

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 7, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 001, March 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JOHN R. AND JANIE L. FISH, TRUSTEES, AND KENNETH A. AND PATRICIA M. WINDHEIM, VC 99-D-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 10C1 having a lot width of 95.11 ft. Located at 1886 and 1888 Virginia Ave. on approx. 1.41 ac. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (3) 10B and 10C.

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 Thomas, Agent, 11320 Random Hills Road, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. It was recently discovered that the subdivision plat that created Lots 10B and 10C had not been legally filed and as a result the lot subdivision recordation was deemed null and void. In addition, it was found that Lot C did not meet the minimum lot width requirement of the Zoning Ordinance. The applicants requested a variance to subdivide two lots (Lots 10B and 10C) into two lots (Lot 10B-1 and Lot 10C-1), with proposed Lot 10C-1 having a lot width of 95.11 feet. A minimum width of 100 feet is required by the Ordinance; therefore, a variance of 4.89 feet was requested for proposed Lot 10C-1.

Mr. Thomas, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said there were a lot of mistakes that went into the creation of these lots, but because of the mistakes that started the process, several irreparable hardships occurred down the lane. The purchasers of the properties obtained clear title and went through the settlement process and lived on lots that had what seemed to be valid tax map numbers, tax map locations, valid subdivision plats and all the endices that would normally be looked at to show compliance. He said Lot 13 already utilized the pipestem configuration that was being discussed. That lot pre-existed and predated the number 10 lots. Mr. Thomas said it was with some of the concerns of the neighbors that caused them to address some of these issues. He said in terms of the actual configuration of the pipestem lot, it works and had worked for a number of years for this particular parcel. He stated that the houses were built in 1995 and Lot 13 had access to the pipestem configuration even before then. Mr. Thomas said the purpose of the variance requested was to legitimize an existing situation that was working.

Chairman DiGiulian called for speakers.

Raymond Wolfe, 6008 Harvester Court, Burke, Virginia, came forward to speak in opposition. He said the builder had seriously damaged the applicants. He said this problem wouldn't exist if the builder had not filed false site plans, forged and notarized, and obtained fraudulent building permits. Mr. Wolfe said the County knew that the site plan was fraudulent, they stopped building and issued another building permit. He said the County could have rectified the situation by not allowing the builder to complete the property at 1890 Virginia Avenue. He said the builder knew that he didn't meet the County Code. Mr. Wolfe stated that if the variance was granted the Board would be allowing the builder to make a profit on a piece of property that they knew did not meet County standards. He said he had paperwork to substantiate his comments.

Mr. Ribble asked the speaker what paperwork he had. Mr. Wolfe responded that he had a site plan submitted by the builder, signed and notarized with fake signatures to obtain the building permits. He said he also had letters from an attorney notifying the County. Mr. Wolfe submitted the information for the record.

John Wolfe came forward to speak in opposition. He referenced the variance standards, indicating that the application did not comply with the standards.

Mr. Pammel asked if the builder was part of the application. Mr. Thomas replied no.

Mr. Thomas stated, in his rebuttal, that the owners had no other recourse but to file for a variance. He said the applicants could not be relieved of their hardship without a variance.

Mr. Hart asked what documents were forged. Mr. Thomas replied that the subdivision plat was forged, which led stemmed into everything else.

Mr. Hart asked if all 3 lots were using the same driveway. Mr. Thomas replied that Lot 10C was the only additional lot using the driveway.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the variance application would resolve very serious and that was the issue that needed to be addressed, not what preceded before that with respect to fraudulent acts by the builder.

Mr. Pammel moved to approve VC 99-D-193 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN R. AND JANIE L. FISH, TRUSTEES, AND KENNETH A. AND PATRICIA M. WINDHEIM, VC 99-D-193 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 10C1 having a lot width of 95.11 ft. Located at 1886 and 1888 Virginia Ave. on approx. 1.41 ac. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (3) 10B and 10C. 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 7, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have demonstrated extreme hardship with respect to their petition before the Board.
3. Previous acts created the current condition.
4. The lot has an unusual configuration and is extremely narrow.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and

the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

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

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

- 1. This variance is approved for the subdivision of two lots into two lots, with proposed Lot 10-C1 having a lot width of 95.11 feet, as shown on the plat prepared by Bengtson, DeBell & Elkin, Ltd., dated August 5, 1998, as revised through October 4, 1999. All development shall be in conformance with this plat as qualified by these development conditions.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twelve (12) 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 003, March 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JEROLD & NANCY JURENTKUFF, VC 99-H-191 Appl. under Sect (s). 18-401 of the Zoning Ordinance to permit construction of decks 0.5 ft. and 0.2 ft. from rear lot line, addition 1.4 ft. and eave 0.1 ft. from rear lot line, deck 0.1 ft. from side lot line and coverage greater than 30% of the minimum required rear yard. Located at 1841 Foxstone Dr. on approx. 11,158 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-4 ((19)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jerold Jurentkuff, 1841 Foxstone Drive, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a concrete deck 0.2 feet from the rear lot line and 0.1 feet from the side lot line; an addition (gazebo) 1.4 feet and eave 0.1 feet from the rear lot line; and a deck (concrete patio) 0.5 feet from the rear lot line and coverage greater than 30% of the minimum required rear yard. A minimum rear and side yard of 8 feet is required; therefore, variances of 7.8 and 7.9 feet were requested for the concrete deck. Variances of 6.6 feet and 4.9 feet were requested respectively for the gazebo and the eave. A variance of 7.5 feet was requested for the concrete patio.

Mr. Jurentkuff presented the variance requests as outlined in the statement of justification submitted with the application. He said the property was acquired in good faith. He stated that both the rear and the side yards were extremely narrow. Mr. Jurentkuff said that there was no feasible way to obtain privacy without the additions.

Mr. Hart asked the applicant what the additions would look like to the neighbors. Mr. Jurentkuff stated that it would look like a basement wall and the gazebo. He stated that he had spoken with the neighbors and they were in support of the application.

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

Mr. Pammel stated that he understood the applicant's hardship, but was concerned with the gazebo being 1/10th of a foot off the property line. He said if it were one foot off the property line then it would be okay. Mr. Pammel asked if he could move the gazebo. Mr. Jurentkuff replied that he could move the gazebo, but it was the eave that was 1/10th of a foot off the property line, the actual gazebo was 1.4 feet from the property line.

Mr. Hart moved to approve VC 99-H-191 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEROLD & NANCY JURENTKUFF, VC 99-H-191 Appl. under Sect (s). 18-401 of the Zoning Ordinance to permit construction of decks 0.5 ft. and 0.2 ft. from rear lot line, addition 1.4 ft. and eave 0.1 ft. from rear lot line, deck 0.1 ft. from side lot line and coverage greater than 30% of the minimum required rear yard. Located at 1841 Foxstone Dr. on approx. 11,158 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-4 ((19)) 1. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The configuration of the house in the rear corner of the back yard is odd.
4. The topography of the hill sloping down with the pool at the top of the hill, erosion, and odd conditions that are occurring causes the need for a variance.
5. There doesn't appear to be any opposition from 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of addition and decks as shown on the plat prepared by Kenneth W. White, dated October 26, 1999, revised through February 7, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 005, March 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WALTER & MAUREEN SIMMONS, VC 99-V-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 7.2 ft. from side lot line. Located at 1920 Swan Terr. on approx. 14,474 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((17)) (4) 20A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Walter Simmons, 1920 Swan Terrace, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 7.2 feet from the side lot line. A minimum

side yard of 10 feet is required; therefore, a variance of 2.8 feet was requested.

Mr. Simmons presented the variance request as outlined in the statement of justification submitted with the application. He said the application was to enclose an existing carport for security of personal property. Mr. Simmons said the neighbors were in support of the application and the addition would improve the appearance of the neighborhood.

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

Mr. Ribble moved to approve VC 99-V-194 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER & MAUREEN SIMMONS, VC 99-V-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 7.2 ft. from side lot line. Located at 1920 Swan Terr. on approx. 14,474 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((17)) (4) 20A. 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 7, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The applicants are simply closing an existing carport.
4. The variance is needed because of the converging lot lines.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an addition (garage) as shown on the plat prepared by L. S. Whitson, dated October 9, 1999, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The 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 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 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 2000. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. MR. AND MRS. MACK L. CRIPPEN, JR., A 1999-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that site plan approval is required to establish the zoological park approved under special permit SP 94-D-058. Located at 820 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A and 15C. (MOVED FROM 6/1/99).

Maggie Stehman, Zoning Administration Division, stated that this was an appeal of a determination that site plan approval was required to establish the zoological park approved under special permit SP 94-D-058. The County Code prohibited the keeping of wild and exotic animals except in very limited circumstances including the keeping of animals in a zoological park. Therefore, in order to keep certain exotic animals, the appellants were granted special permit approval in 1994 for a zoological park. As a condition of the special permit and as required by the standards of Group 6 uses and by Article 17 of the Zoning Ordinance, site plan approval was required to establish the zoological park use. On February 15th, the BZA approved SPA 94-D-058 which modified some of the conditions of the original special permit. Although the development conditions requiring site plan approval was deleted, site plan approval was still required under the provisions of the Zoning Ordinance. The appellants submitted a site plan in August 24, 1998 which was returned with comments on October 13, 1998. No further site plan submittals had been made. The appellants claimed that the keeping of exotic animals was an agricultural use for site plan purposes and therefore exempt from site plan requirements. Ms. Stehman indicated that the use could not be treated as an agricultural use for site plan purposes. The use of the property for pastorage by animals that were otherwise prohibited, did not

constitute the establishment of an agricultural use. It had been determined that the only way these animals can be kept was as a zoological park use. Once the use determination had been made the use could not change arbitrarily for the purpose of providing a mechanism that allowed the use to comply with one section of the Zoning Ordinance for one purpose and a different section of the Zoning Ordinance for another purpose. Thus having determined that the use was a zoological park use, to permit the use, it was not possible to treat the use as an agricultural use for site plan purposes. Therefore, site plan approval as determined by the Director of the Department of Public Works and Environmental Services, was required before the zoological park use could be established.

Mark Bettius, the appellant's agent, stated that the subject property was the most regulated pasture in the County's history. He stated that an "as built" survey and closure plan were the only two requirements needed. Mr. Bettius stated that the appellant never wanted to become a zoological park. He said the only reason for a site plan requirement would be to obtain road dedication. Mr. Bettius stated that if what the appellant was doing was an agricultural use then he should be allowed to obtain a waiver. He stated that the appellant was utilizing the land lawfully.

Ms. Gibb asked other than dedication for the site plan in 1998, what comments on the site plan did the appellant object to. Mr. Bettius replied he didn't think there were any comments in which the appellant objected.

Ms. Gibb asked if the property would continue to be monitored through the closure plan. Mr. Bettius responded yes.

Ms. Gibb asked if the appellants' objection to site plan was because of dedication. Mr. Bettius responded no. He said the site plan process was costly and it would cause the appellant to do everything over that he had already done.

Mr. Kelley asked for an explanation of what was done by the State to make sure the property was in compliance.

Mr. Chuck Dunlop stated that the site was monitored by the Department of Environmental Quality for water quality, air quality, and to make sure there were no breaks in the cap.

Mr. Kelley said one of the reasons for the site plan was to monitor compliance with the consent decree. Mr. Bettius stated that the County and the State had the right to make unannounced inspections.

William Shoup, Deputy Zoning Administrator, stated that the issue was not closure, but what was required for this type of use. He said the Zoning Ordinance stated that site plan provision was required.

Mr. Kelley said the closure plan would be superior to the site plan.

Mr. Shoup stated that to address some of the issues that derived from the special permit use, the appellant needed to go to the Department of Public Works and Environmental Services to possibly obtain a waiver. He said the closure plan did not negate the requirement for site plan approval.

Mr. Kelley asked if the County reviewed the work of the State. Mr. Shoup responded that was a separate process.

Mr. Kelley asked staff to address the consent decree. Mr. Shoup read portions of the decree and then stated that the appellant couldn't circumvent the Zoning Ordinance.

Ms. Gibb asked what if the site plan requirements were duplicated. Mr. Shoup responded that was not a decision for staff to make. He said the director of DPWES was responsible for administering site plan approval.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he didn't see a need for a site plan. He said the closure plan was more than adequate. Mr. Kelley said the only reason for a site plan was to obtain dedication of the roads.

Mr. Kelley moved to reverse the Zoning Administrator's determination.

Mr. Ribble seconded the motion.

Mr. Pammel said he was having a difficult time with the Ordinance. He said the BZA's role was to interpret the Ordinance as it read. Mr. Pammel said the appellant should not have to proceed with a site plan because there was no need for it. He said the Zoning Ordinance prevailed over the consent decree. Mr. Pammel said he agreed that the appellant shouldn't be subject to the imposition of a site plan, but the BZA's function was to address the issue as it related to the Zoning Ordinance.

Ms. Gibb stated that she was aware of the dilemma of site plan approval. She said she would prefer the appellant not have to file for a site plan.

Chairman DiGiulian noted that he would support the motion.

The motion to reverse the decision of the Zoning Administrator carried by a vote of 4-1-1 with Mr. Pammel voting nay and Mr. Hart abstaining from the vote. Mr. Hammack was absent from the meeting.

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9:00 A.M. FATHIA ELSAID SOLIMAN, SP 99-P-069 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit home child care facility. Located at 10044 Blake La. on approx. 18,993 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((10)) 2. (cont'd from 2/1/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fathia Soliman, 10044 Blake Lane, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He said this application was deferred for decision, from February 1, 2000, to allow the applicant an opportunity to revise the parking area to facilitate the pick up and drop off of the children. The applicant submitted a package with revisions for the BZA's consideration.

Ms. Gibb asked staff to comment on the modifications. Mr. Bernal stated that the Office of Transportation reviewed the modifications and had no issues with it.

Ms. Gibb asked if the applicant had resolved the parking issue, could she be open all day. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the remaining issue that the Office of Transportation brought up and the reason why they didn't want the extended hours had to do with the right and left turn lane. The modifications only resolved the turnaround that was not adequate in the front.

Ms. Gibb asked how many more children the applicant was allowed with the special permit. Ms. Langdon replied that the applicant was allowed 7 children by right and the special permit would allow her to have a maximum of 10 children.

Ms. Soliman read and submitted her presentation for the record.

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

Mr. Pammel said the request was reasonable and he moved to approve SP 99-P-069 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FATHIA ELSAID SOLIMAN, SP 99-P-069 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit home child care facility. Located at 10044 Blake La. on approx. 18,993 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((10)) 2. (cont'd from 2/1/00) 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 7, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The request is reasonable.
- 3. With the restriction of a right turn in and a right turn out, the application should be approved.
- 4. The applicant presented testimony indicating compliance with 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 Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 10044 Blake Lane (18,993 square feet), and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by L. W. Whitson, Land Surveyor, dated September 7, 1999, revised by Nagi Soliman, dated November 4, 1999, 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 home child care facility shall be conducted on the application property and shall be the primary residence of the child care provider.
- 5. The maximum hours of operation for the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday.
- 6. The total maximum daily enrollment for the home child care facility shall be 12 children with a maximum of 10 children on site at any one time.
- 7. A four (4) foot high chain-link fence shall enclose the designated play area.
- 8. The maximum number of employees on site at any one time shall be 3 employees including the applicant.
- 9. A parking area with four spaces shall be provided. Prior to the issuance for a Non-Residential Use Permit, the parking area shall be redesigned to provide a turn-around area so cars exiting the site will not have to back out onto Blake Lane. All parking for the use shall be on site.
- 10. There shall be no signs associated with this use.

11. Access into the site shall be by right turn-in only and egress by right turn-out 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. 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 011, March 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. GLORIA FUENTES, SP 99-P-050 Appl. under Sect (s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 8615 Hilltop Road on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A. (deferred from 2/8/00 for decision only)

Mr. Kelley stated that he was not present at the previous hearing; however, he had viewed the videotape from the previous hearing and noted that he would participate in the public hearing.

Mr. Hart stated that he had also viewed the tape and read the materials and would also participate in the public hearing.

Chairman DiGiulian noted that Jane Kelsey, agent for the applicant, had submitted additional information.

Ms. Gibb stated that the staff report indicated that the application was not consistent with the Comprehensive Plan and asked if staff still held that position. Mr. Bernal said that in staff's evaluation, the application was not consistent with the Comprehensive Plan because it was commercial in nature and not in harmony with the surrounding area. Mr. Bernal noted that an addendum had been distributed.

Mr. Pammel asked questions concerning the applicant's present location on Cottage Street. He said he wanted to compare the property that already had a special permit with the current application. Mr. Bernal stated that the Cottage Street site was not under a special permit, that it was a by-right use with no more than 7 children. He said additional information was included in the addendum.

Ms. Langdon said there was some information on the issue that staff would include in their presentation.

Mr. Pammel asked staff to give their presentation.

Chairman DiGiulian stated that it was only fair that if staff made their presentation to allow the applicant and Mr. McHugh the opportunity to speak as well.

Mr. Bernal stated that the applicant requested a special permit to permit a child care center for 25 children. On February 8, 2000, the Board of Zoning Appeals took action to defer decision on SP 99-P050 to March 7, 2000. The deferral was requested by the applicant to address the concerns the BZA had concerning the proposed circular parking area. In addition, at the Board's request, staff researched the operation of the applicant's home child care facility located at 8315 Cottage Street.

The applicant had an existing home child care facility located at 8315 Cottage Street. The home child care

facility had been in operation for the past three years. According to the County's Zoning Enforcement records, there were no open case files regarding the Cottage Street facility. There was a Zoning inspection conducted on March 11, 1998, regarding the number of children permitted in a home child care facility. The number of children being cared for at that time was less than permitted by the Zoning Ordinance; consequently, no violation was found.

The Cottage Street facility operated from 7:00 a.m. to 6:30 p.m. Monday through Friday. The applicant had a maximum daily enrollment of twelve (12) children with eight (8) children at any one time, which was one child more than was permitted by the Zoning Ordinance, and would require approval of a Special Permit. The applicant had a Family Day Home License issued from the Commonwealth of Virginia to provide childcare services for up to twelve children through five years of age.

The applicant submitted a revised plat dated March 1, 2000, which was included in the addendum. The plat depicted a cross-shaped parking area with six parking spaces in the front yard of the subject property. The plat also noted that a portion of the shared driveway would be removed and replaced with transitional screening. There were also revised development conditions submitted by the applicant.

Mr. Bernal stated that the applicant addressed the transportation issues regarding the inadequate area for vehicle turnaround and pick-up and drop-off of the children. The issue of adequate sight distance had not been resolved; however, the issue would be addressed at the time of site plan review to the satisfaction of the Virginia Department of Transportation (VDOT). The Office of Transportation reviewed the revised plat and concluded that there were no issues with the parking area as shown on the revised plat dated March 1, 2000.

Staff believed that the proposed intensity of the site would result in incompatible land use activities proposed by the application. Therefore, staff recommended denial of the application.

Mr. Pammel asked if the Cottage Street facility recent check indicated that she was exceeding capacity. Mr. Bernal stated yes, that the applicant exceeded County limitations by one child.

Jane Kelsey, agent for the applicant, stated that there was no way that the applicant could physically meet the requirements of staff's proposed development conditions. She said she researched the land records and found there was a shared driveway easement. Ms. Kelsey stated that with their revised proposed development conditions, the applicant had agreed to remove the portion of the driveway that was on the applicant's property and install screening past the carport so there would be no vision between the two lots.

Mr. Hart asked if the shared driveway would still be large enough to be used for the adjoining lot. Ms. Kelsey replied that the shared driveway easement was 8 feet on one side of the lot line, on the adjacent property and 8 feet on the applicant's property. She said that would provide the adjacent property owner with sufficient land to get in and out.

Chairman DiGiulian called for speakers.

Michael McHugh, representing Joe and Terry Lynch, came forward to speak in opposition, stating that the staff report reflected that the applicant had exceeded the limitation on the number of children. He requested that the Board adopt staff's proposed development conditions.

Eva Freud, 2801 Toney View, came forward to speak in opposition, stating that the requirement for a driveway was 14 feet and not 8 feet. She said she didn't know how the applicant could eliminate part of the driveway. She said she was not opposed to a child care center, but opposed to a commercial use.

Sharon Mahler, 8613 Hilltop Road, came forward to speak in opposition, stating that she was opposed to the demolition of the driveway.

Ms. Kelsey stated in her rebuttal that it was clear that the applicant would not disturb what was the legal easement for the shared driveway. She said the last inspection of the property reflected that the applicant was down to 9 children on site at any one time, but that the applicant was confused about the number of children that could be on site.

Mr. Hart asked would the applicant need a release agreement from the neighbor to prevent someone from

repaving the driveway. Ms. Kelsey replied that they wouldn't be removing that portion of the easement.

Ms. Gibb asked how long the driveway had been paved. Ms. Kelsey stated that it was paved when the applicant purchased the property.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that he would recommend approval of a modified child care center because there were some things that were lacking that needed to be addressed and he wanted to go forward with a project that the Board could review in a year to see what was happening on the site. Mr. Pammel stated that from the discussion and the testimony, the applicant had not always observed the limits of the use. He said the applicant had exceeded the limitations. Mr. Pammel said the location was fine for a child care center. He said Hilltop Road was a traveled road and used to connect Merrifield industrial office park with Cedar Lane and he felt it met the Board's criteria in approving such facilities. Mr. Pammel said his motion would be in line with the current license which indicated the capacity of the childcare center to be 12 children at any one time. He said this would permit her to have different youngsters in the afternoon and different ones in the morning so that she could actually have a higher number, but the overall capacity would be no more than 12 children at any one time. He said the purpose of reviewing the application in a year would be to see if the applicant applied for a permit that allowed her to have more children than she could at present. Mr. Pammel stated that the documentation didn't support anything more than a maximum of 12 children.

Mr. Pammel moved to approve SP 99-P-050 for the reasons noted in the Resolution with revisions.

Mr. Ribble said he knew that childcare was needed in the County, but he said he had to go along with the staff recommendation. He said the opposition made some statements that swayed him and the staff did a good job on the application. Mr. Ribble said he would not support the motion.

Ms. Gibb said she was going to vote against the motion but with the number of children down to 12 that went a long way towards the objections of the neighbors who said they would consider a home based childcare center.

Mr. Kelley said this was another one he would hold his nose and vote for it. He said he would like to see another development condition allowing more frequent inspections and to notify the Board members of any significant violations. He said he was concerned about the violations in the past.

Mr. Hart said he too felt that 25 children was too many and he felt that reducing it to 12 helped balance the need for child care in the community with the concerns of the neighbors. He said the annual review would allow the Board to see if it worked and if not, he would be prepared to revisit the issue.

Mr. Pammel requested that the application be brought back to the Board for a full Board review one year from this date.

Ms. Langdon asked whether it was approved for one year or that the application was indefinitely approved but was reviewed in one year.

Mr. Pammel moved that the Board would review the application in one year. He also requested that unannounced inspections be conducted on a quarterly basis. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GLORIA FUENTES, SP 99-P-050 Appl. under Sect (s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 8615 Hilltop Road on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A. (deferred from 2/8/00 for decision only) 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 7, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The location is suitable for a child care center and meets the Board's criteria.

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 Sect(s). 3-103 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 8615 Hilltop Road (31,750 square feet) lot 17-A, and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles R. Chalfant, Professional Engineer, dated March 1, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit plat shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.
- 5. The maximum hours of operation for the child care center shall be limited to 7:00 a.m. to 6:30 p.m. Monday through Friday.
- 6. Transitional Screening Type I shall be provided along the southern, western and eastern property boundary in the rear yard area within a landscape width of 25 feet, to screen the child care center use from adjacent single family residences. The exact type, location, size and number of plantings shall be subject to the review and approval of the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES). The six (6) foot high solid wood fence shall be relocated to a point 15 feet inward from the property lot lines, with the landscape area provided on both sides. No transitional screening or barriers shall be located within the shared driveway easement.
- 7. Notwithstanding the landscaping shown on the approved plat, all plant material shall be located outside the shared driveway easement.
- 8. The total maximum daily enrollment for the child care center shall be no more than 20 children with no more than 12 at any one time.
- 9. A six (6) foot high board on board wood fence shall enclose the rear yard while a minimal three (3) foot high fence shall enclose the designated play area.
- 10. The maximum number of employees for the child care center shall be five (5) at any one time.

11. Parking shall be provided as depicted on the approved special permit plat dated through March 1, 2000. All parking for the use shall be on site.
12. Stormwater Management (SWM) and/or Best Management Practices (BMPs) shall be provided as required, unless waived by DPWES. If a structural SWM/BMP is required, then the type, location and size shall be determined by DPWES. The SWM/BMP shall be located outside the play area and transitional screening areas.
13. All signs for the child care center shall comply with the provisions of Article 12 of the Zoning Ordinance.
14. An inspector from the Zoning Enforcement Branch, DPZ, shall make unannounced visits on a quarterly basis for one (1) year following the final approval date of this special permit to determine whether the child care center is operating within the parameters of the approved special permit. A copy of the inspection records shall be forwarded to the BZA following each inspection.
15. The Board of Zoning Appeals shall review the application one (1) year following final approval of the special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be 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. 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. Hart seconded the motion which carried by a vote of 5-1. Mr. Ribble voted against the motion. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 015, March 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. VICTOR S. MAHAL, VC 99-Y-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of two lots into three lots with proposed Lot 3 having a lot width of 142.24 ft. Located at 3517 and 3519 West Ox Rd. on approx. 3.12 ac. of land zoned R-1. Sully District. Tax Map 45-2 ((1)) 12 and 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. Victor Mahal, 2925 Allenwood Drive, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of two lots into three lots with proposed lot 3 having a lot width of 142.24 feet. The minimum lot width in the R-1 District is 150 feet. In staff's evaluation, the proposed subdivision was not in conformance with the provisions of the Comprehensive Plan regarding density and the creation of additional lots with direct access to West Ox Road. Staff believed that the proposed variance did not meet 6 of the 9 required standards for the approval of a variance. Specifically, parcels 12 and 13 contain existing single family homes, and even with the taking of right-of-way, new homes could be constructed without the necessity of a variance. Therefore, there existed a reasonable use of the property, and hardship approaching confiscation had not been demonstrated. Staff believed that the creation of additional lots with direct access to West Ox Road would result in vehicle conflicts that would impede the

safe flow of traffic with negative impacts to adjacent residential neighborhoods. Ms. Schilling stated that staff believed that the subject application did not meet applicable Zoning Ordinance provisions.

Mr. Hart asked if the subdivision would exceed the Comprehensive Plan recommendation. Ms. Schilling replied yes.

Laura Scott, Land Surveyor, presented the variance request as outlined in the statement of justification submitted with the application. She said the variance standards 4 and 5 would produce undue hardship. Ms. Scott said previously 13,000 feet had been dedicated for right-of-way and they were anticipating approximately another 5,000 square feet of right-of-way. The drainfield for Lot 13 was already in the right-of-way after the dedication and the road plans as they stood right now would condemn both houses and that would be considered a hardship. Ms. Scott said she felt the new houses would be an asset to the community and they only requested one additional lot, which caused 7 additional vehicle trips a day. She said they could reconfigure the driveways so that there would not be any more driveway entrances or curb cuts on West Ox Road. Ms. Scott said none of the surrounding properties met the density requirements except for Lot 12A.

Mr. Hart asked Ms. Scott if she considered condemnation a hardship sufficient to grant a variance. Ms. Scott replied that it was expensive to build two houses, but the construction of the third house would offset the expenses.

Mr. Hart asked if there had been any exploration of consolidating the lots to something with a more coordinated access. The applicant's architect, Suquindar Rupry, replied that the construction would be in harmony with the surrounding houses. He said he had also designed Lot 15 which was about to commence construction.

Chairman DiGiulian stated that he couldn't find anything under the variance requirements that required the application to be in compliance with the Comprehensive Plan.

Ms. Schilling stated that when staff reviewed the provisions of the Comprehensive Plan with a subdivision plan, they were doing that with respect to variance standard #9 which referenced it being contrary to the public interest. She said the special permit requirements specify that the use be in harmony with the Comprehensive Plan, but with the variance standards staff looked at that with a broader view and including the requirement relating to a detriment to adjacent properties.

Chairman DiGiulian stated that he felt that was a pretty good stretch.

Mr. Pammel asked if the proposed lot layout was within the minimum lot area of the R-1 District. Ms. Schilling replied yes the applicant was within the minimum lot area.

Chairman DiGiulian called for speakers.

Carol Tygen, Executive Director for Franklin Farm Homeowner's Association, came forward to speak in opposition. She stated that thier job was to defend the recommendation of the Comprehensive Plan. Ms. Tygen urged the Board to oppose the application.

Ms. Scott stated in her rebuttal that the applicant was only requesting a variance for 7.7 feet for road frontage and it was an addition of seven vehicle trips per day.

Ms. Gibb stated that this was a close case and suggested that the applicant consolidate the driveways. She moved to approve VC 99-Y-192 for the reasons noted in the Resolution.

Mr. Hart said he would not support the motion because he didn't believe the required standards had been satisfied. He said there was a reasonable use for the property. Mr. Hart stated it was going in the wrong direction to be adding more homes directly fronting on West Ox Road.

Chairman DiGiulian stated that this was an existing R-1 zoning and that would be confiscation to use the Comprehensive Plan to deny the application.

Mr. Pammel stated that the Plan talked about one dwelling unit per 2 acres. He said the variance was of a

minor extent and the frontage requirements were minimal.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VICTOR S. MAHAL, VC 99-Y-192 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of two lots into three lots with proposed Lot 3 having a lot width of 142.24 ft. Located at 3517 and 3519 West Ox Rd. on approx. 3.12 ac. of land zoned R-1. Sully District. Tax Map 45-2 ((1)) 12 and 13. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The application is consistent with the surrounding lots and appropriate under the current zoning.
- 3. The septic field is in an area that is going to be condemned.
- 4. The lots have an unusual shape.
- 5. The applicant has met the required standards for 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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of the lots as shown on the plat prepared by Laura L. Scott, Land Surveyor, dated December 3, 1999. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
2. The site shall meet all tree cover requirements, as determined by the Urban Forester. Prior to approval of a subdivision plat the applicant shall submit a tree preservation for review and approval of the Urban Forestry Branch of DPWES. Any existing trees designated by the Urban Forester, or their agent, to be preserved, shall be protected from damage by construction activity, as prescribed by and to the satisfaction of the Urban Forester.
3. Irrespective of that shown on the approved variance plat, the driveway serving the proposed dwelling for Lot 1 shall be consolidated with the existing ingress/egress easement located along the northern lot line of Lot 1.
4. In order to reduce the maximum interior noise level to a level of approximately DNL 45 dBA Ldn, for buildings located within 150 feet of the centerline of West Ox Road, and that will be exposed directly to the noise from west Ox Road, the following measures shall be employed:
 - Exterior walls shall have a laboratory sound transmission class (STC) of at least 39.
 - Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any façade they shall have the same laboratory STC 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.

In order to achieve a maximum exterior noise level of 65 dBA LDN, noise attenuation structures such as acoustical fencing, walls, earthen berms or combinations thereof shall be provided for those outdoor recreation areas, including rear yards, that are unshielded by topography or built structures. If acoustical fencing or walls are used, they shall be architecturally solid from the ground up with no gaps or openings. The method employed must be of sufficient height to break all lines of sight between a line eight (8) feet above the centerline of the highway and a plane six (6) feet above the ground in affected outdoor recreational areas. The applicant may pursue other methods of mitigating highway noise if it can be demonstrated, through an independent noise study for review and approval of DPWES that these methods will be effective in reducing exterior noise levels to DNL 65 dBA or less and interior noise levels to DNL 45 dBA or less.

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. Ribble seconded the motion which carried by a vote of 5-1. Mr. Hart voted against the motion. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 018, March 7, 2000, (Tape 2), After Agenda Item:

Approval of November 2, 1999, November 16, 1999, November 30, 1999,
December 14, 1999, and December 21, 1999 Minutes

Page 019, March 7, 2000, (Tape 2), After Agenda Item, continued from Page 018

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Hart abstained from the vote and Mr. Hammack was absent from the meeting.

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Page 019, March 7, 2000, (Tape 2), After Agenda Item:

Approval of February 29, 2000 Resolutions

Mr. Hart moved to approve the Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:52 p.m.

Minutes by: Regina Thorn

Approved on: June 6, 2000

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 14, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; James Hart; Robert Kelley; James Pammel and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 021, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 for church and related facilities to permit building addition and private school of general education. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-3 ((1)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Eckert, Agent, 11446 Dale Spring Drive, Oakton, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to allow a building addition of 582 sq. ft. and a private school of general education for up to 50 children within the existing facilities. Ms. Schilling stated that staff had determined that all land use, transportation and environmental issues were addressed. Ms. Schilling stated that the applicant had informed staff that the school had been operating on the site, but will not resume classes in the fall; therefore, the applicant agreed to a development condition terminating the private school use by July 1, 2000.

Mr. Eckert presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Eckert stated that the church had existed since 1982 and the reason for the request was to permit more space for the church's current congregation. He stated that the request would not change the seating of the sanctuary, the parking spaces, the entrances to the church or the traffic flow. Mr. Eckert stated that the new construction would be consistent with the existing building and said that the addition was hidden from view with a line of existing, mature maple trees. Mr. Eckert presented two letters in support of the addition to the Board from the adjacent homeowners association.

Mr. Pammel asked why the school use would terminate in July, 2000.

Mr. Eckert replied that there was an existing local school which had an overflow of students and needed the church's space to accommodate this overflow. He stated that the school had informed the church that the space would not be needed in the fall; therefore, the applicant removed the school use from the request.

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

Mr. Pammel moved to approve SPA 82-D-047 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 7, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 for church and related facilities to permit building addition and private school of general education. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-3 ((1)) 6. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for the granting of a special permit 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 Sect(s). 3-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 10610 Sunset Hills Road (4.99 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Reid M. Dudley, P.E. dated July 16, 1999, as revised through December 10, 1999, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Transitional Screening shall be maintained as shown on the approved special permit plat. The barrier requirement along the western property boundary shall be waived.
6. There shall be a maximum of 87 parking spaces, and parking shall be provided in accordance with Article 11 of the Zoning Ordinance, in the areas shown on the special permit plat. All parking shall be on-site.
7. The maximum daily enrollment for the private school of general education shall not exceed 50 children, from grades kindergarten through third grade. The school shall obtain a new Non-Residential Use Permit within 45 days of the final date of approval of the special permit. The private school of general education shall terminate no later than July 1, 2000.
8. The maximum hours of operation for the private school of general education shall be between 8:45 a.m. and 3:30 p.m., Monday through Friday.
9. Staff for the private school of general education shall not exceed 4 at any one time.
10. The seating capacity of the church shall not exceed 300.
11. Four parking spaces located directly adjacent to the church building shall be designated for the pick-up and drop-off of children only.

12. Not more than 25 students shall occupy the playground at any one time.

These development conditions incorporate and supersede all previous 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 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. Hart and Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel made a motion to waive the eight (8) day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 023, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SEppo I. SILLAN, VC 00-S-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of an addition 27.0 ft. from front lot line. Located at 9802 Summerday Dr. on approx. 10,588 sq. ft. of land zoned R-3. Springfield District. Tax Map 78-3 ((16)) 26.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Seppo Sillan, 9802 Summerday Drive, Burke, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a covered porch 27.0 feet from the front lot line. A minimum 30 foot front yard is required; therefore, a variance of 3.0 feet was requested.

Mr. Sillan presented the variance request as outlined in the statement of justification submitted with the application. Mr. Sillan stated that when the house was constructed in 1983, the builder had mislocated the house on the property, at which time a variance for the front of the garage and the existing 8 x 8 covered porch was granted. He stated that due to the way the house was situated on the lot, and the curve of the street, a variance was required to extend the existing porch the length of the house and requested the Board's approval.

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

Mr. Hart moved to approve VC 00-S-001 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 7, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SEppo I. SILLAN, VC 00-S-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the

construction of an addition 27.0 ft. from front lot line. Located at 9802 Summerday Dr. on approx. 10,588 sq. ft. of land zoned R-3. Springfield District. Tax Map 78-3 ((16)) 26. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The house was not located properly to begin with.
4. An administrative variance had already been approved when the house was constructed.
5. The side yard, on the proposed side for the addition, is very generous and the curve of the street causes 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a porch addition shown on the plat prepared by Kenneth W. White, dated December 17, 1999, submitted with this application and is not transferable to other

land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 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 6-0. Mr. Kelley made a motion to waive the eight (8) day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 025, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHANG S. & CHUNG S. KIM, SPA 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 94-S-033 for a golf driving range and related facilities to permit change in development conditions, site modifications and building additions. Located at 11501 Braddock Rd. on approx. 46.45 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31.

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the applicant had requested a deferral to May 23, 2000.

Mr. Kelly made a motion to defer SPA 94-S-033 to May 23, 2000, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 025, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. PAUL L. CHARLES, SP 00-S-003 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structure to remain 13.5 ft. from front lot line and 4.9 ft. from side lot line. Located at 7349 Wolf Run Shoals Rd. on approx. 1.52 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-4 ((5)) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Charles, 5214 Lindsey Street, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure to remain 13.5 ft. from the front lot line and 4.9 ft. from the side lot line. A minimum 40 foot front yard is required; therefore, modifications of 26.5 ft. for the front yard and 15.1 ft. for the side yard were requested.

Mr. Charles presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Charles stated that the property was purchased as a single family dwelling with an accessory structure which had existed for over 20 years. Mr. Charles stated that the request was to upgrade the existing dwelling, of which he stated he had received all the necessary permits. He stated that he was

told that he could not modify the structure of the building because it was determined that a building permit was never issued for the structure. Mr. Charles stated that he did not intend to use the existing structure as a dwelling or a public office. He stated that it would be used as a garage/studio/storage area for his private use. Mr. Charles stated that he was in the process of constructing a single family home on the lot and requested the Board's approval to allow the accessory structure to remain.

Chairman DiGiulian asked Mr. Charles to respond to letters received in opposition of the accessory structure.

Mr. Charles stated that there were also letters in support of the application and said that the request was to allow an existing 20 year old structure to remain on the property and that it had not caused anyone problems. Mr. Charles presented pictures to the Board showing that the structure was not visible from the street and also showing that repair work needed to be made to the roof of the structure. Mr. Charles stated that the property was purchased with the structure and that it would cause a hardship if he was required to remove it.

Mr. Ribble asked for clarification on what was the intended use of the accessory structure. Mr. Charles stated that it would be used as a garage/storage space and as a studio to use to read and design his work. He stated that it would be used strictly for personal use and that he would not have clients there to conduct work. Mr. Charles stated that he also intended to equip the structure with electricity.

Ms. Gibb asked for clarification on the issue of raising the roof of the structure, as was mentioned in a letter in opposition. Mr. Charles stated that he did not intend to raise the roof; however, the roof had existing skylights which were leaking and would need to be replaced. He stated that only replacing them would not correct the problem; therefore, he devised a way to pitch the roof so that the problem would not reoccur.

Mr. Hart asked if the structure currently had more than two floors and plumbing. Mr. Charles stated that it currently had a loft and that he proposed to install a 1/2 bath.

Mr. Hart asked what form of approvals would be required from the County if someone wanted to move into the structure. Juan Bernal stated that the acreage of the lot would not allow the structure to be used as a dwelling unit under a special permit application and that they could not expand or modify the exterior without additional approval.

Mrs. Marie Charles, 5214 Lindsey Street, Fairfax, Virginia, stated that the intent of the application was to make the existing building a legal structure and asked for the Board to allow the accessory structure to remain on the property.

Klaus Fisher, 7321 Wolf Run Shoals Road, Fairfax, Virginia, came to the podium to speak in opposition of the application. He stated that the structure had been used as a garage since it was constructed and was located within 5 feet of his property line. Mr. Fisher stated that he had rented the garage from the previous owner and that it was in excellent shape. Mr. Fisher stated that he did not object to the building remaining, his only objection was if the building was to be used for something other than its current use, or structurally changed, such as raising the roof. He stated that he had concerns regarding landscaping and that the existing 6.0 foot high fence would not hide the structure from his property. Mr. Fisher stated that the covenant of the subdivision did not allow a separate three car garage. Mr. Fisher concluded by asking the Board not to allow any expansion to the existing structure.

Mr. Hart asked Mr. Fisher if he would object to a 4.0 foot fence, as depicted on the plat. Mr. Fisher stated that he would prefer no fence at all and replacement of the removed vegetation.

Mr. Charles stated that there were no interior walls inside the building. He expressed to the Board that the purpose of the special permit was to legalize the structure and permit it to remain on the property. Mr. Charles stated that the Virginia Department of Transportation required the 6.0 ft. high fence; therefore, it could not be removed.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 00-S-003 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 7, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL L. CHARLES, SP 00-S-003 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structure to remain 13.5 ft. from front lot line and 4.9 ft. from side lot line. Located at 7349 Wolf Run Shoals Rd. on approx. 1.52 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-4 ((5)) 14. 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 14, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory structure as shown on the plat prepared by Paul Laraque, dated December 22, 1999, submitted with this application and is not transferable to other land.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Kelley made a motion to waive the eight (8) day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 028, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. EDWARD STREET, VC 00-H-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of additions 13.2 ft. and 13.7 ft. from rear lot line. Located at 1724 Abbey Oak Dr. on approx. 20,609 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 28-1 ((9)) 130. (Moved from 3/21/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward Street, 1724 Abbey Oak Drive, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a sunroom addition 13.7 feet from the rear lot line and a screen porch addition 13.2 feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, variances of 11.3 feet for the sunroom and 11.8 feet for the screen porch addition were requested.

