley, Mr. Kerr replied that the office in Herndon is approximately 15 minutes from his home. He explained that working in the home afforded him a very different kind of relationship with his children. Mr. Kerr agreed with the five year limitation since his children will be through school within that time.

The co-applicant, Sandy Kerr, called the BZA's attention to a handout depicting several neighbors who supported the request. She asked the BZA to consider their request on an individual basis.

Vice Chairman Ribble called for speakers in support of the request.

Barbara Lowery, 2635 Wild Cherry Place, Reston, Virginia, said she has lived directly across the street from the applicants for eight years. She said there are no signs indicating that a business is being conducted from the home, there are no exterior construction changes, there is no litter or excess debris generated from this business, and there is no major increases in traffic. Ms. Lowery said since the request involves off street parking there will be less impact than many of the neighbors who have teenagers. She said Mr. Kerr has been in operation for eight years without any complaints until now and that she was in support of the request.

Katherine Lins, 2617 Mountain Laurel Place, Reston, Virginia, read a letter of support into the record. She said she has known the applicants for five years, they are excellent neighbors, and she supported the request. Ms. Lins said knowing the Kerr's are home during the day gives the neighbors who have children walking back and forth to school a sense of well being.

Bob Wallace, 2640 Wild Cherry Place, Reston, Virginia, said he lives three houses down from the applicants and agreed with the previous speakers comments and that he also did not believe there was a traffic impact. He urged the BZA to grant the request.

There were no additional speakers in support and Vice Chairman Ribble called for speakers in opposition to the request.

Frances I. Roy, 11922 Riders Lane, Reston, Virginia, read a prepared statement into the record. (A copy is contained in the file.) She was opposed to the request based on the traffic impact and the precedent setting nature of the request.

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In response to a question from Vice Chairman Ribble, Mrs. Roy replied that there are always cars parked on the street. She said she has owned her house for four years and has lived in it for two.

During rebuttal, Mr. Kerr assured the BZA that there is only one part time employee on the premises and that employee parks in the driveway.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel said this was purely a land use issue and there is a provision in the Zoning Ordinance that allows this type of operation on a very limited scale. He said he believed that there appears to be a trend toward people working in their homes under very limited circumstances, which has many positive benefits. He then made a motion to grant the request. The motion died for the lack of a second.

Mrs. Thonen said she believed that with all the electronic equipment available the applicant should be able to have a home occupational office, which would mean no employees and no clients coming to the premises. She said she did not believe that the BZA could approve something that would impact on a neighbor and that she believed that home professional offices were created to allow a fledgling business to get started and be able to operate for a short period of time and then move to a commercial space. Mrs. Thonen then made a motion to deny the request.

Mr. Kelley said he would reluctantly second the motion since he could relate to the applicants' lifestyle. He pointed out that Mr. Kerr already has additional office space, therefore there would be no additional financial burden.

The vote was 3-1 with Vice Chairman Ribble, Mrs. Thonen, and Mr. Kelley voting aye; Mr. Pammel voting nay; Chairman DiGiuliano, Mrs. Harris, and Mr. Hammack were absent from the meeting.

NOTE: The BZA granted the applicants' request for a Reconsideration on October 20, 1992; therefore, the Resolution will not become final until after the Reconsideration Public Hearing.

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Page 462 October 15, 1992, (Tape 1), Scheduled case of:

9:15 A.M. MR. AND MRS. STEPHEN MCBRIEN, VC 92-C-082, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.8 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 21,227 sq. ft., located at 9204 Talisman Dr., zoned R-3, Centreville District, Tax Map 28-4((17))17.

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. McBrien replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was proposing to construct a one story addition 7.8 feet from the side lot line. A minimum side yard of 12 feet is required, therefore the applicant was requesting a variance of 4.2 feet from the minimum side yard requirement.

Stephen McBrien, 9204 Talisman Drive, Vienna, Virginia, said he and his wife purchased the property approximately one year ago and at that time they recognized that the house, as it was constructed, did not meet one of their primary considerations as there are no windows on the rear of the house. He said it has always been their intention to remove the existing deck, which was constructed without a permit by a previous owner, and replace the deck with a one story addition which would allow them to extend a small laundry room and a small bedroom. He pointed out that the initial building permit was based on a 8 foot setback. Mr. McBrien said there is a path leading back to the park, which he maintains although he does not own it. The house of the only neighbor who would be able to see the addition sets back approximately 100 feet from the shared lot line.

In response to a question from Mr. Kelley, Mr. McBrien replied that the lot slopes down in the rear.

Mr. Pammel pointed out that the plat indicates that the fence is located on parkland. Mr. McBrien said the fence was in that location when they purchased the property, but that he would be willing to relocate the fence.

There were no speakers to address the request, 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 October 6, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-C-082 by MR. AND MRS. STEPHEN MCBRIEN, under Section 18-401 of the Zoning Ordinance to allow addition 7.8 feet from side lot line, on property located at 9204 Talisman Drive, Tax Map Reference 28-4((17))17, 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 15, 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 21,227 square feet.
4. The applicant has met the standards for the granting of a variance, in particular the exceptional narrowness of the lot and topographic conditions.
5. If the dwelling had been moved over to the right of the lot, the applicant could probably build the addition by-right.
6. The subject property is abutted by a path leading into a park, which the applicant maintains.
7. The addition would be approximately 100 feet from the adjacent dwelling.

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 specified addition shown on the variance plat prepared by Alexandria Surveys, Inc., dated June 30, 1992 submitted with this application and not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.
3. The addition shall be architecturally compatible with the existing dwelling.

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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 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. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, 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 October 23, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 464, October 15, 1992, (Tape 1), Scheduled case of:

9:35 A.M. MELVIN D. SMITH, SP 92-V-046, 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 3.6 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 8,800 sq. ft., located at 8048 Fairfax Rd., zoned R-3, Mount Vernon District, Tax Map 102-2((3))548.

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.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant's request results from an error in building location to allow an addition to remain 3.6 feet from the side lot line. Ms. Langdon said the adjacent dwelling on Lot 60 to the east is located approximately 25 feet from the shared lot line.

Melvin D. Smith, 8048 Fairfax Road, Alexandria, Virginia, said when he and his wife purchased the house in 1987 one of the "drawing cards" was the nice, large deck, which has now been defined as an addition. He said he was unaware of any violation until he applied for a building permit to construct an addition to the rear of the house. When the violation was brought to his attention, he immediately filed the special permit. Mr. Smith said to reduce the deck to comply with the setback requirements would effectively remove all of the deck.