Mr. Street presented the variance request as outlined in the statement of justification submitted with the application. Mr. Street stated that the intent of the application was to cover the existing deck; however, because the deck was in disrepair, it was more appropriate to replace the existing deck. He stated that the new sunroom addition and screen porch addition would not extend any further than the original structure and therefore, asked for the Board's approval of the application. Mr. Street submitted a letter in support from the homeowners association and stated that there were 142 homes in the neighborhood, none of which objected to the addition. Mr. Street asked the Board to remove the development condition in the staff report referring to the play equipment. He stated that with the slope and topography, it would be too difficult to place the equipment anywhere else in the yard.

Ms. Gibb asked if the homeowners association had any objection to the play equipment. Mr. Street stated that there were no questions from the homeowners association and that the parcel was owned by the Park Authority. He further stated that the structure was not permanent and could be removed; therefore, if the Park Authority asked him to remove the play equipment, he would accommodate this request.

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

Ms. Gibb moved to approve VC 00-H-004 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 7, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD STREET, VC 00-H-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of additions 13.2 ft. and 13.7 ft. from rear lot line. Located at 1724 Abbey Oak Dr. on approx. 20,609 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 28-1 ((9)) 130. (Moved from 3/21/00). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The applicant is simply building in the same location that a deck currently exists on the property when it was purchased, and enclosing a porch in that same location.
4. Topographically, the rear of the lot slopes away and the house is situated in such a manner that it is to the back of the property.
5. Restrictive covenants prevent building these additions in the front of the property; therefore, they have been located in the only possible location.
6. The house siting is out of the ordinary 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of additions (sunroom and screen porch) as shown on the plat prepared by Kenneth W. White, dated October 7, 1999, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions 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. Kelley seconded the motion which carried by a vote of 6-0. Mr. Kelley made a motion to waive the eight (8) day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 030, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. KAVEH RAZZAGHI, VC 00-D-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1231 Earnestine St. on approx. 15,300 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kaveh Razzaghi, 1231 Earnestine Street, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a garage to be located 8.0 feet from the side lot line. A minimum 12 foot side yard is required; therefore, a variance of 4.0 feet was requested.

Mr. Razzaghi presented the variance request as outlined in the statement of justification submitted with the application. Mr. Razzaghi submitted written statements from both of his immediate adjacent neighbors in support of the application. Mr. Razzaghi stated that the request was to enhance the home and asked for the Board's approval.

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

Mr. Kelley moved to approve VC 00-D-002 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 7, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KAVEH RAZZAGHI, VC 00-D-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1231 Earnestine St. on approx. 15,300 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 7. 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 14, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.

3. There are three greater variances approved in the immediate vicinity.
4. The applicant has made his case for approval, as outlined in the statement of justification.

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 **APPROVED** with the following limitations:

1. This variance is approved for the garage addition shown on the plat prepared by Nezam Ghasemian, dated November 30, 1999, as revised through December 5, 1999, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Kelley made a motion to waive the eight (8) day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 032, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP & CHING CHAO, VC 99-D-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 5.8 ft. from side lot line and 15.1 ft. from rear lot line. Located at 6678 Avignon Blvd. on approx. 5,174 sq. ft. of land zoned PDH-4. Dranesville District. Tax Map 40-2 ((45)) 4. (Moved from 1/25/00 due to weather)(Def. from 2/29/00 for decision only).

Phyllis Wilson, Staff Coordinator, stated that the applicant had indicated that they were planning to redesign the deck in such a way that a variance would not be required. Ms. Wilson stated that she had asked the applicant for a letter in writing requesting a withdrawal of the application; however, that nothing had been received to date.

Mr. Ribble made a motion to defer VC 99-D-174 to March 28, 2000, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 032, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN KERNER-HOEG, VC 00-B-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.5 ft. from side lot line such that side yards total 17.0 ft. Located at 8910 Braeburn Dr. on approx. 13,921 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((8)) 164.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Kerner-Hoeg, 8910 Braeburn Drive, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a garage 2.5 feet from the side lot line with a total side yard of 17.0 feet. A minimum 8 foot side yard is required with minimum total side yards of 7.0 feet; therefore, variances of 5.5 feet for the minimum side yard and 7.0 feet for the total side yards were requested.

Ms. Kerner-Hoeg presented the variance request as outlined in the statement of justification submitted with the application. She stated that there was an existing one-car carport, which would be replaced with a 20 foot wide two-car garage. Ms. Kerner-Hoeg stated that the request was necessary due to cars being vandalized when parked on the street. She stated that the request would not be detrimental to adjacent property owners and that the affected adjacent property owner had no objection to the application.

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

Mr. Pammel moved to approve VC 00-B-003 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 7, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN KERNER-HOEG, VC 00-B-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.5 ft. from side lot line such that side yards total 17.0 ft. Located at 8910 Braeburn Dr. on approx. 13,921 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((8)) 164. 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 14, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The request borders on a convenience; however, the relatively narrow width of the lot has relevance in this application in terms of supporting the request.
4. The variance request is minimal given the fact that the lot is narrow in its width and there were not many options available for 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition (garage) shown on the plat prepared by DeLashmutt Associates Ltd., dated December 16, 1999, as revised through January 6, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 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.

Ms. Gibb seconded the motion which carried by a vote of 4-2. Mr. Hart and Mr. Kelley voted against the motion. Mr. Kelley made a motion to waive the eight (8) day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 034, March 14, 2000, (Tape 1), Scheduled case of:

9:00 A.M. LESLIE G. HOWARD, VC 99-M-198 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 3313 Wraywood Pl. on approx. 25,639 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((13)) 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. Leslie Howard, 3313 Wraywood Place, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a garage/family room addition 8.0 feet from the side lot line. A minimum 15 foot side yard is required; therefore, a variance of 7.0 feet was requested.

Mr. Howard presented the variance request as outlined in the statement of justification submitted with the application. Mr. Howard stated that due to the narrowness of the lot would not allow construction of a double garage without the approval of the variance request. Mr. Howard stated that his wife was a jewelry store owner and had been accosted in the past and therefore the garage was for the purpose of safety concerns. Mr. Howard stated that the adjacent property owners were in support of the application and that the garage would raise the value of the property.

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

Mr. Hart moved to approve VC 99-M-198 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 7, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LESLIE G. HOWARD, VC 99-M-198 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 3313 Wraywood Pl. on approx. 25,639 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((13)) 13. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The angling of the south property line relative to the house and the narrow configuration of the lot cause the need for the variance 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition (garage and family room) shown on the plat prepared by Absolute Surveys Inc., dated November 1, 1996, as revised through November 17, 1999, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage/family room addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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. Kelley made a motion to waive the eight (8) day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 036, March 14, 2000, (Tape 1), Scheduled case of:

9:30 A.M. MARK J. WISEMAN, A 1999-SU-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that appellant has established a storage yard and junk yard on property in the R-C District, in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance and has exceeded the outdoor storage limitations set forth in Par. 24 of Sect. 10-102 of the Zoning Ordinance. Located at 12512 Braddock Rd. on approx. .89 ac. of land zoned R-C and WS. Sully District. Tax Map 66-2 ((1)) 15.

William Shoup, Deputy Zoning Administrator, stated that the notification requirements were not met with the application and stated that staff had concerns with the failure to satisfy the requirements and the resulting delay in the case. Mr. Shoup requested that if a deferral was allowed, a new recommended hearing date should be April 25, 2000, at 9:30 a.m. and requested that the appellant be notified that if he again failed to meet notice requirements, dismissal of the appeal application would be considered.

Mark Wiseman, 12512 Braddock Road, stated that one of ten of the notifications were not in order and therefore, asked for a deferral of the application to April 25, 2000.

Mr. Ribble made a motion to defer Appeal Application A 1999-SU-036 to April 25, 2000, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 036, March 14, 2000, (Tape 1), After Agenda Item:

Approval of March 7, 2000 Resolutions

Mr. Pammel made a motion to approve the March 7, 2000 Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 036, March 14, 2000, (Tape 1), After Agenda Item:

Additional Time Request for Abner Louis Notkins, VC 97-D-043

Mr. Pammel made a motion to approve the additional time request to December 30, 2000. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack 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 10:18 a.m.

Minutes by: Deborah Hedrick

Approved on: May 9, 2000

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 28, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 037, March 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SUZANNE MADORMO SMITH & GREGORY C. SMITH, VC 00-H-012 Appl. under Sect (s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. from side lot line. Located at 2804 Winter Oaks Way on approx. 15,243 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 25-4 ((20)) 118.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Madormo Smith, 2804 Winter Oaks Way, Oak Hill, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a screen porch addition, to be located 1.5 feet from a side lot line. A minimum side yard of 8 feet is required; therefore a variance of 6.5 feet was requested.

Ms. Smith presented the variance request as outlined in the statement of justification submitted with the application. She said the neighbors and the homeowners' association were in support of the application. Ms. Smith stated that the addition would not be visible to the neighbors because the lot was surrounded by wetlands. She said they had explored every alternative and this was the only location for the addition. Ms. Smith said the lot was exceptionally narrow and had an exceptional shape. She stated that her property was the only one with this problem in the neighborhood. Ms. Smith requested a waiver of the 8-day waiting period.

Mr. Hammack asked the applicant if the deck would be an open deck. Ms. Smith responded yes.

Mr. Hart asked the applicant if you could walk under the porch. Ms. Smith responded yes, that it was 9 feet off the ground. Mr. Hart asked the applicant if she had explored moving the deck back. Ms. Smith stated that it had been pushed back as far as it could go to obtain the most practical use.

Mr. Hammack said he had a problem with deck being 1½ feet from the property line.

Ms. Smith stated that maintenance wouldn't require her to encroach onto someone else's property. She said the screens would be removable.

Mr. Hammack stated that another property owner might not care for the property the way the applicant would.

Ms. Smith stated that they planned to live in the house for a very long time and the property was adjacent to approximately 8 acres of woods. She said the easiest way to maintenance the deck was from the deck itself.

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

Mr. Hammack said these applications were difficult when they backed up to County parkland. He moved to approve-in-part VC 00-H-012 for the reasons noted in the Resolution.

Mr. Hammack stated that a revised plat would need to be submitted reflecting the screened porch located 4 feet from the lot line.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUZANNE MADORMO SMITH & GREGORY C. SMITH, VC 00-H-012 Appl. under Sect (s). 18-401 of the Zoning Ordinance to permit construction of addition 1.5 ft. from side lot line. **(THE BOARD APPROVED 4.0 FEET)** Located at 2804 Winter Oaks Way on approx. 15,243 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 25-4 ((20)) 118: 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 28, 2000; and

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

1. The applicants are the owners of the land.
2. The lot is large and irregularly shaped.
3. The addition is too close to the lot line on one corner of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screen porch addition shown on the plat prepared by Charles E. Powell, dated December 16, 1999, revised through April 10, 2000 submitted with this application and is not transferable to other land.

- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Kelley 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 April 18, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROBERT & GISELINDE TUTEN, VC 00-L-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. and 6.1 ft. high fence to remain in front yard of a corner lot. Located at 5926 Shadow Walk on approx. 29,968 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((4)) 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. Robert and Giselinde Tuten, 5926 Shadow Walk, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an accessory structure (garage) in the front yard of a lot containing less than 36,000 square feet and a 6.1 foot high fence to remain in the front yard of a corner lot. The maximum height for a fence in a front yard is 4 feet; therefore, a variance of 2.1 feet was requested.

Mr. Tuten presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to build a detached garage to protect cars and to give easy access to their home in time of inclement weather. He said putting a garage somewhere else on the property would not be logical. He said it would mean a longer driveway, more ice and snow to remove, and more trees to remove. Mr. Tuten said most of the homes in the neighborhood had garages, both attached and detached. He said his lot was heavily treed and had a gravel driveway.

Mr. Hammack noted letters in opposition indicating that a shed was attached to the garage. He asked what was the purpose of the shed. Mr. Tuten said the original intention was that during inclement weather, they could put the barbecue grill and chairs in that vicinity but it also could be used as a carport. Mr. Hammack asked what was the depth of the proposed structure. Mr. Tuten stated that it was 24 X 34 feet.

Mr. Hammack asked about the fence. Mr. Tuten stated that the fence was there when they purchased the property but they thought it had been there approximately 8 years.

Chairman DiGiulian called for speakers.

Elaine Manzer, 3613 Oakland Drive, came forward to speak in opposition. She stated that the addition would obstruct the woodsy nature of the area. She stated that carports tended to gather junk and she didn't want the see that in their small community.

Mr. Hammack asked Ms. Manzer whether she objected to the carport or the garage. She replied that she only objected to the carport.

Ms. Tuten stated in her rebuttal that the lot was a large, densely wooded corner lot. She stated that the garage was important and they would not do anything detrimental to the property. Mr. Tuten stated that they could have built the garage to face Shadow Walk without a variance, but that would detract from the property. He said changing the entrance to the garage would be a hazard because the road was very narrow.

Mr. Hammack asked staff whether the lot suffered from double front yard requirements. Susan Langdon, Chief, Special Permit and Variance Branch replied yes.

Ms. Gibb asked staff to indicate on the overhead, where the applicants could build a garage without a variance. Staff complied with the request.

Chairman DiGiulian asked what was the front yard requirement. Ms. Langdon responded that it was 35 feet.

Mr. Hart asked staff if the new structure was moved back a few feet and connected to the house in some way, rather than freestanding garage and carport, how far off the setback line would it be. Ms. Langdon replied that the structure would be considered an addition and would have to meet the front yard requirement of 35 feet.

Mr. Hart asked about the storage area or carport depicted on the plat. Ms. Langdon stated that the plat indicated that it was a storage area, but not a carport. She said it wasn't labeled as such on the plat and this was the first time that staff had an indication that it would be used for a carport.

Mr. Hart stated that he didn't know what the term "proposed storage" meant and would approval permit a carport. Ms. Langdon stated that from looking at the plat, staff assumed that this would be an enclosed storage area and normally if it was going to be a carport, it would be labeled as such and it would be open sided. She said in this instance, whether it was a carport or storage area, it would not change the advertisement, but when the applicant went to get a building permit, staff would look at it as an enclosed storage area.

Mr. Hart asked the applicants what was Shed A, as depicted on the plat. Mr. Tuten responded that the former owner built it. Mr. Hart asked if there were trees between the shed and the proposed storage area. Mr. Tuten responded yes.

Chairman DiGiulian closed the public hearing.

Mr. Hart said if the garage came back about 7 feet, or could touch the house in some way then some of the issues would be mitigated. He said he would like to defer to see if that resolution would be feasible. Mr. Hart moved to defer the application to April 25, 2000, to allow the applicant's to revisit the configuration of the proposed garage. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

Chairman DiGiulian asked staff to research the extent of the connection that you would have to have between the house and the addition to make the garage an addition and not an accessory structure.

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Page 040, March 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JACQUELINE J. FAIR, SP 00-Y-001 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 12202 Waples Mill Rd. on approx. 21,372 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((4)) 3. (Notices not in order)

Chairman DiGiulian noted that the application had been administratively moved to April 18, 2000.

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Page 040, March 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP & CHING CHAO, VC 99-D-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance

to permit the construction of addition 5.8 ft. from side lot line and 15.1 ft. from rear lot line. Located at 6678 Avignon Blvd. on approx. 5,174 sq. ft. of land zoned PDH-4. Dranesville District. Tax Map 40-2 ((45)) 4. (Moved from 1/25/00 due to weather)(Def from 2/29/00 and 3/14/00 for decision only).

Susan Langdon, Chief, Special Permit and Variance Branch, noted that this case was originally heard on February 29, 2000, and the BZA deferred decision to March 14, 2000, for the applicant to look at moving their proposed addition further from the lot line. She said the applicant indicated verbally to staff that they would not pursue that request and withdraw the application. Ms. Langdon stated that staff had tried to contact the applicant and had not received a withdrawal letter and the applicant was not currently present. She indicated that the BZA had the option to dismiss the application.

Mr. Kelley moved to dismiss the application for lack of prosecution. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 041, March 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. KAREN L. REID, VC 00-P-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 23.0 ft. from front lot line. Located at 7213 Hickory St. on approx. 8,969 sq. ft. of land zoned R-4. Providence District. Tax Map 40-3 ((10)) 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. Karen Reid, P.O. Box 244, Catlett, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 23.0 feet from a front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 7 feet was requested.

Ms. Reid presented the variance request as outlined in the statement of justification submitted with the application. She stated that the subdivision was recorded in 1939-40. Ms. Reid stated that the demands on how houses were constructed at that time were that the houses were considerably smaller and more modest. She said the lot was narrow and today's standards require much more house than what was originally built there. Ms. Reid stated that the lot lines were not parallel. She said the basic reason for the variance request was for the front stoop. Ms. Reid noted a similar application approved in the neighborhood.

Chairman DiGiulian called for speakers.

Ron Foote, 2419 Chestnut Street, came forward to speak in opposition. He stated that the neighbors had signed a petition in opposition of the application. Mr. Foote stated that they had a lot of problems with the builder and he didn't know why the minimum requirements could not be met for this lot. He said there were problems with grading and erosion issues.

Mr. Hammack asked Mr. Foote to give zoning reasons why the variance was inappropriate. Mr. Foote stated that the applicant was proposing to build a larger house on a small lot. He said the neighbors across the street would be looking at a very large house right in their face because the trees would be removed.

Mr. Hammack asked staff if the application met all the other setback requirements for a 10-foot rear yard. Ms. Schilling said the Ordinance stated that the rear yard was determined to be the yard directly opposite the narrowest front yard on a corner lot. She said the Ordinance also stated that in these instances where you had two front yards, the rear yard could take a side yard requirement, in this instance 10 feet.

Mr. Hammack asked that if the builder didn't apply for a variance, could he do all this as a matter of right. Ms. Schilling said yes except for the front yard.

Mr. Foote asked what was the benefit of the County or the neighborhood by granting the variance. He said someone wasn't living in the house asking for a waiver to build an extension or build a home they would be living in. He said this was developer who was going to build a big house and get out. Mr. Foote said it was a little different that a homeowner wanting a waiver for a property they live in.

Mr. Hammack stated that he couldn't answer that question. He said that was not a criteria in the Zoning Ordinance for a variance to be granted.

Mr. Kelley asked the applicant if this was a spec house. Ms. Reid replied that yes it was. She said the issue was that they had two front yards.

Enid Palazzolo, 7211 Hickory Street, came forward to speak in opposition. She expressed concerns relating to drainage problems. Ms. Palozolo stated that the builder was not concerned about the community. She said the houses would not be aligned with the other houses in the neighborhood.

Mr. Hart said the function of the BZA was not to deal with grading problems nor was it a criteria for the dismissal of a variance. He said those issues needed to be addressed elsewhere.

Mr. Hammack stated that the principle request was for a porch. He stated that he was only interested in hearing testimony that related to the porch.

Chairman DiGiulian noted that the applicant could build within the setback requirements.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 00-P-007 for the reasons noted in the Resolution.

Mr. Kelley said he would support the motion, but really was not interested in giving a spec house a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KAREN L. REID, VC 00-P-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 23.0 ft. from front lot line. Located at 7213 Hickory St. on approx. 8,969 sq. ft. of land zoned R-4. Providence District. Tax Map 40-3 ((10)) 13. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 28, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The request was modest.
4. The lot was exceptionally narrow with double front yards.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling shown on the plat prepared by Kenneth W. White, dated September 21, 1999, revised through January 6, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 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 April 5, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 043, March 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & CARMEN CASTILLEJO, SP 00-P-002 Appl. under Sect(s). 3-103 and 8-914 of the Zoning Ordinance to permit a home child care facility and dwelling to remain 10.4 ft. from side lot line. Located at 2918 Glenvale Dr. on approx. 21,796 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((3)) (39) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Olivera, Agent for the applicant, replied that it was.

Mr. Olivera stated that the affidavit that was submitted with the package did not disclose him. He said it must have been an inadvertent oversight, but there was a replacement affidavit that included himself and his firm and that it existed within the file.

Chairman DiGiulian asked staff whether they had that affidavit.

Julie Schilling, Staff Coordinator, stated that staff was not aware of a revised affidavit.

Chairman DiGiulian indicated that the applicant, Mrs. Castillejo, needed to reaffirm the affidavit and she complied with the request.

Ms. Schilling made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home child care facility with a total maximum daily enrollment of 10 children. The hours of operation were proposed to be 6 a.m. to 6 p.m., Monday through Friday, and a total of 3 employees, including the applicant would be involved in the operation of the facility. In addition, the applicant requested a reduction in minimum yard requirements based on error in building location to allow the existing dwelling, specifically the enclosure of a screened porch, to remain 10.4 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, the amount of the error was 9.6 feet, or 48%. There were no land use, transportation, or environmental issues associated with the request. Staff recommended approval of the home child care facility, subject to adoption of the proposed development conditions contained in Appendix I of the staff report.

Mr. Hart stated that he had a number of cases where he was on the other side of attorneys from Mr. Olivera's firm and consequently recused himself from the hearing.

Mr. Olivera, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. He said the applicant complied with all of the standards that were specified by the Zoning Ordinance. Mr. Olivera stated that the structure was existing and there was no new construction planned. He said the structure was previously a deck and the applicant enclosed the structure making it an addition.

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

Ms. Gibb moved to approve SP 00-P-002 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM & CARMEN CASTILLEJO, SP 00-P-002 Appl. under Sect(s). 3-103 and 8-914 of the Zoning Ordinance to permit a home child care facility and dwelling to remain 10.4 ft. from side lot line. Located at 2918 Glendale Dr. on approx. 21,796 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((3)) (39) 23. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants met the criteria for a home child care center.

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 Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 2918 Glenvale Drive (21,796 square feet), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by John F. Schiller dated July 13, 1993, as revised by William E. Castillejo, dated December 11, 1999, 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 dwelling that contains the home child care facility shall also be the primary residence of the child care provider.
5. The maximum hours of operation for the home child care facility shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday.
6. The total maximum daily enrollment for the home child care facility shall be 10 children.
7. The maximum number of employees on site at any one time shall be 3 employees including the applicant.
8. There shall be no signs associated with this use.
9. A parking area with four spaces shall be provided as shown on the approved special permit plat. All parking for the home child care facility 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 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. 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.

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Hart recused himself from the vote and 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 April 5, 2000. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. HACOR, INC. AND/OR CARDINAL FOREST, L.C., SP 99-Y-038 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit commercial golf course and golf driving range. Located on the W. side of Pleasant Valley Rd. on approx. 246.70 ac. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((5)) pt. A1 (Formerly 43-3 ((3)) pt. A; 52-2 ((2)) pt. 6, pt. 7, pt. 8, 9-12, pt. 18, 13-22; 53-1 ((5)) pt. C, pt. D, pt. 68, pt. 69, pt. 70, pt. 71, 72-81, pt. 82, 83-90; 53-3 ((7)) pt. 63, pt. 64, pt. 65, pt. 66, pt. 67, pt. E). (In association with SE 99-Y-033). (Moved from 1/25/00, 2/29/00 and 3/21/00).

Chairman DiGiulian noted that the application had been deferred to April 18, 2000.

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Page 046, March 28, 2000, (Tape 1), Scheduled case of:

9:30 A.M. CRANK AND CHARGE, INC., A 1999-PR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that proposed expansion of an existing motor vehicle parts repair business to include the use of a service bay for the installation, servicing and testing of the parts in the vehicles, constitutes a change in use from business service and supply service establishment to a vehicle light service establishment which requires special exception approval by the Board of Supervisors. Located at 2842 Stuart Dr. on approx. 9,178 sq. ft. of land zoned C-8. Providence District. Tax Map 50-3 ((15)) A5. (DEFERRED FROM 10/12/99 and 12/21/99). (Reconsideration granted 1/18/00)

Laura Clark, Zoning Administration Division, stated that this was a reconsideration of the appeal decided by the BZA on January 6, 2000, at which time the Board upheld the Zoning Administrator's decision. The appeal related to a determination that Zoning Administration staff made that vehicle repair was not an accessory use to the existing business service and supply service establishment, but rather it constituted a change in use and became a vehicle light service establishment which required special exception approval. She said the specific issue was whether the installation, servicing and testing of parts in the actual vehicles on a limited basis could be considered an accessory use to the authorized principle vehicle parts repair use or did the proposed use constitute a vehicle light service establishment. It was noted that the existing vehicle parts repair use was authorized as a business service and supply service establishment because it was providing services to other businesses and would not do work directly on vehicles. Staff found that although the appellant offered to limit the vehicle repair to 3 vehicles per day, the minor vehicle repair service proposed in conjunction with the authorized auto parts repair, significantly changed the characteristics of the overall use to the extent that it constituted a new use which would be a vehicle light service establishment. The case history and the background and the zoning provisions were included in the staff report. From the last meeting on January 6, 2000, staff's position remained consistent with the presentation and staff report from that time.

William Baskin, Agent for the appellant, thanked the Board for their willingness to reconsider the appeal. He said 6 members of the Board previously heard the appeal and the vote was 3-3. Mr. Baskin stated that they had hoped for a full Board. He said it put them in a difficult spot because on the one hand they would like to have a full Board, but it was tempting to ask for a deferral and come back, but that you could only come back so many times in hopes of having a full Board. Mr. Baskin stated that the appellant was ready to proceed as scheduled and hoped that it wouldn't be another 3-3 vote.

Mr. Kelley stated that he had a big problem with what was going on with the case procedurally. He said he was tempted to abstain from the vote, but that he would like to be convinced not to because he didn't like to abstain. Mr. Kelley stated that the absent member of the Board was one who voted against the appellant's position. He said Mr. Baskin knew that a new member was coming on board.

Mr. Baskin stated that if Mr. Hart had been the absent member of the Board he would have requested a deferral. He said in an ideal world they would love to have seven members present, but they would proceed with the appeal as scheduled.

Mr. Baskin stated that the appellant operated a business of repairing and rebuilding alternators and starters for sale to other businesses such as repair garages, dealers to parts suppliers, but not to consumers at his site. The building was zoned C-8 and it was adjoining 3 other service stations or repair garages each of which had two service bays. The site was built in 1965 and from 1965-1978 it was used as a repair garage; consequently, it had an existing service bay at the rear of the building. From 1978-81, it was an upholstery shop, and then from 1981-present it had been used for alternator repair. He said the appellant put his business in there in 1996, replacing another alternator repair business. The issue was whether the appellant's proposed use of having the ability to make limited use of this service bay, no more than 3 times a day, qualified, under the definition, as an accessory use to his principle use, or whether it changed the entire nature of the use and made it a different use altogether. The County approved the appellant's use and they

classified it as a business supply service establishment. The proposal was to check, no more than 3 times a day, when there was a warranty question on an alternator that the appellant had sold, whether it was working or not. The appellant wanted the ability to put one on the car, run a diagnostic test to determine whether the alternator was bad or whether it was some other electrical problem with the vehicle. Mr. Baskin stated that the proposed use was subordinate to the principle use. He said if the appellant was a repair garage, he couldn't survive on three cars a day. Mr. Baskin stated that it was more convenient for the appellant to test the alternator on site than to send an employee to some other location to perform a test on someone else's equipment. The appellant had been permitted to do that on occasion, but it was an inconvenient way to do business. He said the repair bay occupied a subordinate area of the site and if the appellant wanted to perform more major repairs, he was limited due to physical space. He said staff's position was that the appellant's proposed accessory use changed the entire nature of his business and made him a vehicle light service and repair establishment. Mr. Baskin said it was the appellant's position that what he proposed was an accessory part of his major business and it did not change his primary business. They believed that a fair interpretation and fair construction of the Ordinance could only lead to the conclusion that the use was accessory. Mr. Baskin noted a previously submitted petition that was signed by several of the surrounding property owners indicating that they had no objection to the appellant's continued use.

Mr. Hart asked about a note from the Deputy Zoning Administrator, on the Non-Residential Use Permit (Non-RUP) application, that indicated there were to be no automobiles on site, he asked if that was a correct statement at the time of the application. Mr. Baskin stated that the appellant's accountant who was present to answer that question filled out the application. Mr. Baskin said it was his understanding that was not put on the application by the appellant's accountant and that he did not request that it be put in the application. He said it was the appellant's belief that it was put on there after the fact, at some later time. Whether or not it was put on then or later was not specific as to the meaning and it did not change the argument that what they proposed was still accessory to the main business.

Mr. Hart asked if the testing and installation in the cars was something that crept into this or whether from the beginning this was a part of the deal. Mr. Baskin said he couldn't answer that question. He said the appellant, Mr. Vartanian, could answer the question.

Mr. Vartanian said the "no automobiles on site" statement was added to the application much later. He said when the original permit was issued it never said anything. He stated that later when they ran into some problems with enforcement was when the statement was added. Mr. Vartanian said if you look close enough you could see the difference in the pen impression.

Mr. Hart asked was the testing and installation of parts in the cars always a part of what the appellant originally set out to do or did it gradually become a part of it.

Mr. Vartanian stated that he was always doing the testing in the vehicles. He said in the staff report, there was one Notice of Violation in 1996-97, because he was under the impression that he could do that. Mr. Vartanian stated that from the beginning it was his intention to do that.

Mr. Hart asked Mr. Baskin if he was aware of any other instance in the County similar to what the appellant was doing. Mr. Baskin stated that he was not aware of any other instances in the County.

Mr. Hart asked whether a special exception application had been submitted for the site. Mr. Baskin replied that just having the garage bay didn't justify going through that process.

Chairman DiGiulian called for speakers.

Vern Bashura, Rudy Florez, Gary Gibson, and Christopher Banner came forward to speak in support of the appellant's position. They each described instances in which the appellant provided his expertise with the repair of alternators.

William H. Fields came forward indicating that he had submitted the application on behalf of the appellant. He noted that the words "no automobiles on site" had been put on the application after he had initially signed it.

Mr. Vartanian presented a video reflecting his position that traffic would not be increased.

Mr. Shoup stated, with regard to the contention about adding the notation on the Non-Rup application after it was submitted, that he didn't believe that occurred. He said the suggestion that staff did something that wasn't proper was disturbing. Mr. Shoup said it was noted in the staff report that a portion of that notation was added by Melinda Artman, who was Chief of that Branch at the time, during her review of the application. He said what most likely occurred was that after the gentleman submitted the application, it was being reviewed, and often staff issuing the permits would make notations on the application, which would set forth the basis for why the particular decision was made. Mr. Shoup said adding vehicles on site changed the characteristics of the use to where it clearly fell in line with the criteria of the vehicle light service establishment definition. He said some of the testimony heard in support of the appellant supported staff's position. Mr. Shoup requested that the Board uphold the decision of the Zoning Administrator in the subject appeal.

Mr. Baskin stated that the application fell under the heading of accessory use. He said the appellant was not asking for unlimited use, but just wanted to make sure the parts he sold, worked. Mr. Baskin said a special exception was too much of a process for just 3 times a day. He asked the Board to rule in favor of the appellant.

Mr. Hart asked how would the use limitation be monitored if the appeal were successful. Mr. Shoup stated that it would become an enforcement issue, but there were no provisions in the Ordinance that could be relied upon. He said staff couldn't impose a condition or limitation that only 3 vehicles a day would be allowed.

Mr. Shoup stated that there was no specific limitation in the Ordinance. He noted that staff had been through this with previous Notices of Violation that were noted in the staff report. He said even in spite of the fact that the appellant was aware that he wasn't allowed to have automobiles on site, violations still occurred. Mr. Shoup stated that there were up to 15 or 18 vehicles on the site at one time and there was a concern that it might happen again.

Mr. Hart asked if the decision of the Board would be limited to the appellant only. Mr. Shoup replied that anyone who was to follow the appellant would be able to do the same thing on the property. He said the decision would allow that use on this property.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he was on the side upholding the Zoning Administrator in the December hearing and it was a tough case. He said there was some argument to be made that this was an accessory use or could fall as an accessory use and it was a difficult decision at that time because he was sympathetic to the appeal of the appellant, but at the same time it was an appeal of the Zoning Administrator's decision. Mr. Hammack said the appellant bore some burden of persuasion or burden of proof to show that the Zoning Administrator was clearly wrong. He said he wasn't satisfied with the explanation of the type of warranty check that the appellant intended to do. Mr. Hammack said the testimony indicated that the appellant would become a vehicle light service repair establishment and subject to the requirement to get a special exception. He said he felt the Zoning Administrator was correct in their determination. He said they probably stretched to get him in under the business supply and service establishment criteria to begin with, but they were correct in their determination because of its nature. He said it was not a special permit where the Board could impose conditions. Mr. Hammack moved to uphold the determination of the Zoning Administrator.

Ms. Gibb seconded the motion.

The motion failed by a vote of 2-4. Chairman DiGiulian, Mr. Hart, Mr. Ribble and Mr. Kelley voted against the motion. Mr. Pammel was absent from the meeting.

Mr. Hart made a new motion to reverse the decision of the Zoning Administrator. Mr. Kelley seconded the motion.

Mr. Hart said this was a very close call. He said the appellant persuaded him that this was an accessory use to what they started out with. Mr. Hart said this didn't fit as a business service and supply service establishment. Mr. Hart said it sounded closer to a vehicle light service establishment whether or not there

were cars on the premises. Mr. Hart said in this unique situation, it was an accessory use to the underlying principle use.

Mr. Hammack stated that what troubled him about that argument was that under an appeal there was not a development condition that the Board could monitor the degree of accessory use.

Chairman DiGiulian said the appellant said he would only have up to 3 cars a day there, and the Board didn't have any evidence to the contrary. He said if he did then it would be an enforcement issue. Chairman DiGiulian said they would determine the accessory use by the number of cars.

Mr. Hammack said the appellant was supposed to show that the Zoning Administrator was wrong as a matter of interpretation, not that if he only did this at a very minimal level that it might fall under an accessory use category. He said the Board was focusing on the wrong issue.

Mr. Hart stated that in the first two prongs of the definition of accessory use, they use the words "subordinate to", and that involved some relative assessment of whether the testing in the cars was subordinate or not to the other activity that was going on. He said it was not an objective standard and there was some flexibility in the word and at least on the evidence they had it was subordinate.

The motion carried by a vote of 4-2. Mr. Hammack and Ms. Gibb voted against the motion. Mr. Pammel was absent from the meeting.

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Page 049, March 28, 2000, (Tape 1), After Agenda Item:

Approval of January 4, 2000, January 6, 2000,
January 11, 2000 and January 18, 2000 Minutes

Mr. Kelley moved to approve the Minutes. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 049, March 28, 2000, (Tape 1), After Agenda Item:

Approval of Meeting Dates for the latter six months of 2000

Mr. Hammack moved to approve the meeting dates. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

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Mr. Hammack moved that the Board enter into Executive Session to discuss legal matters. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

The Board recessed into Executive Session at 11:30 a.m.

The Board reconvened at 11:39 a.m.

Mr. Hammack 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. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:42 a.m.

Minutes by: Regina Thorn

Approved on: July 11, 2000

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 4, 2000. The following Board Members were present: Vice Chairman Paul Hammack; Nancy Gibb; James Hart; Robert Kelley; James Pammel and John Ribble. Chairman DiGiulian was absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:05 a.m. Vice Chairman Hammack discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Vice Chairman Hammack called for the first scheduled case.

Page 051, April 4, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MT. VERNON YACHT CLUB, INC., SPA 80-V-028-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-V-028 for a swimming pool and marina to permit building addition. Located at 4817 Tarpon La. on approx. 8.82 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (H) 1; 110-3 ((4)) A.

Vice Chairman Hammack noted that the applicant had requested a deferral to May 2, 2000.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that it was determined that the applicant also needed to file a variance application, which they had done; and therefore requested a deferral so that both applications could be heard concurrently.

Mr. Kelley made a motion to defer SPA 80-V-028-2 to May 2, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 051, April 4, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH & MARY KREMPASKY, VC 00-L-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.4 ft. from rear lot line. Located at 4513 Squiredale Sq. on approx. 3,267 sq. ft. of land zoned R-8. Lee District. Tax Map 101-1 ((6)) 388.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sean McLarty, Patio Enclosures, Agent, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 14.4 feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, a variance of 10.6 feet was requested.

Mr. McLarty presented the variance request as outlined in the statement of justification submitted with the application. Mr. McLarty stated that the rear of the property was very sunny and did not have trees and that the applicants could not use their back yard. Mr. McLarty stated that the applicant had approval from their homeowners association and requested the Board approve the request.

Mr. Pammel asked what the nature of the hardship was for the request. Ms. Krempasky stated that the request was necessary due to the shallowness of the property.

Vice Chairman Hammack asked what the depth of the property was. Mr. McLarty stated that it was 99 feet deep.

Mr. Hart questioned the easements, as noted on the plat, and asked if the walkway easement was within the applicant's fence line. Ms. Krempasky stated that the walkway was not an actual concrete walkway. She stated that it was a grassy area and referred to as common area owned by the homeowners association. Mr. McLarty stated that all of the townhomes had their rear fence line in the same location.

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

Mr. Pammel moved to deny VC 00-L-005 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH & MARY KREMPASKY, VC 00-L-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.4 ft. from rear lot line. Located at 4513 Squiredale Sq. on approx. 3,267 sq. ft. of land zoned R-8. Lee District. Tax Map 101-1 ((6)) 388. 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 4, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have not presented a hardship to distinguish their lot from any of the other lots in the development and all of the houses were set back uniformly.
3. The request was presented more as a convenience than as a hardship to have the addition.

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**.

Ms. Gibb seconded the motion which carried by a vote of 5-1. Vice Chairman Hammack voted against the motion. 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 April 12, 2000.

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Page 053, April 4, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CARL H., JR. & MARIE C. SEBENIUS, VC 00-D-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 6420 Noble Dr. on approx. 11,384 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((6)) (C) 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. Carl Sebenius, 6420 Noble Drive, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a garage to be located 10.0 feet from the side lot line. A minimum 12 foot side yard is required; therefore, a variance of 2.0 feet was requested.

Mr. Sebenius presented the variance request as outlined in the statement of justification submitted with the application. Mr. Sebenius gave the Board letters supporting the variance request. He stated that the purpose of the request was only to enclose an existing carport to provide safety for his wife. Mr. Sebenius stated that there would be no further intrusion into the side yard than the current carport and that the existing overhang would not be extended.

Mr. Hart asked if there would be excavation into the sanitary sewer easement. Mr. Sebenius stated that excavation would occur next to the easement; however, not in the easement.

Ms. Wilson stated that the Department of Public Works and Environmental Services would address those concerns and issues at the time of building permit approval.

Vice Chairman Hammack called for speakers. There were no speakers present to speak in support of the application.

Mark Downey, 6422 Noble Drive, McLean, Virginia, came to the podium to speak in opposition of the application. Mr. Downey stated that he had resided at this address for 24 years and was against the construction of the garage stating that it would pose a fire hazard due to the lack of clearance between the homes. He expressed his concern with the encroachment into the storm drain and with construction done by Mr. Sebenius within this easement.

Mr. Hart asked Mr. Downey what side of the applicant's property his home was on. Mr. Downey stated that he owned Lot 2, which was on the opposite side from where the garage was to be constructed.

Mr. Sebenius stated that they had received approval from the County to place a drain from the downspouts into the storm drain, which was inspected and approved by County staff. He stated that the carport had existed for 34 years and the garage would not be any more of a fire hazard than the current structure.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 00-D-006 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 28, 2000.

Mr. Pammel noted that a number of letters were received in support of the application, including the most affected property owner.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARL H., JR. & MARIE C. SEBENIUS, VC 00-D-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 6420 Noble Dr. on approx. 11,384 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((6)) (C) 3. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 4, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The way the house is positioned on the lot, there is no room for a garage on either side of the house.
4. The existing carport currently has an overhang and, although the foundation is moving slightly to the side, the request is to enclose an existing carport and extend the foundation beneath it.
5. The side yards are exceptionally narrow.
6. The proposed location is the only location for 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 **APPROVED** with the following limitations:

1. This variance is approved for the garage addition shown on the plat prepared by D. E. Whiting, Certified Surveyor, dated October 24, 1966, as revised through December, 1999 by Frederick E. Sheridan, Certified Architect, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hart made a motion to waive the eight (8) day waiting period. Mr. Ribble 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 April 4, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 055, April 4, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration
Karen L. Reid, VC 00-P-007

Susan Langdon stated that the original application was a request for a builder to build a spec house on a corner lot with a variance request to one of the front lot lines. Ms. Langdon noted that two additional letters were received and distributed to the Board also requesting a reconsideration, one of which was from Supervisor Connolly.

Ms. Gibb noted that the original house had been demolished and the proposed construction of the new home was set back further than the original house from the property line. Ms. Langdon agreed; however, stated that she was unsure of the yard requirements at the time the original house was constructed.

Ms. Gibb stated that she had thought the request was for a front porch/stoop closer to the property line and asked if there were other houses built, similar in size, to the house proposed. Ms. Langdon stated that other houses were built; however, there were no other variances approved.

Ms. Gibb noted that the applicant was entitled to build a house of this size on the lot. Ms. Langdon stated that there were no restrictions to the size of the house in the Zoning Ordinance as long as it met the setback requirements.

It was noted for the record that the vote for the approval was unanimous.