Vice Chairman Ribble asked when the deck was constructed. Mr. Smith said he believed that it was constructed by the owner prior to the one from whom he purchased the property.

In response to a comment from Mrs. Thonen, Mr. Smith said that because the fencing is over 4 feet in height it is classified as privacy fencing, making it an addition.

There were no speakers to the request, and Vice Chairman closed the public hearing.

Mr. Pammel made a motion to grant the request subject to the Development Conditions contained in the staff report dated October 6, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-V-046 by MELVIN D. SMITH, 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 3.6 feet from side lot line, on property located at 8048 Fairfax Road, Tax Map Reference 102-2((3))548, 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, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and 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.

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 addition 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 Alexandria Surveys, Inc., dated June 15, 1992, submitted with this application, as qualified by these development conditions.
- 3. A building permit and all required inspections 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. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mrs. Thonen seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, 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 October 23, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 465, October 15, 1992, (Tape 1), Scheduled case of:

9:50 A.M. FAIRFAX COUNTY WATER AUTHORITY (FCWA), SPR 90-L-076, appl. under Sects. 5-503 and 8-915 of the Zoning Ordinance to amend SP 90-L-076 to continue use of waiver of dustless surface requirement, on approx. 8.06 acs., located at 6903 Hill Park Dr., zoned I-5, Lee District, Tax Map 99-2((4))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. Triolo replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting a renewal of the dustless surface requirement at a proposed public utility supply yard to be known as the Eastern Area Shop and Property Yard. The proposed gravel surfaces would be on the equipment material storage area and a portion of the parking area located at the rear of the proposed building. She said the area proposed to be maintained as a gravel surface would be used primarily for overnight and long term parking of maintenance vehicles and for the storage of materials used in maintaining the water system. In closing, Ms. Langdon said staff recommended approval subject to the implementation of the proposed development conditions dated October 6, 1992, which supersede all previously imposed conditions.

Chris Triolo, 5206 Richardson Drive, Fairfax, Virginia, said he was an engineer with the Fairfax County Water Authority and also the Project Manager of the site. He said construction was expected to begin in early 1993 and the project is currently out for bid.

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Mr. Triolo pointed out on the viewgraph the portion of the site where the applicant was requesting the waiver. He said the area was a low traffic portion of the yard and the areas that would be heavily traveled would all be paved. The program that the Water Authority has been using was suggested by the Fairfax County Health Department's Air Pollution Control Section, which uses a modified version of the Environmental Protection Agency's test method for a visual test method. He said the Water Authority was of the opinion that the method was adaptable for the day to day use. Mr. Triolo said the Authority was a well-respected first class public service organization, they do maintain their facilities, and has every intention to be a good neighbor.

In response to a question from Mr. Kelley, Mr. Triolo replied that he agreed with all the development conditions.

Mr. Pammel asked if the area to the east of the retaining wall would be left in its natural state. Mr. Triolo said it was the Water Authority's intention to have the area beyond the retaining wall graveled, too. Mr. Pammel said, based on that assumption, he believed that a revised plat needed to be submitted.

Following a discussion among the BZA as to whether or not the plat needed clarification, Ms. Langdon said staff would not object to including the area in question under the waiver. The applicant agreed.

There were no speakers to the request, and Vice Chairman Ribble closed the public hearing.

Mrs. Thonen 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 October 6, 1992. The BZA requested that the applicant submit a revised plat. (The revised plat was approved on October 27, 1992.)

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 90-L-076 by FAIRFAX COUNTY WATER AUTHORITY, under Sections 5-503 and 8-915 of the Zoning Ordinance to renew SP 90-L-076 to continue use of waiver of dustless surface requirement, on property located at 6903 Hill Park Drive, Tax Map Reference 99-2((4))16, 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 15, 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 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 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 on the application property and is not transferable to other land. \*
2. This Special Permit is granted only for the gravel surfaces indicated on the Special Permit plat entitled FCWA/EASPY Lee District and prepared by Pacifull, Simmons & Associates, Ltd., which is dated March, 1990, as revised through October 16, 1992, 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 parking lot shall be limited to a term of five (5) years from the date of approval of this special permit amendment and shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM). These practices should include but not be limited to the following: \*

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

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

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

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

The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of stone surface.

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 and Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, 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 October 27, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 10:25 a.m. and reconvened at 10:33 a.m.

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Page 467, October 15, 1992, (Tapes 1-2), Scheduled case of:

10:05 A.M. PETER PIPER PRESCHOOL-LYNDA K. O'BRYAN, SPA 75-D-081, appl. under Sect. 3-103 of the Zoning Ordinance to amend S-81-75 for preschool to allow building addition and renovation, on approx. 2.2714 acs., located at 1351 Scotts Run Rd., zoned R-1, Dranesville District, Tax Map 30-1{(9)}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. The applicant's agent, Leeta Keller, t/a Dall-Keller Associates, 6719 Lowell Avenue, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. Ms. Langdon said the applicant was requesting an amendment to an existing special permit for a nursery school to construct a 570 square foot addition and 690 square foot carport and a deck at the front of the residential portion of the structure. She noted that after the staff report was sent to print, the applicant submitted a revised plat dated September 22, 1992, accurately depicting existing and proposed site conditions. The applicant had requested a modification of transitional screening, and staff supported the modification on all lot lines with the exception of the eastern lot line. She said the special permit depicted a deck located within the transitional screening yard 15 feet from the eastern lot line. Ms. Langdon said if the deck was approved it would reduce the screening yard by 10 feet and result in the removal of existing vegetation that serves to mitigate visual impacts from the primary use of this property on abutting residential development. The existing swimming pool already intrudes into the required screening yard. Ms. Langdon said staff recommended that the future deck be removed or relocated out of the transitional screening yard and the existing vegetation be used to satisfy the requirement. In closing, she said staff recommended approval subject to the implementation of the development conditions dated October 6, 1992 and the submission either deleting or relocating the future deck as shown on the plat. She suggested the wordage ". . . if determined by the Zoning Administrator" be added to Condition Number 4.

Ms. Keller said the original special permit for the school was obtained in 1954 by Willa Eckles as a kindergarten in home rather than a preschool. Mrs. Eckles moved to the property on Scotts Run Road in 1970, and the house was specifically designed to include a 780 square foot kindergarten as part of the lower level. She said in 1985 Mrs. O'Bryan purchased the property from the Eckles and the BZA granted a change in ownership as well as an increase in the number of students from 25 to 32. Ms. Keller said Mrs. O'Bryan has operated the preschool in part of the lower level continuously since that time and in 1986 the Board of Supervisors honored Mrs. O'Bryan during the national designated Year of the Child for her work benefitting the welfare of young children.