Mr. Hart noted that there were several speakers at the original public hearing who had problems, not necessarily germane to the variance, but to the front porch.

Ms. Langdon stated that the entire house was too close to the front lot line; however, the testimony from the applicant was that it was only the front porch that required the variance. She stated that the requirement was 30.0 feet from the front lot line and the request was for the house to be located 27.2 feet from the front lot line and the porch would therefore extend to 23.0 feet from the front lot line.

Ms. Gibb stated that the request seemed to be modest and reiterated that the demolished house was closer to the front lot line than the proposed house.

Vice Chairman Hammack asked if the Board wished to grant the reconsideration request.

Mr. Pammel stated that in the past in reconsideration requests, representatives had been heard from and recommended to the Board to allow the citizens aggrieved by the Board's decision to be heard.

Mr. Kelley stated that he objected to allowing anyone to speak on the issue because it would mean rehearing the application, which could only be done if the Board granted the reconsideration request.

Vice Chairman Hammack stated that the issue was if the Board would allow the speakers the opportunity to address the narrow issue of whether the Board should reconsider the decision and not to rehear the application.

Alice Armstrong, 7214 Hickory Street, asked the Board to reopen the hearing because evidence was not presented entirely to the Board. Ms. Armstrong read a letter to the Board, which was submitted for the record, basing the request for reconsideration on the fact that she did not believe that all of the nine required standards for the granting of a variance were met.

Karen Reid, Applicant, stated that there were differences in the lots and the lot in question. She said because their lot was a corner lot they were subjected to more than one front yard. She stated that the front elevation of the house did not affect the variance, only the depth did, therefore, she asked the Board to allow the approval to stand.

No motion was made; therefore, the request was, by inaction, denied.

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Page 056, April 4, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration
Suzanne Madormo-Smith & Gregory C. Smith, VC 00-H-012

No motion was made; therefore, the request was, by inaction, denied.

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Page 056, April 4, 2000, (Tape 1), After Agenda Item:

Approval of March 28, 2000 Resolutions

Mr. Ribble made a motion to approve the March 28, 2000 Resolutions. Mr. Kelley seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote. Chairman DiGiulian was absent from the meeting.

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Page 056, April 4, 2000, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request, Walter C. Pague Jr., VC 00-P-038

No motion was made; therefore, the request was, by inaction, denied.

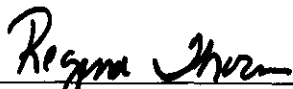
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Page 057, April 4, 2000, (Tape 1), continued from Page 056

As there was no other business to come before the Board, the meeting was adjourned at 10:06 a.m.

Minutes by: Deborah Hedrick

Approved on: May 9, 2000



Regina Thorn, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 11, 2000. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel; and John Ribble. Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. The Vice Chairman outlined the procedures of the BZA. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 059, April 11, 2000, (Tape 1) Scheduled case of:

9:00 A.M. YEONAS & ELLIS LANGLEY COURT, L.L.C. ET AL & LANGLEY COURT HOMEOWNERS ASSOCIATION, VC 00-D-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit gates, gate posts and fence in excess of four feet in height across 100% of the lot width. Located at 1099, 1095, 1091 and 1087 Langley Fork Ln. on approx. 4.97 ac. of land zoned R-1 (Cluster) (Historic Overlay District). Dranesville District. Tax Map 22-3 ((9)) 1-4 and A, B and C.

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. Barnes Lawson, Jr., Lawson & Frank, 6045 Wilson Boulevard, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a fence, gates and gate posts in excess of 4 feet in height in a front yard area across 100 percent of the lot widths of 4 residential lots and associated out-lots. The applicants received the approval of the Historic District Architectural Review Board for the proposed fence design with gateposts measuring a maximum of 6.7 feet in height and the fence measuring 5.9 feet in height. The Ordinance limits the fence or any portion of a fence in front yards to a maximum of 4 feet in height; therefore, a maximum variance of 2.7 feet was requested.

Mr. Hart asked whether there had been similar variance requests throughout the County. Ms. Wilson replied that there had been several requests for fences in connection with gated communities. Mr. Hart asked if the variance was consistent with the previous approvals. Ms. Wilson replied that it was.

Mr. Hammack asked for clarification that the gate and the fence were a minimum of 300 feet from Old Georgetown Pike. Ms. Wilson stated that was correct. Mr. Hammack asked how neighboring Parcels B and C would be developed. Ms. Wilson stated that those parcels were out-lots and were to be kept as open space.

Mr. Lawson, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that in 1997 the Board of Supervisors (BOS) granted a special exception for a cluster subdivision for the 5 lots. He said, at that time, the applicant had the support of the neighbors, the McLean Citizen's Association, the McLean Planning Committee and the Historical Review Board. He stated that after the special exception was approved the applicant concentrated on the marketing effort and in a response to the desires of the purchasers the applicant requested approval of the gate. Mr. Lawson explained that Parcels B and C could not be developed because they did not have enough density. He explained that the property was a cluster subdivision and it had a very large front yard with several easements that made it impossible to construct the gate without a variance. He informed the Board that the neighborhood was in support of the application and illustrated the location of the fence on the property. Mr. Lawson stated that he had researched similar variance requests and only found one that occurred 20 years prior. He said that the gate was very attractive and was greatly desired by the purchasers.

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

Mr. Hammack moved to approve VC 00-D-011 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

YEONAS & ELLIS LANGLEY COURT, L.L.C. ET AL & LANGLEY COURT HOMEOWNERS ASSOCIATION, VC 00-D-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit gates, gate posts and fence in excess of four feet in height across 100% of the lot width. Located at 1099, 1095, 1091 and 1087 Langley Fork Ln. on approx. 4.97 ac. of land zoned R-1 (Cluster) (Historic Overlay District). Dranesville District. Tax Map 22-3 ((9)) 1-4 and A, B and C. 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 11, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have shown that the property is uniquely shaped.
3. The fact that the property is a cluster subdivision presents some unique problems in the development.
4. The front yard is in an unusual location, almost 300 feet from Georgetown Pike and will not have a negative impact on any of the surrounding properties.
5. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of 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.

Page 061, April 11, 2000, (Tape 1), YEONAS & ELLIS LANGLEY COURT, L.L.C. ET AL & LANGLEY COURT HOMEOWNERS ASSOCIATION, VC 00-D-011, continued from Page 060

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

1. This variance is approved for the location of a fence measuring a maximum of 5.9 feet in height, with fence posts/pillars measuring a maximum of 6.7 feet in height, and gate(s) measuring a maximum of 4.9 feet in height, located in the front yard areas along 100 percent of the lot width of the lots shown on the plat prepared by TRI-TEK Engineering, dated October 22, 1999, submitted with this application and is not transferable to other land.
2. The fence design shall be in substantial conformance with that shown in Attachment A, Proposed Landscaped Improvements for Langley Fork Lane, as approved by the Architectural Review Board.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

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 April 19, 2000. This date shall be deemed to be the final approval date of this variance

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Page 061, April 11, 2000, (Tape 1) Scheduled case of:

9:00 A.M. THOMAS L. & JEFFERY L. MARCEY, VC 00-P-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of an Interstate Highway. Located at 9019 Dellwood Dr. on approx. 2.86 ac. of land zoned R-2. Providence District. Tax Map 48-2 ((7)) (44) F1.

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. Shahman Foradi, 10680 Main Street, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of 3 new dwellings, all of which were proposed to be located within 200 feet of an interstate right-of-way. Sect. 2-414 of the Zoning Ordinance requires that all residential buildings be located a minimum distance of 200 feet from the right-of-way of interstate highways. The proposed single family dwellings were proposed to be located 195.05 feet for Lot 1, 164.89 feet for Lot 2 and 110.19 feet for Lot 3, from the I-66 right-of-way.

A previous variance application (VC 99-P-067) to permit the construction of five dwellings within 200 feet of an Interstate Highway on the subject property was heard by the Planning Commission and the Board of Zoning Appeals. On November 17, 1999, the Planning Commission voted unanimously to recommend to the Board of Zoning Appeals (BZA) that they deny the variance application. On November 30, 1999, the Board of Zoning Appeals also voted unanimously to deny the Variance application.

On March 30, 2000, the Planning Commission unanimously voted to recommend to the Board of Zoning Appeals (BZA) that they deny VC 00-P-009. In its denial recommendation, the Planning Commission noted that the application did not meet several of the applicable Zoning Ordinance provisions for variances particularly Standards 2, 3, 4, 5, and 6. The Planning Commission also added Standard 7 to the list, which dealt with a substantial detriment to adjacent property regarding tree-save and Standard 9, which dealt with the public interest. Specifically, the 200 foot setback was "instituted to protect the public interest".

Mr. Noel Kaplan from the Department of Planning and Zoning's Environment and Development Review Branch and Ms. Angela Rodeheaver Chief of the Department of Transportation's Site Analysis Section were present to answer questions from the Board.

Staff submitted revised Development Conditions dated March 30, 2000. The revision was necessary due to

some minor edits and clarifications.

Mr. Hart asked Ms. Rodeheaver how much additional right-of-way would be required if I-66 was widened. She replied that if the HOV lanes were widened on the north side of I-66, approximately 50 to 55 more feet would be taken. She stressed that the amount was not definite and could change.

Mr. Hart asked staff what were the minimum side and rear yards in the R-1 District. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the yard requirements were 15 feet for the side and 25 feet for the rear. He asked if there was a minimum lot size and if there was any prohibition on a percentage of the lot being out in the 200 foot zone. Ms. Langdon replied that the minimum lot size was 15,000 square feet in the R-2 District and there was no prohibition regarding lots located in the 200 foot set back.

Mr. Hart referred to a memo regarding issues surrounding the location of the box culvert and asked if that issue had been remedied and what its actual location was. Mr. Kaplan stated that the culvert was located accurately.

Shahman Foradi, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the Board of Zoning Appeals, on November 30, 1999, denied the previous variance application, but suggested that a revised application depicting a reduced number of lots and a more appropriate design would be viewed more favorable. He stated that the new application proposed the construction of 3 homes on the site, the replacement of the eroding natural dirt channel with a concrete channel and the preservation of a large amount of open space as well as the bordering trees. He said the proposed homes closest to the sound wall had been eliminated and the trees in that area were to be preserved.

Mr. Foradi illustrated the changes between the current and previous variance applications. He mentioned the neighborhood concerns regarding the eroding natural dirt channel and stated that the applicant had committed to extend the concrete channel off-site to existing pipe on the edges of the properties with the property owner's permission. He stated this improvement would provide a benefit to the both the neighbors and Fairfax County. He explained that the applicant had a proposed tree-preservation plan to address the neighbors concerns regarding the tree buffer along the I-66 sound wall.

Mr. Hart asked whether the proposed homes were to be constructed on fill and if so, how much. Mr. Foradi stated that was correct and approximately 10 feet. Mr. Hart asked if all of the trees from the vicinity of the cul-de-sac to the back of the property would be removed. Mr. Foradi stated that the only trees proposed to be eliminated were where the houses and cul-de-sac were to be constructed. He illustrated the areas of tree removal for the Board. Mr. Hart asked if there were any trees being saved on Lots 1 or 2. Mr. Foradi answered no.

Mr. Hart asked for clarification that the first noise study was prepared during the week surrounding a Holiday and that there had not been any other noise studies conducted since that time. John Huckins, Sound Consultant, replied that was correct. Mr. Hart asked for clarification that there had been no sound measurements taken from the second floor elevations of the proposed houses. Mr. Huckins replied that was correct.

Vice Chairman Ribble called for speakers in support.

Jeff Marcey, 14297 Fairland Court, Gainesville, Virginia, came forward to speak in support of the application. He stated that the land had been purchased by his grandfather in 1972 with the intent that the grandchildren would live on the property at one time. He said that his parents acquired the land in 1987 and had been paying taxes on the land ever since. He informed the Board that the taxes had steadily increased due to there being multiple lots. Mr. Marcey said that the family had offered the land to the Town of Vienna and they did not respond. He said the family had found a buyer for the land and felt that it was time to receive some income from the property. He explained that the family was trying to get a reasonable use out of the land. Mr. Marcey stated that the neighbors use the property as a dumping area for their lawn debris.

Vice Chairman Ribble called for speakers in opposition.

Loretta Williams, 1209 Ware Street, came forward to speak in opposition. She stated that there should be

additional noise studies conducted to detect whether the removal of the tree buffer would increase the noise beyond the limitations of Fairfax County.

Mr. Hammack asked how long she had lived at her property. Ms. Williams replied since 1992. He asked if the 200 foot set back was in effect at that time. She answered that it was. He asked if it caused her any concern. She stated that at the time she didn't have a clear understanding of the 200 foot set back or how much the noise would increase in the future. He asked if she had any noise measurements conducted on her site to see what the level was. She replied that she had not requested any noise studies and didn't think that it was part of her obligation.

Mr. Pammel asked if she or any of her neighbors had discussed the applicant's offer of the property to the Town of Vienna. Ms. Williams replied that she was not aware of the applicant's offer; however, she would be supportive of that option.

Lynn Smith, 1125 Pekay Street, came forward to speak in opposition. She submitted a photograph of the tree save area that illustrated the view directly across the widest portion of her property to I-66. She explained that the tree save area not only blocked the view of I-66, but provided substantial noise mitigation. She stated that the significant tree cover reduced pollution and blocked headlights from I-66. She said the applicant proposed to locate the cul-de-sac at the closest point to the VDOT right-of-way and if I-66 were widened, most of the cul-de-sac would need to be removed. Ms. Smith stated that construction would increase the erosion in the existing channel.

Mr. Hammack asked if she or her neighbors had requested help from the Town of Vienna to stabilize the channel. Ms. Smith replied both the Town of Vienna and Fairfax County owned portions of the property and that several neighbors had requested help from the Town of Vienna and in response the Town had attempted to fix several sink holes on their portion of the property. She informed the Board that when the owners of the lots that were the most impacted by erosion requested help they were told by both the Town of Vienna and Fairfax County that they would have to fix the problem on their own.

Lona Ballion, 2303 Vienna Woods, came forward to speak in opposition. She stated that she has lived in her home for more than 11 years and had noticed the increase in noise from I-66. She explained that she purchased her house because of the tree buffer.

Mark Kaufman, 1125 Pekay Street, came forward to speak in opposition. He stated that the new application did very little to address the neighborhood concerns. He stated that most of the trees in the preservation area would be lost to erosion from increased stream run-off, poor health of existing trees, and degradation due to the construction impact. He stated that the applicant's could still build one home on the property, benefit from it financially, and put the property to good use.

Mr. Foradi, in his rebuttal, stated that the applicant had a meeting with the owners to discuss what they could do to accommodate their needs. He said that the outcome of the meeting was that the neighbors did not want any trees removed or any homes built. He informed the Board that the cul-de-sac would remain intact if I-66 were widened and the proposed homes would be located farther away from the right-of-way than some of the existing homes. Mr. Foradi stated that it was the applicant's right to remove all of the trees on the property without constructing even one home and with the development proposal, the applicant was attempting to beautify the neighborhood and remedy some of the existing drainage and erosion problems off site.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel stated that there were a number of issues that caused him concern. He said that there may be a need for additional right-of-way for the expansion of I-66 and the Board could not deny the development of a property based on a future proposal, which may or may not occur. He stated that the residents of the area want the trees saved; however, the Board could not deny the applicants the right to use their property. He stated that the Town of Vienna or Fairfax County should acquire the land, as it was an environmentally sensitive property to be preserved, but if neither of the jurisdictions made that choice, then the Board had to allow the owners reasonable use of the property. He stated the property had many development constraints and it was practically not possible to get the allowed type of density on the property and the construction of 3 homes was stretching the limits. He said that something less would be appropriate only if Fairfax County

and the Town of Vienna chose not to acquire the property.

Mr. Kelley stated that he did not see much difference from the first application.

Mr. Hart stated that he agreed with the opinions of staff and the Planning Commission that the applicant did not satisfy all of the conditions for the granting of a variance. He said that, with an odd lot configuration, the applicants might be able to construct two houses on the property with a minimal variance. He stated that the removal of the trees would cause an adverse impact on the neighbors. Mr. Hart said that he had visited the site and was amazed by the roar on the site and he was particularly troubled that there was no further noise data subsequent to the initial application.

Mr. Pammel stated that he had visited the site at 8:30 a.m. on a weekday morning and the noise was substantial. He said there was valid argument that the trees provided additional noise mitigation.

Mr. Hammack voiced his opinion that the applicants had done a lot to mitigate and to change the earlier application. He said the third house that was located 89 feet from the right-of-way troubled him but it was no closer to the right-of-way than many of the existing homes. He said the applicant had the right to develop and that the Board did not give the applicants enough credit for their efforts to arrive at some satisfactory development of the property.

Mr. Pammel moved to deny VC 00-P-009 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS L. & JEFFERY L. MARCEY, VC 00-P-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of an Interstate Highway. Located at 9019 Dellwood Dr. on approx. 2.86 ac. of land zoned R-2. Providence District. Tax Map 48-2 ((7)) (44) F1. 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 11, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants have not presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-401 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 4-2. Mr. Hammack and Vice Chairman Ribble voted 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 April 19, 2000.

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Page 065, April 11, 2000, (Tape 1) Scheduled case of:

9:30 A.M. MOBIL OIL CORPORATION, A 2000-HM-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant's request for the Zoning Administrator to render a proffer interpretation regarding the Planning Commission's denial of Concept Plan CPA 86-C-121-4 is not a request that falls within the purview of the Zoning Administrator's responsibilities to interpret, administer and enforce the Zoning Ordinance. Located at 12191 Sunset Hill Rd. on approx. 1.74 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-3 ((1)) 33A.

William E. Shoup, Deputy Zoning Administrator, stated that Stephen K. Fox, agent for the appellant, requested deferral for Mobil Oil Corporation, A 2000-HM-001, and the consideration of Acceptance for the Mobil Oil Corporation Appeals submitted on December 9, 1999, and January 13, 2000. He indicated that due to recent action by the Board of Supervisors, the January 13, 2000 submission was moot and that he discussed that with Mr. Fox, who concurred. Mr. Shoup recommended that Appeal A 2000-HM-001 and the Consideration of Acceptance item for the December 9, 1999, submission be deferred to May 9, 2000, and that the BZA declare the January 13, 2000, submission to be moot and take action to not accept that appeal.

Mr. Hammack asked if the deferral period was long enough. Mr. Shoup replied that it was not enough time because the Board of Supervisors (BOS) had recently accepted the December 9, 1999, appeal of the Planning Commissions' decision, which had also been filed with the BOS, but it would not be considered by the BOS for a number of months. Mr. Shoup related that Mr. Fox was only authorized by his client to seek deferrals of 30-day increments so the appeals stay current.

Mr. Hammack asked how long it would take before the issue was before the BOS. Mr. Shoup answered somewhere in the vicinity of 90 days.

Mr. Hammack moved to defer Mobil Oil Corporation, A 2000-HM-001, and the Consideration of Acceptance

Page 066 April 11, 2000, (Tape 1), MOBIL OIL CORPORATION, A 2000-HM-001, continued from Page 065
item for Mobil Oil Corporation's appeal submitted on December 9, 1999, to July 11, 2000, and further, that the BZA not accept the January 13, 2000 appeal.
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Page 066 April 11, 2000, (Tape 1) After Agenda Item:

Approval of February 1, 2000 and February 22, 2000 Minutes

Mr. Pammel moved to approve the Minutes. 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 066 April 11, 2000, (Tape 1) After Agenda Item:

Consideration of Acceptance – Application for Appeal Filed on behalf of
Mobil Oil Corporation.
(December 9, 1999 Submission)

Refer to Mobil Oil A 2000-HM-001, as presented earlier in the public hearing.
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Page 066 April 11, 2000, (Tape 1) After Agenda Item:

Consideration of Acceptance – Application for Appeal Filed on behalf of
Mobil Oil Corporation.
(January 13, 1999 Submission)

Refer to Mobil Oil A 2000-HM-001, as presented earlier in the public hearing.
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Page 066 April 11, 2000, (Tape 1) After Agenda Item:

Approval of April 4, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.
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Page 066 April 11, 2000, (Tape 1) After Agenda Item:

Additional Time Request for Karharias, Inc. T/A
The Shark Club Billiards & Café/The Shark Club,
SPA 95-S-069

Mr. Hammack moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 6-0. The new expiration date is July 19, 2000. Chairman DiGiulian 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 a.m.

Minutes by: Lori M. Mallam

Approved On: June 27, 2000

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 18, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 067, April 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DAVID, MARTIN AND ELLEN YOUNG, VC 00-P-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 21.32 ft. from rear lot line, 24.0 ft. from front lot line, 6 ft. high fence in front yard and accessory structure in a front yard on a lot containing less than 36,000 sq. ft. Located at 8400 Rainbow Rd. on approx. 12,515 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((1)) 49.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the applicants had requested an indefinite deferral.

Mr. Hammack moved to indefinitely defer VC 00-P-010. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 067, April 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CAPITAL BAPTIST CHURCH, SPA 76-M-268-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-M-268 for church and related facilities to permit building addition and site modifications. Located at 3435 Aston St. on approx. 5.95 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 52 and 55. (MOVED FROM 1/4/00).(DECISION ONLY FROM 2/22/00).

Chairman DiGiulian noted that the subject application had been deferred for decision only and asked if there were new development conditions.

Phyllis Wilson, Staff Coordinator, stated that the revised development conditions had been distributed to the Board and there was clarification and additional information requested previously by the Board. She said the issues requiring clarification included the status of the previously reported zoning violations including uses of the garage and barn buildings as classrooms, and busses parked in unapproved location. Ms. Wilson listed the following issues requiring clarification for the BZA: the adequacy of the buffer on the eastern property boundary; the adequacy of screening and buffering for lots 14 and 53 on the northern property boundary; possible traffic calming devices between the Gallows Road entrance and the Aston Street entrance; the responsibility of the church as it related to stormwater flooding on Rebel Drive; clarification from the Zoning Administrator as to the acceptability of certain church activities accessory to the church use, such as the "bible institute", the religious theatrical productions, and the support group of mothers of home-schooled children. She stated that a written statement was included in the BZA's package from the Zoning Enforcement Inspector regarding the zoning violations which concluded that the applicant was in compliance with all provisions and limitations approved with the previous application's amendment. Ms. Wilson said the other issues requiring clarification were addressed through the development conditions and/or through interpretations from the Zoning Administrator, which was distributed to the Board.

David Hunter, the applicant's agent, stated that the applicant was in agreement with the development conditions and noted that Ms. Wilson had worked very diligently with the applicant.

Mr. Hammack stated that in view of the large amount of material submitted to the BZA that morning, he would moved to defer decision to April 25, 2000, so he could read the new proposed development conditions and consider all the information contained in the staff report. He said he was not prepared to vote on the application.

Mr. Ribble seconded the motion, which carried by a vote 7-0.

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9:00 A.M. LOREN SCOTT MEADE, SP 00-B-008 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification of the limitations on the keeping of animals. Located at 5114 Dalhgreen Pl. on approx. 1,430 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-4 ((11)) 137.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lauren Scott Meade, 5114 Dalhgreen Place, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a modification to the limitations on the keeping of animals. The applicant requested that they be permitted to keep (6) dogs on a lot of less than the minimum lot size required.

Ms. Meade presented the special permit request as outlined in the statement of justification submitted with the application. She said she would like permission to be able to keep her Boston terriers. Ms. Meade stated that she suffered from agoraphobia and the dogs had helped her to maintain a productive lifestyle. She said the complainant no longer lived in the neighborhood and that all her current neighbors were in support of the application. She submitted letters from the neighbors indicating their support. Ms. Meade said her backyard was fenced and the dogs were kept indoors most of the time.

Chairman DiGiulian asked the applicant whether she had seen the letter from the Lake Braddock Community Association. Ms. Meade replied that she had not had an opportunity to formulate a response to the letter.

Mr. Hart asked staff if 6 dogs had ever been approved in a townhouse. Mr. Bernal replied that he believed the maximum had been 5 dogs.

Chairman DiGiulian called for speakers.

Thurman Greco, no address given, came forward to speak in support of the application. Ms. Greco stated that the applicant was a very responsible pet owner.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 00-B-008 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LOREN SCOTT MEADE, SP 00-B-008 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification of the limitations on the keeping of animals. Located at 5114 Dalhgreen Pl. on approx. 1,430 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-4 ((11)) 137. 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 18, 2000; and

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

1. The applicant is the owner of the land.
2. The request is reasonable.

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 Sect(s). 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 5114 Dahlgreen Place (1,430 square feet), shown on the plat prepared by Richard W. Long, dated March 22, 1986, revised by Loren Scott Meade, dated May 13, 1999, and is not transferable to other land.
2. The applicant shall make this Special Permit property available for inspection by County Officials during reasonable hours of the day
3. This approval shall be for the applicant's existing six dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard used for the dogs shall be cleaned of animal debris daily and shall be disposed of in a method approved by the Health Department.
5. The dogs shall be supervised at all times while in the yard.

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.

Ms. Gibb 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 April 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 069, April 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF CAMERON UNITED METHODIST CHURCH, SP 00-L-004 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities, child care center and nursery school. Located at 3130 Franconia Rd. on approx. 4.02 ac. of land zoned R-3. Lee District. Tax Map 82-2 ((8)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Hunter, P.O. Box 2344, Dale City, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a church and related facilities, a childcare center and nursery school. The childcare center and nursery school were proposed to have a total maximum daily enrollment of 99 children. The proposed hours of operation for the school of general education would be 9:15 a.m. to 3:15 p.m., Monday through Friday. There were no proposals for structural changes to the site. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of the application.

Mr. Hunter, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He asked the members of the audience present to stand to represent their support of the application. Mr. Hunter stated that the church was not currently under special permit, but had been on site for over 40 years. He said only snacks would be served on site. Mr. Hunter stated that the school would be located on the first floor of the building and would not conflict with the existing uses of the church. Mr. Hunter stated that the applicant was in agreement with all the development conditions with the exception of Condition #10. He said pursuant to FDPA 88-L-082, approved on February 20, 1999, the church entrance

would be relocated to the north. He stated that there was a current project for Franconia Road funded for alternative routes associated with the "mixing bowl" project. He said the Telegraph Road/Franconia Road intersection would be widened and because of that the entrance to the church would be relocated. Mr. Hunter stated that unfortunately the church was not aware of the relocation of their entrance and even though the developer notified them, they were not aware that the approval of the townhouse development would impact them so greatly. He indicated that the applicant requested the deletion of development condition #10, fully aware that dedication was requested. He said the applicant was in agreement with the dedication; however, the applicant was concerned that they would not receive any compensation for the dedication, in light of the fact that the entrance was relocated without their knowledge.

Mr. Hammack asked where the new relocated entrance would be. Mr. Hunter illustrated from the plat on the overheard projector.

Mr. Hammack asked what the dedication had to do with the relocation. Mr. Hunter replied that the dedication was the first step of widening Franconia Road.

Mr. Hammack asked what the Virginia Department of Transportation (VDOT) would do if there was not any development to the north. Mr. Hunter replied that he didn't know.

Mr. Hart asked what were the dimensions of the dedication. Susan Langdon, Chief, Special Permit and Variance Branch, replied that staff did not know specifically, but the condition did reference the approved project and it would be in line with that dedication.

Mr. Hart asked if the reason there were not any waivers of barrier requirement was that the applicant had not been through the special permit process before. Ms. Langdon stated that the buildings were built prior to the requirement for special permit and they were adding the childcare center that was requiring them to bring the whole site under special permit.

Mr. Hart asked whether staff was comfortable with the existing screening. Ms. Langdon replied yes.

Mr. Hunter responded that the dedication was almost 1/2 an acre.

Mr. Hart asked what was the depth from the centerline of the road. Ms. Langdon stated that it was hard to tell from the plat, but it appeared it could be up to 24 feet from the centerline.

Mr. Hart asked if the dedication affected the parking lot. Mr. Hunter replied no.

Mr. Hammack asked whether the VDOT right-of-way dedication was to accommodate traffic in the area. Ms. Langdon stated that she would assume it would be to address the traffic problems in the area.

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

Mr. Hart moved to approve SP 00-L-004. The motion failed for lack of a second.

Mr. Kelley moved to approve SP 00-L-004 with the deletion of Condition #10.

Mr. Kelley stated that he drove by the site several times a week, and he did not understand why the townhouses were approved, because they caused a traffic mess and he did not think the church should be expected to pay more than it contributed to traffic. He said the church had been there for 45 years and had been a good neighbor.

Mr. Hammack stated that he did not see the nexus between the frontage dedication and the subject application and he would support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF CAMERON UNITED METHODIST CHURCH, SP 00-L-004 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities, child care center and nursery school. Located at 3130 Franconia Rd. on approx. 4.02 ac. of land zoned R-3. Lee District. Tax Map 82-2 ((8)) 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 18, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony indicating compliance with the required standards for 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 Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 3130 Franconia Road (4.02 acres) and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by W. N. Yehle, Professional Engineer, dated December 16, 1999, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. The seating capacity of the main worship area shall not exceed 300.
- 6. The combined total maximum daily enrollment for the nursery school and child care center shall be 99 children.
- 7. The maximum hours of operation for the nursery school / child care center shall be 9:15 a.m. to 3:15 p.m., Monday through Friday.
- 8. The barrier requirements shall be waived.
- 9. The existing vegetation shall be maintained and shall be deemed to satisfy the transitional screening requirements along the property lines. Dead or dying plant material shall be replaced with like kind to maintain the existing transitional screening.
- 10. Any existing or proposed lighting of the parking lot shall be in accordance with the following:

- The combined height of the light standards and fixtures shall not exceed (12) twelve feet.
 - The light shall be a low-intensity design which focuses the light directly on the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
11. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be 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 a new Non-Residential Use Permit be obtained. 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 and 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 April 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 072, April 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JACQUELINE J. FAIR, SP 00-Y-001 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 12202 Waples Mill Rd. on approx. 21,372 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((4)) 3. (Admin. Moved from 3/28/00 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. Jacqueline Fair, 12202 Waples Mill Road, Oakton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow the operation of a home child care facility with a maximum of 10 children on site at any one time. The proposed hours of operation would be 7:30 a.m. to 6:30 p.m. A proposed 14,000 square foot fenced play area was to be located within the rear yard. A semi-circular parking and driveway area with 4 spaces was proposed off Waples Mill Road. Staff concluded that the subject application met all standards for a Special Permit use and was in harmony with the applicable recommendations of the Comprehensive Plan.

Mr. Fair presented the special permit request as outlined in the statement of justification submitted with the application. She stated that there was a demand for quality childcare. Ms. Fair stated that the childcare was not the cause of the traffic conditions. She said the majority of the complaints were directed towards another person with a childcare center in the area. Ms. Fair stated that the noise and equipment would be kept at a minimum and that there would be no signs placed in the yard.

Mr. Hammack asked if the applicant was a lessee of the property. Ms. Fair replied no. Mr. Hammack asked the applicant whether she had a written lease that allowed childcare on the property. Ms. Fair stated that she did not have a written agreement that allowed childcare.

Mr. Hart asked the applicant if she had any objections to the development conditions. Ms. Fair replied no.

Chairman DiGiulian called for speakers.

Patrick Brown, owner of the subject property, came forward to speak in support of the application. He stated that he had given the applicant 100% support for the childcare center. Mr. Brown stated that most of the letters received in opposition focused on traffic and most of the traffic was transient traffic. He stated that the applicant's request was simply to obtain care for three additional children and that she could keep seven by right.

Mr. Ribble noted that the Board had received two letters in support of the application.

Gloria Mudge, 12114 Waples Mill Road, came forward to speak in opposition of the application. She said there was another day care center nearby which was not in compliance. Ms. Mudge stated that all of the houses were on septic and the land only perked for three bedrooms and the applicant gave no consideration to the septic system. She also noted that the subject lot was close to the light at the intersection of Vale Road and Waples Mill Road.

Lois Wenzel, Lot 9, came forward to speak in opposition. She noted a petition signed by the neighbors. Ms. Wenzel stated that the driveway was inadequate. She said there was another day care center in violation in the neighborhood. Ms. Wenzel stated that approving the subject application would be setting a precedent.

Mr. Kelley stated that the speakers should have spent more time focusing on the subject application instead of talking about another person that was in non compliance.

Mr. Brown stated, in rebuttal, that he hoped the Board would be fair and consider the attributes of the subject application.

Mr. Hammack said he didn't believe Ms. Fair had any legal right to use the property because she wasn't a title owner or a lessee. He said she had approval from the owner stating that he did not object. Mr. Hammack asked if the Ordinance allowed for that.

Susan Langdon, Chief, Special Permit and Variance Branch, replied that the Ordinance allowed submission of a special permit if you had permission of the owner.

Mr. Hammack asked what would happen if the owner revoked permission. He said he worked with divorce cases all the time where rights were nebulous at best.

Mr. Brown replied that there was a lot that was nebulous in life and he understood Mr. Hammack's point and that there was a question of precedence that the Board could be setting if they were venturing into uncharted territory. Mr. Brown stated that they had been at the property since 1987.

Mr. Brown stated that the ages of the children should be taken into account considering when septic.

Ms. Gibb said she did not remember septic being an issue before. Ms. Langdon replied it was not for a home child care facility and staff was not required to obtain a letter from the Health Department.

Mr. Pammel asked if staff was aware of the other day care, had it been investigated, and did they have a permit. Mr. Bernal replied that when a complaint call was received, they were referred to Zoning Enforcement.

Mr. Hart asked if the circle parking area was one way. Ms. Fair stated that the parents went one way on the driveway, but it was large enough for two ways.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 00-Y-001 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JACQUELINE J. FAIR, SP 00-Y-001 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 12202 Waples Mill Rd. on approx. 21,372 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((4)) 3. (Admin. Moved from 3/28/00 for notices) 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 18, 2000; and

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

1. The applicant has permission, by the owner of the property, for the home child care facility.
2. There is a great demand for child care in the County.
3. The staff report indicates that the environmental and traffic concerns have been analyzed and no problems were found.
4. The application is in compliance with the Comprehensive Plan.
5. The applicant has adequately explained how the request can work.

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 Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 12202 Waples Mill Road (21,372 square feet) lot 3, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles B. Shreve, Land Surveyor, dated July 24, 1987, as revised by Jacqueline Fair, dated December 9, 1999, 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 dwelling that contains the home child care facility shall also be the primary residence of the child care provider.
5. A circular driveway and three (3) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on site in locations as shown on plat.
6. The maximum hours of operation for the home child care facility shall be limited to 7:30 a.m. to 6:30 p.m., Monday through Friday.
7. The total maximum daily enrollment for the home child care facility shall be 10 children.
8. A four (4) foot high chain-link fence shall enclose the designated play area as depicted on the special permit plat.
9. The maximum number of employees shall be two (2) including the applicant.
10. There shall be no signs associated with this use.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be 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. 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 6-1. Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 075, April 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ANNIE & RAFAEL PARRA, SP 00-Y-005 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 5517 Chestermill Dr. on approx. 13,000 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 66-2 ((5)) 174.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Annie Parra, 5517 Chestermill Drive, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a home child care facility with a total maximum daily enrollment of 10 children, to be conducted in the home of the applicant. The applicant currently had in-home child care for up to seven children, but had been cited for operation of a home child care facility with 12 children without a special permit. The subject application was filed to correct this violation, and the applicant understood that only 10 children were permitted under the provisions of the special permit. In staff's evaluation, all issues were addressed with adoption of the development conditions that required that a fence be constructed within the rear yard of the home.

Ms. Parra introduced Lauren Branzinski to present the special permit request as outlined in the statement of justification submitted with the application. Ms. Branzinski stated that she was an attorney and the mother of two children that were in the care of the applicant. She stated that the applicant provided quality childcare. Ms. Branzinski said the applicant purchased the house with the intent of having a daycare in the basement. She presented support letters and photographs from parents of children in the care of the applicant. Ms. Branzinski said there were no traffic concerns and there would not be any noise because the children were small. She also submitted letters of support from the adjacent neighbors. Ms. Branzinski asked the parents present to stand to indicate their support for the subject application.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in support of the application: Carol and Bruce Bleckall, Carolyn Hurwitz, Jane Palocek, Pat Ishbach, and Buddy Berden. The speakers indicated how pleased they were with the quality of childcare offered by the applicant.

John O'Neal, 5523 Chestermill Drive, came forward to speak in opposition of the application. He expressed concerns relating to traffic and noise. Mr. O'Neal asked for a deferral to allow the applicant time to provide a fence within the rear yard of the home.

Gary Petty, Hampton Forest Homeowners' Association, came forward to speak in opposition of the application. He stated that the applicant had violated a homeowner covenant about conducting a business in

a residence. Mr. Petty stated that he was concerned about the impact of a commercial facility in a residential area. He requested a deferral to allow the applicant time to erect a fence and to answer to the neighbors.

Mr. Hart asked if there was any inconsistency about the specification with the development condition regarding the fence and the covenants of the homeowners' association. Mr. Petty replied that one of the issues was the common height of the fence with contiguous homeowners.

Mr. Hart stated that in viewing the photographs, there were no fences in the immediate vicinity.

Mr. Kelley asked staff whether it was essential to have a fence. Ms. Schilling stated that it was not a requirement but a suggested condition.

Ms. Parra stated in her rebuttal that she was willing to comply with the fence issue and that she was more than willing to speak with the neighbors, but was opposed to a deferral.

Chairman DiGiulian closed the public hearing.

Ms. Gibb asked how the requirement for a fence was enforced. Ms. Schilling replied that the applicant had to meet all the requirements of the special permit before a Non-Residential Use Permit (Non-RUP) could be issued nor would the special permit be considered established without fulfillment of all the conditions of approval.

Ms. Gibb asked how that would be followed up. Ms. Schilling replied that since there was a Notice of Violation issued, Zoning Enforcement would conduct a site visit before the Non-RUP could be issued.

Ms. Gibb said most of the complaints centered around children leaving the yard, noise, trespassing and increased traffic. Ms. Gibb stated that in this case there would be just three more children than what was allowed by right. She said if there was fence in the back yard, then the trespassing issue would be avoided and that might take care of whatever noise would come from the use. Ms. Gibb stated that in light of the dire need for childcare in the community and the double driveway, which accommodated most of the parents, she would move to approve the subject application.

Ms. Gibb moved to approve SP 00-Y-005 for the reasons noted in the Resolution.

Mr. Kelley moved to amend the motion to remove Condition #9 relating to the fence. He said the applicant and the homeowners association should resolve the issue amongst themselves. The amendment failed for lack of a second.

Mr. Hart stated that he would support the original motion. He said the development condition would address the issue of the fence. Mr. Hart stated that the traffic impact would be minimal.

Mr. Hammack stated that the development condition provided for a solid wood fence and commented that the condition should be regulated liberally as to comply with the homeowners association.

Ms. Schilling suggested that the wording be changed to wood fence as opposed to solid wood fence.

Mr. Hammack moved to amend the condition to state "wood" fence. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANNIE & RAFAEL PARRA, SP 00-Y-005 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 5517 Chestermill Dr. on approx. 13,000 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 66-2 ((5)) 174. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2000; and

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

1. The applicants are the owners of the land.
2. The staff report has supported the application.
3. The applicant had a special permit previously approved in the current subdivision but in a different location.

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 Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 5517 Chestermill Drive (13,000 square feet), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Harold A. Logan, P.C., revised by R. Parra dated January 10, 2000, revised through January 21, 2000, 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 dwelling that contains the home child care facility shall also be the primary residence of the child care provider.
5. The maximum hours of operation for the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
6. The total maximum daily enrollment for the home child care facility shall be 10 children.
7. The maximum number of employees on site at any one time shall be 3 employees including the applicants.
8. There shall be no signs associated with this use.
9. Prior to issuance of a Non-Residential Use Permit for the home child care facility, a wood fence with a minimum height of 48 inches shall be constructed around the rear yard of the home, which shall serve as a play area.
10. A parking area with four spaces shall be provided as shown on the approved special permit plat. All parking for the home child care facility 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 until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, ninety (90) days after the date of approval* unless the use has been established. 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

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 April 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 078, April 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARK GUIRGIS, SP 00-L-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.0 ft. from rear lot line and stairs 4.9 ft. from side lot line. Located at 6392 Dakine Ci. on approx. 2,100 sq. ft. of land zoned PDH-8. Lee District. Tax Map 91-1 ((23)) 195.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Guirgis, 6392 Dakine Circle, Springfield, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for modification to minimum yards based on error in building location to allow a deck to remain 0.0 feet from the rear lot line. The Zoning Ordinance requires a minimum yard of 2 feet; therefore, the amount of the error was 100%. Ms. Schilling noted that the deck encroached onto adjacent homeowners' association property an additional 2 feet. The proposed development conditions required removal of that portion of the deck that encroached onto adjacent property. Ms. Schilling noted that since publication of the staff report, staff learned that a Notice of Violation of the Building Code Violations had been issued and the building inspector and the Zoning Enforcement inspector was present to answer any questions.

Mr. Hart asked if there were any previous approvals of additions over the lot line. Ms. Schilling replied that staff was not aware of any BZA approvals of structures encroaching onto adjacent property.

Mr. Pammel asked what was the nature of the structural concern or violation. Ms. Schilling replied that the concern was that building inspections had not been obtained which was a violation of the Building Code.

Mr. Pammel asked whether it was known that this was a structurally sound deck or not. Ms. Schilling replied not to staff's knowledge without inspection.

Mr. Hammack said the photographs reflected other decks that appeared to be comparable and asked if staff was aware of any of those in violation. Ms. Schilling replied that staff was not aware of violations on adjacent lots.

Mr. Kelley stated that the Board should defer the application until the building inspection was made. Mr. Kelley moved to defer SP 00-L-007 to April 25, 2000, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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Page 078, April 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. HACOR, INC. AND/OR CARDINAL FOREST, L.C., SP 99-Y-038 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit commercial golf course and golf driving range. Located on the W. side of Pleasant Valley Rd. on approx. 246.70 ac. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((5)) pt. A1 (Formerly 43-3 ((3)) pt. A; 52-2 ((2)) pt. 6,

pt. 7, pt. 8, 9-12, pt. 18, 13-22; 53-1 ((5)) pt. C, pt. D, pt. 68, pt. 69, pt. 70, pt. 71, 72-81, pt. 82, 83-90; 53-3 ((7)) pt. 63, pt. 64, pt. 65, pt. 66, pt. 67, pt. E). (In association with SE 99-Y-033). (Moved from 1/25/00, 2/29/00 and 3/21/00)(Def from 3/28/00.

Chairman DiGiulian 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, McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to permit construction of a commercial golf course and driving range consisting of a clubhouse, pavilion, maintenance buildings, a parking lot with 250 spaces, and a driving range with lights. The hours of operation were proposed to be 6:30 a.m. to 11:00 p.m., daily for both the clubhouse and driving range. The golf course was proposed to be developed over the balance of the site, and would include two woodland preservation areas and a 50-foot buffer surrounding those woods. The areas within the EQC would be preserved in part, except for those areas where ponds were located. In staff's evaluation, all land use, environmental and transportation issues were addressed with adoption of the development conditions.

Ms. Schilling stated that since the publication of the staff report, staff received revised plats and a lighting study, and met with the applicant several times to further discuss the development conditions. The revised development conditions dated April 18, 2000, were the result of those ongoing discussions. She said the changes to the development conditions included: reference to the latest plat received April 17, 2000; changes to the proposed location and square footage of buildings; transportation conditions that resulted from the applicant's desire to have a second entrance to the site; and several changes to the conditions pertaining to treatment of wetlands and forested areas. With respect to the request for lighting of the driving range, staff was in receipt of the lighting study for only a short time, and did not have ample time to review the study to the extent that a recommendation could be made for the approval of lights. The revised conditions continued to recommend that the driving range be unlit and that the range close at dusk. Staff recommended approval of the application subject to the revised development conditions dated April 17, 2000.

Ms. Gibb asked whether staff still wanted to have 50% open space. Ms. Schilling stated that it was desirable for staff to have 50% undisturbed open space, but this was a very unique area in which the applicant had wooded areas and some particular areas that contained unique and significant wooded dye-based soils. She said the applicant indicated their desire to preserve two such areas that contained quite a bit of value and a buffer area. Ms. Schilling said in light of that and the treatment of the wetlands area and the overall site, staff believed that the issue of not having 50% undisturbed open space was adequately addressed. Ms. Schilling stated that there might be additional opportunities to obtain more open space, but that would not be determined until the time of final site plan. She added that the applicant was obligated to preserve a base amount of 44%.

Mr. Hart asked what the Virginia Department of Transportation (VDOT) decided upon for the 2nd entrance. Ms. Schilling stated that for a minor arterial roadway, cross traffic for a single use was discouraged. She said that was the reason for the original recommendation by VDOT not to have the second entrance. Ms. Schilling said that with this particular application, at some point in the future, the applicant envisioned that, on the Comprehensive Plan, Pleasant Valley Road would have a median break and it would be a four-lane divided facility. She said the applicant has, in their revised special permit plat, shifted their second entrance to make it possible to, perhaps in the future, access that through a median break. Ms. Schilling stated that it met the VDOT distance standards for median breaks.

Mr. Hart asked about development condition #37 relating to the issue of accessory eating facilities. He said he thought there was going to be a square footage limitation and he didn't see that noted. Ms. Schilling replied that normally when staff reviewed other similar types of uses it would typically be conditioned so that the eating facility would not exceed a certain amount of square feet. She stated that the square footage was typically 1500 square feet with some of the other driving ranges. Ms. Schilling noted that the applicant was still in the process of the final design of the interior of the clubhouse and she did not know if they had come up with the final square footage yet. She stated that when the applicant goes through the site plan process, a determination would be made as to whether the eating facility was accessory and subordinate to the use.

Mr. Hammack asked about the two types of tree habitats that were very rare and if staff felt those habitats were adequately preserved. Ms. Schilling stated that staff did a walk of those areas with the State, environmental planners, staff, and the applicant, and noted those two areas where rare and unique natural communities were worthy of preservation. She said the applicant supported the requirement to preserve those areas in a conservation easement, which allowed the State to visit the sites and do research as needed and advise on maintenance of those areas.

Mr. Fifer, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He acknowledged staff for their hard work on the application. He stated that approximately 100 acres of the property would remain untouched. He said the applicant met all the required standards. Mr. Fifer suggested a change to Condition #14 to add the language "right and left turn lanes will be provided if required by VDOT at the time of site plan approval." He noted that they were interested in pursuing the issue of lighting on the golf course. Mr. Fifer asked that the Board consider granting a contingent approval to their lighting plan subject to review by County staff. He said the applicant had met with the neighbors in the Virginia Run community. Mr. Fifer noted that the developer of the golf course, Bill Keefe, was present. Mr. Fifer requested a waiver of the 8-day waiting period.

Mr. Hammack asked how long would it take to discuss the light issue with the homeowners' association and staff.

Mr. Fifer replied that they had already spoken with the homeowners' association, but it would take about a week or so because one additional study was requested and staff would need time to review it.

Noel Kaplan, Planning Division, DPZ, stated that one of the problems with giving a specific review target date for a lighting study was that there was new information which seemed to indicate some upper level impact of lighting which might be a problem. He said that if problems were identified, perhaps the consultant could address them. Mr. Kaplan said there would be some back and forth in the process and because of that he could not give a target time frame.

Mr. Fifer stated that the technical problem would be that the applicant would have to file an amendment to the special permit and if there was a way to short circuit that, they would greatly appreciate it.

Chairman DiGiulian called for speakers.

Steve Logan, President, Virginia Run Homeowners' Association, came forward to speak in support of the application. He said the Association supported staff's recommendations. Mr. Logan stated the Association would like the hours of operation to be limited to 10 p.m. and that an annual meeting be included in the development conditions. He said the annual meeting would include representation from the golf course owner, the homeowner's association and County staff with the intention of reviewing an annual study of the lighting conditions with the idea of mitigating any problems that arise as time goes on.

Danielle Steger, Columbia LNG Corporation, came forward to speak in support of the application. She said there was a Columbia LNG easement running through the center of the property and she had reviewed the special permit plat. Columbia Gas appreciated the fact that the plan was sensitive to the gas easement and there were no significant tees or greens on the gas easement.

Robert Donnelly, 15495 Eagle Tavern Lane, came forward to speak in support of the application. He said the community was in support of the golf course, but they had concerns with the lighting. Mr. Donnelly stated that the community supported staff recommendations.

Mr. Hammack asked what would happen if the Board delayed decision on the lights.

Mr. Fifer said if the Board could not approve the lights at this point, they would come back as soon as possible with an amendment application.

Mr. Hart asked the applicant if he would prefer for the Board approve the application without the lighting. Mr. Fifer replied yes.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he would go with the staff on the lights until the issue was resolved, but would approve the basic operation as requested. He moved to approve SP 99-Y-038 for the reasons noted in the Resolution with the revised development conditions dated April 17, 2000.

Mr. Pammel asked about the use of the clubhouse. Mr. Fifer responded that the definition under the Ordinance limited the use to that accessory to the golf course.

Mr. Hart thanked the applicant for meeting with the members of the community.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HACOR, INC. AND/OR CARDINAL FOREST, L.C., SP 99-Y-038 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit commercial golf course and golf driving range. Located on the W. side of Pleasant Valley Rd. on approx. 246.70 ac. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((5)) pt. A1 (Formerly 43-3 ((3)) pt. A; 52-2 ((2)) pt. 6, pt. 7, pt. 8, 9-12, pt. 18, 13-22; 53-1 ((5)) pt. C, pt. D, pt. 68, pt. 69, pt. 70, pt. 71, 72-81, pt. 82, 83-90; 53-3 ((7)) pt. 63, pt. 64, pt. 65, pt. 66, pt. 67, pt. E). (In association with SE 99-Y-033). (Moved from 1/25/00, 2/29/00 and 3/21/00)(Def from 3/28/00). 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 18, 2000; and

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

- 1. The applicants are the owners of the land.

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 Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is APPROVED 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, (246.7 acres), and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William C. Putnam, P.E. dated February, 2000, as revised through April 15, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum occupancy of the golf course and driving range shall not exceed 434 persons. The maximum number of employees shall not exceed 45 at any one time.
6. The hours of operation shall not exceed 6:00 a.m. to 11:00 p.m. daily, except that the golf driving range and golf course shall close at dusk. Maintenance operations shall not begin before 7:00 a.m. daily, and shall end one hour after sunset.
7. The golf driving range shall not exceed 25 uncovered tee stands.
8. 250 parking spaces shall be provided on-site in the locations shown on the special permit plat. All parking shall be on-site. Parking lot landscaping shall be provided as shown on the approved special permit plat, subject to the review and approval of DPWES.
9. The existing vegetation shown on the special permit plat along the northern and western property boundaries shall be preserved and shall be deemed to satisfy the requirements of Transitional Screening Type. The barrier requirement shall be waived.
10. The clubhouse, pavilion and maintenance buildings shall be constructed within the building envelopes shown on the special permit plat. The clubhouse shall not exceed 11,000 square feet of gross floor area and a height of 25 feet; the pavilion shall not exceed 5,000 square feet of gross floor area and a height of 25 feet; the maintenance/cart barn/ turf management buildings shall not exceed 25,000 square feet of gross floor area, and shall not exceed 25 feet in height.
11. Up to 57 feet of right-of-way (56 feet from centerline with an additional 1 foot for the provision of right turn lanes into all site entrances,) from the centerline of Pleasant Valley Road shall be dedicated in fee simple to the Board of Supervisors at the time of site plan review or upon demand by VDOT or Fairfax County, whichever occurs first. Dedication along the site's Pleasant Valley Road frontage to accommodate a turn radius of 955 feet shall be provided by the applicant in fee simple to the Board of Supervisors at the time of site plan approval or upon demand by VDOT or Fairfax County, whichever occurs first.
12. Ancillary easements with a width of up to 10 feet shall be provided for future improvements to Pleasant Valley Road if frontage improvements are not required at the time of site plan review.
13. Left and right turn lanes shall be provided at all site entrances prior to the issuance of a Non-Residential Use Permit for the facility, required by VDOT at the time of site plan approval.
14. In order to enhance the habitat and water quality values of the stormwater management/best management practice ponds, the applicant shall incorporate the following into the design of the stormwater management/BMP pond:

An emergent wetland bench shall be provided for each pond in locations depicted on the special permit plat as "pond edge wetland shelf. These benches shall be located between zero (0) and twelve (12) inches below the normal pool surface elevations of the ponds (the applicant shall have the discretion to determine precise depths within this range) and shall be planted with a minimum of four (4) emergent wetland plant species selected from Table 13 of the Metropolitan Washington Council of Governments (MWCOC) "Design of Stormwater Wetland Systems" (October, 1992) or other equivalent reference approved by DPWES. All species provided shall be native to the area, have a high value for wildlife, as set forth in the MWCOC document or as otherwise determined by DPWES, and be tolerant of fluctuating water conditions that may be anticipated due to the use of the ponds for irrigation, as determined by DPWES. Within these wetland 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," and shall be signed as "no play or entrance to this area permitted." At least twice the surface area of wetlands impacted by this project shall be provided through the provision of these emergent wetland benches. Prior to the approval of the site plan, a wetland construction and planting plan shall be submitted for review and approval of DPWES.

15. In order to filter pollutants from stormwater runoff entering ponds from maintained turf areas, an area of tall, thick, rough shall be provided immediately adjacent to each pond in all areas characterized by

maintained turf grass. This rough area shall extend a minimum width of five (5) feet from the shoreline of the pond. The applicant may pursue one or more alternative approaches to reducing pollutants from stormwater runoff from greens and nearby areas of holes 2 and 15, subject to approval by DPWES. Such alternative approaches may include, but not be limited to, the conveyance of the first ½ inch of runoff from maintained turf areas that would otherwise drain directly into the ponds through a bioretention facility designed in accordance with condition number 18 or through an alternate type of facility (e.g. an area designed to infiltrate the requisite volume of stormwater runoff into the ground) that has an equivalent water quality benefit, subject to the approval of DPWES.

16. The stormwater management/irrigation ponds and erosion and sedimentation control basins and traps shall be designed and constructed such that clearing and grading within EQC areas will be minimized, as determined by DPWES in coordination with the Urban Forestry Division, consistent with BMP and irrigation needs for the golf course. All stormwater management ponds shall be designed to provide a BMP function for the entirety of their drainage areas, subject to the approval of DPWES. In order to minimize the potential for adverse thermal impacts downstream of the ponds, the ponds shall be designed either to prevent thermal stratification or such that cooler water within lower areas of the ponds will be discharged (as opposed to warmer water near the surface).
17. Stormwater runoff from fairways of holes 1, 2, 7, 8, and 16 shall be conveyed into one or more bioretention basins prior to being discharged into any stream or drainageway. At the applicant's option, bioretention basins may also be provided elsewhere on the property outside of EQCs, Piedmont/Mountain Woodlands, and other tree preservation areas. Bioretention basins shall be designed in substantial conformance with the typical detail presented on sheet 3 of the Special Permit Plat and shall be designed to detain the first half-inch of stormwater runoff (with subsequent volumes of runoff bypassed around these facilities). Species selected for planting within bioretention basin areas shall be native to the area, shall be well suited to the soil, hydrologic, and microclimatic conditions within which they will be planted, and shall have a high value for wildlife, as set forth in documentation that shall be provided for the review and approval of the Urban Forestry Division of DPWES. In order to minimize infringement in playing areas while augmenting the habitat values of nearby wooded areas, bioretention facilities shall be located as close to the edges of these woodlands as possible (without requiring additional clearing into the woodlands) as determined by the Urban Forestry Division.
18. Documentation indicating that the proposed construction of a trail/cart path within the Columbia Liquefied Natural Gas Easement is acceptable to the Columbia Gas Transmission Corporation shall be provided to DPWES prior to approval of the site plan. If the location and construction of cart paths are not approved, the paths shall be relocated in substantial conformance with the special permit plat, or an amendment to the special permit will be obtained.
19. Prior to site plan approval, the applicant shall provide documentation to DPWES demonstrating that the applicant has informed the Northern Virginia Field Office of the U.S. Army Corps of Engineers of the nature and extent of the proposed development and associated wetland impacts and that the applicant has sought the U.S. Army Corps of Engineers review of the proposed development for consistency with federal wetlands permitting requirements if required, and has obtained all necessary permits.
20. Limits of clearing and grading shall generally correspond with the "clearing limit" shown on the Special Permit Plat and areas to remain undisturbed shall generally be provided as shown on the Special Permit Plat. Additional groups of trees and/or individual specimen trees shall be selected for preservation to the extent feasible, consistent with golf course design as approved by the Urban Forestry Division prior to site plan approval. In order to provide flexibility to allow for the final location for the design of golf course holes, minor modifications to the limits of clearing and grading may be allowed subject to the following:
 - Clearing and grading shall not occur within EQCs except as explicitly provided for within these development conditions;

- Clearing and grading shall not occur within either of the "Piedmont Mountain Woodland" areas identified on the Special Permit Plat or within 50 feet of either of these areas, except as explicitly provided for within these development conditions;
 - Limits of clearing and grading shall be designed such that only the minimum amount of clearing necessary for the construction of fairways, tee boxes, and greens shall be permitted, subject to the approval of the Urban Forestry Division;
 - Utility lines shall be located, designed, and constructed such that clearing will be minimized to the maximum extent feasible subject to the approval of the Urban Forestry Division; and
 - A minimum of 44% of the total area of the property shall be preserved in a completely undisturbed condition. Removal of vegetation in "undisturbed areas" shall be limited to the following: (a) the removal, by hand, of dead or dying trees which are hazardous, or noxious shrubs or plants which are hazardous; and (b) the removal, by hand, of plants determined to be invasive or alien by the Virginia Department of Conservation and Recreation. Existing vegetation in undisturbed areas may be augmented as set forth in development condition number 24. There shall be no net reduction in the total area of undisturbed land (i.e., areas to be protected by the "clearing limits," exclusive of areas identified for "select clearing") as shown on the Special Permit Plat; if an area shown as being undisturbed on the Special Permit Plat is disturbed (including disturbance to the understory of areas where the tree canopy will be retained), equivalent compensatory areas of undisturbed land shall be provided elsewhere on the property in one or more areas identified on the Special Permit Plat for clearing (this may include areas identified for "select clearing"), subject to the approval of the Urban Forestry Division.
21. The applicant shall retain a certified arborist to prepare a tree preservation plan to be submitted to the Urban Forestry Division at the time of the first plan submission. The tree preservation plan shall preserve trees shown to be preserved on the special permit plat and as provided in development condition 20 above. The tree preservation plan shall include specific activities which will be implemented to maximize the survivability of individual trees and areas of forest designated for preservation. Activities may include, but are not limited to, specific methods of vegetation removal along the limits of clearing, placement and maintenance of tree protection fencing, crown pruning, root pruning, mulching, fertilization, selective clearing within EQC areas to create and maintain fly-overs (within the "play through areas" identified on the Special Permit Plat), and construction of the proposed golf cart trail cut-throughs. The plan shall also include methods for minimizing impacts to tree preservation areas as a result of removing large downed trees.
- Any individual specimen trees or small groups of trees to be preserved that are located within the proposed limits of clearing shall be accurately located on the tree preservation plan. The certified arborist shall provide a condition analysis for each of these trees as outlined in the latest edition of the "Guide for Plant Appraisal." Specific recommendations shall be provided on the tree preservation plan for the preservation of these trees during the construction process.
22. Prior to any land disturbing activity to include the clearing of trees or vegetation on the site, a pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. If a Rough Grading Plan (RGP) is approved prior to approval of a site plan, a preconstruction meeting shall be held between the applicant, the Urban Forestry Division, and the project Arborist. This meeting shall include flagging of the clearing limits to the minimum extent possible, as determined by DPWES and Urban Forestry, to designate the general layout of the course only. Subsequent to approval of a final site plan, and prior to any further land disturbing activities or clearing of vegetation, the applicant shall have the limits of clearing and grading marked with a continuous line of flagging. A second pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. Before or during the pre-construction meeting, the applicant shall walk the limits of clearing and grading with a staff member of the Urban Forestry Division and

the Project Arborist, to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading, and if so, such adjustments shall be made. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance, shall also be identified at this time and the applicant shall be given the option of removing them as part of the clearing operation. Any tree that is designated for removal, at the edge of the limits of clearing and grading, within a "select clearing" area as shown on the Special Permit plat, or within a tree preservation area, shall be removed by hand with a chain saw to avoid damage to surrounding trees. If a stump must be removed, this shall be done using a stump grinding machine in a manner causing as little disturbance as possible to the adjacent trees.

23. Trails and golf cart paths shall be located and designed such that disturbance to tree preservation areas will be minimized. Where trail locations are shown on the Special Permit Plat as being located within areas to remain undisturbed, these trails/golf cart paths shall be relocated outside of these areas to the maximum extent feasible, as determined by the Urban Forestry Division. All portions of trails/golf cart paths that must be located within tree preservation areas shall be field located in consultation with the Urban Forestry Division prior to the first submission of the site plan in order to minimize clearing and grading. Specific methods for constructing the trails/golf cart paths within tree save areas shall be provided as part of the tree preservation plan.
24. The applicant shall coordinate with the Urban Forestry Division to determine the feasibility and value of providing transitional habitat areas between the maintained golf course and natural open space areas, and to determine where it may be feasible to provide additional plantings of native species of wildflowers in golf course rough areas near such transitional habitat areas, consistent with recommendations within "A Conservation Plan for Developing Two Golf Courses on the Hacor Property" (dated January 31, 1992), prepared by Edward Milhouse and Keith W. Cline. The purposes of the transitional habitat and wildflower areas would be to provide buffers to the natural open space areas and to augment the habitat values of these areas, consistent with golf course design. Where transitional habitat areas will not be provided between maintained golf course areas and natural open space areas, the applicant may instead provide, where determined to be appropriate by the Urban Forestry Division, supplemental plantings in the understory of undisturbed areas in order to prevent the rapid spread of invasive species of plants within understory areas and to augment the habitat value of the undisturbed areas. Species to be planted and the method(s) of planting shall be subject to the review and approval of the Urban Forestry Division.
25. The applicant shall, at the time of site plan approval, record a conservation easement in a form approved by the County Attorney to the benefit of Fairfax County Board of Supervisors, among the land records of Fairfax County for land which is included in each of the Piedmont Mountain Woodland areas identified on the special permit plat and any wooded area located within fifty (50) feet of either of these areas. The exact boundaries of the conservation easement areas shall be determined at the time of site plan review, subject to the review and approval of the Urban Forestry Division of DPWES. In the areas subject to the conservation easement, there shall be no clearing of any vegetation, except for the following
 - Dead or dying trees which are hazardous or noxious shrubs or plants which are hazardous may be removed by hand,
 - The removal, by hand, of invasive species which may occur within the Piedmont Mountain Woodland areas and/or the associated buffer areas. However, clearing may occur only subject to the review and approval of the Urban Forestry Division of DPWES, in consultation with the Virginia Department of Conservation and Recreation, Division of Natural Heritage, regarding the management of these areas.
26. All areas designated on the Special Permit Plat as "play through 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." Management efforts shall limit the disturbance of these areas to the minimum degree necessary to permit the walkways/golf cart crossings shown on the plat and to permit golf play through these crossing areas.

All stumps shall remain. In order to retain a native cover of low-growing shrubs and herbaceous vegetation while allowing for the provision of sight lines across these areas, vegetation that currently exceeds a height of four feet within these areas may be reduced in height through hand-removal or pruning. No vehicles shall be allowed within these areas during or after construction except to provide for the construction and use of any golf cart trail shown on the Special Permit Plat. Further, except to provide for the construction of such trails, there shall be no exposure of the ground surface (i.e., soil underlying existing vegetation) within these areas. Low growth shrub and herbaceous vegetation in all "play through areas" shall be retained and shall be supplemented as needed with native low-growing shrubs and herbs as approved by the Urban Forestry Division. Specifications regarding tree removal within and maintenance of play through areas shall be provided within a Tree Preservation Plan to be prepared pursuant to development condition number 21.

27. Staff of the Virginia Department of Conservation and Recreation, Division of Natural Heritage, shall be provided access to the Piedmont Mountain Woodland areas and associated buffer areas as identified on the Special Permit Plat at any time during the hours of operation of the golf course, for the purposes of studying these areas and providing management guidance to the applicant and/or golf course operator, in accordance with development condition 25. Prior to site plan approval, the applicant shall provide documentation that demonstrates that legal provisions for such access have been established as necessary, as determined by the County Attorneys Office of Fairfax County.
28. Turf management chemicals, including lime, fertilizers, pesticides, and herbicides, shall be stored within buildings or under cover so that these materials will not be exposed to rainfall.
29. In order to prevent groundwater contamination, all surfaces used for chemical, machine, vehicle storage, or cleaning and maintenance associated with the maintenance building shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with impervious geotextile liner designed to remove contaminants and pollutants. A maintenance plan for the system shall be designed and implemented. The catchment system design and the maintenance plan for this system shall be subject to the approval of DPWES. In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substance stored on the property. The emergency spill response plan shall be subject to the review and approval of the Fairfax County Fire and Rescue Department and the Fairfax County Department of Health.
30. In order to minimize the runoff of nutrient and pesticide pollutants into nearby streams and to minimize infiltration of such pollutants into groundwater resources, a turf establishment and maintenance plan (to include both nutrient management and pest management components) for all managed turf areas shall be developed, provided to DPWES for approval, and implemented as approved. This plan shall be implemented in accordance with the best management turf grass practices developed by Virginia Polytechnic Institute and shall include regular on-site monitoring by the applicant of its major components to allow for ongoing adjustments and improvements. The plan shall be subject to approval by the Virginia Cooperative Extension Office, Fairfax County, and shall include provisions ensuring that records of applications of fertilizers and pesticides shall be maintained and be made available to the County upon request.
31. Any outdoor lighting of the site shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet,
 - The lights shall be focused downward directly on the subject property,
 - Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
 - Up-lighting of buildings or signs shall not be permitted on the site.
 - The golf driving range shall not be lighted.

32. All signs shall comply with Article 12 of the Zoning Ordinance.
33. Prior to any land disturbing activities, the applicant shall contact the County Archeologist to identify the scope of work for the subject property. Subject to the recommendations rendered by the County archeologist, the applicant shall have a Phase I archeological survey of the property conducted which shall subsequently be submitted to the County Archeologist for review and approval. If based on the Phase I survey, the County Archeologist determines that further study is warranted the applicant shall conduct a Phase II and/or Phase III archeological survey as appropriate.
34. In order to enhance the habitat value of the Virginia Power and the Columbia Gas Pipeline Company easements on the property, the applicant shall prepare and implement a utility easement management plan, for the review and approval of the Urban Forestry Division, that will provide for habitat enhancement measures consistent with recommendations within "A Conservation Plan for Developing Two Golf Courses on the Hacor Property" (dated January 31, 1992) (Attachment A), prepared by Edward Milhouse and Keith W. Cline and/or through an alternative approach approved by the Urban Forestry Division. These habitat enhancement measures shall be provided to the extent allowed by Virginia Power and the Columbia Gas Pipeline Company; if both companies refuse to grant the Applicant permission to pursue the habitat enhancement measures recommended within the Conservation Plan, the Applicant shall not be obligated to pursue these measures; however, the Applicant shall provide sufficient documentation to DPWES to establish that permission to pursue the habitat enhancement measures has not been granted.
35. Accessory eating facilities within the clubhouse may be permitted for the use of patrons of the golf course/driving range, and shall be limited to the sale of snack bar concessions and a dining room/kitchen.

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. Hart seconded the motion which carried by a vote of 7-0. Mr. Hammack moved to waive the 8-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 April 18, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 087, April 18, 2000, (Tape 1), After Agenda Item:

Approval of February 29, 2000 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

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Page 087, April 18, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration or Request for Waiver of the 12-month refiling period for
Thomas L. and Jeffery L. Marcey, VC 00-P-009

Page 088 April 18, 2000, (Tape 1), After Agenda Item, continued from Page 087

Mr. Hammack moved to waive the 12-month waiting period for refileing. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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Page 088, April 18, 2000, (Tape 1), After Agenda Item:

Approval of April 11, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. There was no second and the motion carried by a vote of 7-0.

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Page 088 April 18, 2000, (Tape 1), After Agenda Item:

Approval of Revised Plat for
Suzanne Madormo-Smith and Gregory C. Smith, VC 00-H-012

Mr. Hammack moved to approve the revised plat. There was no second and the motion carried by a vote of 7-0.

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Page 088, April 18, 2000, (Tape 1), After Agenda Item:

Request for Additional Time for
Seven Corners Animal Hospital, VC 95-M-066.

Mr. Ribble moved to approve the additional time request. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was February 1, 2001.

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Page 088, April 18, 2000, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
VC 00-V-043 and SP 00-V-017, Peyton and Joan Duncan

Mr. Pammel moved to deny the out of turn hearing request. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 088 April 18, 2000, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
SPA 99-M-037, O-Luck Inc. t/a Happi Billiards and Cafe.

Mr. Pammel moved to deny the out of turn hearing request. Mr. Ribble 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 12:07 p.m.

Minutes by: Regina Thorn

Approved on: August 15, 2000

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 25, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 089, April 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARK GUIRGIS, SP 00-L-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.0 ft. from rear lot line and stairs 4.9 ft. from side lot line. Located at 6392 Dakine Ci. on approx. 2,100 sq. ft. of land zoned PDH-8. Lee District. Tax Map 91-1 ((23)) 195. (def. From 4/18/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Guirgis, 6392 Dakine Circle, Springfield, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for modification to minimum yards based on error in building location to allow a deck to remain 0.0 feet from the rear lot line and stairs 4.9 feet from the side lot line. This hearing was deferred from April 18, 2000, in order for the building inspector to conduct an inspection of the deck in question. Ms. Schilling referenced a cover memo which included a punch list from the building inspector showing the deficiencies with the deck which needed to be addressed before an inspection could be obtained.

Mr. Kelley asked if the deficiencies had been addressed or overcome. Mr. Guirgis replied that they had not but was prepared to address that in his statement.

Mr. Kelly stated that he would not want to act on the special permit request until the deficiencies were overcome.

Mr. Guirgis presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Guirgis stated that building a deck was intended for the purpose of creating an addition to his house where his family and friends could enjoy nice weather outdoors. He stated that he was the teen youth leader at his church and the youth group often used his deck for barbecues and was a comfortable place for the group to gather. He stated that he obtained a deck permit in 1996 as mandated by the County; however, during construction an error was made in size due to a two foot over hang that extended out on the second floor but not on the first floor. He explained that this error skewed the measurements and caused the exact two-foot encroachment onto home owner association property. He presented engineer drawings that illustrated the building error and stated that it wasn't his intention for the deck to encroach onto home owner association property. Mr. Guirgis noted that the encroachment was over 10 feet in the air and that no one walking behind his house could bump their head. He stated that reducing his deck to meet minimum yard requirements would probably limit the number of people that he could have on the deck, cause the existing \$1,500.00 deck furniture to become completely obsolete, as it would no longer fit and would probably put him out of commission for the summer until he could afford to have the repairs done professionally. Mr. Guirgis stated that he would not make the repairs again himself due to the errors he had made the first time. He submitted a letter stating that his nearest neighbors did not find his deck to be a hindrance, an obstruction or of any offense to them and did not prevent them from enjoying any of their rights as neighbors. Mr. Guirgis emphasized that he had no desire to stand in violation of either the BZA or the County regulations. He stated that to address Mr. Kelley's question, he had spoken at length to the county inspector and went through the list of ten items with him that he wanted him to address and was told that he was in full compliance. Mr. Guirgis stressed that his intention was to find out the outcome of this hearing and then address the discrepancy expediently and with full compliance. He emphasized that he would prefer the BZA approve his deck in its current form and size, however he realized that wasn't what he had originally applied for. He acknowledged that the error was made and requested respectfully that the Board approve the special permit for the structure to remain subject to compliance with all of the 10 points stated by the County inspector.

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

Mr. Hammack stated that he could not approve this type of application without an easement being granted. He said that the applicant was encroaching onto property owned by other property owners and if they gave one individual this sort of latitude everybody in the development would want that type of privilege. He said that it was regrettable if errors crept into construction with measurements. He stated that he appreciated the applicant's candor in discussing the deficiencies in the construction because it would be regrettable if the deck had any serious problems with structural failure.

Mr. Hammack moved to deny SP 00-L-007 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK GUIRGIS, SP 00-L-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.0 ft. from rear lot line and stairs 4.9 ft. from side lot line. Located at 6392 Dakine Ci. on approx. 2,100 sq. ft. of land zoned PDH-8. Lee District. Tax Map 91-1 ((23)) 195. (def. From 4/18/00) 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 25, 2000; and

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

- 1. The applicant is the owner of the land.

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 Sect(s).8-914 in the applicable sections 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 2000.

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Page 090, April 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ALI A. GHODS & JILA AHMADI, VC 00-Y-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a 6.0 ft. high fence in a front yard to remain. Located at 5529 Clifton Rd. on approx. 31,824 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 55-3 ((4)) 27.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ali A. Ghods and Jila Ahmadi, 5529 Clifton Road, Clifton, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The

applicant requested a variance to allow a 6.0 foot high fence to remain in the front yard. The Zoning Ordinance limited the height of fences in a front yard to 4 feet in height; therefore, a variance of 2 feet was requested.

Mr. Ghods and Ms. Ahmadi presented the variance request as outlined in the statement of justification submitted with the application. Mr. Ghods stated that they built a 6.0 foot high fence in front of their yard next to Clifton Road without permission. He said Fairfax County required them to cut it down to four feet and they complied. He said that the Fairfax County Inspector later told them that they had to cut the fence on both sides of their yard in the front of the house. Mr. Ghods stated that when they purchased the house, the builder told him that he had already received permission to build the 6 foot high fence. Mr. Ghods testified that the fence was inspected at 6.0 feet before they moved in. He explained that he wanted to keep the fence because it provided safety and security for the children especially from the heavy traffic flow when Clifton Road was joined with Stringfellow Road.

Ms. Ahmadi said that they owned the land on 5525 Clifton Road, so she reasoned that part of the fence belonged to them. She stated that the owners at 5539 brought a large construction truck to the property and had a business there. Ms. Ahmadi stated that they needed the fence to be 6 feet tall because it shielded them from seeing the people coming at 6:30 a.m. and making a lot of noise. She reiterated several times that the fence was already there when they bought the house. Ms. Ahmadi testified that in the front part of the yard, they had already cut the fence back to 4.0 feet. She asked the Board why were there many other properties on Clifton Road with 6 foot high fences.

Mr. Hart asked if the fence facing the street was o.k. Ms. Schilling confirmed that the fence across the front was 4 feet in height and rose up to 6 feet on either side. She stated that it was just the side fences in the front yard that were the subject of the variance. She said that the fence directly in the front of the yard was in compliance.

Mr. Hart asked if there was a step in the check list that included things like "fence is too high in the front yard" when a house was inspected for a residential use permit or if that would be separate.

Ms. Schilling answered that it would be separate when the building inspector was there to inspect the home. She explained that this was an older pre-existing lot and a redevelopment because the house was fairly new. She stated that there wasn't a provision to inspect for yard regulation for fences at that time, but an inspection of that type would come when someone would make an inquiry of the Zoning Permit Review Branch.

Mr. Hart asked if someone made a complaint to get this case started or was it just spontaneous.

Ms. Schilling responded that there was a complaint, that the violation was something that was Noticed by County staff.

Mr. Ghods stated that on the left side of the building the fence was 6.0 feet high. He explained that because of the slope they had, when they stood on their driveway, it was level with the fence. He stated that if they cut the fence to 4.0 feet high, it would be low.

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

Mr. Pammel moved to approve-in-part VC 00-Y-020 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 18, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI A. GHODS & JILA AHMADI, VC 00-Y-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a 6.0 ft. high fence in a front yard to remain. Located at 5529 Clifton Rd. on approx. 31,824 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 55-3 ((4)) 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 April 25, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have met in part the requirements set forth for the granting for 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 **APPROVED-IN-PART** with the following limitations:

1. Notwithstanding that shown on the plat prepared by Kenneth W. White, dated January 31, 2000, the fence shall be reduced to a height not to exceed four (4) feet, for a distance of 35 feet back from the front property line.

This approval, contingent upon 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. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) days after the final date of approval unless the fence has been reduced in height as outlined in Condition 1.

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

Page 093, April 25, 2000, (Tape 1), ALI A. GHODS & JILA AHMADI, VC 00-Y-020, continued from Page 092

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 093, April 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. J. THOMAS & JUDITH K. HINES, VC 00-P-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yard of a corner lot. Located at 10117 Joy La. on approx. 32,607 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 37-4 ((9)) 23. (OTH Granted 2/29/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. J. Thomas and Judith K. Hines, 10117 Joy Lane, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a 6.0 foot high fence to be constructed along the front yard of Nadine Drive. The Zoning Ordinance permits a maximum fence height of 4 feet. Therefore, a variance of 2.0 feet was requested.

Mr. Hart asked Mr. Bernal if the front yard ended from the corner of the house and straight back. Mr. Bernal confirmed that he was correct.

Mr. and Ms. Hines presented the variance request as outlined in the statement of justification submitted with the application. Mr. Hines stated that they were requesting a variance so that they could construct a 6.0 foot high fence in a front yard. He said they proposed to put a swimming pool in the back yard with the fence to run from the chimney on the west side directly to Nadine Street, back down Nadine Street to the rear of the lot (along Nadine Street), across the rear of the lot to the neighbors yard, on the east side, up the neighbors property in conjunction with the neighbors and then across to the corner of the house. He stated that it would appear that the back yard of the house was being fenced in. Mr. Hines said the reason why there was an issue was that it was a corner lot and was deemed to have two front yards; one facing Joy Lane the other front yard facing Nadine Street.

Mr. Hines stated that he had concerns with privacy and safety issues. He stated that the zoning rules permitted a 6.0 foot fence on the rear and side of the property. He explained that the privacy issue had to do with the foot traffic in the spring and summer along Nadine Street. He testified that Nadine Street was also used as a play ground because the street was dead end at the rear of the property line and behind that there was park land.

Mr. Hines said there was a considerable amount of traffic with parents dropping off their kids all along the side of Nadine Street and also on Joy Lane.

Mr. Hines said when they purchased the house there was a 4.0 foot high fence in the exact location that they proposed to put the 6.0 foot high fence, but it had deteriorated. He stated that there was no privacy with a 4.0 foot high fence.

Mr. Hines stated that there were a number of pools in the neighborhood that had 4.0 foot high fences, but in each case it was very difficult to see the pool from the street because of the location of the pool behind the house. He testified that the house directly across from them was a corner lot with a pool, but it could not be seen from the street. He presented photographs from Nadine Street reflecting that their pool would be in plain view.

Mr. Hines stated that their main concern was the issue of safety. He testified to different instances where he or one of the neighbors had the police come out to break up groups of teenagers that had been drinking at the end of Nadine Street late at night and partying.

Mr. Hines summed up his presentation by stating that they had a hardship situation because of the unique situation of a corner lot that was deemed to have two front yards and because of both the privacy and safety issues which he believed were paramount.

Mrs. Hines stated that they needed to install the pool because they had a son who was mildly mentally retarded and was advised by her son's doctor that he needed exercise on a daily basis. She said that although their son took part in certain sports once a week, it would really benefit him if he could swim everyday.

Mr. Pammel asked Mr. Hines if he was aware that if any maintenance problems arose with the fence, which was proposed to go over a storm sewer easement, that the County was authorized to take the fence down to do whatever had to be done and Mr. Hines would incur the cost to rebuild it. Mr. Hines affirmed that he was aware of that.

Mr. Pammel asked Mr. Hines if he would object to the fence being moved back about 12 feet so that it did not encroach on the easement.

Mrs. Hines asked if Mr. Pammel was just referring to the corner of the lot.

Mr. Pammel said that it would come in about 12 feet from the property line all the way up to where the fence would junction at the house.

Mr. Hines asked if he was referring to 12 feet back from Nadine Street.

Mr. Pammel explained 12 feet back from the property line on Nadine Street and extending straight up the street line to where the fence would come out from the house. Mr. Hines said he understood and stated that he mistakenly thought Mr. Pammel meant they would cut the fence at the corner.

Mr. Pammel said he was thinking of more visibility width of the street.

Mr. Hines said that they tried to address the visibility issue at least from the corner of Joy and Nadine Street with the pictures they submitted.

Mrs. Hines stated that possibly they could just cut the corner off and put the fence back on a diagonal line and cut the corner.

Mr. Pammel said that he would personally be more comfortable if it set back 12 feet from the entire frontage and said that he didn't think they would lose anything.

Mr. Hines stated that currently it was set back about 4.0 feet from the berm.

Mr. Pammel stated that it was still on the property line and that he was suggesting it be 12.0 feet back off the property line. He stated that it was approximately 12 feet back down in the corner where the sewer easement crossed over the property line.

Mr. Hines stated that there was a pine tree that would be right in the middle of the 12 foot proposal.

Mr. Hammack stated that he had a question with regard to visibility. He asked if Nadine Street ended at the park. Mr. Hines said that it did.

Mr. Hammack stated that the tax map it showed Nadine Street actually going through. Mr. Bernal stated that on the tax map the words "Not Through" were indicated.

Mr. Hammack asked if there were parking lots in the park. Mr. Hines replied no.

Mr. Hammack asked if the people who used the park, parked on Nadine Street. Mr. Hines replied yes.

Mr. Hammack asked if Mr. Hines had spoken with the neighbor across the street on lot 24. Mr. Hines replied that they had and that his neighbor was strongly in support of the application because he had a four-year-old who wanted to use the pool.

Mr. Hammack asked if the neighbor had any objections to looking at a 6.0 high foot fence directly across the street. Mr. Hines stated that the previous neighbors were in favor of the 6.0 high foot fence and that these were new neighbors that were even more in favor and wished them luck in getting the approval.

Mr. Hart asked where the sidewalk was in relation to the property line. Mr. Hines stated that there was no sidewalk.

Mr. Pammel responded to the applicant's concern by stating that the fence would be behind the pine tree because the 12 feet would be from the property line and that their curb was probably 6.0 foot or more from the property line.

Mr. Hines asked if it was 12 feet from the property line back or from the curb. Mr. Pammel said not from the curb but from the property line.

Mr. Hines asked if the property line was 3 feet back from the curb. Mr. Pammel calculated that it was a 36-foot wide pavement and a 50-foot wide right-of-way which would be 14 feet. He stated that the property line should be approximately 7 feet from the back of the curb.

Mr. Hines stated that there was another pine tree about half way between the rear property line and where the fence would be at the top.