She said Mrs. O'Bryan obtained a building permit to construct an addition with a carport on the subject property, which was reviewed and approved, a site inspection was made, the health department signed off, the structural plans were approved, and a permit was issued. Ms. Keller said construction began, inspections were performed, and after 2 1/2 months into the project an inspector told Mrs. O'Bryan that a Stop Work would be issued and her building permit would be cancelled due to some of the wording in Condition Number 3 of the BZA's approval of May 18, 1975. She pointed out that the addition would not increase the size of the nursery school or affect any of the conditions and called the BZA's attention to pages 1, 3, and 5 of the staff report. Ms. Keller said none of the nursery school activities is ever held on the second floor of the dwelling or in the front yard off of Scotts Run Road.

Ms. Keller said the fill near Lewinsville Road noted on page 4 of the staff report was put there by the Virginia Department of Transportation (VDOT) and not by the applicant.

She said the applicants did not object to the 40 foot building restriction line but they did not believe that the tree house does not impact on the Environmental Quality Corridor (EQC).

Ms. Keller asked for a clarification with regard to enrollment. She said the applicant had appeared before the BZA and requested an increase in the enrollment from 25 to 32, which was approved. Ms. Keller asked that Condition Number 4 requiring a site plan be deleted.

Vice Chairman Ribble called for speakers in support of the request.

Ed Sabine, 1342 Scotts Run Road, McLean, Virginia, and Otha L. Anderson, 1355 Scotts Run Road, McLean, Virginia, appeared before the BZA and read prepared statements into the record. (Copies are contained in the file.) They both expressed their belief that because the applicant was requesting a modification to the residence only that it would not impact the neighborhood and that Mrs. O'Bryan should be afforded the same rights as any other property owner.

The BZA explained to the speakers that because Mrs. O'Bryan operates a nursery school on her property the entire site was under the special permit.

In response to a question from Mr. Pammel, Ms. Langdon replied that the deck could extend 5 feet into the side yard as long as it is no higher than 4 feet.

Ms. Keller said the applicant would welcome a condition that limited the preschool to the lower floor of the dwelling and the upper level would continue to be used as residential.

Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to grant SPA 75-D-081 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 6, 1992, with the following modifications.

4. The Zoning Administrator shall determine if the Special Permit should be subject to the provisions of Article 17, Site Plan. The Board of Zoning Appeals believes the requirement, in this case, is unnecessary and unwarranted.
6. The enrollment shall be limited to 32 children, ages 3 through 5.
9. Deleted the wording that required the removal of the tree house.

Ms. Langdon asked the BZA to clarify Condition Number 6 by stipulating a maximum daily enrollment.

Mr. Kelley amended the Condition to read:

6. The maximum daily enrollment shall be limited to 64 children, ages 3 through 5, with a maximum of 32 on site at any one time.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 75-D-081 by PETER PIPER PRESCHOOL-LYNDA K. O'BRYAN, under Section 3-103 of the Zoning Ordinance to amend S-81-75 for preschool to allow building

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addition and renovation, on property located at 1351 Scotts Run Road, Tax Map Reference 30-1(9)1, 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 15, 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-1.
3. The area of the lot is 2.2714 acres.
4. The request is simply for an addition to the residence and is more of a technical matter.
5. Because the entire site is under special permit, the applicant was required to come before the Board of Zoning Appeals for any changes.

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 is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by J. Horace Jarratt, Surveyor, dated October 29, 1974, submitted with this application and not transferable to other land.
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 Zoning Administrator shall determine if the Special Permit should be subject to the provisions of Article 17, Site Plan. The Board of Zoning Appeals believes the requirement, in this case, is unnecessary and unwarranted.
5. The hours of operation shall be limited to 9:00 A. M. to 3:30 P. M., Monday through Friday.
6. The maximum daily enrollment shall be limited to 64 children, ages 3 through 5, with a maximum of 32 on site at any one time.\*
7. Thirteen (13) on-site parking spaces shall be provided for the nursery school use as shown on the special permit plat.
8. A modification of the transitional screening and a waiver of the barrier requirements are approved on all lines.
9. The applicant shall commit to the preservation of the Environmental Quality Corridor (EQC) as identified on the Special Permit Amendment Application Map attached to the Proposed Development Conditions. The exact location of the boundary of the EQC shall be determined at the time of site plan review by the Department of Environmental Management in coordination with the Office of Comprehensive Planning (OCP). There shall be no clearing of any vegetation in this area except for dead or dying trees or shrubs and no grading. All construction debris (and other sizable objects which are visible) shall be removed from the EQC adjacent to the play area. Areas of intrusions into the EQC shall be allowed to revert to a natural state.
10. The applicant shall provide erosion and sedimentation controls during all phases of construction on site as required by the Fairfax County Public Facilities Manual.

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

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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. Chairman DiGiulian, Mrs. Harris, and Mr. Hammack were absent from the meeting. The Board of Zoning Appeals waived the eight day waiting period.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 15, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 470, October 15, 1992, (Tape 1), Scheduled case of:

10:20 A.M. MAURICE R. ST. GEORGE, VC 92-V-053, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached garage 2.0 ft. from side lot line and 2.0 ft. from rear lot line (12 ft. min. side yard required by Sect. 3-307, 14 ft. min. rear yard required by Sect. 10-104), on approx. 10,646 sq. ft., located at 8414 Crossley Pl., zoned R-3, Mount Vernon District, Tax Map 102-4((5))1518.  
(RECONSIDERATION GRANTED 7/23/92)

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. Maurice R. St. George, 8414 Crossley Place, Alexandria, Virginia, replied that it was.

Mr. Kelley made a motion to defer the case to allow all the BZA members an opportunity to review the case which was heard on July 23, 1992. Vice Chairman Ribble seconded the motion. Mrs. Thonen said she knew the area and that she would be reluctant to approve a detached garage the size that the applicant was requesting.

Marilyn Anderson, Assistant Branch Chief, suggested October 27, 1992, at 10:25 a.m. The applicant agreed.

Mr. Kelley so moved. Mrs. Thonen seconded. The motion carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mr. Hammack were absent from the meeting.

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Page 470, October 15, 1992, (Tape 1), Scheduled case of:

10:30 A.M. JOHN W. JACOBS, VC 92-S-033, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of deck 13.8 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 8,416 sq. ft., located at 7604 Maritime La., zoned R-3 (cluster), Springfield District, Tax Map 97-2((3))621.  
(RECONSIDERATION GRANTED 7/23/92)

Mrs. Thonen made a motion to allow the withdrawal of VC 92-S-033 as requested by the applicant. Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mr. Hammack were absent from the meeting.