Mr. Pammel stated that he would situate it so that the trees would not be interrupted and that it could be done.

Mrs. Hines asked if the two pine trees would be outside the fence.

Mr. Hines stated that they hadn't focused on that aspect so that is why they were not quite sure where the 12-foot alignment would be.

Chairman DiGiulian stated that it was clear that they wanted the fence right on the property line.

Mr. Hines stated that he wanted the proposed fence right where the 4.0 foot high fence was located which lead about 4.0 feet to the berm. He stated that he was not clear on the exact position of the property line and from where they would be measuring from for the 12 feet.

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

Mr. Hart stated that he was prepared to make a motion but was wondering if the applicants wanted to look at the position of the trees in relation to the property line for a week or so before the Board voted. He stated that he couldn't tell from the photographs how far the storm sewer easement was at the corner. He said that he thought the pine trees were between the fence and the curb and wondered if the Board should defer for one week. He then asked the other Board members for their opinion.

Mr. Kelley stated that he didn't see the need to move the fence.

Chairman DiGiulian, Mr. Hammack, and Ms. Gibb stated that they agreed with Mr. Kelley.

Mr. Hart moved to approve-in-part VC 00-P-018 with the limitation that the fence not enclose the storm sewer easement at the corner which was depicted on the plat.

Mr. Hines asked if it would make a difference if they granted a Hold Harmless Agreement with the County on the easement. He stated that they intended to do that anyway.

Chairman DiGiulian stated that the public hearing was closed.

Mr. Hammack said that he would second the motion for purposes of discussion. He said that the applicants made a good case for having the fence in the position shown on the plat. He stated that the Board did not have jurisdiction on Hold Harmless Agreements. He said that the applicant understood the County's authorization process if there was any problem with the fence. He said that he would rarely support any enclosure of an easement, but under the circumstances, he didn't have a problem with it.

Ms. Gibb confirmed that the easement agreement stated that it was subject to the County's rights. Therefore, she didn't see a problem to enclose the fence.

Mr. Hart explained that he called for the stipulation because the applicant was willing to comply and that, in his own experience, he had seen that when fences were located across storm sewer easements, it tended to collect trash and create ponding on the high side of the property. He stated that because the set back was only on the very corner of the yard, it wouldn't effect the pool at all and it would resolve the situation. He also stated that the applicants didn't need the fence there anyway.

Mr. Hammack asked if there was underground pipe. Mr. Hines confirmed that the pipe was underground.

Ms. Gibb moved to amend the motion because of the underground pipe. She moved that the application be approved as applied for, along the periphery of the property. Mr. Kelly seconded the motion which carried by a vote of 5-2. Mr. Pammel and Mr. Hart voted nay.

Mr. Hart stated that he was just voting on the amendment.

Mr. Chairman stated that it was the amended motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

J. THOMAS & JUDITH K. HINES, VC 00-P-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yard of a corner lot. Located at 10117 Joy La. on approx. 32,607 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 37-4 ((9)) 23. (OTH Granted 2/29/00). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.
3. The house is oriented on an angle with a double front yard and located on a dead end street.
4. The applicants' testimony regarding the traffic and the desire for privacy for the back yard is a close call as to whether the fence should be right at the property line. However, under the circumstances, a 4.0 ft. fence was previously there and there will be a swimming pool in the back yard; therefore, the applicants have sufficient reason for 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a fence as shown on the plat prepared by John D. Jarrett, dated June 7, 1999, 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 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 091, April 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT & GISELINDE TUTEN, VC 00-L-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. and 6.1 ft. high fence to remain in front yard of a corner lot. Located at 5926 Shadow Walk on approx. 29,968 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((4)) 2. (Def from 3/28/00 for decision only)

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 R. Tuten, 5926 Shadow Walk, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He said on March 28, 2000, the BZA deferred decision so that the applicant could consider moving the garage further back by 7 feet from Shadow Walk and possibly "connecting" the proposed garage to the dwelling via a "breezeway" and submission of a revised plat.

Mr. Bernal said a revised plat was submitted April 20, 2000, and was dated April 18, 2000. The plat showed the accessory structure (detached garage) to be located 34 feet from Shadow Walk rather than 28 feet as was submitted in the original application. He said the Board had asked staff to research the extent of a connection between the dwelling and an addition. The Zoning Administration Branch had an interpretation which determined that in order for any construction to be considered an addition, the structure would have to be

connected to the principal dwelling via an enclosed room that was considered to be living space. By that, it meant having a roof, walls and floor with access to a heat source during the winter months.

Mr. Tuten presented the variance request as outlined in the statement of justification submitted with the application. He stated that all they wanted was to have a garage as close to their house as possible and remove as few trees and shrubs as possible. He said that they were both retired and were planning for their old age. He stated that they had tried their best to conform to the Board's requests and had made every effort to attach the garage to the house which would have been in their best interest. He explained that there was no logical place to attach the garage without making major modifications at a very great expense. He presented photographs to the Board that showed the entrance to the house from Shadow Walk and the walkway into the patio. He stated that their house was unique in that the front door to the house faced Oakland Drive while their mailing address was 5926 Shadow Walk, which explained why visitors used that side entrance. He stated that the side entrance was the only place a garage could be attached which would block a window and a door. He stated that they reduced the width of the structure by 4.0 feet and moved the garage 8.0 feet further toward the rear fence. He stated that in doing so, it increased the distance from Shadow Walk to the front of the garage to 34 feet and to 37 feet from the rear of the garage to Shadow Walk. He stated that they had done their best to conform to the Board's requests and the concerns of their neighbors; however, he stated that he did not believe that their neighbors realized what would be involved in building the garage where Building A was currently located. Mr. Tuten stated that the potting shed, that set on a cement slab, along with more trees and shrubs would have to be removed. He stated that a larger driveway would be required and a large turnaround area would be needed. He stated that they planned to make maximum use of the existing driveway and the existing flag stone walkway. Mr. Tuten added that the overhang would be an extension to the walkway and would not be accessible or usable as a carport. He said that the Board's approval would be greatly appreciated.

Ms. Gibb stated that she understood they moved their driveway over and were going to remove the asphalt from the old location, but according to the plat, the driveway didn't actually go into the garage.

Mr. Tuten stated that the driveway would actually be off the current driveway leading into the garage. He stated that the doors of the garage would be facing open. Ms. Gibb explained that their plat didn't show that. Mr. Tuten said that she was correct.

Ms. Gibb asked if the dark lines were what he was removing.

Mr. Tuten said "no", the dark lines were the current driveway. He stated that the driveway was mostly small gravel except for about a 30 foot asphalt portion that leads from Shadow Walk. He proposed to remove the asphalt and make it all gravel. He then pointed out, on the overhead projector, where the asphalt and gravel up to Oakland Drive was and where the new driveway would come off the gravel portion into the garage, which would also be gravel.

Ms. Gibb asked about another area on the plat.

Mr. Tuten answered that it was the proposed entrance from the original drawing back 37 years ago when they proposed to put in a driveway and a garage at that time.

Ms. Gibb asked if it was anything in reference to his current proposal. Mr. Tuten said that it was not and that it was just the plat he had to work with. He stated that the old plan was shown on Attachment #1 which was the original plan for a garage and a driveway.

Mr. Hammack stated that he noticed that the garage was pulled back 34 feet from Shadow Walk and that there was only a 1.0 foot encroachment. Mr. Tuten confirmed he was right.

Mr. Hammack stated that if the accessory structure was attached to the house as requested, the applicant would only need a variance of 1.0 foot; otherwise, it satisfied all the set back requirements.

Mr. Tuten said that to attach the accessory structure to the house, the breezeway would have to be enclosed.

Mr. Hammack stated that he could build it with a one foot variance almost as a matter of right although there was an inconsistency. He stated that the applicant was almost within the building footprint.

Mr. Bernal confirmed he was correct.

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

Mr. Ribble moved to approve VC 00-L-008 for the reasons noted in the Resolution subject to the Development Conditions contained in Appendix 1 of the staff report dated March 21, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT & GISELINDE TUTEN, VC 00-L-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. and 6.1 ft. high fence to remain in front yard of a corner lot. Located at 5926 Shadow Walk on approx. 29,968 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((4)) 2. (Def from 3/28/00 for decision only) 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 25, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.
3. The applicants did a good job modifying the application.
4. A letter from the builder indicates this location would cause the least amount of impact.
5. The lot has a double front yard.
6. The proposal could almost be done by right.

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

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

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

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

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

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

- 1. This variance is approved for the location of accessory structures and fence as shown on the plat prepared by Kenneth W. White, dated December 7, 1999 as revised through April 18, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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.

Ms. Gibb and 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 3, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 100, April 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CAPITAL BAPTIST CHURCH, SPA 76-M-268-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-M-268 for church and related facilities to permit building addition and site modifications. Located at 3435 Aston St. on approx. 5.95 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 52 and 55. (MOVED FROM 1/4/00).(DECISION ONLY FROM 2/22/00 and 4/18/00).

Chairman DiGiulian called the applicant to the podium. Pastor David N. Hunter, Sr., Spiritual House Church Planning, P.O. Box 2344, Dale City, Virginia, stated that the Capital Baptist Special Permit Amendment Application had been deferred for decision only. Pastor Hunter presented the special permit amendment request as outlined in the statement of justification submitted with the application. He made reference to his letter to Chairman DiGiulian dated April 10, 2000, and addressed the following six items requested by Mr. Hart at the public hearing on February 22, 2000:

Pastor Hunter stated that the flooding of properties downstream had been studied and the letter from Gerry A. Hish, Sr. of Bury & Partners, Inc., indicated that the flooding along Rebel Drive was caused by an inadequate culvert on Rebel Drive and Capital Baptist Church's contribution to the run-off was not the source of the storm water run-off problem on Rebel Drive. He stated that Mr. Hish was present to discuss the issue. Pastor Hunter further testified that with regard to zoning violations, the church had complied with Zoning Enforcement's request to cease use of the barn. He stated that the buses, which were parked along Gallows Road, had been relocated and the Zoning Enforcement Officer was pleased with the Church's compliance. Pastor Hunter also stated that a letter from Zoning Enforcement had been submitted. In addition, Pastor Hunter stated that a buffer for property owners to the east of the site (across Gallows Road) was provided as shown on the special permit amendment plat and that in response to citizen concerns and the Board's request for traffic calming devices on site, the church agreed that the Aston Street entrance to the site would be gated except for all day on Sundays, Wednesday evening worship services, special holiday events and

revivals. He stated that the type of gate would be approved by the Department of Public Works and Environmental Services (DPWES). Pastor Hunter also stated that based on the concerns of the immediate neighbors to the north, a six-foot high fence would be provided by the applicant adjacent to Lots 53 and 49 pursuant to Development Condition No. 14. Pastor Hunter stated that the Zoning Administrator had determined that the religious theatre productions, Monday night Bible Study and the Thursday morning mothers home school support group were allowed along with the approval of a special permit for church and related facilities.

Pastor Hunter made reference to three letters submitted to the Board the previous week. He stated that Dorthy Almsay, 3402 Hemlock Drive, did not support the special permit amendment and that her letter was not applicable due to the fact that Hemlock Drive was not shown on the tax map and she was not an immediate neighbor of the church. Pastor Hunter stated that Mr. and Mrs. Miller, immediate neighbors of the church, had written in support of the application after being in opposition for most of the process. He stated that their support was due to the church's consent to gate the Aston Street entrance at the time aforementioned. Pastor Hunter stated that it was a "quantum leap" for them to gain the support of the Millers and many others that were initially in opposition to the application. He stated that Mr. Anderson was in opposition of the application due to the stormwater runoff problem.

Chairman Digiulian stated that there were four additional letters in opposition submitted that morning.

After reviewing copies of the letters Pastor Hunter stated that they had to do with issues already discussed. He stated that the letter from John Clifton addressed concerns about increased traffic. Pastor Hunter stated that the traffic on Aston Street would be reduced after the entrance was gated as previously described and the entrance on Gallows Road was constructed. He mentioned that Mr. John Bassett from VDOT was present to address any traffic concerns.

Pastor Hunter stated that the applicant had addressed all outstanding concerns. He stated that any additional letters spoke for the fact that not everyone was enamored with the church's plans and that it was "par-for-the-course" for any special permit application for a church. In conclusion, he stated that the applicant respectfully requested the Board grant the application based on the favorable support of staff.

Mr. Hammack stated that the applicant had taken measures to come into compliance with regard to the fact that the church was operating in violation of the special permit. He stated that the use of the gymnasium was addressed very well by staff in the development conditions and that the size of the existing sanctuary would increase from 497 to 750 seats. Mr. Hammack stated that the parking would be increased substantially and that the overall FAR was increased from 0.09 to 0.12, which was a significant but not a huge increase and still within the FAR allowed in the neighborhoods in that zoning category. He stated that the overall development plan, aside from lot 53, did not have a lot of barriers and that there was adequate screening for the size of the development. Mr. Hammack stated that the exit off Aston Street had been addressed with the development conditions and the applicant had agreed to construct improvements to Gallows Road. He stated that the storm water run-off problem was addressed by the engineer and that any issues currently raised by neighbors had already been considered and addressed in prior hearings. Mr. Hammack stated that the staff report indicated that the applicant had probably "maxed out" the development of this property to the length in which it could be developed and that overall the applicant satisfied the standards for special permit uses.

Mr. Hammack moved to approve SPA 76-M-268-02 for the reasons noted in the Resolution subject to the Development Conditions contained in Appendix 1 of the staff report dated April 17, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAPITAL BAPTIST CHURCH, SPA 76-M-268-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-M-268 for church and related facilities to permit building addition and site modifications. Located at 3435 Aston St. on approx. 5.95 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 52 and 55. (MOVED FROM 1/4/00).(DECISION ONLY FROM 2/22/00 and 4/18/00).

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 25, 2000; and

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

1. The applicant is the owner of the land.

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 Sect(s). 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Capital Baptist Church, 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), structures and/or use(s) indicated on the special permit plat prepared by Bury + Pittman, dated June, 1999, as revised through December 27, 1999, and certified on December 27, 1999, and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.
4. 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.
5. Upon issuance of the Non-Residential Use Permit for Phase III construction (completion of the sanctuary addition) Church seating shall be limited to a maximum of 750.
6. Interior parking lot landscaping shall be provided in accordance with Article 13.
7. All parking for the use shall be on site as shown on the special permit plat. There shall be a maximum of 235 parking spaces provided on the site unless the fifteen parking spaces depicted within the location of possible expansion of the existing stormwater management/ BMP management facility along the western lot line are deleted, wholly or in part, to provide for required expansion of the facility.
8. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance, Signs.
9. All proposed new exterior lighting fixtures shall be the low intensity type, full cut-off lights. All existing and proposed lighting shall be shielded in such a manner to prevent light from projecting onto adjacent residential property. All parking lot lights located east of the church building shall be low bollard-type fixtures, not exceeding four feet in height. The combined height of any other new proposed light standards and fixtures shall not exceed twelve (12) feet.

10. Stormwater management satisfying all Public Facility Manual requirements shall be provided to the satisfaction of DPWES. Subject to approval by DPWES, the final stormwater management design may provide for bioretention mechanisms within the parking lot islands, or other innovative methods to reduce the required size of any stormwater management facilities and to satisfy BMP requirements. The bioretention islands or other approved facilities shall be configured to the satisfaction of DPWES. All stormwater runoff shall be directed from the improved portion of the site to either the stormwater management ponds shown on the Plat, or to the bioretention, rain gardens or other facilities as may be approved by DPWES.
11. Right-of-way measuring a minimum of forty-eight (48) feet from the centerline of Gallows Road, shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County or at the time of site plan approval, whichever occurs first. All proposed frontage improvements (to include deceleration/turn lane, sidewalk, site entrance, curb and gutter) shall be provided for the Gallows Road frontage, and construction of the entrance to the site from Gallows Road shall be completed to VDOT standards to the satisfaction of DPWES prior to the issuance of a Non Residential Use Permit for the first phase. All proposed parking lots shall be completed, prior to the issuance of a Non-Residential Use Permit for the first phase.
12. Subject to approval by the DPWES Building Official, the structure identified on the plat as an existing "2 story storage" building, which is located near the north property boundary, may be used for storage and classroom with a seating capacity for 40 students until such time a Non-Residential Use Permit (Non-RUP) is issued for the Phase I portion of the fellowship hall addition. Prior to issuance of that Non-RUP, a demolition permit shall be acquired and the building shall be removed from the site.
13. Transitional Screening 1 shall be provided on the north and south lot lines, and transitional screening requirements shall be modified for the areas along the eastern and western property boundaries in favor of conditions shown on the plat, to the satisfaction of the Urban Forester, subject to the following conditions:
 - Existing vegetation shall be used where possible and supplemented where necessary, as determined by the Urban Forester. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary. Notwithstanding proposed new plantings shown on the special permit plat, all new plantings used around the perimeter of the site to satisfy transitional screening requirements shall be evergreen trees.
 - Final size and species of plantings shall be as directed by the Urban Forester. In order to accomplish an effective visual screen between the stormwater management facility and the residential properties to the east and west, additional plantings may be required at time of site development, to the satisfaction of the Urban Forester, subject to the PFM limitations on planting in the vicinity of a stormwater management pond.
14. Barrier requirements shall be waived for the perimeter of the site, except for the area near the north property boundary where a basketball goal is installed. Prior to issuance of a Non-Residential Use Permit for Phase I, a solid wood fence measuring six (6) feet in height shall be installed at the interior of the transitional screening area in order to buffer adjoining residential properties from noise, to the satisfaction of DPWES. In addition, a solid wooden barrier measuring four (4) feet in height, or a single row of evergreen trees or shrubs, shall be installed at the interior of the transitional screening area where the application parcel adjoins Lot #53, such that vehicle lights do not penetrate into Lot #53, to the satisfaction of the DPWES. Plantings in this area shall be subject to PFM limitations on planting in the vicinity of a stormwater management pond. All barriers shall be maintained in good repair.
15. Use of the outdoor basketball goal and all other outdoor sports, play ground activities or other scheduled outdoor church activities shall be limited to the hours between 8:00 A.M. and 8:00 P.M. daily.
16. Use of the gymnasium shall be limited to church members and/or church functions only. The gymnasium shall not be for use by the public or by league sports entities. Evening sports activities

within the gymnasium shall conclude by 9:00 P.M., Monday through Friday, and on Sunday; and shall conclude by 10:00 P.M., Saturday evenings.

- 17. Any buses used in conjunction with the use shall be parked to the rear of the church building, within the northernmost parking lot.
- 18. The applicant shall provide additional sidewalk to link the sidewalk on Gallows Road to the periphery of the church building, to the satisfaction of DPWES.
- 19. In all phases of construction, the construction entrance shall be located on Gallows Road. Vehicles or equipment associated with site construction shall be prohibited from entering from or exiting onto Aston Street.
- 20. A permanent barrier or gate shall be installed at the Aston Street entrance to the application site. The gate/barrier shall remain closed at all times, except that the barrier/gate may be temporarily opened and vehicle access to the church site shall be permitted from Aston Street for the entire day on Sundays, Wednesday evening worship services, special holiday events, revival services and for any use considered an emergency, such as fire or rescue operations. The final location and design of the barrier/gate shall be to the satisfaction of the Department of Public Works and Environmental Services.

These development conditions incorporate and supercede all previous 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 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. Issuance of the Non-Residential Use Permit for Phase I shall constitute establishment of the use. 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.

Ms. Gibb 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 3, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 104, April 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MICHELLE M. NILSSEN, VC 00-V-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 31.2 ft. from front lot line and 14.1 ft. from side lot line. Located at 8010 West Boulevard Dr. on approx. 11,149 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle M. Niilsen, 8010 West Boulevard Drive, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought approval to permit construction of an addition, which was a wrap-around covered porch, to be located 31.2 feet from the front lot line and 14.1 feet from a side lot line.

In the R-2 District a minimum 35-foot front yard was required and a minimum 15 foot side yard was required; therefore, a variance of 3.8 feet was requested for the front yard and a variance of 0.9 feet was requested for the side yard.

Ms. Nilssen presented the variance request as outlined in the statement of justification submitted with the application. Ms. Nilssen stated that she was requesting a variance for a wrap-around porch. She submitted photographs showing that it was an old-fashioned, wooden porch, which was the style that was popular in the turn of the century. She said that the porch would be compatible with both the house built in 1939 and the neighborhood. Ms. Nilssen stated that there were several other porches very similar to this one in the neighborhood. She stated that when she bought the house, she planned to add a porch for the purpose of additional living space and to improve the appearance of the house and the neighborhood. Ms. Nilssen stated that she found out from the architect and the staff of the Zoning Enforcement office that she did not own the whole front yard and that the 12 foot strip running across the front of the yard was property owned by the County. She said that even though there was over 50 feet from the front of the house to the road, she could not build the planned porch without a variance and was not aware of this when she bought the house. She said that because of the 50-foot stretch, even with the porch, the house would not appear as if it was encroaching into the 35-foot set-back area or was out of place compared to the other houses on the block. She referred to the staff report, which pointed out variances, which had been granted to several other houses in the neighborhood. Ms. Nilssen stated that since East and West Boulevard Drive and the George Washington Parkway were between her house and the houses across the street, the neighbors would not be affected because they couldn't even see the porch from their yards. She stated that the variance she was applying for was fairly minor in that she was seeking a variance on the south side ranging from 2 to 11 inches and on the front of the house a variance ranging from 3.3 feet on the southeast corner of the porch to 3.8 feet on the northeast corner. She stated that on the north side no variance was required.

Mr. Ribble stated that she alluded to the fact that her house was built in 1939. He said that as it sat presently, he didn't believe so. Ms. Nilssen stated that he was right and that there had been an addition.

Chairman DiGiulian called for speakers in support.

Mr. Sean McCade stated that he was a Park Ranger and worked for the National Park Service at the George Washington Memorial Parkway. He stated that they had no problem with the granting of the variance; however, they did have two technical concerns that he wanted to mention. He stated that the National Park Service owned the 12 foot strip of land, West Boulevard Drive and 300 feet of property that extended from their common property line going east over to the residents that lie along East Boulevard Drive. He stated that the Federal Government had owned the property since about 1930, which he estimated predated the construction of the house. He stated that the concern was that they had not received notice from Fairfax County concerning the variance application. He said that he understood in talking to County staff that it was due to the County's failure to assign a tax identification number to the federal property at that location. He stated that they looked forward to resolving the issue with County staff but thought that it would be appropriate to mention at the present time.

Mr. Robert Browning stated that he resided at 8014 West Boulevard Drive and was the neighbor to the south of Ms. Nilssen. He said that he enjoyed living in the neighborhood and had been a resident for about 2 years and lived in a 60 year old house that he was currently renovating to its original condition. He stated that he enjoyed the whole street and was pleased to see people either renovating their homes or improving them with additions such as Ms. Nilssen's proposed front porch. He added that he had the opportunity to examine the architectural renderings and thought that they would be a great enhancement to that particular residence and would enhance the whole area. He stated that after talking with Ms. Nilssen he was confident that she would hire and contract with a reputable builder. He added that he wanted to state for the record that he had absolutely no objection to the request for this variance, looked forward to seeing the construction proceed, and hoped the Board would grant the variance.

Chairman DiGiulian closed the public hearing.

Mr. Kelly moved to approve VC 00-V-013 for the reasons noted in the Resolution subject to the Development Conditions contained in Appendix 1 of the staff report dated April 18, 2000.

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COUNTY OF FAIRFAX, VIRGINIA
VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHELLE M. NILSSEN, VC 00-V-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 31.2 ft. from front lot line and 14.1 ft. from side lot line. Located at 8010 West Boulevard Dr. on approx. 11,149 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 7. 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 25, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant met the required standards for a variance as noted in the statement of justification.
- 3. The lot is narrow.

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

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

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

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

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

- 1. This variance is approved for the location of the addition (wrap-around covered porch) shown on the plat prepared by Alexandria Surveys, Inc., dated January 13, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

be obtained.

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 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 107, April 25, 2000, (Tape 2), Scheduled case of:

9:00 A.M. NORMA RAMOS & VICTOR CARTAGENA, SP 00-L-009 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit roofed deck to remain 4.0 ft. from front lot line. Located at 7107 Beverly Park Dr. on approx. 3,750 sq. ft. of land zoned R-5. Lee District. Tax Map 90-3 ((10)) 21. (Concurrent with VC 00-L-030).

9:00 A.M. NORMA RAMOS & VICTOR CARTAGENA, VC 00-L-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence and accessory structure to remain in front yard of a lot containing less then 36,000 sq. ft. Located at 7107 Beverly Park Dr. on approx. 3,750 sq. ft. of land zoned R-5. Lee District. Tax Map 90-3 ((10)) 21. (Concurrent with SP 00-L-009).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Norma Ramos and Victor Cartagena, 7107 Beverly Park Drive, Springfield, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow a reduction in minimum yard requirements based on an error in building location to permit a roofed deck to remain 4.0 feet from the front lot line. The minimum yard required was 20.0 feet; therefore, the modification requested was 16.0 feet. The applicant also requested approval of a variance application to permit a 6.0 foot high fence in the front yard. The maximum height for a fence in a front yard is 4.0 feet; therefore, a variance of 2.0 feet was requested.

Ms. Gibb asked if the accessory structure was a shed. Ms. Wilson confirmed that it was. Ms. Gibb asked where was the roof extension. Ms. Wilson answered that it was the blue area on the plat as shown on the overhead screen.

Ms. Ramos and Mr. Cartagena presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Ms. Ramos stated that they didn't know that a permit was required and apologized for the error. She testified that they applied for the special permit when informed of their mistake. She said that when they bought the house the concrete was already established. She stated that the house was very small for three children so they thought that if they built a roof over the concrete they would have some extra space for the children to play. She stated that they did not want to cause any problems and that they built the roof in good faith.

Ms. Gibb asked if the shed was still under the porch. Mr. Cartagena stated that they destroyed it and threw it out. Ms. Gibb asked if the front door to the house was where the stoop was and asked if he could point to it on the plat. Mr. Cartagena stated that it was on the other side and pointed to the back side and said that there were two double doors on the side and a single door in the kitchen.

Ms. Gibb asked Ms. Ramos to point to where the front door was. Ms. Ramos said that the roof was facing Ivy Lane and the entrance was towards Beverly Park on the other side. Ms. Gibb asked about the 6.0 foot high fence. Ms. Ramos stated that the fence was there when they bought the house and they didn't know that it wasn't done properly. It was there when they purchased the house and they had lived there for six years.

Ms. Gibb asked how she found out that she needed a variance. Ms. Ramos said that a neighbor asked her if they had a permit and they said that they didn't know that it was required. Her neighbor gave her a number to call and she called zoning and applied for the special permit.

Ms. Gibb asked if the house sat right on the street. Ms. Wilson said that there was no exact measurement between the street and the house. She said that it was not quite zero lot line lot. She said that it was maybe two or three feet. Ms. Gibb asked if the shed pre-dated the Ordinance. Ms. Wilson said that it did pre-date the Ordinance.

Ms. Gibb asked staff if the fence was flush with the house and would it be a logical extension if they were charitable. Ms. Susan Langdon, Chief, SPVC Branch, confirmed that it was flush with the house.

Mr. Hart asked Ms. Wilson where Ivy Lane was on the tax map. He asked if it was a dead end. Ms. Wilson answered that it appeared it was a right of way or was originally intended to be a street or some sort of passage but it was not actually a through street from what staff could tell.

Mr. Hart said that it looked like it was asphalt in the picture and asked if there was a house at the end of it. Ms. Langdon said that it appeared that it came by the side of the house and made a loop and went back out. Mr. Hart asked if a car could drive by it. Ms. Langdon said that appeared to be correct. Ms. Gibb said that it was an access for lot 7A.

Chairman DiGiulian called for speakers.

Mr. Ronald Facchina stated that he lived at 7112 Itte Lane which was a horse shoe drive with about 15 very small houses around the circumference of the horse shoe. He stated that the roof structure diminished his property value tremendously and was an eye sore. He testified that he approached the contractor the day the structure was going up. He said that the current regulations were adequate and felt the roof structure should come down.

Ms. Gibb asked if he objected to the fence, the porch or both.

Mr. Facchina stated that the fence was right along the curb and it was an extension of the house. He said that everyone's fence was that way. He stated that what he objected to was the roof structure.

Mr. Cartagena stated in his rebuttal that he was not there when Mr. Facchina had the confrontation with his friends who were in the process of building his roof. He said that he found out about the problem when he got back but never spoke with Mr. Facchina about it. He stated that he didn't know that they needed to apply for a permit.

Ms. Ramos stated that it was a misunderstanding that took place, after Mr. Cartagena had left to buy some supplies, between Mr. Facchina and Mr. Cartagena's friend due to a language barrier. She stated that that they didn't hire anyone to build the roof. She stated that the only two people who were building the roof was Mr. Cartagena and his friend and that they didn't know that they needed a permit. She stated that the roof, as shown in the photographs, was not that visible and that the roof should not be a problem to the neighbors.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 00-L-009 for the reasons noted in the Resolution subject to the Development Conditions contained in Appendix 1 of the staff report dated April 18, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORMA RAMOS & VICTOR CARTAGENA, SP 00-L-009 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit roofed deck to remain 4.0 ft. from front lot line. Located at 7107 Beverly Park Dr. on approx. 3,750 sq. ft. of land zoned R-5. Lee District. Tax Map 90-3 ((10)) 21. (Concurrent with VC 00-L-030). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the existing roofed deck shown on the plat prepared by Cervantes & Associates, P.C., dated October 3, 1999, as revised through November 10, 1999, submitted with this application and is not transferable to other land.
- 2. The applicant shall obtain a building permit and approval of final inspections shall be obtained.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 2000. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb then moved to approve VC 00-L-030 for the reasons noted in the Resolution subject to the Development Conditions contained in Appendix 2 of the staff report dated April 18, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NORMA RAMOS & VICTOR CARTAGENA, VC 00-L-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence and accessory structure (the applicant withdrew the request for the accessory structure) to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 7107 Beverly Park Dr. on approx. 3,750 sq. ft. of land zoned R-5. Lee District. Tax Map 90-3 ((10)) 21. (Concurrent with SP 00-L-009). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicant presented testimony indicating compliance with the required standards for a variance.
- 3. The house sits on the property line.
- 4. The fence is reasonable and necessary for the occupants' safety, is modest in length, identical to other fences in the neighborhood and does not impair the safety of 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;
 - 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.

Page 111, April 25, 2000, (Tape 2), NORMA RAMOS & VICTOR CARTAGENA, SP 00-L-009, VC 00-L-030, continued from Page 110

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 **APPROVED** with the following limitations:

1. This Variance is approved for the six (6) foot high fence in the front yard, as shown on the plat prepared by Cervantes & Associates, P.C., dated October 3, 1999, as revised through November 10, 1999, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 6-1. Mr. Pammel voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 111, April 25, 2000, (Tape 2), Scheduled case of:

9:00 A.M. MARY C. NELMS, SP 00-Y-010 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 11.0 ft. from side lot line. Located at 15125 Stillfield Pl. on approx. 14,961 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 550.

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. Mary C. Nelms, 15125 Stillfield Place, Centreville, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant, Mary C. Nelms, sought approval of the modification of minimum yard requirements for certain R-C lots to permit construction of an addition 11 feet from the side lot line. In the R-C District, a minimum 20 foot side yard was required; therefore, a modification of 9 feet was required to permit the proposed addition, a screened porch, to be constructed.

Ms. Nelms presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Nelms stated that she was petitioning a special permit to build a screened porch addition to her single family residence. She stated that she understood that the BZA would approve a special permit to allow modification to the minimum yard requirements under the four provisions for a special permit. Ms. Nelms stated that staff had advised her that the specifications were that the addition not exceed the minimum yard requirement of 8 feet from the side property line or 24 total feet from both sides. She stated that the addition would be 11 feet from the side property line and the total feet from both sides would be 30 feet. She stated that the screened porch would be in the same location as the preexisting deck with regard to the side property lines. Ms. Nelms stated that the proposed screened porch must be harmonious with the existing development in the neighborhood and not impact the public health, safety and welfare of the

area. She stated that she has submitted her plans to the Virginia Run Architectural Review Board which was her homeowners association and they had been approved. She stated that her specific plan was consistent with others in the neighborhood and would be constructed by a contractor who had built many others similar to it in her neighborhood. She stated that she was aware of no reason her screened porch would present any impact to public health, safety, or welfare in the area. In accordance to the fourth provision, she stated that she had submitted to the Board all items to accompany the special permit application as described. She stated that she believed that her application met all the technical requirements to qualify for approval under the provision 8-913. She added that the hardship in this case was that the preexisting deck, that came with the house when it was purchased, was rotting. In order to replace the wood, with any structure in the same place required modification to the minimum yard requirements because the house was built under different zoning specifications than what was current. She said that if the Board approved the application she would like a waiver of the eight day waiting period because their contractor was ready to begin work on May 1, 2000.

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

Mr. Hammack moved to approve SP 00-Y-010 for the reasons noted in the Resolution subject to the Development Conditions contained in Appendix 1 of the staff report dated April 18, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY C. NELMS, SP 00-Y-010 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 11.0 ft. from side lot line. Located at 15125 Stillfield Pl. on approx. 14,961 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 550. 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 25, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The property was the subject of final plat approval prior to July 26, 1982.
- 3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
- 4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
- 5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

- 1. This special permit is approved for the location of a screened porch addition shown on the plat as revised by Mary C. Nelms, dated February 1, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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 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 7-0. Mr. Hammack moved to waive the 8 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 April 25, 2000.

Ms. Gibb then moved to amend her motion of the previous case, Norma Ramos & Victor Cartagena, VC 00-L-030, to remove from the development conditions the reference to the accessory structure which was approved by a vote of 7-0.

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Page 113, April 25, 2000, (Tape 2), Scheduled case of:

9:00 A.M. MARK J. WISEMAN, A 1999-SU-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that appellant has established a storage yard and junk yard on property in the R-C District, in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance and has exceeded the outdoor storage limitations set forth in Par. 24 of Sect. 10-102 of the Zoning Ordinance. Located at 12512 Braddock Rd. on approx. .89 ac. of land zoned R-C and WS. Sully District. Tax Map 66-2 ((1)) 15. (Def. From 3/14/00 for notices).

Chairman DiGiulian called the appellant to the podium and asked him to state his name and address for the record. Mr. Mark J. Wiseman, 12512 Braddock Road, Fairfax, Virginia.

William Shoup, Deputy Zoning Administrator, stated that Ms. Epstein would make the presentation on the case.

Susan Epstein, Zoning Administration Division, stated that this was an appeal of a determination that the appellant was maintaining a junk yard storage yard and outdoor storage in the RC District in violation of the Zoning Ordinance provisions. The property was located at 12512 Braddock Road and was zoned RC and was in the Water Supply Protection Overlay District. The property consisted of .89 acres of land which was developed with a single family detached dwelling, a detached garage, and one shed. She said the appellant was the owner of the property but did not reside at the property. Zoning inspections of the property conducted on October 19, 1999, and November 22, 1999, revealed storage consisting of automobile parts, at least four inoperative and/or unlicensed automobiles, lumber, plywood, pallets, scrap metal, concrete blocks, construction debris, PVC pipe, concrete wire, and a fiber glass tank. It had been determined that the appellant had established outdoor storage in an area in excess of 100 square feet not contained to the rear half of the lot and not screened from view from the first story neighboring dwellings, in violation of Par. 24 of Sec. 10-102 of the Zoning Ordinance, and that the nature and the extent of the outdoor storage constituted the establishment of the junk yard and storage yard in violation of Par. 5 of Sec. 2-302 of the Zoning Ordinance which stated that no use shall be allowed in any district which was not permitted by the regulations for the district. The appellant maintained that some of the stored materials were to be used for improvements to the property but did not provide details about how the materials on the property related to specific projects. Staff believed that the nature and the extent of much of the storage appeared to be scrap materials that had no relationship to the description of the work to be done. She stated that clearly there was no relationship between any proposed building renovation activity and the inoperative vehicles and scrap automobile parts on the site. The appellant had removed some items from the property, but in order for the appellant to comply, the outdoor storage would have to be limited to an area not exceeding 100 square feet, be located on the rear half of the lot, and be screened from the view of the first floor window of any neighboring dwellings. The outdoor storage that remained on the property did not comply with those

limitations and included items that still met the criteria for junk yard storage yard definitions. Therefore, staff requested that the BZA uphold the Notice of Violation at issue in the appeal.

Mr. Wiseman stated that there were many facets to the matter. He stated that the house was purchased as a 203 rehabilitation project and that the completion of the rehab had been done. He said that there had been many illegal problems going on, especially with the government. The first case, he testified, was by the Virginia Department of Transportation (VDOT) and AW Contracting which lasted from 1986 to 1988 and presented the Board with court documents. He stated that VDOT and its contractor came onto the property and did significant damage which had since been settled and stated that he prevailed in General District Court. He stated that there had been problems with a certain neighbor who was a convicted felon who had committed theft. He stated that there had been a case where a contractor did some work without a license that held up construction. Mr. Wiseman said that there was another case with Fairfax County and its contractor Community Systems and Services, which had been recently settled with the Philadelphia Insurance Company and that this property faced Braddock Road. He stated that there had been a couple accidents, one in particular involving Fairfax County's contractor, that damaged the front of the property and was the reason that some of the automobile parts were on the property. He further stated that there had been a continuing series of debris left on the property by others. He stated that he had contacted the police many times and that the only people he had yet to prosecute was VDOT and Fairfax County and the Community Systems. He stated that he had taken steps and constructed a fence around the perimeter to keep off unwanted people. He stated that he had pictures and documentation that the Board might be interested in. He stated that he had itemized each of the items the Zoning Administrator detailed and there were twenty-eight of them. He stated that some of them were clearly a misunderstanding of the Administrator's view of the property. He stated that one of his neighbors deposited a truck load of firewood on his property and he had since constructed a fence around the wood and decided to use it for landscaping. He stated that there was ongoing construction on the property including the installation a washer and dryer service; the excavation of a trench that had been inspected and closed in and had yet to be finalized; the separation of the dwelling from the garage and its electric service; He stated that the house was built in 1950 and had to be hand excavated underneath and had a concrete foundation poured. He said that he had to put in steel I-beams to reinforce it, which was significant work. Mr. Wiseman stated that they had to rip out the entire floor and all the supports and redo the roof and that there was a significant termite problem in the house. He testified that the house was basically new after all the renovations. He stated that all of the wood work had been redone and that he intended to obtain another building permit to add on to the house because the house was only 400 square feet. He stated that the house had been rented for some time. He stated that the individual that was renting it worked for a towing company. Mr. Wiseman stated that he only owned one vehicle and a trailer which were both licensed and the trailer was sometimes at the property. He stated that the other vehicles were illegally put there by passers-by or his tenant. He said he had told his tenant not to put vehicles there and was assured by his tenant that there were provisions that allowed him to keep a vehicle for thirty days on a temporary tag. Mr. Wiseman said that he left it to his tenant to defend his side of it. He stated that he had no qualms about moving the automobiles or towing them and that he had called the police many times to report that there were illegal items that did not belong to him on the property. Mr. Wiseman testified that he was consistently told that it was a civil matter and the police refused to do anything about it.

Mr. Wiseman stated that he thought that someone dropped items there as a dump site. He stated that the items seemed to come and go and that one day he may see something there and the next day it's gone. He stated that there was a thousand foot perimeter around the property, that he had spent about \$10,000 on the fence so far and, most of the fence had been completed. Mr. Wiseman stated that there was always an ongoing buying of materials and then shortly thereafter it would be used for something. In reference to the pallets, he stated that the material came on the pallets from Home Depot and Lowes, and there was a pallet sitting on site currently which he intended to return to the place of purchase because there was a \$10.00 deposit on each pallet. Mr. Wiseman stated that he was also using the pallet to hold down the tarp used on his tractor which he planned to transport back to his other property once the fence was complete. He stated that the plywood was also being used.

Chairman DiGiulian stated that Mr. Wiseman needed to conclude as quickly as possible.

Mr. Wiseman stated that he had a five page response to their concerns and offered any documentation they would wish to see and photographs that were taken that morning of the property which were vastly different from pictures they had seen from the County.

Ms. Gibb asked how often Mr. Wiseman went out to his property. Mr. Wiseman responded about once a week.

Ms. Gibb asked if the automobile transmission and pieces of automobile were from car accidents. Mr. Wiseman responded that some of them were. He stated that there was a major accident in his front yard with Community Systems.

Ms. Gibb stated that he had a tenant, and Mr. Wiseman confirmed that he did.

Ms. Gibb asked if he understood that as owner of the property he was responsible for what was on the property even if it was not something that he would have put there or wanted there. Mr. Wiseman agreed, and stated that if he found someone who put something on the property he promised to prosecute them.

Ms. Gibb stated that she meant that the responsibility to have them removed and stay within the Zoning Ordinance was on him to comply. She further stated that if his tenants were doing something that contravenes the Ordinance, it was up to him, as the owner, to bring the property into compliance. Mr. Wiseman agreed and stated that there was a vehicle out there presently and he was told by his tenant that it was under a 30-day temporary permit and that he had no reason to doubt the sincerity of his tenant.

Ms. Gibb stated that what she was talking about was the automobile parts or pieces of concrete. Mr. Wiseman stated that the parts he told him to remove had been removed and that there were other parts out there which were new, that he did not know who put them there and he intended to remove them.

Ms. Gibb asked staff if the applicant could have 100 square feet of fencing screening the view. Ms. Epstein replied that 100 square feet of outdoor storage screened from view was allowed and it needed to be in the rear part of the yard.

Ms. Gibb asked if the fence that was photographed was in the rear. Ms. Epstein confirmed that it was.

Ms. Gibb asked if it was quite a bit larger than 100 square feet. Ms. Epstein confirmed that the outdoor storage she saw the last time exceeded 100 square feet.

Ms. Gibb asked if debris was strewn from one end of that fenced area to the other that it would not be in compliance because it had to be 100 square feet. Ms. Epstein agreed that the total amount could not exceed 100 square feet.

Ms. Gibb asked if the debris was in a pile of less than 100 square feet but had a big fence, would that comply. Ms. Epstein agreed as long as it was in the rear part of the yard and was screened from the first story of neighboring dwellings.

Ms. Gibb asked when was the last time they were there to observe the site. Ms. Epstein replied that the last time she was there was on February 25, 2000.

Ms. Gibb asked if she had made several visits. Ms. Epstein stated that she had been there twice. Once on February 3, 2000, and the next time on February 25, 2000.

Ms. Gibb asked if it had changed from the first visit to the next. Ms. Epstein stated that when she was there on February 3, 2000, there was snow on the ground and they took photos but they couldn't see exactly how much had been cleaned up because the ground was covered. On February 25, 2000, it looked like some of the items had been removed but the amount of storage still exceeded 100 square feet and there were still items that would meet the definition of a junk and storage yard.

Ms. Gibb asked about the condition of the front yard. Ms. Epstein replied that the problem was not the front yard but the rear yard.

Ms. Gibb asked if the case was the result of a neighbor's complaint. Ms. Epstein and Mr. Wiseman replied that it was.

Mr. Hammack asked Mr. Wiseman if all the materials that he testified were delivered to the property had been used on this particular 400 square foot house. Mr. Wiseman replied that it had and was also used on

the fence and the garage.

Mr. Hammack asked if all the materials had been used. Mr. Wiseman replied 80% plus.

Mr. Hammack asked where the other 20% went. Mr. Wiseman replied that they were still there and that the construction was still ongoing.

Mr. Hammack asked if he had a contractor doing the construction. Mr. Wiseman replied that he had another tenant from another property helping him and he replied that he had employed an architect and had contractors.

Mr. Hammack stated that he thought that Mr. Wiseman stated that he worked from 9:00 a.m. to 5:00 p.m. Mr. Wiseman replied that he did and that he had other tenants who assisted in the construction full time.

Mr. Hammack asked if the tenants were living on the property while he was replacing the foundation. Mr. Wiseman replied that they were not.

Mr. Hammack asked if the auto transmissions and other things that materialized were there from the current tenants or tenants in the past. Mr. Wiseman responded that when he bought the property there was a large dumpster parked on the side of the garage and the property had a significant number of tires and automobile parts at the time of purchase. He stated that he had removed those along with the dumpster.

Mr. Hammack asked how long ago it was that he removed the dumpster and debris. Mr. Wiseman replied that it was in 1986.

Mr. Hammack asked if he had seen the photographs identified as attachment 5 in the staff report. Mr. Wiseman responded that yes he had.

Mr. Hammack asked if the photographs were accurate. Mr. Wiseman stated that they were not.

Mr. Hammack asked how they were not accurate for February 25, 2000. Mr. Wiseman responded that they were accurate for that date.

Mr. Pammel asked Mr. Wiseman when the current tenant moved into the house. Mr. Wiseman responded less than one year ago.

Mr. Ribble asked Mr. Wiseman to submit the photographs he testified to taking that morning.

Mr. Hart asked staff if all the piles were behind the fence, would it have to be less than 100 square feet total. Ms. Epstein confirmed that the pile could not exceed 100 square feet. She stated that it could be in little piles or in one area but could not exceed a total of 100 square feet.

Mr. Ribble asked Mr. Wiseman to state for the record if the photographs he submitted were the photographs he took that morning. Mr. Wiseman confirmed that they were. He stated that he also had photographs of neighboring properties to show what the surrounding area looked like.

Mr. Hart asked Mr. Wiseman if there was a particular function for the fenced area in the rear. If it might be a parking lot. Mr. Wiseman replied that it was not a parking lot. Mr. Hart asked if it was a fenced yard or was something supposed to go in there. Mr. Wiseman replied that it was a fenced yard.

Chairman DiGiulian called for speakers.

Jeff Sherman, 12506 Braddock Road, stated that he was just to the back and to the right of Mr. Wiseman's property. He stated that he had the smallest piece of property in the area and that he purchased his property in 1985 and had lived there for the past 15-16 years. He stated that Mr. Wiseman purchased the property in 1996, not in 1986. At the time of purchase, the property was a nice homestead. When Mr. Wiseman purchased the property, suddenly there were truck loads of gravel all over the property. He stated that it changed the look when you turned into the road and that it did not look like a nice area to live. He stated that the fence Mr. Wiseman put up was right on his property line and the edge of the right of way. He stated that he had no complaints for it being right on the road, except that it was very hard to get in and out of his

driveway. He stated that the last tenant who lived there did work for a towing company and some of his friends did bring cars and drop them there. He stated that the tenant was told to have them removed and they came and removed the cars. The first tenant worked on vehicles. Mr. Sherman stated that the property had gone down hill and was no longer nice property. Gravel covered the entire front yard, there were parts that had been on the property for a long time, and the fence created an eye sore because he could no longer look out his front door and see grass, rolling hills, and wild animals.

Trulene Aquino, 12505 Braddock Road, stated that she lived to the east of Mr. Wiseman's property. She stated that she purchased her property and had been there approximately 18 years. She said she absolutely did not want a junk yard or storage yard established there because it was a residential neighborhood. She stated that it used to look like a very nice neighborhood to live in; however, she could see a lot of debris from her home and would like that some of the things that marred her view to be moved to a fenced area out of sight. She said that about ½ acre was fenced about 6 to 8 feet high and closed with a gate and asked if a light could be installed because she felt it was a safety hazard with such a large area dark. She testified to seeing tow trucks, including Harry's Towing which she believed was Mr. Wiseman's tenant. She further testified that she had seen a Clifton Towing truck drive up and park in the driveway outlet road that was shared with all the neighbors.

Ms. Gibb asked if she had noticed any material in the side yard that morning. Ms. Aquino confirmed that there was a lot of material but she had gotten into the habit of trying not to look at it, and there were bits and pieces and things that had already been mentioned that would be appropriate to move into a storage area.

Charlotte Blevins, 12508 Braddock Road, stated that they had been in trouble with Mr. Wiseman ever since he moved in and had argued with him and his tenants. She stated that he often had the police come out. She stated that what mostly worried her was the attraction of rats and snakes to the area as a result of the large amount of junk being stored on his property. She stated that there were children around and she was concerned for their safety. She stated that her main worry was their well water, that they all had wells and she didn't want the well water contaminated by the debris he had on his property.

Mr. Hammack asked Ms. Blevins if she could describe some of the items on his property that morning. Ms. Blevins stated that he had big 5 gallon buckets and junk piled up in front of and around the garage. She stated that the fence he built extended all the way around his property and cut off everything and ruined the view. She testified that when he first moved in he used a bulldozer and put gravel down and said he would have a gravel yard with no grass. She stated that free of charge the neighbors would mow his back yard to keep it attractive and keep out rats and snakes. She stated that Mr. Wiseman no longer allowed them to mow his back yard and even called the police on them for trespassing on his property. She further stated that he had the fence built and had the logs put in to keep them out.

Mr. Shoup stated that with reference to the fence, there was an easement that ran down the property line that was a designated front yard. He said that Zoning Enforcement would be following up on that issue and that the height of the fence would have to be reduced along the easement. He stated that the other point was that while Mr. Wiseman might have cleaned up the property some since the Notice of Violation or since the photographs that were in the staff report; but that this was an appeal of the original Notice of Violation and staff believed the issue cited in that Notice was correct and asked that the Board uphold the Notice of Violation. Mr. Shoup stated that staff would work with the appellant on compliance if he cleaned up the property and could locate the storage in the rear half of the yard and screen it as indicated by Ms. Epstein.

Mr. Wiseman said that most of the complaints seemed to be the gravel and the fence. He stated that the gravel was done because the ground was soggy and muddy, and that the gravel was from the garage and VDOT and the contractor NW using the driveway as a gravel depot against his desires. Mr. Wiseman stated that the four foot height along the easement could readily be accommodated. He stated that there was absolutely nothing on the property that would suggest that the ground and well water was getting contaminated. The buckets were for the garage and paint for painting the fence. He stated that most of the fence painting was done. He said that there was some wood that was in front of the garage that could easily be moved. Mr. Wiseman testified that he had talked with his tenant who assured him that the automobiles were there on a temporary permit which had to be done through the Division of Motor Vehicles. He testified that his photographs taken that morning indicated the condition of the property and that it was enclosed as several individuals had testified to. He further stated that there was a security problem and that he had no way of knowing the intention of an individual trespassing on his property and was unable to distinguish if they would be there to help or break in. He stated that it was within a property owner's purview to ensure that

trespassers would not just wander on the property, because the property owner would be held responsible. He stated that even though the fence blocked the view, it was allowed. He further testified that he checked with Fairfax County and was told that the fence was permitted to be right on the property line.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that there were a number of issues in the case that were troubling. He stated that obviously the case had been going on for some period of time, and that some of the complaints involved Mr. Wiseman and the materials he had stored over an extended amount of time on the site. He stated that other aspects of the complaint had to do with the tenant. Mr. Pammel said that Mr. Wiseman stated that he had advised the tenant but didn't have a lot of control. He said that, however, Mr. Wiseman was the property owner and the problem had been on going for some period of time. He stated that from the pictures that were taken in February 2000, when this complaint was filed by the Zoning Administrator, it was clear that there was storage on the site well beyond the 100 square foot permitted by the Zoning Ordinance.

Mr. Pammel moved that the Board of Zoning Appeals uphold the decision of the Zoning Administrator with respect to appeal A 1999-SU-036, Mark J. Wiseman, for property located at 12512 Braddock Road. Mr. Ribble seconded the motion which passed by a vote of 7-0.

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Page 118, April 25, 2000, (Tape 2) After Agenda Item:

Additional Time Request for Daniel and Deborah Rich
VC 96-L-110

Mr. Ribble moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date was January 8, 2001.

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Page 118, April 25, 2000, (Tape 2) After Agenda Item:

Approval of April 18, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:36 a.m.

Minutes by: Maria D. Foltz

Approved On: November 14, 2000

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 2, 2000. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; Robert Kelley; James Hart; and Nancy Gibb. James Pammel and John Ribble were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 119, May 2, 2000, (Tape 1) Scheduled case of:

9:00 A.M. JAMES L. & REGINA M. GYURICZA, VC 00-P-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.7 ft. from rear lot line. Located at 10810 Tradewind Dr. on approx. 37,505 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 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. Regina Gyuricza, 10810 Tradewind Drive, Oakton, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to allow a screened porch addition 20.7 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 4.3 feet was requested.

Ms. Gyuricza presented the variance request as outlined in the statement of justification. She explained that the deck could not be constructed on the opposite side of the home because there were several tall sets of windows. She stated she had neighborhood support. She requested a waiver of the 8-day waiting period.

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

Mr. Hart moved to approve VC 00-P-014 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES L. & REGINA M. GYURICZA, VC 00-P-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.7 ft. from rear lot line. Located at 10810 Tradewind Dr. on approx. 37,505 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((15)) 13. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The house is on an oddly configured lot.
4. The placement of the septic field and the pump line to required that the house be put at an angle and pushed toward the back of the property; therefore, the only logical place to put an addition would be in the rear corner.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch addition shown on the plat prepared by Joseph J. Chavez, dated January 21, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The screened 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 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.

Ms. Gibb seconded the motion which carried by a vote of 4-0-1. Mr. Hart moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Mr. Pammel 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 2, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 121, May 2, 2000, (Tape 1) Scheduled case of:

9:00 A.M. MT. VERNON YACHT CLUB, INC., SPA 80-V-028-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-V-028 for a swimming pool and marina to permit building addition. Located at 4817 Tarpon La. on approx. 8.82 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (H) 1; 110-3 ((4)) A. (Concurrent with VC 00-V-033). (Def. from 4/4/00)

9:00 A.M. MT. VERNON YACHT CLUB, INC., VC 00-V-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit second story addition 19.0 ft. from side lot line. Located at 4817 Tarpon La. on approx. 8.82 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (H) 1; 1103 ((4)) A. (Concurrent with SPA 80-V-028-2).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Inda Stagg, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow remodeling of the clubhouse to allow an addition to include a third story with a floor area of 1,188 square feet. This would result in a total floor area of 6,500 square feet for the clubhouse. The applicant also proposed to remove two sheds from the site.

The applicants requested a variance to allow the building to remain 19 feet from the eastern lot line. The set back was calculated using an angle of bulk plane measurement that required a set back of 22.6 feet; therefore, a variance of 3.6 feet was requested.

Ms. Stagg presented the special permit and variance requests as outlined in the statements of justification. She stated that the special permit was requested to increase the floor area from 5,300 square feet to approximately 6,500 square feet. She explained that the result would make an FAR of 0.02, which was substantially less than what was permitted. She said that no changes in the use or the hours were proposed. Ms. Stagg stated that the variance was needed to accommodate the requested floor area. She explained that because of the layout of the existing structure and the foundation, it was not practical to locate the floor area elsewhere. She requested a waiver of the 8-day waiting period because the club was not usable without the construction.

Mr. Hart asked if the height of the proposed addition was similar to the adjacent homes. Mr. Jerome Skelly, Commodore of the Yacht Club, stated that the proposed addition would be lower than the adjacent homes.

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

Ms. Gibb moved to approve SPA 80-V-028-2 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MT. VERNON YACHT CLUB, INC., SPA 80-V-028-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-V-028 for a swimming pool and marina to permit building addition. Located at 4817 Tarpon La. on approx. 8.82 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (H) 1; 110-3 ((4)) A. (Concurrent with VC 00-V-033). (Def. from 4/4/00) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a special permit.
3. The request is fairly modest.
4. The addition and the pool house will be consistent with the surrounding architecture.

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 Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 4817 Tarpon Lane (8.82 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Larry N. Scartz, Land Surveyor, dated December 15, 1999 (Sheets 1 and 2), and Phillip L. Vander Myde, Architect, dated March 17, 2000 (Sheet 3) 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The operation of the pool shall be limited to Memorial Day through Labor Day, seven days a week from 8:00 a.m. to 9:00 p.m.
6. The maximum hours of the fuel dock shall be Saturday and Sunday from 9:00 a.m. to 12:00 noon.
7. Unless otherwise qualified herein, extended-hours for parties or other activities of outdoor community swim clubs or recreational associations shall be governed by the following:
 - a. Limited to six (6) per season.
 - b. Limited to Friday, Saturday and pre-holiday evenings.
 - c. Shall not extend beyond 12:00 midnight.
8. The maximum number of memberships shall be 234.
9. The maximum number of boatslips shall be 137.
10. Seventy (78) parking spaces shall be provided as shown on the Special Permit Plat and all parking spaces shall be striped. All parking shall be on-site. The parking spaces existing on Tarpon Lane shall be removed.
11. Existing vegetation along the northern, eastern and western lot lines shall be preserved and maintained as indicated on Sheet 2 of the approved Special Permit Plat and shall satisfy the requirements of Transitional Screening 1. The existing wood, wire and chain fences along the northern, eastern and western lot lines shall be maintained as indicated on Sheet 1 of the approved Special Permit Plat and shall satisfy the barrier requirements.

These development conditions incorporate and supersede all previous 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 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 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel 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 2, 2000. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 00-V-033 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MT. VERNON YACHT CLUB, INC., VC 00-V-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit second story addition 19.0 ft. from side lot line. Located at 4817 Tarpon La. on approx. 8.82 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (H) 1; 110-3 ((4)) A. (Concurrent with SPA 80-V-028-2). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 2000; and

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

1. The applicants are the owners of the land.
2. The request is very moderate.
3. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the building addition shown on the plat prepared by Larry N. Scartz, Land Surveyor, dated December 15, 1999 (sheets 1 and 2), and Phillip L. Vander Myde, Architect, dated March 17, 2000, (Sheet 3) submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the clubhouse building.

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 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel 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 2, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 124, May 2, 2000, (Tape 1) Scheduled case of:

9:00 A.M. EUN-YOUNG LEE & WON-JIN LEE, SP 00-B-006 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center. Located at 8313 Little River Tnpk. on approx. 22,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. J.H. Kim, 3803 Ridge Knoll Court, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to establish a childcare center for a maximum of fifteen children. Staff recommended approval of the special permit subject to the proposed development conditions.

Mr. Kim presented the special permit request as outlined in the statement of justification. He stated that the applicant requested a childcare center with a maximum enrollment of 15 children and 4 teachers. He said there were 3 parking spaces on-site and at least 4 off-site. He said the proposed hours of operation were 6:30 a.m. to 8:30 p.m., Monday through Friday.

Chairman DiGiulian asked if the applicants had read and understood the proposed Development Conditions. Mr. Kim replied they did.

Mr. Hammack asked staff why the childcare center needed to operate until 8:30 p.m. Ms. Wilson answered that the extended hours were to give time to prepare the site for the next day.

Mr. Hart asked staff about the driveway encroachment onto the adjacent property. Ms. Wilson stated there were no Ordinance set back requirements for a driveway. She stated that any encroachment onto the adjacent property would be a civil matter between the applicant and that neighbor. Mr. Hart asked staff to illustrate where the parking and turn-around was located. Ms. Wilson exemplified the layout of the parking areas on-site and off-site.

Chairman DiGiulian called for speakers.

Steward Goddin, 8305 Little River Turnpike, came forward to speak in opposition. He stated that the service road was in poor repair and it narrowed at the beginning of the application property. He stated that NOVA students occupied all of the available parking spaces on the service road; therefore vehicles were forced to travel up the center of the road as cars were usually parked on both sides. He stated that he was concerned about the access of emergency vehicles up the service road due to the parking problems. Mr. Goddin stated that there was a blind man, Mr. Harris, who walked along the service road to NOVA every morning. He mentioned that Mr. Harris's wife, who was also blind, was run over and killed while walking along the service road. He stated that the service road was heavily traveled by NOVA students and by patients of an acupuncturist office, which was located at 8317 Little River Turnpike. He said the daycare center would add 40 trips per day. Mr. Goddin stated that this heavy traffic added to the amount of people turning around in his driveway, damaging his property and invading his privacy. He also stated that he was opposed to any signage on the property.

Jillian Fitzpatrick, 4104 Duncan Drive, came forward to speak in opposition. She stated that she was very concerned regarding the commercialization of the service road. She objected to proposed hours of operation and said that the approval of the daycare center would set a precedent for more commercial uses along the service road.

Randall Borden, 2787 Stone Hollow Drive, came forward to speak in opposition. He stated that the daycare center was already in operation because he had visited the application site that morning at 8:30 a.m. and observed a small child.

Mr. Hammack asked staff what the maximum enrollment for a daycare center was under the Ordinance. Ms. Wilson stated that by right, in a detached home, the maximum enrollment was 7 and anything between 7 and 10 was a home child care facility. She said the maximum enrollment for a childcare center was up to 99 children, however, the applicant was asking for a maximum of 15.

Mr. Hammack asked if the application had obtained an operation permit from the State. Ms. Wilson stated that the State had instructed the applicant to get a special permit; however, it was not part of the criteria for accepting an application.

Mr. Hammack asked for clarification of whether or not the applicant had to occupy the dwelling as a

residence. Ms. Wilson stated that was not the case with a childcare center.

Mr. Kim, in rebuttal, stated that there would not be parking issues because there were scheduled times for drop-off and pick-up.

Mr. Kelley asked if the daycare center was open and whether or not the applicant had a permit issued by the State. Mr. Kim consulted with the applicant and explained that at the time she was operating by right as a home daycare center with a maximum enrollment of 5 children.

Mr. Hammack asked staff if a permit was needed to operate a home daycare center. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant did not need a permit if she had under 7 children. She explained that originally the applicant had requested a home childcare center and then amended the application to a childcare center.

Ms. Gibb asked what the Ordinance stated with respect to signage in relation to the application. Ms. Wilson stated that the applicant would be limited to one sign and the frontage on the building would determine the size of the sign. Ms. Gibb asked if staff had researched the issue of the emergency vehicle access to the application site. Ms. Wilson stated that the Department of Transportation had not identified any problems with access. She pointed out that the application site was very close to Little River Turnpike and they could be reached directly if the need arose.

Ms. Gibb asked if the applicant intended to erect a sign on the property. Mr. Kim replied that the applicants had intended to have a small sign instead of a big commercial sign. He stated that there was not an acupuncture located on the service road.

Mr. Hammack asked if an applicant needed to be licensed by the State for an in home childcare facility. Ms. Wilson stated that they did need to have a State inspection and license.

Mr. Hart asked staff if Development Condition #9 allowed the applicant to have an illuminated sign. Ms. Langdon replied that the Board of Zoning Appeals could include a Development Condition to restrict the illumination of a sign.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he wanted to defer the application to give staff and the applicant time to research whether or not the childcare center was open for operation, if they were licensed by the State, to obtain a statement from Mr. Harris, to get a clear answer regarding the dimensions of the sign, whether the sign would be illuminated, and to resolve the parking issues on the service road.

Mr. Hammack stated that he had reservations about the hours of operation and said that there was no reason for the daycare center to close at 8:30 p.m.

Ms. Gibb stated that she supported the application as it was presented; however, she was not opposed to a deferral for the reasons Mr. Kelley had given. She stated she did not support Mr. Hammack's view on the hours of operation because parents who work late hours needed later childcare.

Mr. Hart also asked staff to report back to the Board the number of daycare centers in the County that had similar hours of operation.

Mr. Kelley moved to defer SP 00-B-006 until June 13, 2000, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 126 May 2, 2000, (Tape 1) Scheduled case of:

9:00 A.M. HORACE & PATRICIA BASKETTE, VC 00-S-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. and deck 9.2 ft. from rear lot line. Located at 9602 Chapel Hill Dr. on approx. 8,871 sq. ft. of land zoned R-3 (Cluster).

Springfield District. Tax Map 88-1 ((16)) 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. Horace Baskette, 9602 Chapel Hill Drive, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a one-story addition to be located 13 feet from the rear lot line and a deck to be 9.2 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard and permitted an open deck to extend 12 feet into the minimum rear yard; therefore, a 12 foot variance for the addition and a 3.8 foot variance for the open deck were requested.

Mr. Baskette presented the variance request as outlined in the statement of justification. He stated that they needed to expand their home to achieve adequate living space. He said there was a 50 foot wooded buffer between the subject property and the adjacent neighbor to the rear. Mr. Baskette stated that they had full neighborhood support.

Mr. Hammack asked what the dimensions of the existing deck were. Mr. Baskette stated that the existing deck was 10 X12 feet in size.

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

Mr. Hammack moved to approve VC 00-S-015 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HORACE & PATRICIA BASKETTE, VC 00-S-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. and deck 9.2 ft. from rear lot line. Located at 9602 Chapel Hill Dr. on approx. 8,871 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((16)) 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 May 2, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The building envelope in this triangular shaped lot pushes the building toward the rear of the property.
4. There is a 50 foot buffer between this property and the properties on the next street so there will be no encroachment on the neighbors.
5. The request is very moderate.
6. There is no other place to construct this kind of an addition on the property to make 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.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and deck shown on the plat prepared by Arencibia Architects Inc., dated December 22, 1999, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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. Kelley seconded the motion which carried by a vote of 5-0. Mr. Pammel 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 10, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 128, May 2, 2000, (Tape 1) Scheduled case of.

9:30 A.M. HAROLD DAWSON/DAWSON'S AUTO CARE, A 95-M-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and

Page 129, May 2, 2000, (Tape 1), HAROLD DAWSON/DAWSON'S AUTO CARE, A 95-M-048, continued from Page 128

specialized vehicle sale, rental and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 5930 Leesburg Pk. on approx. 34,970 sq. ft. of land zoned C-5, R-3, HC and SC. Mason District. Tax Map 61-2 ((1)) 23. (DEF. FROM 11/28/95 TO GIVE APPELLANT, STAFF, AND BOARD OF SUPERVISORS TIME TO RESOLVE ISSUES IN CONTENTION. MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, 2/10/98, 6/30/98, 1/12/99, AND 3/30/99)(DEF. FROM 6/1/99, 6/8/99, and 2/1/00).

Mr. Hart disclosed that his firm currently had three cases, one in the Federal Court in Alexandria and two in the Circuit Court in Manassas, in which attorneys from Mr. Hanes' firm were on the other side. He stated that more than one year ago he was retained as an expert witness on the side of another attorney in Mr. Hanes' firm and that matter had been concluded. He stated that these circumstances would not affect his ability to participate in the proceeding.

Mr. Kelley stated that he was uncomfortable with the number of Board members present and he asked Mr. Hanes if he was prepared to request a deferral.

Grayson Hanes, agent for the appellant, requested a deferral because he had submitted last minute material to the Board and wanted to give them time to review it and also due to the number of Board members present.

William E. Shoup, Deputy Zoning Administrator, stated that the case had a history that dated back to 1995 and had been denied a special exception; therefore, there was no reason to defer the case. He said that staff was prepared to go forward with the hearing and requested that the Board hear the case.

Mr. Kelley moved to defer A 95-M-048 until May 9, 2000, at 9:00 a.m., to allow the Board time to review the information that was submitted. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 139, May 2, 2000, (Tape 1) Scheduled case of:

9:30 A.M. HERITAGE CITGO, A 95-B-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul vehicles) in violation of the Zoning Ordinance provisions. Located at 7824 Rectory Ln. on approx. 10.22 ac. of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1. (DEF. FROM 11/28/95 TO GIVE APPELLANT, STAFF, AND BOARD OF SUPERVISORS TIME TO RESOLVE ISSUES IN CONTENTION. MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, 2/3/98, 6/9/98 AND 1/5/99; DEF. FROM 8/4/98; 3/23/99, 5/25/99 and 2/1/00). **(RECONSIDERATION GRANTED 6/8/99)**

Mr. Hart disclosed that his firm currently had three cases, one in the Federal Court in Alexandria and two in the Circuit Court in Manassas, in which attorneys from Mr. Hanes' firm were on the other side. He stated that more than one year ago he was retained as an expert witness on the side of another attorney in Mr. Hanes' firm and that matter had been concluded. He stated that these circumstances would not affect his ability to participate in the proceeding.

Mr. Shoup stated that a special exception was still pending and suggested a deferral until October 24, 2000, to allow the special exception to run its course.

Mr. Hammack moved to defer A 95-B-045 until October 24, 2000, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were absent from the meeting.

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Mr. Hart moved that the Board go into Executive Session to discuss legal matters. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were absent from the meeting.

Page 130, May 2, 2000, (Tape 1), continued from Page 129

The meeting reconvened at 11:00 a.m.

Mr. Hammack 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.

Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 130, May 2, 2000, (Tape 1) After Agenda Item:

Approval of April 25, 2000 Resolutions

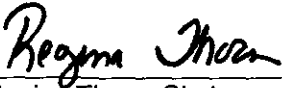
Mr. Hammack moved to approve the Resolutions. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were absent from the meeting.

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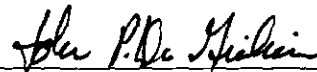
As there was no other business to come before the Board, the meeting was adjourned at 11:04 a.m.

Minutes by: Lori M. Mallam

Approved on: August 15, 2000



Regina Thorn, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 9, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 131, May 9, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARGARET AND ROBERT NIEVES, VC 00-Y-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.3 ft. from rear lot line. Located at 4608 Cambryar St. on approx. 7,040 sq. ft. of land zoned PDH-4. Sully District. Tax Map 56-1 ((17)) 37. (Moved from 5/16/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert and Margaret Nieves, 4608 Cambryar Street, Fairfax, Virginia, replied that it was.

Bill Mayland, Staff Coordinator, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 14.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10.7 feet was requested.

Mr. Nieves presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to put screening on the existing covered deck. Mr. Nieves stated that the dimensions would not change. He noted that two other residences had similar structures in the neighborhood. Mr. Nieves stated that there was no opposition and the character of the neighborhood would not be changed.

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

Mr. Hammack moved to approve VC 00-Y-019 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET AND ROBERT NIEVES, VC 00-Y-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.3 ft. from rear lot line. Located at 4608 Cambryar St. on approx. 7,040 sq. ft. of land zoned PDH-4. Sully District. Tax Map 56-1 ((17)) 37. (Moved from 5/16/00) 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 9, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance and it was also noted in their statement of justification.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of screened porch addition as shown on the plat prepared by Charles P. Johnson & Associates, Inc., dated February 2000, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The screened 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 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 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 May 17, 2000. This date shall be deemed to be the final approval date of this variance.

Page 133, May 9, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK, SPA 81-A-022-5 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 for a cemetery and mausoleum to permit change in development conditions. Located at 4401 Burke Station Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 12.

Chairman DiGiulian noted that the application had been administratively moved to June 6, 2000.

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Page 133, May 9, 2000, (Tape 1), Scheduled case of:

9:30 A.M. HAROLD DAWSON/DAWSON'S AUTO CARE, A 95-M-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 5930 Leesburg Pk. on approx. 34,970 sq. ft. of land zoned C-5, R-3, HC and SC. Mason District. Tax Map 61-2 ((1)) 23. (DEF. FROM 11/28/95 TO GIVE APPELLANT, STAFF, AND BOARD OF SUPERVISORS TIME TO RESOLVE ISSUES IN CONTENTION. MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, 2/10/98, 6/30/98, 1/12/99, AND 3/30/99)(DEF. FROM 6/1/99, 6/8/99, 2/1/00 and 5/2/00).

Mr. Hart stated that he had a disclosure. He said less than two years ago he was retained as an expert witness by another attorney in Mr. Hanes' firm, but that matter had since concluded and he currently had three cases in which attorney's from Mr. Hanes' firm were on the other side and he didn't believe any of those matters would affect his ability to participate in the appeal.

William Shoup, Deputy Zoning Administrator, stated that this issue had been around for a long time and the Board was familiar with it, but he wanted to give brief background and then talk about the issues raised by the appellant. He said this was an appeal of a June 1995, Notice of Violation issued to the appellants for their illegal operation of a U-Haul truck and trailer rental business in a C-5 District from a gasoline service station. In response to a concern raised by the BZA, the Board of Supervisors amended the Zoning Ordinance in November of 1997, to provide the opportunity for special exception approval for truck and rental establishments. The appellants eventually sought such approval but for a number of reasons, on January 24, 2000, the Board of Supervisors denied the Dawson's request for a special exception on the property. Consequently, that meant that the issue of appeal had to be dealt with. The issue on appeal boiled down to the question of whether or not the Dawsons had a nonconforming right to conduct truck and trailer rental operations as an accessory use to an existing service station. As presented in staff's January 24th memorandum, Ms. Kelsey previously provided affidavits, which suggested that the U-Haul truck and trailer had been rented from the subject property since 1969 or 1970. Mr. Shoup noted that the affidavits did not provide any details regarding the extent of the rental activity over the years. In response to Mr. Hanes May 1st submission, Mr. Shoup stated that it was apparent that the information and arguments presented in that document went beyond the grounds that were originally submitted with the appeal. Mr. Shoup noted that the appellants were limited by Virginia Statute to the grounds that were timely presented when the appeal was filed. He said the appellants argued that staff suggested that under the previous zoning Ordinance, service stations were not permitted to have accessory uses, but to the contrary, he agreed that accessory uses to service stations were indeed allowed. An administrative interpretation by the Zoning Administrator's office and the BZA, however, clearly showed that this type of use was not a permitted accessory use to a service station in Fairfax County. Mr. Shoup stated that Mr. Hanes argued that since the County allowed a vehicle storage lot on the property as an accessory use that it was inconsistent for the Zoning Administrator to say that the U-Haul rental was not a permitted accessory use, and staff disagreed. He said the vehicle storage lot was one of many designated locations where the police could have vehicles towed when they became disabled. There was a logical connection between such a facility and a service station where towing service and repair service often where provided, as opposed to U-Haul leasing operations that were separate and distinct business operations with no direct relationship to the service station. Mr. Shoup stated that the historical evidence that staff provided to the Board, clearly demonstrated that the long standing administration of the Zoning Ordinance precluded truck and trailer rental operation as accessory uses to service stations. He said the BZA minutes that were provided in staff's April 24th memorandum, noted that on January 23,

1962, the Zoning Administrator went to the BZA and requested that all filling stations, special permit applications, have a condition limiting the use to service stations only. The July 30th 1963 Minutes, reflected an oil company representative who came to the BZA complaining about the fact that U-Haul truck and trailer rental operations were not permitted as accessory uses to service stations in the County. One of the BZA members noted that they considered such businesses to be a separate business and they should be regulated that way. In August of 1963, the BZA asked the Board of Supervisors to amend the Zoning Ordinance to tighten the definition of gas station to make it clear that it should be for gasoline station uses only and the Board did that several months later. Mr. Shoup said the amendment that was approved in 1963, specifically provided that rental lots of trucks and trailers were limited to the more intense C-G District by special permit approval only. He said the appellants pointed to two 1971 Circuit Court rulings in criminal cases, which had very different legal standards and burdens of proof and which did not state why the court ruled as it did in either case; staff noted that in the later 1972 case, Johnson vs. Woodson, which staff provided the Board, the Circuit Court held that the rental of trailers and trucks was not a use that was customarily accessory and incidental to a gas station. He noted Attachment 11 of the original staff report, which was the ruling from Judge Morris in the Woodson case. Mr. Shoup said the judge found that there was no correlation between a rental business and gas station uses. In comparing the total number of gas stations in the country with rental franchises to the total number of gas stations, the judge concluded that the franchises were not customarily accessory to gas stations. He also noted that the restrictive nature of the C-N District, which was the same zoning classification as the appellant's property under the previous Zoning Ordinance, he noted the distinctive nature of the district. He noted that just because rental operations were convenient to the public, that didn't make them customary and incidental uses to gas stations. Mr. Shoup stated that the judge's findings were consistent with the Zoning Administrator and what the BZA had been saying all through the 1960s and up until now. He said the evidence showed that at the time the rental of trucks and trailers commenced on this site, it was not lawful to do so. Consequently, there was no nonconforming right to continue the separate commercial operation which was not allowed as an accessory use in the C-5 District as a service station, then or now.

Ms. Gibb asked when did truck rental begin on this site. Mr. Shoup replied that with giving the benefit of doubt to the affidavits that Ms. Kelsey submitted, around 1969-1970.

Mr. Pammel asked what was the date of Judge Morris' decision. Mr. Shoup replied September 19, 1972.

Ms. Gibb asked why was the storage of the vehicles a permitted accessory use. Mr. Shoup replied that you could make a direct connection to the vehicle storage lot. He said the police made a towing list and they would have different locations throughout the County on this list so that when a vehicle became disabled in traffic and on the roadways they would have a place to call and get a tow truck to get the vehicle off the roadway and into a lot. He said that was what the subject lot was back then. Mr. Shoup stated that it was reasonable to conclude that since you were dealing with vehicles that may have become disabled there was a need for a tow truck, and a lot of service stations had towing operations. He said vehicles would come to site for repair and you could make a connection that it could be considered accessory to a service station as opposed to the truck and trailer rental where there is no connection.

Mr. Hammack asked if the appellant had to get special permission to become a storage yard for wrecked or disabled vehicles. Mr. Shoup replied that the police department would ask zoning if it was permissible to do so.

There was discussion between Mr. Hammack and Mr. Shoup relating to the issue of storage and repair limitations for gas stations. Mr. Shoup stated that there was nothing noted in the Ordinance relating to storage of cars at gas stations, but the gas stations were limited to minor repairs on the property as noted in the Ordinance at that time. Mr. Hammack asked if it was still staff's contention that the Ordinance in 1963 prohibited rental of U-Haul trailers or storage of U-Haul trailers at service stations. Mr. Shoup replied yes.

Mr. Hart asked if it was staff's position that there had been an expansion of the truck rental operation between 1969 to the present. Mr. Shoup replied that was not a position staff had taken but believed that there had been. Mr. Shoup noted that the area on the site that used to be the storage lot was no longer being used for that, but was being used for the storage of rental trucks. On that information alone, he said staff concluded that it had expanded. Mr. Shoup said that thought it was not an issue, staff's point was it was never allowed

to begin with, and whether expanded or not, it was not allowed.

Ms. Gibb asked if there was a nonconforming use for trailers, would it be considered an expansion if they started to rent trucks. Mr. Shoup stated that when dealing with nonconformity, you would want to know what was the extent of the activity, when it became nonconforming, and if it was limited to trailers. He said it would certainly change the character of the use if you had 5 or 6 tag-along trailers on a site and then you would have 20 trucks, some of them up to 23 feet in length. Mr. Shoup said you could make a good case for a change in the character of the use.

Mr. Hanes introduced Jane Kelsey, Jane Kelsey and Associates. He complimented Mr. Shoup on the extended amount of work that the County spent on this property and this case. Mr. Hanes said that Mr. Barry found that the storage of vehicles was a nonconforming use on this specific site in 1973. The Ordinance at that time did not designate anywhere where you could store towed vehicles of this type. Therefore, that particular use was exactly the same that the appellant was arguing had been in place since 1969 as an accessory use. Mr. Hanes said they were not dealing with the popularity of the use, although a petition was submitted and a magnitude of letters from people who indicated that they wanted the use to continue. Mr. Hanes stated that the Board was acting in their quasi-judicial role to determine a matter of law, equity and fairness. He said this was a constitutional issue and Virginia was the leading state with constitutional rights and property rights and the protection of nonconforming uses, which were under the term of vesting. The issue was whether or not this property was initially established under the Ordinance in affect at that time, was a use of right as a gasoline station, whether it required a special permit at that time, and whether or not it was an accessory use. He said the first he had heard of any expansion issue was at this public hearing. Mr. Hanes stated that staff had never taken the position that it had expanded and it had not expanded. He said the types of vehicles, as noted on the affidavits, were both trucks and trailers. He stated that they had been in affect on the property for 31 years.

He said under the 1941 Zoning Ordinance, the property was rezoned in 1950 under the general commercial district and that allowed a service station as a matter of right, a permitted use, and with that you have your accessory uses as a matter of right. Mr. Hanes said the County had not found a vested right or a nonconforming use of the towed vehicles.

Mr. Hanes noted the findings of several court cases which are included in the file.

Mr. Hanes stated that they had provided the Board with sufficient and overwhelming evidence that would allow them to find that this was a legal, nonconforming use and a vested use.

Mr. Hammack asked Mr. Hanes whether the appellant still accepted towed and wrecked cars. Mr. Hanes replied no, and that he did not know when that ceased.

Mr. Hammack asked whether the appellant's argument was that because the appellant was permitted to have storage of damaged and wrecked vehicles, that U-hauls would also be in the same category.

Mr. Hanes replied that it wasn't his only position, but that particular finding provided an analogy from which he argued. He said they had submitted evidence that this was a legal use when it went into effect and that it was not uncommon, not rare, and was incidental and subordinate to what was going on at that property when it was established.

Mr. Hammack said the Zoning Administrator stated that the use had to be established before 1963 to be a legal nonconforming use and in the appellant's application for appeal, the Dawsons themselves didn't begin leasing U-hauls until after they leased the property. Mr. Hammack stated that he agreed that storage of wrecked vehicles was the same as leasing U-haul trailers, but thought there was a gap in when the U-hauls started

Mr. Hanes responded that you should refer to the 1941 Ordinance as opposed to the 1963 Ordinance. He said with the establishment of the principal use by the rezoning in 1950, accessory uses were permitted equally as a matter of right. Mr. Hanes stated that anytime that you had that permitted use, you could establish the accessory use going forward.

Page 136, May 9, 2000, (Tape 1), HAROLD DAWSON/DAWSON'S AUTO CARE, A 95-M-048, continued from Page 135

Mr. Hanes stated that they had submitted affidavits indicating that the use continued and it was the same intensity of uses on this property.

Mr. Hammack stated that if they were storing wrecked vehicles back in 1973 or 1976, that they couldn't have the same number of U-haul trailers on the property as they do currently and although the issue had not been presented as an expansion, a lot of the facts suggest that might be the case.

Mr. Hart asked about the rezoning of the property in 1959 to the CN District. Mr. Hanes responded that there were three Ordinances in the County, 1941, 1959 and August 14, 1978. He said the 1959 Ordinance comprehensively rezoned the entire County into new categories and the same thing was done again on August 14, 1978 from the CN District to the C-5 District for the subject property.

Mr. Hart asked Mr. Hanes if it was his position that the Board should not consider the 1963 amendment that created a special permit in the C-G District for truck rentals and other things because this was an accessory use permitted under the 1941 Ordinance when the filling station opened in 1950. Mr. Hanes responded yes that was his position.

Mr. Hart asked that in order for the right to be vested, does the use need to be established at some earlier point than 1969. Mr. Hanes replied not if you honor the principal use of a service station and all uses that are accessory to it. He said you would be undermining the principal use that you recognized if you first accepted that the principal use was legal and was to be protected in 1950. If you start carving out from that these accessory, incidental uses, then you would be taking away property rights and violating the vested right.