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Page 470, October 15, 1992, (Tape 1), Scheduled case of:

Discussion for Purposes of Clarification  
Peter Piper Preschool-Lynda K. O'Brayn, SPA 75-D-081

Ms. Keller asked if it had been the BZA's intent to allow the applicant to construct the deck. Mr. Pammel said that had been his intent. Mr. Kelley asked staff if it was in agreement. Ms. Langdon said staff had asked that the deck be removed or relocated to prevent the deck from being used as a part of the preschool if the applicant moved out of the house since there is no condition limiting the preschool to only the lower level. Ms. Keller said that was why the applicant had been receptive to a condition limiting the preschool to the lower level.

Mr. Pammel made a motion to reopen the public hearing. Mr. Kelley asked staff if the deck would be allowed to remain under the Resolution approved by the BZA. Ms. Langdon said that it would. (The public hearing was not reopened.)

Ms. Keller asked if the BZA would waive the eight day waiting period. Mrs. Thonen made a motion to grant the applicant's request. Mr. Kelley seconded the motion. The motion carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mr. Hammack were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:18 a.m.

Betsy S. Hurtt  
Betsy S. Hurtt, Clerk  
Board of Zoning Appeals

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

SUBMITTED: November 19, 1992

APPROVED: December 1, 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 20, 1992. 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.

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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 asked Mrs. Thonen to set the order in which the cases would be heard. Chairman DiGiulian then called for the first scheduled case.

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Page 42, October 20, 1992, (Tape 1), Scheduled case of:

8:00 P.M. JEFFREY K. CLUBB AND ELAINE C. CLUBB, SP 92-Y-050, appl. under Sect. 3-C03 of the Zoning Ordinance to allow modification to minimum yard requirements for certain R-C Lots to allow deck 9 ft. from side lot line, on approx. 12,354 sq. ft., located at 4316 Silas Hutchinson Dr., zoned R-C, Sully District, Tax Map 33-4((2))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. Clubb replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said she would present the first case, which had been prepared by Susan Langdon, Staff Coordinator. Ms. Kelsey stated the property previously was zoned R-2 (cluster) with a minimum side yard requirement of 8 feet and a total side yard requirement of 24 feet; therefore, a modification of 11 feet to the minimum side yard requirement was being requested. The dwelling on adjacent Lot 20 is located approximately 9 feet from the shared lot line. Staff recommended approval of the application, subject to the Proposed Development Conditions, based upon their review of the standards for R-C Lots, and having determined that it meets all of the standards.

The applicant, Jeffery K. Clubb, 4316 Silas Hutchinson Dr., Chantilly, Virginia, said that they had purchased the property with a sliding glass door "going nowhere," and would like to build a deck. He said that when he tried to get a Building Permit to build a deck, he discovered that he would be required to apply for a special permit, for the reasons described by Ms. Kelsey.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 92-Y-050, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 13, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-050 by JEFFREY K. CLUBB AND ELAINE C. CLUBB, under Section 3-C03 of the Zoning Ordinance to allow modification to the minimum yard requirements for certain R-C Lots to allow deck 9 ft. from side lot line, on property located at 4316 Silas Hutchinson Dr., Tax Map Reference 33-4((2))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 October 20, 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-C.
3. The area of the lot is 12,354 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 8-913 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 and the specified deck shown on the plat submitted with this 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 Alexandria Surveys, Inc., dated November 13, 1989, revised by Jeffrey Clubb, dated April 27, 1992, submitted with this application and not transferable to other land.
3. A building permit and all required inspections 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. The applicant shall be responsible for obtaining the required permits 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 5-0. Mr. Pammel 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 October 28, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 474, October 20, 1992, (Tape 1), Scheduled case of:

8:00 P.M. MANTUA SWIM AND TENNIS CLUB, SPA 81-P-089, appl. under Sect. 3-303 of the Zoning Ordinance to amend S-81-P-089 for community swimming and tennis facilities to permit building additions and revisions to the Special Permit Conditions, on approx. 4.68 acs., located at 9330 Pentland Dr., zoned R-3, Providence District, Tax Map 58-2(1)3, 3B. (OTH GRANTED)

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. McDermott replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that a portion of the property lay within the City of Fairfax, surrounding lots in the Mantua Hills Subdivision are also zoned R-3 and developed with single family detached dwellings, land to the south and west is zoned R-1 and is vacant. Mr. Hunter said that the applicant was requesting approval of a special permit amendment in order to allow the replacement and expansion of the existing concrete decking around the pool and the construction of a 12 foot by 24 foot filter room with a height of 10 feet, changes in the type and location of fencing, and revisions to the special permit conditions related to hours of operation, extended hours for parties, and other outdoor activities. Mr. Hunter said that the applicant was also requesting a modification of the transitional screening requirements in order to allow the previously approved transitional screening and barrier modifications to continue. He said staff concluded that the proposed building addition and renovations are in harmony with the Comprehensive Plan and in conformance with applicable Zoning Ordinance Provisions. He said that, while staff supported changes in the hours of operation for the swimming pool and tennis courts, staff could not support the requested revision of existing Development Condition 12, which limits the Association's activities during the summer season. He said that limitation is a standard policy of the Board of Zoning Appeals. Mr. Hunter said that staff recommended approval-in-part of this application, subject to the Proposed Development Conditions contained in the staff report.

Lawrence A. McDermott with the firm of Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, represented the applicant, stating the applicant was amenable to all of the conditions, with the exception of new Condition 6, a limitation upon the seasonal hours of operation. He said that Ms. Kathleen McBride was present from the Club to address that particular issue.

Ms. McBride said that, for the maximum use of the clubhouse, they would like to expand the parties or the social events to 24 per year. She said that the facility is used by the members for parties, wedding receptions, bar mitzvahs, birthday parties and, since they do have a large clubhouse, they would like to be able to have social events all year long.

Mr. Kelley told Ms. McBride it was his understanding that they would like to have the additional parties indoors and she confirmed that was true.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 81-P-089, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated

October 13, 1992, as amended: Condition 6 was changed to read as found in the Resolution. Mr. Kelley explained that changing the number of parties from 6 to 24 per year would not be disruptive because the additional parties, beyond 6, would be held indoors.

Mr. Hammack said that he was a member of the Club and would not vote; however, he questioned the fact that Conditions 13 and 14 of the original conditions had not been carried forward to the new Proposed Development Conditions. A discussion ensued, after which Mr. Kelley further amended Conditions 6 to include Condition 14 from the old set of conditions.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the BZA that the applicant had intended to request a waiver of the eight-day waiting period, following which they passed a motion waiving the limitation, so that the applicant could try to accomplish the proposed goals before the inclement weather began.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-P-089, by MANTUA SWIM AND TENNIS CLUB, under Section 3-303 of the Zoning Ordinance to amend S-81-P-089 for community swimming and tennis facilities to permit building additions and revisions to the Special Permit Conditions, on property located at 9330 Pentland Dr., Tax Map Reference 5B-2((1))3, 3B, 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 20, 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 4.68 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 Dawberry and Davis dated July 21, 1992, revised September 2, 1992 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 94 parking spaces provided for the swim and tennis club. All parking shall be on site.
- 5. The hours of operation shall be limited as follows:

Swimming Pools:	7:30 a.m. to 10:00 a.m. for swim practice only.
	10:00 a.m. to 12:00 p.m. for swim lessons.
	12:00 p.m. to 9:00 P.m. for full membership
Tennis Courts:	6:00 a.m. to 10:00 p.m.

These hours shall apply throughout the entire year.

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6. After-hours parties for the Mantua Swim and Tennis Club shall be governed by the following:

Limited to twenty-four (24) per season, limited to six (6) between Memorial Day and Labor Day, and all others shall be held indoors from September to May.

Limited to Friday, Saturday and pre-holiday evenings,

Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed,  
Shall not extend beyond 12:00 midnight,

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 extended-hour party or for the first one at the beginning of a swim season,

Requests shall be approved only if there are no pending violations of the conditions of the Special Permit,

Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

In connection with the Association's activities, such as meetings of the Scouts, women's clubs, etc., that the Association be permitted to allow the use of their facilities Monday through Friday from 7:00 p.m. to 10:00 p.m. and on Saturday from 9:00 a.m. to 5:00 p.m.

7. Lighting on the tennis courts adjacent to the western property line shall not to exceed 24 feet in height.
8. No loudspeakers shall be used between 7:30 a.m. and 10:00 a.m. and the use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The maximum decibel level of the loudspeakers shall not exceed 55 dBA at the property line.
9. The existing vegetation shown on the plat shall be maintained and shall be deemed to fulfill the requirements for transitional screening along all lot lines.
10. The barrier requirement shall be waived along all lot lines.
11. The maximum number of family memberships shall be 560.
12. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:

All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

13. The existing tree to be removed in the location of the new filter room will be replaced by a hardwood tree of similar type.

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 construction has begun, and has been diligently prosecuted. The Board of Zoning Appeals may grant

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additional time to establish the use 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 4-0-2. Mr. Hammack and Mr. Pammel abstained. Mr. Ribble was absent from the meeting.

Mr. Kelley made a motion to waive the eight-day waiting period. Mrs. Thonen seconded the motion, which carried by a vote of 4-0-2. Mrs. Hammack and Mr. Pammel abstained.

\*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 20, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 477, October 20, 1992, (Tape 1), Scheduled case of:

8:00 P.M. FAST EDDIE'S, INC., SP 92-L-047, appl. under Sect. 4-603 of the Zoning Ordinance to allow billiard and pool hall, on approx. 6,020 sq. ft., located at 7255 Commerce St., zoned C-6, Lee District, Tax Map 80-3((1))48, 118.

Mr. Pammel made a disclosure that he had a financial relationship with The Corby Corporation about three years ago.

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. Thomas replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that land to the south and east is developed as part of the shopping center; there are highrise apartment dwellings on the other side of Commerce Street on land which is zoned R-20. He said that staff's analysis of the application hinged on the fact that the site could be developed by right with other restaurant or entertainment uses of an intensity similar to that proposed in the application; the Proposed Development Conditions contain means to insure adequate parking is available. Mr. Riegle said that, as a component of a larger existing shopping center, it was staff's judgement that the applicant would not generate adverse land use nor environmental or transportation impacts and that special permit standards would be fulfilled with the implementation of the Proposed Development Conditions. Mr. Riegle pointed out that the applicant's representative had submitted additional conditions to be imposed upon the applicant to further limit the use; there were three additional restrictions which the applicant had placed upon himself. Staff had no objection to the additional restrictions.

William C. Thomas, Jr., of the law firm of Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Alexandria, Virginia, represented the applicant, stating that he would accept the recommendations made by staff; however, he could not refrain from expanding the BZA's knowledge of the type of business which was being proposed. Mr. Thomas presented articles and pictures indicative of the nature of the use. He said that Mr. Gillis had put together a display which had already been shown to the members of the Springfield Civic Association and the Central Springfield Area Revitalization Council (CSPARC). Mr. Thomas advised the BZA that he wished to remove the old image of the stereotyped pool hall from their minds. He said that the nature of the billiard parlor being proposed was very upscale and posh. He read from some of the articles, quoting flattering descriptions and comments, enhancing the image of the use.

Mr. Thomas said that the applicant had done an intense amount of business planning in preparation for this use, attending seminars across the Country to familiarize himself with what Mr. Thomas called the billiard parlor renaissance. He said that billiard parlors were rated by the business magazines as being among the top ten small businesses expected to succeed in the 90s. Mr. Thomas said that fifty percent of the people coming to the establishments were couples. He went into the issue of having first requested that the billiard parlor be allowed to remain open 24 hours a day; however, after experiencing resistance from the Civic Association and CSPARC, the request was modified for permission to remain open until 4:00 a.m. Mr. Thomas said that they wished to accommodate the segment of the population, such as restaurant workers, which sought to "unwind" after they left their jobs. He said the furnishings also were upscaled to support the posh image.

Mrs. Harris said she was troubled by the 4:00 a.m. closing time, seven days per week. She said that restaurant-associated people seemed to be too small a group to utilize the billiard establishment to advantage. The issue of how late restaurants generally stayed open was discussed but no exact time could be estimated. Mr. Thomas expressed the belief that restaurant-associated people now headed toward the District of Columbia when they finished work.

The applicant, Edward W. Gillis, 7737 Tiverton Drive, Springfield, Virginia, came to the podium and gave a background of his ties to the area. He spoke of contributing to the revitalization of the area during the present economical downturn, stating that he would provide 20 jobs to the community, appropriate taxes on a projected \$1 million dollars per year in sales, and he is requesting bids from local contractors and buying supplies locally for the restaurant. Mr. Gillis said that he believed he was contributing to the

revitalization of Springfield Plaza by attracting customers from Fredericksburg and Alexandria because of the unique quality of the restaurant. Mr. Gillis also reinforced the image factor, referring to two such existing establishments in the area and citing their success in maintaining an upscale atmosphere. Mr. Gillis emphasized the upscale decor and menu, and the need to be able to remain open late enough to accommodate the segment of the public who seek relaxation after finishing their work late at night/early morning.