Mr. Hart asked if there was a distinction between a filling station operator who was renting trucks prior to 1963 and somebody who starts in 1969. Mr. Hanes responded that yes if it wasn't a use of right in 1969.

Ms. Gibb asked Mr. Hanes if it was his position that if you had a filling station in 1950, could you currently establish a U-haul business incidental to a 1950 filling station. Mr. Hanes responded that his logic and reasoning would say yes that if you couldn't do that, then you were limiting the bundle of rights that went with the nonconforming use.

Mr. Pammel asked if the property was zoned rural commercial. Mr. Hanes replied that it was suburban commercial.

Chairman DiGiulian called for speakers.

Joyce Williams, no address given, came forward to speak on behalf of the appellant. She stated that the appellants were good neighbors. Ms. Williams stated that the appellants did not park their trucks off site often. She said the appellants did not drive their trucks through side streets. Ms. Williams stated that the only time there was heavy traffic was on Sundays when the people from the church services were trying to get out. She said the appellants try to keep the trucks off the road, and tried not to block traffic.

Molly Dawson, the owner of Dawsons Auto Care, came forward and stated that were a family business and that she was trying to make a living for herself and her 12-year old daughter. She said they tried not to interfere with the neighborhood, but the U-haul service helped her and the community.

Jane Filkins, Board of Directors of the Glenforest Community Association came forward to speak in support of the Zoning Administrator's position. She said the number and size of the U-haul trailers and moving vans which augmented the business had increased to the point of being a hazard as well as an eyesore. Ms. Felkins presented letters from neighbors and photographs reflecting the condition of the property. She said the community had been concerned for a number of years about the increase. Ms. Felkins stated that trucks were being driven through the neighborhood. She said there were no sidewalks in the development and the vehicles posed a hazard to the citizens who walked with their pets and to the numerous children. She said the large number of trucks and trailers available would seem to exceed the demand in her area. Ms Felkins stated that they were not asking to close down the business, just to move some of the vehicles.

Janet Hall, 6424 Cavalier Corridor, came forward to speak in support of the Zoning Administrator's position.

She said that she had lived in the area since 1984 and that some times you couldn't even get on to the site to get gas. She said that the trucks were quite large and took up a lot of room. Ms. Hall stated that the trucks and the use were clearly in violation. She said it was difficult to believe that the use was ever permitted by right.

Mr. Shoup gave additional comments stating that it was not in dispute that the service station began as a use by right, but there was not an unending right to add any accessory use that might have been allowed when the use started when there had been some intervening actions suggested that the use was not permitted as an accessory use. He said if you look at the longstanding administrative practice of the Zoning Administrator it was clear that the rental operation was not permitted as accessory uses in service stations. Mr. Shoup stated that to be accessory it would have to be clearly subordinate to, incidental, and customarily found in association with. He said it was a separate business, staff found no connection between this type of business and the principal service station use that was occurring on the property. Mr. Shoup said that with respect to the issue of expansion, staff firmly believed that the use was not lawfully established. He said that the burden of proof was on the appellant to show the extent of the activity. Mr. Shoup stated that if it was a nonconforming use, the appellant would have to demonstrate that and had not been done. Mr. Shoup noted that Randy Greehan from the County Attorney's office was present to answer the Board's questions relating to vested rights issues.

Mr. Kelley asked Mr. Shoup to address the issue of inconsistency as noted in Mr. Hanes' memo. Mr. Shoup stated that Mr. Hanes was talking about an inconsistency by the County on one hand allowing the storage yard use, as an accessory use, but then not allowing the rental operation as an accessory use. Mr. Shoup stated that if it was an accessory use, it would have to be accessory to, and incidental to. He said there had to be a connection to the principal use. He said the truck and trailer rental operation was a separate distinct business that happened to operate on a service station site.

Mr. Kelley said he didn't see a difference between the uses.

Ms. Gibb asked how many of these types cases were left. Mr. Shoup replied that the Heritage appeal was deferred to October and they had a special exception pending and a couple of the others that were on appeal, withdrew the appeal, and there was still a pending special exception for Groveton Car Wash. He said at least 2 others that were originally before the BZA back in 1995 had ceased rental operations.

Mr. Hanes stated in his rebuttal that he knew the Board had given the appeal a great deal of thought and asked for their best judgment. He said they had provided the Board with facts, evidence, rationale, and case law and hoped that was persuasive.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that this was a very difficult decision. He said there was a lot of gray. He said he appreciated the arguments on vesting and think that they had centered the decision clearly on the issue as to when the principal use was established, which was around 1950. Mr. Pammel stated he read the language on the permitted uses in that district that would have permitted accessory uses that were customarily incidental to the primary use and he didn't find any. He said he found specific language for the use regulations even though it was changed to suburban, initially it was a rural business district. Mr. Pammel stated that in a rural business district, no building or structure shall be erected, altered or used, and no land shall be used unless otherwise provided in this Ordinance, except for one or more of the following uses: automobile filling station, automobile repair shops in connection with a filling station, or garage for minor repairs and not equipped with motive power in excess of a ton. Mr. Pammel said he did not find any language that would indicate that the use of this site for U-haul, that is the rental of U-haul trailers and trucks would be included. He said it was a short and simplistic basis for the decision but, based on that he moved that the interpretation of the Zoning Administrator be upheld.

Mr. Hammack seconded the motion.

Ms. Gibb supported the motion and stated that the appellant had a heavy burden. She said the Board started off with the presumption that the Zoning Administrator had acted correctly. Ms. Gibb said Mr. Hanes had an

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interesting position about anything legal and permissive as of the date of the Zoning Ordinance being able to be utilized years later. She said she agreed with the rationale in the Woodson case as to what was accessory and was not persuaded that the U-haul business was customary, incidental, and subordinate use in this case.

Mr. Kelley said he opposed the motion. He stated that there were inconsistencies in the way this subject operation was being treated as opposed to the storage of vehicles. He said he didn't see a difference in the uses. Mr. Kelley said he was glad the question was not whether there had been an expansion, because he felt that had, but that was not the issue. However, he said, there were other issues, that he felt it was an eyesore and he would not want to live near it. Mr. Kelley said he agreed that a 50-year old gas station could enter into the U-haul business.

The motion carried by a vote of 4-2 and the determination of the Zoning Administrator was upheld. Chairman DiGiulian and Mr. Kelley voted against the motion. Mr. Ribble was absent from the meeting.

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Page 138, May 9, 2000, (Tape 1), After Agenda Item:

Approval of February 8, 2000, February 15, 2000, March 14, 2000 and April 4, 2000 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Mr. Hart abstained from the vote and Mr. Ribble was absent from the meeting.

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Page 138, May 9, 2000, (Tape 1), After Agenda Item:

Additional Time Request
Nils and Gladys Antezana, VC 96-D-040

Mr. Pammel moved to approve the Additional Time Request. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is April 16, 2001.

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Page 138, May 9, 2000, (Tape 1), After Agenda Item:

Additional Time Request
Joan K. and Harrison G. Wehner, VC 97-D-027

Mr. Hammack moved to approve the Additional Time Request. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is April 19, 2001.

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Page 138, May 9, 2000, (Tape 1), After Agenda Item:

Additional Time Request
Chesterbrook-McLean Little League, SP 98-D-027

Mr. Pammel moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is November 19, 2000.

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Page 139, May 9, 2000, (Tape 1), After Agenda Item:

Approval of May 2, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Hart 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 11:08 p.m.

Minutes by: Regina Thorn

Approved on: September 26, 2000

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 16, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 141, May 16, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MOHAMMAD NOUSHABADI, VC 00-H-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.3 ft. from rear lot line. Located at 12802 Pinecrest Rd. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-2 ((6)) 685.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mohammad Noushabadi, 12802 Pine Crest Road, Herndon, Virginia, replied that it was.

Charles Burnham, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 21.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 3.7 feet was requested.

Mr. Noushabadi presented the variance request as outlined in the statement of justification submitted with the application. Mr. Noushabadi stated that his bedrooms and bathrooms were too small and that he wanted to expand all the bedrooms.

Mr. Hammack asked if there was any other location on the existing dwelling that he could construct the proposed addition. Mr. Noushabadi responded that there was not. Mr. Hammack asked if he only needed a variance for the small corner of the addition that would exceed into the rear yard. Mr. Noushabadi confirmed that was correct.

Mr. Hart asked Mr. Noushabadi and Mr. Farangis Bigdeli, 12802 Pinecrest Road, Herndon, Virginia, a relative of the applicant and co-owner of the property, what was the distance between the back corner of the proposed addition and the house on lot 686 which was the house directly behind it. Mr. Bigdeli answered that the actual distance currently was about 75 feet from the house right behind it. He stated that with the addition the actual distance would be close to 50 feet.

Mr. Hammack moved to approve VC 00-H-021 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 9, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MOHAMMAD NOUSHABADI, VC 00-H-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.3 ft. from rear lot line. Located at 12802 Pinecrest Rd. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-2 ((6)) 685. 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 16, 2000; and

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

- 1. The applicant is the owner of the land.

2. The applicant has met the required standards for a variance.
3. The house is sited on the property on an angle.
4. The actual variance for the maximum extension into the rear yard is 3.7 feet at the very peak of the variance and most of it sits far less than that.
5. The variance doesn't change the character of the zoning district and will be in harmony with the intended spirit and purpose of this 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by Farid Bigdeli dated February 21, 2000, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Section 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. Hart 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 May 24, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JACQUIE B. SHONK, VC 00-D-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a variance to the minimum lot width and lot area requirements. Located at 1040 Bellview Rd. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((3)) 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. William M. Baskin, Baskin, Jackson, & Hansbarger, 301 Park Avenue, Falls Church, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance for minimum lot area and minimum lot width to allow development of the lot with the width of 199.45 feet and a lot area of 1.05 acres. However, this variance request would result in an increase in density from that permitted in the zoning district which was an unauthorized variance under the provisions of Paragraph 3 of Section 18-406 of the Zoning Ordinance. The Zoning Ordinance specifically prohibited the granting of this variance. Staff noted that the previous variance was heard with the same request on December 21, 1999, and was denied by the BZA. A waiver of the 12-month waiting period for the re-filing of a variance was subsequently approved resulting in the subject request. Ms. Schilling stated that there were no changes in the variance over that previously heard and denied.

Mr. Baskin presented the variance request as outlined in the statement of justification submitted with the application. Mr. Baskin stated that the property in question was a one acre lot that was legally created in 1964 and was purchased by the applicant in 1979. He stated that Ms. Shonk's intention was to build her home on the property; however, it had been determined by the County that the lot was not a buildable lot. Mr. Baskin explained that the basis and justification for the variance was the condition of the surrounding properties abutting her property. He stated that there were 13 lots in the immediate vicinity of less than the two acre minimum requirement and that one of those lots contiguous to her property was created by a variance granted by the BZA in 1966 which permitted subdivision of a 2 acre lot into 2 one acre lots. Mr. Baskin further testified that all of the 13 lots, in the immediate vicinity of less than one acre, had been improved with single family dwellings except for the subject property. He stated that the majority of them were constructed in 1979 and later. Mr. Baskin concluded that it was their position that as a result of the surrounding development of properties adjoining Ms. Shonk's property, a variance was justified, and refusal to grant a variance in the strict application of the Zoning Ordinance would create an unnecessary hardship and deny the applicant reasonable use of her property.

Mr. Baskin stated that although none of the allegations in support of this variance had been denied by the County, their only assertion was that it was an unauthorized variance under the County Code because it would result in an increased density. He stated that the Board of Zoning Appeals was a creature of statute, created and granted power and authority by the General Assembly which was described in the Virginia Code, Section 15.2-2309. Mr. Baskin justified that in the Virginia Code, the BZA had the power to authorize the proposed variance from the terms of the conditions of the Ordinances by the fact that it met the following requirements: as long as it would not be contrary to the public interest; that when going through a special condition, a literal enforcement of the provisions would result in unnecessary hardship; provided the spirit of the Ordinance shall be observed and substantial justice done; when a property owner could show that his property was acquired in good faith and where by reason of the conditions, situation, or development of property immediately adjacent thereto, the strict application of the terms of the Zoning Ordinance would effectively prohibit or unreasonably restrict utilization of the property; where the Board is satisfied upon evidence heard by it that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant; and, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.

Mr. Baskin stated that same Code section also put limitations on variances that were granted by the Board of

Zoning Appeals in the following: no such variance shall be authorized by the Board unless it finds that strict application of the Ordinance would produce undue hardship; that the hardship is not shared generally by other properties in the same zoning district in the same vicinity; that the authorization of the variance would not be a substantial detriment to the adjacent properties; and, that the character of the district would not be changed by the granting of the variance.

Mr. Baskin stated that the proposed variance application met all of the aforementioned requirements for the granting of the variance. He added that there were 13 other properties right around Ms. Shonk's property that were all built and developed with single family houses. He stated that they didn't share the same hardship and that without a variance her property would be unusable. Mr. Baskin stated it was unjust to deny Ms. Shonk the right to use her property and that granting the variance for the one lot simply would not change the character of the RE-2 zoning district. He concluded that if the County wanted to insist on pursuing such an unjust position, he thought that the County should have the burden of going forward. He reiterated that the Board of Zoning Appeals had the authority to grant such a variance that was supported by the Statute and case law.

Mr. Hammack stated that the lot in question was originally a 2.05 acre parcel which apparently had met all the requirements at the time of its creation in 1947, but, he said in 1964, Lot 4 was conveyed out and the staff report said that the lot was created without County review or approval and did not meet the lot area or lot width provisions of an RE-2 District, which was in effect at that time. In addition, Mr. Hammack stated that the Zoning Ordinance adopted in 1978, included provisions for density prohibiting the authorization which would increase density over that permitted, prior to Ms. Shonk's purchase of the lot. Mr. Hammack asked Mr. Baskin to explain how he got around what appeared to be a legal requirement.

Mr. Baskin answered that the staff report included a memorandum that had determined that the lot was legally created when it was subdivided. He stated that it wasn't an issue that it was an illegal subdivision, but that it was a lot that was created under existing County Ordinances, which at the time, did not require that division to go through subdivision control. Mr. Hammack stated he was correct, but that it didn't meet lot width or lot area requirements at the time. Mr. Baskin said he was right. Mr. Hammack further stated that it was a substandard lot when it was created even though it might have been created legally. He stated that it was like an outlot.

Mr. Baskin stated that the tax records indicated that the dwelling, which currently existed on Lot 4A, the other part of this original lot, was built in 1964. He said that it was doubtful that it was built before March 1964, but said it would appear that the County approved it after the subdivision. Mr. Baskin explained that the County Zoning Ordinance and the State Code defining variances, both require that a variance be granted or requested as a result of the exceptional narrowness, shallowness, shape, or size of a specific piece of property at the effective date of the Ordinance. Mr. Baskin stated they were not asking for the variance because the lot was simply too small although he agreed that it was too small at the time of the Ordinance, but that both the Statute and the County Ordinance permitted the granting of a variance where conditions of developed property immediately adjacent justify it, and that it did not contain the modifier or the requirement that related back to the date of the Ordinance or creation of the lot.

Mr. Hammack asked Mr. Baskin if he was aware of the letter in opposition that was filed by Mr. Camp complaining about wells. Mr. Baskin answered that it was the same one that had been filed previously and that he hadn't gotten anything since the last meeting. Mr. Baskin said however, that he did recall an objection earlier about low water pressure and thought that it was an issue that would have to be addressed at the time of development of the lot. He said that it might require a deeper well or it might require a hook up to public water, but he didn't think that the condition or situation should result in denial of the variance.

Mr. Hart asked Mr. Baskin if any of the lots and houses on Exhibit 2 were a result from the 1966 variance. Mr. Baskin answered that he believed they were Lots 3A and 3B since that variance created the 2 lots from a 2 acre parcel. Mr. Hart asked why the lot was divided in 1964 and what the purpose was to create a lot that apparently was too small at the time. Mr. Baskin answered that he didn't know. Mr. Hart asked if there were any other lots on the list that required a variance before a house could go on there. Mr. Baskin answered that he didn't know.

Mr. Hart referred to the issue that the current Ordinance would not allow a variance due to the increased density problem. He asked if it was Mr. Baskin's position that there was a Dillon's rule problem with a local Ordinance depriving the BZA of the authority to grant a variance for that type of situation. Mr. Baskin

answered that he was correct and that the issue had been addressed by the Virginia Supreme Court before and in one case it involved the Fairfax County Board of Zoning Appeals. He said that the case was the Board of Zoning Appeals of Fairfax County versus Cedar Knoll Inc. and had involved the authority of the Board of Zoning Appeals to revoke a special permit and the County Ordinance provided that the Board of Zoning Appeals had the authority to revoke special permits. He said that the state enabling statute which empowered the Board of Zoning Appeals only gave the Board appellate jurisdiction to revoke special permits, and in that case the Fairfax County Board of Zoning Appeals revoked the permit, deciding that because it had the authority to grant it, it had the authority to revoke it and so it was revoked. Mr. Baskin said that the Supreme Court held otherwise and said that the Board of Zoning Appeals had only those specific powers granted by the General Assembly and the case was reversed, notwithstanding the fact that the County Ordinance appeared to give the Board that authority.

Mr. Hart stated that on Number 7 under the required standards for variances, the authorization of the variance would not be a substantial detriment to adjacent property. He asked Mr. Baskin if that was a hurdle Ms. Shonk had to clear since granting the proposed variance would result in a house on the lot. He said that if there was a problem already with the well water for the neighbors, wouldn't that be aggravated somewhat by one more well? Mr. Baskin said that he didn't think it was a hurdle she had to clear at the present time. He said that he didn't know if there was any evidence that it would be aggravated. He stated that possibly, because of the situation that existed concerning wells on surrounding properties, she might have to dig a deeper well, hook up to public water or have some other requirement that would not exacerbate problems that existed for current properties. Mr. Hart asked if there was public water nearby. Mr. Baskin answered that he wasn't sure, but apparently that issue was present when house number 11 and 12 went in and was it only Ms. Shonk's house, the last one that caused the problem.

Mr. Hart asked Ms. Schilling if all of the houses on Exhibit 2 were properly constructed and if there were any zoning problems with the houses built on any of those lots. Ms. Schilling answered that with respect to the houses that were constructed surrounding the subject of the variance, a building permit was issued for a house to be constructed based on 2.05 acres and when the back portion of the lot was separated, it did not come under County review. Ms. Schilling stated that with the other houses, the construction of the houses was based on whether you had a legally created lot that met the provisions of the Zoning Ordinance at the time that it was created. She said you could develop with a single family dwelling as long as you met the bulk standards. Ms. Schilling said the bulk of the lots were created between 1941 and 1959 when the Zoning Ordinance provided that you could divide lots into a half-acre minimum and the subject lot was created in 1964. She said a variance was granted for the minimum lot area, because the Ordinance did not operate as a density based Ordinance; however, in 1978, we went to a density based Ordinance, which provided that you had to meet both the minimum lot area and density provisions of the Zoning District. Ms. Schilling said the house could be constructed on a lot that was legally created and met the provisions under today's Ordinance.

Mr. Hart stated that the lot in question would have been eligible for a variance notwithstanding its small size until 1978, and then subsequent to 1978 the lot was no longer eligible for a variance due to the density problem. Ms. Schilling answered that before 1978 the lot was not a buildable lot because of the minimum lot area and minimum lot width, but a variance could be applied for and it would have been up to the Board of Zoning Appeals to grant the variance. She said that no variance was ever applied for during that time and then in 1978, approximately one year before the applicant purchased the property, the density based Zoning Ordinance and the provision that the Board of Zoning Appeals shall not authorize a variance which will result in an increase in density, went into effect. Ms. Schilling added that Jan Brodie with the County Attorney's office was present and could answer any questions regarding any of the legal aspects or the provision of Dillon rule.

Mr. Hart noted that Mr. Baskin had identified two of the houses on Exhibit 2 emanating from the 1966 variance. He asked if staff knew if any of the other houses were the subject of a variance. Ms. Schilling answered that to the best of their knowledge there were no other variances granted in the immediate vicinity and that Ms. Shonk's application for a variance was the only one.

Mr. Hart asked Ms. Brodie, from the County Attorney's office, how the application for a variance could be accepted if it could never be granted. He stated that there was an inconsistency. Ms. Brodie answered that it had been the position of DPZ that they could basically apply for anything and that it was the prerogative of the Board to make the decision whether or not the requirements were met. She said that they had never made a decision on variances prior to the hearing. Mr. Hart asked Ms. Brodie if she could briefly address the

Dillon's rule problem that Mr. Baskin had identified. Ms. Brodie answered that she wasn't prepared, but that in the Cedar Knoll Case dealing with the denial of the revocation, the language was silent as to whether or not the Board had the authority to revoke the special permit. She stated that Ms. Shonk's case had Sect. 18-4063, which held the specific regulations saying no, that the Board had incorporated in the Ordinance. Ms. Brodie stated that other than that, she would have to do more research but she didn't see a problem with the Dillon rule.

Mr. Kelley asked Mr. Baskin if he believed Mr. Kelley could vote against the variance if he came to the conclusion, from testimony, that there was insufficient well capacity to support another dwelling there. Mr. Baskin answered that the fact that other property owners testified that they had problems with their wells didn't mean that a well on the property in question would impact their wells. He stated he didn't believe there would be any evidence, other than the testimony of neighbors that they had problems with their wells. He stated that the applicant would still have to get County approvals and obtain a permit to build a house on the property and establish that there was sufficient basis to provide water to the house.

Mr. Hammack asked Ms. Brodie if the State Statute authorized the County to base its Zoning Ordinance on density criteria. Ms. Brodie answered yes; however, she didn't have the Ordinance with her. She stated that it would be incorporated with the zoning of the property and that clearly she thought that the Board would have the authority to regulate that.

Ms. Gibb asked staff if the owner of Lot 4A wanted to put an addition on the house, would they have to apply for a variance and could the Board grant one because they didn't meet the minimum density. Ms. Schilling stated that would be a problem and that the owner of Lot 4A would need to come to Zoning Administration. She said that staff had issued a letter to the property owners for adjacent Lot 4A because even though the house was established legally on the lot, there were subsequent subdivisions through the issue of whether or not the house was a conforming dwelling. Ms. Gibb asked if the applicant presently had an illegal lot. Ms. Schilling answered yes, because in addition to Lot 4, Lot 4A did not meet the provisions of the Zoning Ordinance and Section 2-405.

Mr. Baskin responded to a statement made by the County Attorney's Office on the content of the Zoning Ordinance that was applied on the Cedar Knoll case. He stated that in the Supreme Court opinion on that case, they had the Ordinance quoted in the footnote which stated that with respect to the authority of the Board granting the special permit, that unless a time limit was specified for a permit, the permit shall be valid for an indefinite period of time but shall be revocable on order of the Board and at any time, on failure of the owner or operator of the use to observe all requirements of law. Mr. Baskin explained that the Ordinance, in that case, specifically gave the Board the authority and the Supreme Court said that the Board didn't have the authority. He stated that the preceding case of the Virginia Supreme Court, Lake George Corporation versus Patrick L. Standing, who was the Planning Director in Virginia Beach, dealt with the granting of variances and at the time, the state enabling statute only permitted Boards of Zoning Appeals to grant variances on an Appeal from the Zoning Administrator's denial. He stated that the Virginia Beach BZA took an original application for a variance, granted it and the Supreme Court reversed it and said they didn't have that authority. Mr. Baskin explained that the General Assembly later changed the statute to give Boards of Zoning Appeals the original jurisdiction to hear variance applications. He stated that it did not do so with respect to special permit applications which was why Fairfax County did not prevail in the Cedar Knoll case. Mr. Baskin stated that the same rationale supported the Board's authority and ability to grant the variance in Ms. Shonk's case. He said that the purpose of variances was to permit flexibility in Zoning Ordinances that were necessarily inflexible and could not apply to every situation. Mr. Baskin stated that was the whole reason for the creation for the Boards of Zoning Appeals and the authority to grant variances.

Ms. Gibb asked why Ms. Shonk's case wasn't a rezoning. Mr. Baskin answered because it was not changing the proposed use of the property. He stated that it was asking for a variation from the strict requirements of the Ordinance to use the property in a manner otherwise consistent with the Ordinance. Ms. Gibb asked if density was the crux of the matter for rezoning and weren't they needing to increase the density. Mr. Baskin answered that by granting the variance they were not increasing the density for the entire district beyond the permissible level. He stated that there were 13 other examples of lots adjacent to Ms. Shonk's lot that enjoyed the right to have their homes on smaller than required lots. He stated that it was legally unjust and a denial of equal protection for Ms. Shonk to be able to use her property. Mr. Baskin stated that Ms. Shonk should have the same rights as the other land owners.

Chairman DiGiulian called for speakers.

Ms. Melanie Johnson stated that her 97-year-old mother lived at 1038 Bellview Road and testified that she was neither in support or in opposition of the application but had some concerns. She stated that her father was deceased and her mother still lived on the property in front of Ms. Shonk's property. She stated that the house was already there before her parents purchased the property in good faith from Thomas and Analee Gordon, in March of 1964, and at that time, Bellview Road was under a different name. Ms. Johnson stated that they had received information from Zoning Administration that the land was not subdivided in accordance with the Subdivision Ordinance and her lot was not considered a buildable lot. She said that when they bought the property, they were the only ones in the area and that all of the other lots after 1964 were allowed to build on their one acre or less than 2 acre lots. Ms. Johnson stated that all of a sudden, when Ms. Shonk got ready to build, she couldn't build on her property. She stated that she was concerned that if her mother's house was damaged by a fire, she would not be allowed to build or remodel her home when everyone else was allowed to build on their property. Ms. Johnson stated that when the property was built and purchased, it was surely before 1964 and they had to have gotten a license from Fairfax County in order to build on their property. She stated that if the Ordinance required a two-acre minimum then all the other property owners who built around them should not have been allowed to build on their property. She stated that there was a problem with the Ordinance, and if everybody else could build, then she didn't see any problem with Ms. Shonk building on her property. Ms. Johnson stated that their only concern was that their well was right on the line where Ms. Shonk's egress and ingress was, and they were concerned about the drainage of the well water and where Ms. Shonk's road would be in consideration to their property. Ms. Johnson said that the deed stated they were free of all incumbencies when they bought the property and that back then, there was nothing there but their house. She concluded by saying they were not against Ms. Shonk building, because they felt that she should be able to build on her property, but they wanted to know what she would do as far as the 20-foot width concerning their well and where her drainage would be.

Mr. Hart asked Ms. Johnson if her mother's well was within the 20 foot easement? Ms. Johnson answered that it was near, probably not even a foot or two feet away.

Mr. Martin Simon, 1044 Bellview Road came forward to testify in opposition of the application stating that in 1947, 7 lots were created and in 1959 the Zoning Ordinance was established and required two acre lots in the RE-2 by size and dimension. He stated that in 1962 Lot 4 was conveyed to Thomas Gordon and in 1964 Thomas Gordon recorded an unauthorized subdivision of Lot 4 which created one additional lot designated as Lot 4A, thereby making both lots 4 and 4A unbuildable by the Zoning Ordinance. Mr. Simon testified that in 1978, an updated Zoning Ordinance was adopted including provisions for density and that Lot 4 did not meet three basic criteria of a buildable lot which were area, lot width, and density. He stated that in 1979, over one year after the new Ordinance was adopted, Thomas Gordon conveyed for Lot 4 a deed to Ms. Shonk and no title search appeared to have been performed on behalf of Ms. Shonk. Mr. Simon stated that a simple title search would have determined that Lot 4 whether legally created or not, was unbuildable by Ordinance. He stated that the Shonk purchase, made with or without that certain knowledge of the Zoning Ordinance, although unfortunate, did not give forth any legal or moral basis to grant a variance. In addition, Mr. Simon stated that even more important was that the well water was of grave concern to the home owners on adjacent lots. He said that over the past two years, and two summers in particular, all the homeowners in that area had experienced low water levels to their wells. Mr. Simon testified that several wells had burned out including his pump, the neighbor's pump, and their adjacent neighbor's pump due to sediment and sand being sucked up because of low water levels. He stated that they had been forced to use bottled water and to ration well water uses for showers, toilets, and laundry purposes. Mr. Simon stated that the same weather patterns had been forecasted as ongoing and continuing the drought conditions. He said that since the wells on the adjacent properties all drew from the same underground water source, an additional drain on the availability of the water from a new home would certainly be detrimental to their most basic needs by possibly creating dry well conditions. Mr. Simon said that Mr. Baskin had pointed out that the well problem had to be addressed later, which was wrong because once the variance was granted, they could not get city water because they don't qualify and the cost would be prohibitive. He stated that this was of major concern to them and it would not go away by adding another well to the system. Mr. Simon stated that the County created the Ordinances to protect citizens from just such a problem of someone coming in and adding more density and uses. He said that the County could not put a provision in the variance that stated that only Ms. Shonk as single person could live in the house. He stated that Ms. Shonk could turn around the next day and have 5 people live in the house using well water. In conclusion Mr. Simon stated that Ms. Johnson had brought up an excellent point. He stated that for Ms. Shonk to have egress and ingress, the only place she could have that in which it was set aside on the land would be right through the middle of Ms. Johnson's property. Mr. Simon further stated that a cost would then be incurred to either Ms. Johnson or Ms. Shonk of around 15 to 20,000 dollars to move a drain field. He stated that Ms. Shonk should have had full knowledge

of what the Ordinances were all about before she purchased the property and that to stand before the Board 20 or 30 some years later after the laws had been passed and to say they shouldn't apply to her because she made a mistake was preposterous.

John Camp, 1054 Bellview Road, Lot 7, read to the Board from his letter of May 1, 2000. He stated that the proposed variance for the Shonk property would be a serious precedent to set the property as less than the required minimum lot acreage allowed by the zoning in the neighborhood. Mr. Camp stated that at the time of purchase of the property, the Zoning Ordinance was the same as it was currently, which meant that Ms. Shonk knew that the property did not conform when she bought it. He stated that the application as for yet another exception of the zoning laws would once again ignore the reason for those zoning laws in the first place which was for adequate well and septic usage. Mr. Camp stated that the larger more serious problem was the absence of sufficient well water in their area on Bellview Road which consisted of houses that all depended on well water. Mr. Camp stated that last year his family was reduced to Navy showers and limiting toilet usage as far as flushing was concerned. He said that additionally, there was expansion on the property next door to the Shonk lot that had five new bedrooms and three baths, at 8537 Old Dominion Drive, which would further tax their serious water situation. He stated that his well was already 720 feet deep, and that the issue would not go away until public water was available which was not likely to happen any time soon. For these reasons he requested the Board of Zoning Appeals to deny the Shonk property exception.

Mr. Camp read a letter by Prabhu Ponshe, 1042 Bellview Road, immediately adjacent to the Shonk property which he asked be entered in the record. He stated that the letter expressed serious reservations about granting the variance at the previous hearing and was still opposed to the issue. Additionally, Mr. Camp quoted from Prabhu Ponshe's letter that the applicant had made an intentional or unintentional error in purchasing the property without full investigation of whether or not the lot was buildable. If the error was unintentional, Prabhu Ponshe was extremely sorry but felt that the applicant had to assume the full risk and reward because the land owners boarding the property should not have to assume any of the risk or be victimized for someone else's mistake.

Mr. Baskin addressed the issue about the wells by suggesting to add a development condition that satisfactory evidence would have to be provided to the County that proposed development of the lot would not adversely impact wells on the adjoining lots. He added that he didn't think that their statements of what they suffered with respect to their wells necessarily translated to a need to deprive Ms. Shonk of all the use of her property, stated that he felt their concerns should be taken into consideration when Ms. Shonk's property was developed. Mr. Baskin reasoned that the matter could be addressed in a variety of ways which was why he proposed that if the Board saw fit to grant the variance, they would accept the condition that the applicant would provide satisfactory evidence prior to granting a building permit that the water source she proposed would not adversely impact the water supply for the adjoining owners. Mr. Baskin then addressed the problem of the access to Ms. Shonk's lot crossing the drain field or the well of lot 4A. He stated that he was not sure of the location of that well or drain field, but there were two easements that provided access to Ms. Shonk's , one of which, he stated, was paved and currently provided access to the lots to the rear.

There was a question from several speakers on whether Mr. Baskin was wrong and making an incorrect statement. Mr. Baskin stated that he recognized the possibility that he could be incorrect and that there appeared as depicted on the zoning map, access provided. He stated that if that wasn't access Ms. Shonk was entitled to use, then she would have to rely on access from the other side. Mr. Baskin said he was simply looking at the map and withdrew his assertion. Mr. Baskin stated that nevertheless, he would certainly accept the condition that Lot 4A would not be impacted by Ms. Shonk's access to the lot. He concluded by stating that the justification was more than adequate to support the variance and the authority of the Board to grant it.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that he voted with the prevailing side at the first meeting; however, there was some evidence in the submissions that he had not addressed or carefully looked at before. Mr. Pammel stated that there was no doubt in his mind, based on what had been presented to the Board, that Ms. Shonk had purchased the property in good faith. He said that she was a property owner of a lot that was recorded and that Mr. Simon was incorrect in his conclusion that Ms. Shonk owned an illegal subdivision. Mr. Pammel said that when her lot was cut and separated, it was legal at that point and time under the standards of the County. Mr. Pammel stated that when the term "lot" was used, it could be used in many different ways and that normally as the term "lot" was used, without there being other any other defining language, a lot is a

piece of ground that could be used or built upon. Mr. Pammel said that an outlot, a defined term, would describe a lot that could not be built upon. He said that a parcel of land could usually be built upon if it met the standards for water or health and that those same standards should apply to Ms. Shonk's lot, if in fact the lot met the health standards of the County which meant that there was a suitable drain field and source of well water. Mr. Pammel also stated that the BZA had authorization, under the language of the State Code, to grant a variance where the strict interpretation of the Ordinance would preclude the development of that site, would cause a hardship approaching confiscation of the property involved. He said that was a clear finding in Ms. Shonk's case because if she was not permitted to have the variance, her property in effect would be confiscated for any reasonable use. Mr. Pammel concluded that under the State Law the BZA would have jurisdiction, notwithstanding what the Ordinance stated.

Mr. Pammel said that although it wasn't in evidence when Ms. Shonk purchased the property, it certainly was relevant at the point and time that the initial actions were brought to bear before the Board and if a mistake had been made by an administrative officer, Zoning Administrator of the County and was not recognized and detected within a sixty day period, then the error or omission stood. Mr. Pammel stated that to some extent that was applicable to Ms. Shonk's case because the County's system of recordation certainly could have ascertained in 1964 that a division had been made on the parcel in question and that in its original state would conform with the zoning. However, Mr. Pammel stated that with the division no longer conforming to the zoning requirements, there was the provision for the variance. He stated that it was unfortunate that Ms. Shonk didn't purchase the property a year or eighteen months earlier, wherein she could have without question been eligible for that aspect of the Ordinance provisions. Mr. Pammel concluded by stating that based on all of the elements he addressed, he would side with Ms. Shonk and Mr. Baskin, and that if the case went any further, the burden would be upon the County to address those issues in another forum.

Mr. Pammel then moved to approve VC 00-D-016 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report.

Ms. Susan Langdon stated that there were no conditions in the staff report. Mr. Pammel stated that he would add conditions as proffered by Mr. Baskin with respect to those issues identified concerning the well, and the septic field. In addition, he stated that in his findings of fact he would note that the prevailing development was reflected in the Exhibit #2 by Mr. Baskin, which showed the development of the surrounding properties of which only two met the minimum two acre standards, and that all others were one acre, less than one acre and in a couple of instances about two thirds of an acre.

Mr. Kelley seconded the motion.

Ms. Gibb stated that it seemed to her that the land records were filled with lots that were created legally at the time that they were created, but which did not meet the density requirements presently. She said that she recalled an example of twenty foot wide lots and the remedy that current owners had was to put them together to meet the current density requirements. Ms. Gibb said that just because someone buys a lot, didn't mean that they were buying a buildable lot, even though that might be the general thought. Mr. Pammel answered that except in the current situation, Ms. Shonk couldn't buy another lot. Ms. Gibb said that she could buy Ms. Johnson's property.

Mr. Hammack stated that Mr. Baskin's arguments were very logical and if the variance was not granted it really produced an inequitable result, but that the Board was not there to do equity. He said that it was regrettable sometimes, but staff still maintained that the lot was basically created as a non-buildable lot when it was divided. Mr. Hammack stated that with the subsequent application of density regulations, as much as he would like to vote the other way, the legal argument was with staff on the application and he would vote against the motion as he did at the first meeting. Mr. Hammack stated that it did produce an inequitable result in many ways, but he didn't think the Board had the authority to grant the variance in Ms. Shonk's case.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JACQUIE B. SHONK, VC 00-D-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a

variance to the minimum lot width and lot area requirements. Located at 1040 Bellview Rd. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((3)) 4. 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 16, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant purchased the property in good faith and is a property owner of a lot that is recorded, legal, and can be used and built upon.
3. The applicant's property, without the approval of this variance, is in effect, confiscated for any reasonable use under the language of the State Code; that the Board of Zoning Appeals is authorized to grant a variance where the strict interpretation of the Ordinance would preclude the development of the site and would cause a hardship approaching, if not absolute or actual confiscation of the property involved.
4. The County, with its system of recordation, could have ascertained in 1964 that a division had been made on this parcel that in its original state conformed with the zoning. However, with the division no longer conforming with zoning requirements, there was the provision for the variance. In 1998 it was decided that if a mistake is made by the Zoning Administrator of the County and is not recognized or detected within a 60 day period, then the error or omission stands.
5. The prevailing development is reflected in Exhibit # 2 which shows the development of the surrounding properties of which only two meet the minimum two acres standards, while all others are one acre, less than one acre and in a couple of instances about 2/3 of an acre.

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 **APPROVED** with the following limitations:

1. This variance is approved for the lot shown on the plat prepared by Edward L. Johnson, Land Surveyor, dated June 3, 1999. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for the lot.
2. The applicant shall provide satisfactory evidence as determined by the Department of Public Works and Environmental Services (DPWES), prior to granting a building permit, that the water source the applicant proposes for development of the lot will not adversely impact the wells or water source for the adjoining owners. (Tax map #'s 20-1 ((3)) 2, 3, 4A, 5A, B, 7). No building permit shall be issued absent such documentation.
3. Prior to issuance of any permits for the lot, the applicant shall demonstrate to the satisfaction of DPWES that the applicant's access to the lot will not adversely impact the well or septic fields for lot 4A. No permits shall be issued absent such documentation.

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 conditions have 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. Kelley seconded the motion which carried by a vote of 4-3. Ms. Gibb, Mr. Hammack and Mr. Hart voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 24, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 151, May 16, 2000, (Tape 1) After Agenda Item:

Approval of May 9, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Mr. Hammack moved that the Board recess and go into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants, and attorneys pertaining to actual and probable litigation and to other specific legal matters requiring the provision of legal advice by counsel pursuant of Virginia Code Section 2.1-344(A)(7).

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

Mr. Hammack moved that the Board of Zoning Appeals certify that to the best of its 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 during the Executive Session.

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:02 a.m.

Minutes by: Maria D. Foltz

Approved on: September 12, 2000

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. Di Giulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 23, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 153, May 23, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JOHN E., JR. & HILDA C. BANKERT, TRUSTEES, VC 00-P-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. from one side lot line and 10.2 ft. from other side lot line. Located at 7631 Shreve Rd. on approx. 10,036 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 158. (moved from 5/9/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Ms. Gibb explained that she had represented the applicants during the past year; therefore, she recused herself from the hearing.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a dwelling 10 feet from a side lot line and 10.2 feet from the other side lot line. The property was currently developed with an existing older dwelling which was to be removed. The existing dwelling currently encroached into the minimum side yard further than the distance requested with the application. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 2.0 feet was requested for the west side lot line and 1.8 feet was requested for the east side lot line.

Ms. Kelsey presented the variance request as outlined in the statement of justification. Ms. Kelsey stated that the existing home on the property was closer to both side lot lines and to Shreve Road, than the proposed dwelling. She said that the proposed house had two small areas on either side that infringed into the required rear yard. She explained that the applicants originally wanted to restore the existing home; however, they were told by a contractor that the home did not meet current building codes and the Zoning Ordinance requirements. Ms. Kelsey stated that the new house would be more in conformance with the Zoning Ordinance than the existing house. She said the variance was minor and it would not create any adverse impact to the neighborhood. She submitted a copy of two similar court cases which she stated were similar to the subject request.

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

Mr. Hammack moved to approve VC 00-P-017 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN E., JR. & HILDA C. BANKERT, TRUSTEES, VC 00-P-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. from one side lot line and 10.2 ft. from other side lot line. Located at 7631 Shreve Rd. on approx. 10,036 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 158. (moved from 5/9/00). 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 23, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of 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 **APPROVED** with the following limitations:

1. This variance is approved for the dwelling shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated January 14, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 5-0-1. Mr. Hammack moved to waive the 8-day

waiting period. Mr. Kelley seconded the motion which carried by a vote of 5-0-1. Ms. Gibb recused herself from the hearing and 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 May 23, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN E., JR. & HILDA C. BANKERT, TRUSTEES, VC 00-P-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivison of two lots into two lots with proposed Lot 2 having a lot width of 5.0 ft. and permit dwelling on Lot 156 to remain 23.0 ft. from front lot line. Located at 7631 Shreve Rd. on approx. 30,468 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 149D and 156. (Moved from 6/6/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Ms. Gibb explained that she had represented the applicants during the past year; therefore, she recused herself from the hearing.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the subdivision of two lots into two lots with lot 2 having a lot width of 5 feet at the point where it adjoined Shreve Road. The application parcel currently consisted of two lots with lot 156 developed with an existing dwelling occupied by the applicants. Lot 149D was an adjoining outlot originally associated with the Holly Crest subdivision. Both lots were irregularly shaped. The applicants proposed to adjust the lot lines to create two regular shaped lots and construct a dwelling on proposed lot 2, which was predominately the outlot area, which would have access from Holly Manor Drive, via easement, across lot 158 adjoining to the west. The Zoning Ordinance requires a minimum lot width of 70 feet; therefore, a variance of 65 feet for lot width was requested for proposed lot 2.