In answer to a question from Mr. Kelley, Mr. Gillis said that he had a lease for 5 years with a 5 year option.

There were no speakers in support of the application.

Speaking in opposition were: Bob Westmoreland, 6111 Backlick Road, Springfield, Virginia, Immediate Past President of the Springfield Civic Association, and Pat Foss, 7219 Monticello Boulevard, Springfield, Virginia. Mr. Westmoreland said that the Board of Directors of the Civic Association was meeting that evening and that was why they were not present. He said that they were not concerned about the integrity of the business, but were concerned about the hours of operation. He spoke of having had a meeting with the applicant and the applicant's representative, during which the hours requested had been changed from being open 24 hours per day to remaining open until 4:00 a.m. He said that the owners of the Carr Corporation's Springfield Gardens complex considered it more appropriate to have a closing time of 2:00 a.m. Mr. Westmoreland referred to a recent incident involving police action in the area having sparked concern among the residents. He believed the closing time of 4:00 a.m. might contribute to undesirable activity in the area.

Mr. Westmoreland said that a small number of the members of the Civic Association had participated in the discussion with the applicant and it was his wish that the subject could come before the members at a regular meeting of the Association. Chairman DiGiulian asked him if the purpose was to establish agreement between the Association and the applicant regarding a closing time and Mr. Westmoreland said that was the purpose.

Mr. Westmoreland also raised the issue of having the billiard parlor closed until noon on Sunday but Mrs. Thonen said that, if they served food, it might be a good idea for them to open at the regular time of 11:00 a.m.

Chairman DiGiulian asked Mr. Westmoreland, if the BZA were to grant a deferral, what period of time he was suggesting. Mr. Westmoreland said he was talking about a meeting of the total Civic Association on November 17, 1992, the third Tuesday of November.

Mrs. Thonen said that, when a business is getting started and trying hard to meet with the local Association, which the applicant had been doing, it is not the applicant's fault if they are faced with unreasonable delays: The Association's September agenda was too full to accommodate the applicant; they were supposed to meet in October, but the Association did not have a meeting in October; so that put them into the November time frame. Mrs. Thonen believed that, if the closing time was the only issue, the BZA could take care of that without deferring the case until the Association had another meeting.

Ms. Foss' belief and concern was the fact that the application was not common knowledge in the area. The notice package was checked to establish that the notices were in order. A lengthy discussion ensued regarding the issue surrounding knowledge by area residents of the application and the applicant's obligation to contribute to the process. It was the consensus of the BZA that the applicant had not been remiss in his obligation and that the legal notification procedure and posting had been accomplished.

Mrs. Thonen reviewed the many attempts by the applicant to inform the area residents of his proposed application. She said that, in the current economic climate, holding up a businessman from pursuing his interests could lead to serious results; for one thing, the space would not be earning money, while accumulating costly rental fees.

Mr. Kelley said that, if the community considered the presence of this business so important, they could have scheduled an earlier meeting with the applicant. He agreed with Mrs. Thonen that it was unfair to expect the applicant to sacrifice a couple of months' worth of business.

Mr. Hammack agreed that the applicant should not be made to suffer losses because his attempts to inform might not have met with success.

Chairman DiGiulian remained concerned that there might not be enough knowledge in the community about the application.

Mrs. Foss said that she had not been to any recent meetings of the Association and, thus, would not have learned of the application even if the applicant had succeeded in coming before the members. In answer to a question from Mrs. Harris, Mrs. Foss stated that she had not seen the available staff report, but had seen the plans presented to the group who had met with the applicant last Thursday night.

Mrs. Foss said that she had no objection to Fast Eddie's coming into the shopping mall; she objected to 24 hours of operation or remaining open until 4:00 a.m.

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Mr. Hammack raised the issue of age and asked staff if they knew of there was any age limitation for arcades. Mr. Riegler deferred to Mr. Thomas for an answer.

Mr. Thomas said that the Alcohol Beverage Control Board (ABC) does not regulate who comes and goes, but only regulates the activities of underage individuals. Mr. Thomas said the issue had been resolved with the Association. Mr. Hammack questioned why youths under the age of 18 should not be permitted to play billiards if it is a nice establishment. Mrs. Harris pointed out that there was a bar in the establishment and Mr. Hammack said that bowling alleys have bars and youths are permitted to bowl. Mr. Gillis said his original thought was of when he was a youth and had bowled on Saturday mornings from 9:00 a.m. till 12:00 Noon. He said he had planned to have leagues to accommodate youths on Saturday mornings and the only reason he had changed the age limitation was to comply with the wishes of the Springfield Civic Association. He said he met with twelve people from the Association last Thursday: the President, the Vice Chairman, and some other people. Mr. Gillis said they had concerns about the age limitation and he had changed it for their benefit.

Mrs. Harris asked Mr. Gillis how he felt about deferring the case for a month. Mr. Gillis said that he had already waited 6 months for the hearing and every week that went by resulted in a loss of \$1,000 in personal income. He said he would really like to resolve the case. Mrs. Harris attempted to encourage Mr. Gillis to consider the importance of waiting another month and getting the support of the area citizens.

Mr. Kelley interjected that the BZA would obviously vote for a 2:00 a.m. closing time and, if that were the only outstanding issue, as it seemed to be, the testimony indicated that the community supported the application if the closing time were changed to 2:00 a.m. He said he believed that the BZA should get on with the hearing. Mr. Kelley said that Mr. Gillis made a very good point when he stated that not being able to open for another month would create a financial hardship.

At the request of Mrs. Thonen, Chairman DiGiulian called Mrs. Foss back to the podium. Mrs. Thonen asked Mrs. Foss, if the BZA set the closing time at 2:00 a.m. and included the three additional conditions, would it settle her fears. Mrs. Foss said it would settle her fears, but she could not speak for the Association. In response to a question from Mrs. Thonen, Mrs. Foss said that the other people present at the meeting were "aghast" at the proposed 24 hour operation and even the 4:00 a.m. closing time.

Mr. Thomas made his rebuttal, proposing that the closing time be amended to 2:00 a.m., having always hoped that it would be possible to work with the Association to reach an amicable resolution on the hours. He stated that the application had been in the process for several months and their efforts to contact the Association uncovered the interest of CSPARC; however, their efforts to meet did not come to fruition. Mr. Thomas said that his name was on the legal notices and had received calls of inquiry. He also believed that anyone with questions could have called staff.

Mrs. Thonen made a motion to grant SP 92-L-047 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 13, 1992, as amended by adding three conditions, 8, 9 and 10, contained in the letter from Mr. Thomas, and changing the closing time to 2:00 a.m. The amendments are reflected in the Resolution.

Mrs. Thonen addressed the issue of knowledge of the application, stating that many people were aware of it. She said that Supervisor Joseph Alexander, Lee District, knew of the application, as well as many others.

Mr. Hammack said that he would support the motion, but he questioned the need to restrict youths under the age of 18. Mrs. Thonen disagreed with Mr. Hammack.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, reminded the BZA members that the applicant had intended to request a waiver of the eight-day waiting period and the BZA passed a motion waiving the eight-day limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-L-047 by FAST EDDIE'S, INC., under Section 4-603 of the Zoning Ordinance to allow billiard and pool hall, on property located at 7255 Commerce St., Tax Map Reference 80-3((1))4B, 11B, 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 20, 1992; and

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

1. The applicant is the lessee of approximately 6,020 square feet.
2. The present zoning is C-6.
3. The area of the lot is 7.384 acres.
4. Although not all people in the area were aware of the application, there was an awareness by a great many people.
5. The proposed establishment does not fit the old stereotype of a pool hall, rather it indicates promise of being an upscale billiard parlor type of business which fits into the shopping center.
6. The use will be in harmony with the adopted Comprehensive Plan.
7. The general purpose of the business is good.
8. The use will not adversely affect the development of the neighboring properties.
9. The pedestrian and vehicular traffic associated with the use will not be hazardous in any way.
10. Appropriate landscaping shall be required in accordance with Article 13.
11. The signage shall be regulated by the sign ordinance.

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 Springfield Engineering dated May 13, 1986 revised through March 10, 1987, approved with this application, as qualified by these development conditions. This approval shall only govern the 6,020 square foot area to be occupied by the approved billiard parlor at 7255 Commerce Street.
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. A minimum of 28 parking spaces shall be allocated for this use. At the time of site plan review a parking tabulation shall be submitted to and approved by DEM which shows that the required parking for all uses can be provided in the shopping center or this special permit shall be null and void.
6. Landscaping in the existing parking lot islands and in the area along Commerce Street in the vicinity of the approved billiard parlor shall be maintained in accordance with the approved site plan for the Springfield Plaza shopping center. If any of the existing vegetation in the parking area in the vicinity of the billiard parlor dies or is removed, it shall be replaced with plantings of a similar size and species as determined by the Urban Forestry Branch DEM.
7. Any signage erected on the building shall be of a size and materials which is compatible with existing signage in the shopping center and shall be subject to the issuance of appropriate sign permits under Article 12 of the Zoning Ordinance.
8. Fast Eddie's Billiard Cafe will allow no one under the age of eighteen (18) on the premises unless accompanied by a parent or guardian at all times or unless the person under eighteen is participating in a recognized activity sponsored by the Billiard Cafe such as billiard instruction or league play. All instruction and league play shall be strictly supervised by cafe management and strict adherence to all conditions of the Special Use Permit and the laws and ordinances of Fairfax County and the State of Virginia shall be observed, including the laws of the Alcoholic Beverage Control Board.
9. Proper attire shall be required and appropriate signage shall be posted at the entrance to the premises and this dress code shall also be strictly enforced. A neat, clean appearance shall be necessary for admittance. Specific prohibitions shall include, but not be limited to, cut-off pants or jeans, tank tops or other sleeveless shirts, work clothing other than basic business attire, and clothing signifying membership in a gang or other such activity.



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10. The hours of operation shall not exceed 11:00 a.m. to 2:00 a.m. daily.

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 legally established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. Mr. Ribble was absent from the meeting.

Mr. Pammel made a motion to grant a waiver of the eight-day waiting period. Mrs. Harris seconded the motion, which carried by a vote of 6-0. 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 20, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 481, October 20, 1992, (Tape 1), Action Item:

Approval of Resolutions from October 13, 1992 Hearing

Mrs. Harris made a motion to approve the resolutions as submitted by the Clerk. 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 481, October 20, 1992, (Tape 1), Action Item:

Approval of Minutes from July 23, 1992 Hearing

Mrs. Harris so moved. 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 481, October 20, 1992, (Tape 1), Action Item:

Letter regarding Gregory Ellis Interpretation

The Board discussed this at length and examined the plat. Mr. Pammel made a motion that the proposed expansion of the use would require an amendment to the special permit. 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 481, October 20, 1992, (Tape 1&2), Action Item:

Request for Reconsideration  
Robert L. & Sandy R. Kerr  
SP 92-C-035  
Heard and Denied on October 15, 1992

Mr. Kelley moved to deny the request because he believed there was no new information. Mrs. Thonen seconded the motion because she said that the person speaking in opposition had read about 75% of the letter into the record as to the reasons she was opposing this. Mrs. Thonen said that she had made her decision based upon the information in the staff report. Mrs. Harris said that she had not been present at the original hearing, but the letter stated that there had been numerous misrepresentations, and she knew that only four Board members had been present. She questioned whether or not the presence of more Board members might result in a better decision. Mrs. Thonen said that she believed the argument going on was between the neighbors.

Chairman DiGiulian said that he also was not present, but the statement that there was information presented at the hearing which had not been given to the applicants in advance of the hearing, did not afford the applicants adequate response time. There was a question of whether the letter in question had been presented to the applicants before the hearing and whether even that much advance notice was sufficient to allow a suitable response. Mr. Pammel had been present and said he believed this to be the heart of the issue. The Chairman said that one of those letters had not been given to the applicant and that concerned him.

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Mrs. Thonen said that she made her decision based on the facts and the staff report and I disagreed on what staff had to say.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, requested permission to submit information in the absence of the Staff Coordinator, Mary Ann Godfrey, who had prepared the staff report. Permission was given. Ms. Kelsey said that Ms. Godfrey and Mr. Derrickson who was also present, indicated to her that the adjacent property owner, Mrs. Roy, had handed the copies of the letter to Mr. Derrickson prior to the meeting and Mr. Derrickson had distributed them to the Board members and Ms. Godfrey, who gave a copy to Mrs. Kerr prior to the meeting. To identify the letter, Ms. Kelsey said it was a letter from Mrs. Roy to the Board containing Mrs. Roy's statement.

Mr. Hammack asked one of the members who had been present to tell him whether the applicants had been given the opportunity to rebut and Mr. Kelley answered in the affirmative.

Ms. Kelsey gave two letters from the file to the Board members who were present for purposes of identification.

Chairman DiGiulian said he did not believe the Kerrs said that the Board had not seen both letters, instead he believed they said that "they" had not seen one of the letters.

Mr. Kelley said that Mrs. Roy testified and that the applicants were able to rebut the testimony. She said that she testified about cigarette butts being left around by the applicant and automobiles parking on the street and that until the last few weeks or so the employee never parked in the driveway. He said that he was not drawing conclusions as to the truth of that, but it was testimony. Mr. Pammel said that the Vice Chairman also made a comment that the members had both letters and they became a part of the record.

Mr. Pammel again pointed out that the second letter was dated the date of the hearing and he appreciated that there was not much time for the applicants to prepare a response.

The motion to deny failed by a vote of 2-3-1. Chairman DiGiulian, Mrs. Harris and Mr. Pammel voted nay. Mr. Hammack abstained.

Ms. Kelsey advised that the rule is that a member of the prevailing side that made the motion to deny must make the motion to reconsider.

Mr. Kelley said that he would like to reopen the request for a reconsideration hearing since so many of the members felt strongly about the case. Mrs. Thonen said that she would withdraw her second if it helped the situation, but she stated very strongly that, if the case were reheard, she wanted to hear testimony based on land use and no personal testimony about neighborhood activities, or about the applicant driving the children to school or that type of thing. She said that she was not saying that she would vote for it at all, but would support the reconsideration.

Mrs. Thonen made a motion that in application SP 92-C-035, Robert L. and Sandy Kerr that the Board schedule a reconsideration hearing. Mrs. Harris said that she would second the motion. Mr. Kelley said that he would second the motion but believed they were setting a bad precedent. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Chairman DiGiulian asked Ms. Kelsey to convey to both sides that the Board would only listen land use issues and would not get involved neighborhood problems. He said that the testimony would be limited to 5 minutes from each side. The Board said that it would not like to receive any personal phone calls about this issue from the applicants or neighbors, in fairness to both sides.

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Page 482, October 20, 1992, (Tape 2), Action Item:

Request for Approval of Revised Plats  
J. Sheldon & Shirley Weil  
YC 92-Y-097  
Granted-in-Part September 24, 1992

Mr. Roy from the audience asked why they couldn't talk now. Mr. DiGiulian called him out of order. Mr. Roy said that the Board had misrepresented what was presented in the Kerr's letter or misunderstood it. Mr. Kelley said that there would be a reconsideration hearing and he could speak then. Ms. Kelsey advised that the Board's December schedule is very heavy; however, the use is in violation, and there was a reluctance to wait until January. Ms. Kelsey, therefore, suggested the night meeting of December 15, 1992. Mr. Kelley emphasized that the applicants were in violation and he would like to resolve the issue at the earliest possible time, perhaps the following week. Ms. Kelsey advised that a reconsideration hearing must be readvertized, reposted and renoticed, which would require the legal length of time.

It was the consensus of the BZA that the hearing should be set for December 15, 1992.

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Mrs. Harris asked that the BZA receive copies of the two letters discussed previously, in preparation for the hearing. Ms. Kelsey advised that a copy of the entire file would be furnished to the BZA members, including all communication.

Mr. Pammel so moved. 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 483, October 20, 1992, (Tape 2), Action Item:

Request for Intent to Defer  
Anna Marie Truong  
SP 91-M-068  
Scheduled for October 27, 1992

Mr. Kelley so moved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 483, October 20, 1992, (Tape 2), Action Item:

Dar Al-Hijrah (Mosque), SP 84-M-009

Chairman DiGiulian said that there was another action item which did not appear on the agenda, Dar Al-Hijrah (Mosque), SP 84-M-009, which had received a notice of violation. He said that Jane W. Gwinn, Zoning Administrator, indicated that, during peak usage, there are between 400 and 500 cars surrounding the use. Because there are only 90 spaces on site, the overflow parking spills into the community.

Chairman DiGiulian said that he would like to schedule a special meeting with the mosque people, the community association representatives only (not all members), staff, and possibly police, to see if a commitment could be obtained from the mosque representatives to alleviate the parking problem immediately, that might be temporary, followed by a long range plan to either acquire some land to build more parking or split the congregation.

Chairman DiGiulian said that limiting the seating to 360 seats, believing that it would control the intensity, does not work because the congregation does not sit down to worship.

Chairman DiGiulian and Mr. Kelley emphasized that what was being suggested was a meeting and not a hearing. They said that there clearly was a violation which required the BZA's attention. In answer to a question from the Board, Ms. Kelsey said that the notice of violation expired on October 24, 1992. Mr. Hammack asked if taking action at this stage complied with the BZA's authority.

A lengthy discussion ensued, culminating in a motion by Mr. Pammel to set aside some time the following week for an Executive Session with the County Attorney to discuss the legal aspects of the BZA's authority to revoke a special permit, and get into the issue to find out what their position was and what they could do. Mr. Hammack seconded the motion. Mrs. Thonen asked if Mr. Zook should also be there. Mr. Pammel said that any member of staff who wanted to could come. He said that the Zoning Administrator certainly should be there.

Mr. Kelley said that, pending a vote on Mr. Pammel's motion, he would like to see them go ahead in accordance with staff's request and at least try to schedule a meeting; they could always cancel it if they had to. He said they should try to go forth and set it up without any advertisement, but just get the necessary space. Mr. Kelley said that his was a substitute motion and that he was more than willing to go ahead with the motion already on the floor. He just believed they should go ahead and make the technical arrangements. They could also go ahead with Mr. Pammel's motion.

Mr. Pammel's motion carried by a vote of 6-0. Mr. Ribble was absent.

Mr. Kelley made a motion that staff prepare to make the necessary technical and/or administrative arrangements for such a meeting, if they vote to have the meeting. Mr. Pammel seconded the motion. The motion carried by a vote of 6-0. Mr. Ribble was absent.

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Page 483, October 20, 1992, (Tape 2), Action Item:

Kerr Reconsideration Hearing  
Acted upon previously in the meeting

Ms. Kelsey asked the Board to defer the Kerr Resolution, in light of the forthcoming reconsideration hearing. Mr. Pammel so moved. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mr. Ribble 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 10:25 p.m.

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

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

SUBMITTED: November 5, 1992

APPROVED: November 10, 1992