The applicants also requested that the existing dwelling on lot 156 be permitted to remain 23 feet from the front lot line, following right-of-way dedication. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, a variance of 7 feet was requested.

Ms. Kelsey presented the variance request as outlined in the statement of justification. She stated that the two lots currently were very irregularly shaped and applicants' proposal to subdivide the lots would make a better building lot in the back of the applicants' home. Ms. Kelsey provided a history of the two lots in question which entailed how the applicants came to purchase the lots and how they gained access to the lots through an easement for Holly Manor Drive. She explained that the easement for Holly Manor Drive did not constitute public street frontage and that was the reason for the variance requested. Ms. Kelsey informed the Board that the applicants had support from the neighborhood and their Homeowner's Association. She also referred to the two court cases that were submitted with VC 00-P-017, the previous case. She stated that there would be no use of the lot without the granting of the variance.

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

Mr. Pammel moved to approve VC 00-P-023 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN E., JR. & HILDA C. BANKERT, TRUSTEES, VC 00-P-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivison of two lots into two lots with proposed Lot 2 having a lot width of 5.0 ft.

and permit dwelling on Lot 156 to remain 23.0 ft. from front lot line. Located at 7631 Shreve Rd. on approx. 30,468 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 149D and 156. (Moved from 6/6/00). 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 23, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot would not have any use whatsoever if a variance were not approved.
4. Ms. Kelsey presented a history of the lot and documentation in terms of prior cases where this issue has been before the Board.
5. The staff has noted that the application does meet the standards as prescribed by 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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of two lots into two lots, with proposed lot 2 having a lot width of five (5) feet and to permit an existing dwelling on Lot 156 to remain 23.0 feet from the front lot line, as shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated February 25, 1999. All development shall be in conformance with this plat as qualified by these development conditions.
2. Right-of-way measuring 18.93 feet from the centerline of Shreve Road, as shown on the plat, shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County. All required ancillary easements along the frontage of the site shall be conveyed to the Board of Supervisors at the time of dedication.
3. Access to proposed Lot 1 shall be from Shreve Road. Access to proposed Lot 2 shall be from Holly Manor Drive.

This approval, contingent upon 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. 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. Hart seconded the motion which carried by a vote of 5-0-1. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hart seconded the motion which carried by a vote of 5-0-1. Ms. Gibb recused herself from the hearing and 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 May 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 157, May 23, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ST. CATHERINE OF SIENA CHURCH, SPA 80-D-021-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-021 for church and related facilities to permit building additions, increase in seating capacity, increase in land area and site modifications. Located at 1020 Springvale Rd. on approx. 15.19 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 31, 32B and 32C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Juanpere, 1021 Lee Highway, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit amendment for a church and related facilities to permit building additions, an increase in seating capacity, an increase in land area, and site modifications. On August 3, 1993, amendment application SPA 80-D-021-2 was approved by the Board of Zoning Appeals (BZA). This application approved building additions, an increase in parking spaces, an increase in land area and increase in seating capacity. As explained in detail in the background portion of the staff report, this approval expired after some, but not all, of the approved uses and structures were completed. At the time of expiration, the governing conditions defaulted to those approved with the prior -1 amendment application. Many of the improvements approved with the expired application were completed, including the rectory building, all of the expanded parking lot, all landscaping and site engineering for storm water management. The current application proposed once again to complete the church building additions with a slightly scaled down footprint, which accommodated 506 seats where currently 454 exist. The application was proposed to include the additional land area where the rectory was constructed following the previous approval. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Juanpere presented the special permit request as outlined in the statement of justification. He explained that the seating capacity of the church and the original floor area of the building was reduced. He said that the applicant did not agree with Condition #8 which dealt with the deceleration lane at Springvale Road. He explained that the Department of Transportation (DOT) had plans to realign Springvale Road and the applicants did not want to pay to install a deceleration lane when it would be destroyed at the time of realignment.

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

Mr. Hart moved to approve SPA 80-D-031-3 for the Reasons stated in the Resolution. Mr. Hammack amended the amended motion to delete Development Condition #8. Mr. Kelley seconded the motion which carried by a vote of 5-1-1. Mr. Hart voted nay and Mr. Ribble abstained from the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. CATHERINE OF SIENA CHURCH, SPA 80-D-021-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-021 for church and related facilities to permit building additions, increase in seating capacity, increase in land area and site modifications. Located at 1020 Springvale Rd. on approx. 15.19 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 31, 32B and 32C. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria 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 Sect(s). 3-103 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, St. Catherine of Siena Church, 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), structures and/or use(s) indicated on the special permit plat prepared by Intec Group, Inc, dated August 23, 1999, as revised through April 10, 2000, and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.

4. 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.
5. Transitional Screening shall be provided in accordance with the following:
 - Along the southern lot line, existing vegetation shall be deemed to satisfy Transitional Screening I, except that supplemental plants shall be provided between the rectory and tree line, as shown on the plat.
 - Along the northern lot line, the existing vegetation shall be deemed to satisfy Transitional Screening 1.
 - Along the eastern lot line north of the driveway, Transitional Screening 1 shall be provided adjacent to the eastern boundary of the proposed parking lot, as shown on the plat.
 - Along the western lot line, the existing vegetation shall be deemed to satisfy Transitional Screening I provided that that evergreen plants are provided west of the proposed Social Hall and adjacent to the parking lot, as shown on the plat.
 - The above plantings shall be in a location, quality, type and size as approved by the Urban Forestry Branch of the Department of Public Works and Environmental Management (DPWES). The purpose of these plantings shall be to screen the use, particularly the parking areas, from the adjacent residential properties. The planting plan and tree preservation plan shall include the preservation of existing quality trees which the Urban Forestry Branch may deem to be appropriate to be saved with particular emphasis on the existing trees in and around the proposed rectory.
 - The evergreen trees removed from the area west of the circular parking lot shall be replaced to create a continuous single row of evergreen trees along the northern and western edge of the circular parking area. Size and species of plantings shall be as determined by the Urban Forester. All plantings required to satisfy transitional screening purposes shall be maintained in good health and replaced with like-kind plantings when necessary.
6. The barrier requirement shall be waived along all lot lines.
7. Right-of-way necessary for the realignment of Springvale Road located on the northeastern part of the property shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand by the Virginia Department of Transportation or at such time as an alignment is determined and VDOT has begun acquisition.
8. Upon issuance of a new Non-Residential Use Permit, seating in the church sanctuary shall be limited to a maximum of 506.
9. There shall be 257 parking spaces provided on the site. All parking for the use shall be on site, as shown on the plat.
10. The area west of the line identified on the Special Permit Plat as the existing floodplain line and storm drainage easement shall be designated as an Environmental Quality Corridor (EQC). There shall be no clearing or grading in this area except for the removal of dead or dying trees and shrubs. This area shall remain as undisturbed open space.
11. Best Management Practices (BMPs) shall be provided as determined by the Director, DPWES, to meet the requirement of the Chesapeake Bay Preservation Ordinance. Infiltration trenches or other infiltration measures may be used to help meet this requirement. Should a stormwater management pond be required, the location shall be generally in the area shown on the Special Permit Plat and shall be outside the EQC.
12. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning

Ordinance Signs.

13. Any proposed new exterior lighting fixtures shall be the low intensity type, full cut-off lights. All existing and proposed lighting shall be shielded in such a manner to prevent light from projecting onto adjacent residential property. The combined height of any other new proposed light standards and fixtures shall not exceed twelve (12) feet.
14. Any dumpster placed on the site shall be located in an area which does not obstruct any space designated for parking and does not impact pedestrian pathways. Dumpsters shall be screened from view from adjacent residential properties.
15. The "chiller enclosure," which is noted on the plat to be located north of the proposed new social hall, shall be constructed as a solid wall, sufficient in height to screen air conditioner units and/or other enclosed items from the view of residential properties. The enclosure structure shall be maintained in good repair.

These development conditions incorporate and supercede all previous 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 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. Issuance of the Non-Residential Use Permit for Phase I shall constitute establishment of the use. 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 6-0. Mr. Ribble did not vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 23, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 160 May 23, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MOST REVEREND PAUL S. LOVERDE, BISHOP FOR THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, SUCCESSOR IN INTEREST TO THE MOST REVEREND JOHN R. KEATING, BISHOP OF CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND THEIR SUCCESSORS IN OFFICE, SP 00-M-012 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities and private school of general education with an enrollment of 100 or more students daily. Located at 3305 Glen Carlyn Rd. on approx. 13.12 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((1)) 8, 8A and 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. Peter Juanpere, 1021 Lee Highway, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow the construction of a gymnasium for the school consisting of approximately 9,850 square feet to be constructed in the existing parking lot for the church and school. In addition the applicant proposed to construct an additional parking lot on the east side of the church to replace parking spaces lost with the construction of the gym and to provide additional parking for church services. The revised development conditions reflected the applicants request to have a total maximum daily enrollment based on their total school capacity and not the current enrollment. The applicant had informed

Page 161, May 23, 2000, (Tape 1), MOST REVEREND PAUL S. LOVERDE, BISHOP FOR THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, SUCCESSOR IN INTEREST TO THE MOST REVEREND JOHN R. KEATING, BISHOP OF CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND THEIR SUCCESSORS IN OFFICE, SP 00-M-012, continued from Page 160

staff that the total school capacity was 800 students, rather than 750 students as reflected in the latest development conditions.

Mr. Juanpere presented the special permit request as outlined in the statement of justification. He stated that the purpose of the addition for the parking lot was to try to facilitate the ingress and egress to the site. He explained that the present design of the parking lot dead ended and forced the cars to back up the entire length of the parking lot before they were able to turn around. He said that the new parking lot design would provide a loop to alleviate the back-up of traffic. Mr. Juanpere stated that the multi-use room was for the children to utilize after hours. He requested the following Development Condition changes: Development Condition #5; to change the total capacity of students to 800 instead of 750. He stated that this was not an increase because the school did have the capacity to hold 1,000 students. Development Condition #8; to amend the last sentence to read "Landscaping shall be supplemented along the eastern property boundary, adjacent to the parking lot addition, to provide additional evergreen trees and shrubs plantings to shield the parking lot from adjacent homes." He explained that this would give the applicant the flexibility to have hedge and evergreen screening. Development Condition #10; to add an additional bullet to read "Existing lighting shall be allowed to remain in place and any new outdoor lighting would meet the new standard."

Mr. Hart asked staff which direction the lighting was pointing at the present time. Ms. Schilling stated that the church was originally constructed in the late 1960's and at that time a special permit was not required; therefore, the lighting seen in the existing parking lot had never come under special permit control. She said that Development Condition #10 was a general condition that applied to all churches. She explained that the applicants stated they would be willing to institute the condition for the new parking lot and upgrade the old lighting as it needed to be replaced. Ms. Schilling stated that the applicants' changes to Development Condition #8 were acceptable because the Urban Forestry Branch still had the flexibility to look at the planting strip and determine what was appropriate. Mr. Hart asked staff to explain the difference between staff's conclusions and the applicant's regarding the maximum enrollment for the school. She addressed the issue of maximum capacity by explaining that the normal process for reaching the maximum capacity for a structure was to review past special permit applications to find the original maximum capacity. She stated that because this case was so old there were no development conditions that dealt with that issue. She said the applicants stated that their capacity was 1,200 to 1,400 students at the Board of Zoning Appeals hearing in 1961. She went on to say that the applicants had recently stated that the student capacity standards had changed since then so that the building had a capacity of 800 students. Ms. Schilling informed the Board that staff had no issue with the applicant's proposed change to 800 students from 750 since this represented their present capacity. She stated that DOT also had no issues with the maximum capacity.

Mr. Hammack asked if the applicant was agreeable to phasing in new lighting over a period of time as the old lighting needed to be replaced. Mr. Juanpere replied that the applicant had no objection.

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

Mr. Ribble moved to approve SP 00-M-012 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MOST REVEREND PAUL S. LOVERDE, BISHOP FOR THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, SUCCESSOR IN INTEREST TO THE MOST REVEREND JOHN R. KEATING, BISHOP OF CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND THEIR SUCCESSORS IN OFFICE, ST. ANTHONY'S CATHOLIC CHURCH, SP 00-M-012 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a church and related facilities and private school of general education with an enrollment of 100 or more students daily. Located at 3305 Glen Carlyn Rd. on approx. 13.12 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((1)) 8, 8A and 10. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

Page 162, May 23, 2000, (Tape 1), MOST REVEREND PAUL S. LOVERDE, BISHOP FOR THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, SUCCESSOR IN INTEREST TO THE MOST REVEREND JOHN R. KEATING, BISHOP OF CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND THEIR SUCCESSORS IN OFFICE, SP 00-M-012, continued from Page 161

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 2000; and

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

- 1. The applicants are the owners of the land.

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 Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 3305 Glen Carlin Rd. (13.12 acres), and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, Inc. (Charles F. Dunlap, Land Surveyor) dated August 3, 1998, as revised through April 17, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. The total maximum daily enrollment for the private school of general education shall not exceed 800 students.
- 6. The maximum hours of operation for the school shall be 7:00 a.m. and 6:00 p.m., Monday through Friday.
- 7. The applicant shall dedicate additional right-of-way along Leesburg Pike of up to 74 feet from the construction centerline, with additional right of way adjacent to Glen Carlin Road, as shown on the proposed plat, and all construction easements, in accordance with VDOT Roadway Improvement Project 0007-029-117, C501, in fee simple to the Board of Supervisors at the time of site plan approval or upon demand, whichever comes first.
- 8. The barrier requirements shall be waived. Transitional screening requirements shall be modified along the northern and western property boundaries as shown on the special permit plat. Landscaping shall be supplemented along the eastern property boundary adjacent to the parking lot addition to provide additional evergreen tree and shrub plantings to shield the view of the parking lot from adjacent homes, subject to the review and approval of the Urban Forestry Division of DPWES.
- 9. The maximum number of seats in the main area of worship for the church shall be 1,150.

Page 163, May 23, 2000, (Tape 1), MOST REVEREND PAUL S. LOVERDE, BISHOP FOR THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, SUCCESSOR IN INTEREST TO THE MOST REVEREND JOHN R. KEATING, BISHOP OF CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND THEIR SUCCESSORS IN OFFICE, SP 00-M-012, continued from Page 162

10. Any new outdoor lighting of the site shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet,
 - The lights shall be focused downward directly on the subject property,
 - Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
 - Up-lighting of buildings or signs shall not be permitted on the site.
 - Existing lighting shall remain in place until such time as repairs are needed. At that time, lighting shall come into compliance with the provisions above.
11. A maximum of 404 parking spaces shall be provided in the locations shown on the special permit plat. All parking for the church and private school of general education shall be on-site.
12. The design and building materials for the gymnasium addition shall be consistent with that of the private school of general education.

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 7-0. Mr. Ribble moved to waive the 8-day waiting period. 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 May 23, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 163 May 23, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JOHN P. & DONNA J. DAUGHERTY, VC 00-S-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.9 ft. from rear lot line. Located at 6403 Four Oaks La. on approx. 8,707 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((14)) 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. John Daugherty, 6403 Four Oaks Lane, Burke, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an enclosed deck 13.9 feet from the rear lot

line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 11.1 feet was requested.

John Daugherty presented the variance request as outlined in the statement of justification. He stated that the application met all of the required standards for the granting of a variance. He informed the Board that there was 50 to 75 feet of woods between the subject property and the closest property to the rear.

Ms. Gibb asked how far away lots 14 and 16 were from the proposed deck. Mr. Daugherty replied there was about 30 feet to each side. Ms. Gibb asked if there was any other place on the property to locate the deck. Mr. Daugherty replied that there was not.

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

Ms. Gibb moved to approve VC 00-S-032 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN P. & DONNA J. DAUGHERTY, VC 00-S-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.9 ft. from rear lot line. Located at 6403 Four Oaks La. on approx. 8,707 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((14)) 15. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 2000; 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 and the area of the lot is 8,707 square feet.
3. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
4. The location of the house toward the back of the lot makes the lot shallow.
5. The applicants have testified that there is no other location where the deck could be built.
6. The approval of this application will not have an impact on the neighbors to the sides or to the rear.
7. The property to the rear is owned by the Homeowners Association and it is open space.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an enclosed deck addition shown on the plat prepared by Harold Logan Associates, P.C. dated March 1, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The enclosed deck 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 and Mr. Ribble seconded the motion which carried by a vote of 7-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hammack and Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 165 May 23, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARK & SUSAN LEYDEN, VC 00-B-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 28.0 ft. from front lot line and 8.5 ft. from side lot line and deck 9.9 ft. from side lot line. Located at 5308 Kings Park Dr. on approx. 11,858 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((5)) 309.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Leyden, 5308 Kings Park Drive, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested variances to permit the construction of an attached garage 28 feet from the front lot line

and 8.5 feet from the side lot line and a deck 9.9 feet from the side lot line. For the garage, the Zoning Ordinance requires a minimum front yard of 30 feet and a minimum side yard of 12 feet; therefore, variances of 2 feet and 3.5 feet were requested respectively. For the deck, the Zoning Ordinance requires a side yard of 12 feet; therefore, a variance of 2.1 feet was requested.

Mr. Leyden presented the variance request as outlined in the statement of justification. Mr. Leyden stated that the variance requests would improve the appearance and living space of the home.

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

Mr. Kelley moved to approve VC 00-B-031 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK & SUSAN LEYDEN, VC 00-B-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 28.0 ft. from front lot line and 8.5 ft. from side lot line and deck 9.9 ft. from side lot line. Located at 5308 Kings Park Dr. on approx. 11,858 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((5)) 309. 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 23, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The statement of justification was excellently written.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an addition and deck shown on the plat prepared by Arencibia Architects Inc. (Javier Arencibia, Architect), dated March 6, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition and deck 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 7-0. Mr. Kelley moved to waive the 8-day waiting period. 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 May 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 167 May 23, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHANG S. & CHUNG S. KIM, SPA 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 94-S-033 for a golf driving range to permit change in development conditions, site modifications and building additions. Located at 11501 Braddock Rd. on approx. 46.45 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (Def. From 3/14/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit amendment to permit the construction of 27 additional parking spaces, the construction of a 2,400 square foot accessory storage structure and to extend the hours of operation. Currently the approved hours of operation were 7:00 am to 9:00 p.m. for the driving range, and 9:30 p.m. for the clubhouse. The proposed hours of operation would be extended to 10:00 p.m. In addition, the applicants requested that the hours in which the loudspeakers, mowing equipment, and mechanical ball gathering operations were conducted, be permitted to commence at 8:00 a.m. rather than 9:00 a.m., Monday through Friday and remain at 9:00 a.m. on weekends.

The public hearing was originally scheduled for March 14, 2000, and deferred at the applicant's request. In

the staff report dated March 7, 2000 staff recommended approval-in-part to permit the addition of the parking spaces and the accessory storage structure. However, staff at that time, did not support the extended hours of operation requested because lighting did not conform with the foot candle reading as illustrated on the Illumination Lighting Plan as approved in conjunction with SP 94-S-033.

Foot candle readings were taken on several occasions by Zoning Enforcement. Since that time, the applicant had been working to address the lighting issues. A recent foot candle reading by Zoning Enforcement revealed that at the property line with the lights turned off on the driving range, the reading was .02 foot candles and with the driving range lights turned on, the reading was .04 at the property line.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification. She stated that the addition of 27 parking spaces and an equipment building would not result in any modification to the limits of clearing and grading. Ms. Strobel submitted revised development conditions proposed by the applicant. She informed the Board that the applicant suggested modifying the existing request in relation to the hours of operation as a result of several meetings with staff and adjacent neighbors, site visits from Zoning Enforcement and a representative of Supervisor McConnell's office. She explained that the applicant requested operating the driving range 1 additional hour during the months of April to October, to compromise and close 1 hour earlier during the months of January and February, and keep the same hours of operation for the months of March, November and December. She stated that there was a substantial tree buffer with vegetation, which substantially screened the lighting. She added that the applicant also proposed to modify the operation of mowing equipment to 8:00 a.m. during the week and 9:00 a.m. on the weekends.

Ms. Strobel stated that the applicant had been working with the light standards that exist on the property by replacing one of the three 1000 watt bulbs with a 400 watt bulb to reduce the impact of the lighting. She said the applicant had the intention of reducing all of the bulbs to 400 watts with the understanding that if the reduction made it too dark, one 1000 watt bulb could be placed on each light standard.

Ms. Strobel informed the Board that the FAR, with the applicant's proposed development conditions, was .008, which was far less than what was permitted in the district. She said there was approximately 94% open space, which was far more than the minimum required by Fairfax County.

Ms. Strobel requested a deferral of decision to give staff and the adjacent property owners adequate time to review the applicant's revised development conditions.

Mr. Hammack asked how long a deferral was necessary. Susan Langdon, Chief, Special Permit and Variance Branch, stated that a deferral of at least two weeks was needed and there was space available on June 20, 2000.

Chairman DiGiulian called for speakers.

John Hilton, 5100 Meath Court, came forward to speak in opposition of the application. He stated that his property adjoined the golf course on the southern border. He said that his opposition to the application was strictly due to the lighting problems. He said the illumination of the lights was very bright and as a result he could not go out onto his deck in the winter months without shielding his eyes. He requested an explanation of a deferral for decision only and asked that he be able to speak again at the next hearing because he had not had a chance to review the proposed changes. Mr. Hilton pointed out that the applicant had indicated that there was 6 foot fence along the east and south sides of the property, however, the fence did not exist. He said that the brightness of the lights differ between the summer and winter months, as full foliage sufficiently blocks the illumination of the lights.

Mr. Hammack stated that the site plan revealed that the 6 foot chain length fence did exist. Mr. Hilton stated that the fence, in reality, did not exist and he did not see the need for one.

Mr. Hammack asked for clarification that the only issue that Mr. Hilton had with the driving range was the lighting. Mr. Hilton stated that was correct, but that the lighting issue led to the suggested hours of operation during the months where there were no leaves on the trees.

Ms. Gibb asked if Mr. Hilton had noticed a difference in the lighting since the 400 watt bulbs were implemented. Mr. Hilton replied that he had not, but pointed out that the trees were fully covered with leaves.

Catherine Potter, (no address given for the record) came forward to speak in opposition of the application. She stated that her property adjoined the driving range to the east. She explained that her main objection to the application was the illumination. She said that when there were no leaves on the trees she could not enjoy her property because of the lights. She said she could not tell if the installation of the 400 watt bulbs in any way alleviated the problem because they had just been installed and the trees were in full bloom. She requested that the hours of operation decrease during the months of March, November, December, January and February because there were no leaves on the trees during that period.

Mr. Hart asked if there was an existing fence between her property line and the driving range. Ms. Potter answered that there was not.

Ms. Strobel, in her rebuttal, stated that she did not know if there was an existing fence along the east and south borders, but that she would investigate that issue. She said that the applicant was willing to work with the neighbors regarding the hours of operation during the winter months.

Mr. Hammack moved to defer decision regarding SPA 94-S-033 until June 20, 2000, at 9:00 a.m., to give the applicant time to address the outstanding issues, but left open the opportunity for further public testimony. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 169 May 23, 2000, (Tape 1), Scheduled case of:

9:30 A.M. GORDON W. DUCHEZ/TWOCHEZ AND COMPANY, INC., A 2000-BR-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance appeal determination that special exception application SE 99-B-029, for a service station and accessory truck rental establishment, should be amended to include the 7-11 quick service food store located above the service station. Located at 7824 Rectory Ln. on approx. 19,985 sq. ft. of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1 pt. and 2C pt.

Chairman DiGiulian stated that there was a request to withdraw the appeal. Mr. Ribble moved to approve the withdrawal of A 2000-BR-004. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 169, May 23, 2000, (Tape 1), After Agenda Item:

Revisions to the Board of Zoning Appeals By-Laws

Chairman DiGiulian suggested a deferral to give the Board more time to review the revisions. Mr. Hammack asked if there was a statutory change that the BZA no longer elected their Clerk. Susan Langdon, Chief, Special Permit and Variance Branch, stated that for the past two years the Board had not elected the Clerk and it was not a requirement in the Code. She said it was possible to add it back into the By-laws.

Mr. Hammack moved to defer the after agenda item until June 20, 2000. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 169, May 23, 2000, (Tape 1), After Agenda Item:

Approval of May 16, 2000 Resolutions

Mr. Ribble moved to approve the Resolutions. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Mr. Pammel stated that he was comfortable with the Resolution for VC 00-D-016.

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Mary K. Toone vs. Board of Zoning Appeals

Mr. Hammack stated this was the case where Judge Klein remanded the case back to the BZA to make findings of fact with respect to the nonconforming use. The Judge upheld the Board on the Res Judicata issue. Mr. Hammack stated that he had reviewed the transcript and was prepared to make findings of fact. Mr. Hammack asked staff if Mr. Cerrick was notified of the proceedings. Pam Pelto, Assistant County Attorney, replied that she did notify Mr. Cerrick. The following were Mr. Hammack's comments and findings of fact with relation to Mary K. Toone vs. Board of Zoning Appeals.

Chancery No. 160681 in which the BZA was directed to set forth findings of fact and conclusions of the law on lawful nonconforming uses raised in the appeal application A 1998-DR-038 filed by Kenneth A. Toone and Mary K. Toone. The property was located at 6818 Georgetown Pike. The BZA upheld the Zoning Administrator's determination on September 1, 1998, the Notice of Violation, to Mary K. Toone. The property was being used as contractors' offices and shops and for keeping construction equipment associated with a business in violation of the Zoning Ordinance Sect. 2-302 Sub. 5 and Sect. 10-104.16A. The BZA made their decision on February 9, 2000. It was found that Mr. Cerrick set forth facts in a letter which indicated that the property was being used for business and construction purposes and also by the testimony of Mr. Toone, which basically conceded the fact of the uses of the property at the present time. The appellants never contested the uses being made of the property. The thrust of their argument was that there had been a criminal prosecution back in the 1980's which was dismissed against the Toones and they thought that the dismissal somehow legitimized their use of the property for Zoning Ordinance purposes. The nonconforming issue was a secondary argument and the facts were never an issue. The Toones cannot contest that the subject property is currently being used for an excavation business, specifically a contractor's office and shops for purposes of the Zoning Ordinance violation and the keeping of construction equipment associated with the excavation business. The subject property was zoned Rural Residence District on March 1, 1941, the date the first Zoning Ordinance was adopted by Fairfax County. The uses permitted in the Rural Residence District did not include the establishment of an excavation business on the subject property. No Zoning Ordinance provisions had been adopted since March 1, 1941, that would have allowed an excavation business to be legally established on the subject property after that date. The Toone family first purchased and began residing on the subject property in 1946, five years after the adoption of the Ordinance and that was not contested. The subject property was rezoned on September 1, 1959, from Rural Residence District to an RE-1 District, which permitted the parking of 1 commercial vehicle on the property as long as it was not a tractor trailer. Kenneth Toone first established the excavation business at issue in the appeal on the subject property in 1971. The excavation business at issue in the appeal was established on the property at a time when such use was in violation of the Ordinance. The subject property was zoned R-1. That is residential 1, dwelling unit per acre. Contractor's offices and construction equipment have never been permitted in that district and on August 14, 1978, and October 30, 1978, zoning restrictions were adopted that further prohibited the parking on the subject property of vehicles exceeding a carrying capacity of 1 1/2 tons, dump trucks and construction equipment. Aerial photographs of the property have shown that from 1943 to 1976 there was no evidence of an excavation business taking place on the property, keeping of construction equipment or parking of other commercial vehicles. No evidence was presented to the BZA to substantiate what, if any, commercial vehicles and construction equipment were kept on the subject property prior to the adoption of the September 1, 1959 Ordinance. Based on these facts and other facts contained in the record, Mr. Hammack moved that the BZA adopt the following conclusions of law:

1. The Toones failed to prove that the excavation business currently operated on the subject property was ever established as or constituted a lawful nonconforming use, that it has been operated continuously without expansion or with an interruption of not more than two years.
2. The Toones failed to prove that the use of the subject property for the keeping or parking of construction equipment associated with the excavation business was ever established as or constituted a lawful nonconforming use that has continued without expansion or interruption of not more than two years.
3. The Zoning Administrator correctly determined on September 1, 1998, in the Notice of Violation that the use of the subject property for an excavation business was a violation of Zoning Ordinance Sect. 2-302 Sub 5 and that the Zoning Administrator correctly determined on September 1, 1998, with the Notice of Violation that the use of the subject property for the keeping or parking of construction equipment associated with the excavation business was a violation of Zoning Ordinance Sect. 10-104 16A.

Page 171, May 23, 2000, (Tape 1), After Agenda Item, continued from Page 170

Mr. Pammel stated that the record would indicate that the use was never established as a use that was permitted by the Ordinance; therefore there was no nonconforming use that existed.

Mr. Hammack adopted that as a part of the motion. Mr. Hart abstained from the motion as the case preexisted prior to his term on the Board.

Mr. Pammel seconded the motion which carried by a vote of 6-0-1. Mr. Hart abstained from the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:29 a.m.

Minutes by: Lori M. Mallam

Approved on: September 5, 2000

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 6, 2000. The following Board Members were present: Chairman DiGiulian; James Hart; Robert Kelley; James Pammel; and John Ribble. Nancy Gibb and Paul Hammack were absent from the meeting

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 173, June 6, 2000, (Tape 1), Scheduled case of:

9:00 A.M. LINDA LOFTON, VC 00-V-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from rear lot line. Located at 2730 Manorhaven Ct. on approx. 1,453 sq. ft. of land zoned R-12. Mt. Vernon District. Tax Map 102-1 ((37)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Lofton, 2730 Manorhaven Court, Alexandria, Virginia, replied that it was. Bob Burch, Patio Enclosures, noted that he was the contractor for the applicant.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 10.6 feet from the rear lot line. A minimum rear yard of 20 feet is required; therefore, a variance of 9.4 feet was requested.

Mr. Hart noted that in the staff report, a house 3 doors down was granted a similar variance and he asked if there was a split vote on that application. Mr. Bernal replied that the vote was 4-3 for approval.

Ms. Lofton presented the variance request as outlined in the statement of justification submitted with the application. She stated that the addition would provide a place for her retired mother to take care of plants. Mr. Burch noted that they had received a letter in support of the application.

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

Mr. Pammel stated that he was in a dilemma because this was a circumstance that had occurred previously and it was clear that this was a recurring situation. He said every townhouse in that block had the same rear yard. Mr. Pammel stated that under the procedures that the Board operated and the criteria, it would call for a negative response. He said he had mentioned it before to the staff. Mr. Pammel stated that an amendment to the Zoning Ordinance was needed to allow people such as the applicant to be able to put additions on without having to get a variance because they didn't meet the variance standards. He said he wished the staff would push this forward as an emergency legislation to get the Board to respond to it. Mr. Pammel said that given that statement, he had no other choice but to recommend that the variance be denied. There was no second and the motion failed.

Mr. Hart stated that he shared Mr. Pammel's concerns about this kind of a situation and this problem. He said it was very difficult to see how the variance standards were met, but in this one case he would make an exception. Mr. Hart stated that the problem he had was that the house 3-doors down, which the backyard was about 2 feet bigger, had a variance granted a year ago. Mr. Hart stated that this was a very close call and moved to approve VC 00-V-026 for the reasons noted in the Resolution.

Mr. Ribble stated that he read the statement of justification and would support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA LOFTON, VC 00-V-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from rear lot line. Located at 2730 Manorhaven Ct. on approx. 1,453 sq. ft. of land zoned R-12. Mt. Vernon District. Tax Map 102-1 ((37)) 30. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of 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 6, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony and the statement of justification indicated compliance with the required standards for a variance.
3. There was a similar variance approved in the neighborhood one year ago and that yard was 2 feet larger.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by Kenneth W. White, dated January 24, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The sunroom 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

Mr. Kelley seconded the motion which carried by a vote of 4-1. Mr. Pammel voted against the motion. Ms. Gibb 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 June 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 175, June 6, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARC & LAURA GOLDBERG, SP 00-B-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.1 ft. from side lot line. Located at 9322 Winbourne Rd. on approx. 11,743 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-4 ((10)) 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. Marc and Laura Goldberg, 9322 Winbourne Road, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit based on an error in building location to permit an addition to remain 5.1 feet from the side lot line. A minimum side yard of 8 feet is required; therefore, a modification of 2.9 feet or 36% was requested.

Mr. Goldberg presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he decided to enclose the double carport into a garage and put new siding on the house and the garage so that it had a seamless transition. Mr. Goldberg stated that he did not extend past the current slab and he didn't know he needed a variance at that point. He said the enclosure had enhanced the look of the house and the surrounding area. He noted the letters received in support of the application. Mr. Goldberg asked for a waiver of the 8-day waiting period.

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

Mr. Ribble moved to approve SP 00-B-014 for the reasons noted in the Resolution.

Mr. Pammel asked staff if the subject property had been treated as an R-3, would the standard setback be 12 feet and the reason it was less than that was because they applicants had a carport and they were able to get into the side yard that way. Susan Langdon, Chief, Special Permit and Variance Branch stated that the reason the requirement was less was because this was a PDH District and that after the plan was originally approved, then any subsequent addition would go to the most closely related R-District which would be the R-3 Cluster District and the Cluster had a setback of 8 feet.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARC & LAURA GOLDBERG, SP 00-B-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.1 ft. from side lot line. Located at 9322 Winbourne Rd. on approx. 11,743 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 69-4 ((10)) 276. 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 June 6, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a garage addition as shown on the plat prepared by Kenneth W. White, Land Surveyor, dated December 17, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Hart seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 June 6, 2000. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. PAMELA MARY ANN NEISCH, VC 00-L-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. from side lot line. Located at 6806 Darby Ln. on approx. 14,360 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 237.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pamela Mary Ann Neisch, 6806 Darby Lane, Springfield, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 8.1 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 3.9 feet was requested.

Ms. Neisch presented the variance request as outlined in the statement of justification submitted with the application. She stated that she wanted to build the addition over her existing deck. She stated that only the southwest corner required the variance. Ms. Neisch stated that the request was because her mother could not use the stairway.

Mr. Pammel asked if the lot had an unusual shape. Ms. Neisch responded that the lot was pie-shaped with a steep backyard.

Mr. Hart asked if the addition would be larger than the existing deck. Ms. Neisch responded no.

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

Mr. Kelley moved to approve VC 00-L-028 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAMELA MARY ANN NEISCH, VC 00-L-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. from side lot line. Located at 6806 Darby Ln. on approx. 14,360 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 237. 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 6, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance as noted in the statement of justification submitted with the application.

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

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

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated February 16, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Ribble seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 June 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 178, June 6, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHESAPEAKE HEALTHCARE CORPORATION, VC 00-H-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of 8.0 ft. high fence in front, side and rear yards. Located at 1121 Reston Ave. on approx. 5.06 ac. of land zoned R-1. Hunter Mill District. Tax Map 11-2 ((1)) 34 pt.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elizabeth Baker, Walsh, Colucci, et al., 2200 Clarendon

Page 179, June 6, 2000, (Tape 1), CHESAPEAKE HEALTHCARE CORPORATION, VC 00-H-027, continued from Page 178

Boulevard, Arlington, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an 8-foot high fence in the front, side, and rear yards. On January 10, 2000, the Board of Supervisors approved Special Exception SE 98-H-060 for a medical care facility on the application property, to permit the operation of a 64-bed assisted living facility for patients of Alzheimer's Disease. A maximum height of 4 feet is permitted for a fence in a front yard; therefore, a variance of 4 feet was requested. A maximum height of 7 feet is permitted for a fence in the side and rear yards; therefore, a variance of 1 foot was requested. Ms. Schilling stated that the applicant submitted a revised variance plat on the morning of June 6, 2000, reflecting a revision in the location of the fence. She said that previously they had shown that the fence would travel over a Colonial Pipeline Gas Easement to the far side of the gas easement. Ms. Schilling stated that they had chosen to relocate the fence so that it would not intrude into the gas pipeline easement. She said part of that was in response to drainage concerns by the Urban Forestry Department as part of processing the site plan for the property.

Ms. Baker, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the applicant was the operator of assisted living communities for individuals in the early to mid stages of Alzheimer's Disease and they had developed a specific product that was aimed at locating Alzheimer's patients in a safe and secure situation. Ms. Baker stated that the courtyard included areas to both sides of the building and to the rear of the building that allowed the residents to be able to wander freely in a safe way. She said the variance request was from 4 to 8 feet in the front yard and from 7 to 8 feet for the side and rear yards to ensure the safety of the residents. Ms. Baker said the fence was relocated to be 5 feet east of the pipeline. She said the fence was moved away from the neighbors as well. Ms. Baker said there was proposed landscaping and tree preservation around the outside of the fence so that the fence would not be a negative visual impact to the neighbors. She said the application satisfied all the requirements for a variance.

Mr. Hart asked the applicant if they were adding landscaping to the outside of the fence. Ms. Baker stated that was correct. She said there was a tree preservaton area on the south edge of the property and they would be augmenting that with evergreen trees along the fence line on the south, east, and north portions of the property.

Mr. Hart asked if the applicant was deleting anything that was in the approved special exception. Ms. Baker said no.

Mr. Hart asked if there was a fence with the special exception. Ms. Baker responded that there was a fence shown on the location of the original variance plat, in which the staff report was based, and that was the fence location at the time of the special exception. She stated that there was note on the special exception indicating that they would seek a variance for the height of the fence.

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

Mr. Pammel moved to approve VC 00-H-027 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHESAPEAKE HEALTHCARE CORPORATION, VC 00-H-027 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of 8.0 ft. high fence in front, side and rear yards. Located at 1121 Reston Ave. on approx. 5.06 ac. of land zoned R-1. Hunter Mill District. Tax Map 11-2 ((1)) 34 pt. 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 6, 2000;

and

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

1. The applicant is the owner of the land.
2. The applicant met the criteria for 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an 8.0 foot high fence shown on the plat prepared by Peter J. Rigby, Jr., P.E., dated January 24, 2000, revised through June 5, 2000, 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 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. Hart seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

Page 181, June 6, 2000, (Tape 1), CHESAPEAKE HEALTHCARE CORPORATION, VC 00-H-027, continued from Page 180

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 181, June 6, 2000, (Tape 1), Scheduled case of:

9:00 A.M. A. KENNETH & KAREN H. STEPKA, VC 00-M-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 4.3 ft. from side lot line. Located at 8133 Garth Ct. on approx. 13,764 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-4 ((13)) 209.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth Stepka, 8133 Garth Court, Annandale, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 4.3 feet from the side lot line. A minimum side yard of 8 feet is required; therefore, a variance of 3.7 feet was requested.

Mr. Stepka presented the variance request as outlined in the statement of justification submitted with the application. He stated that the request was to expand the kitchen. Mr. Stepka stated that the lot was pie-shaped and narrow. He said the addition would not be detrimental to the neighborhood and the neighbors were in support of the application.

Mr. Hart asked how far was it from the outside of the addition to the closest point to the house on Lot 208. Mr. Stepka replied 25 feet.

Mr. Hart stated that in the photographs, there appeared to be a projection from the side of the house existing in the approximate location of the addition; he asked how much of that had a projection in it. Mr. Stepka replied about 2½ feet.

Mr. Hart asked whether the adjacent neighbor was in support of the application. Mr. Stepka responded yes.

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

Mr. Hart moved to approve VC 00-M-024 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

A. KENNETH & KAREN H. STEPKA, VC 00-M-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 4.3 ft. from side lot line. Located at 8133 Garth Ct. on approx. 13,764 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-4 ((13)) 209.

Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony and the statement of justification indicated compliance with the

required standards for a variance.

- 3. The position of the house on the lot causes the need for the variance.
- 4. There is no other location for 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated January 19, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Ribble seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent

Page 183, June 6, 2000, (Tape 1), A. KENNETH & KAREN H. STEPKA, VC 00-M-024, continued from Page 182

from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 183, June 6, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARY M. CORRADO, VC 00-P-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of an addition 22.5 ft. from rear lot line. Located at 9904 Oleander Ave. on approx. 8,604 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 48-1 ((7)) 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. Mary Corrado, 9904 Oleander Avenue, Vienna, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction on an addition 22.5 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 2.5 feet was requested.

Ms. Corrado presented the variance request as outlined in the statement of justification submitted with the application. She stated that the addition was to provide her with a larger kitchen. Ms. Corrado said her front yard was larger than her backyard.

Mr. Hart asked what was Parcel 1 behind the applicant's property. Ms. Corrado responded that it was a Fairfax County storm drain system and surrounding that was common area for the development.

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

Mr. Ribble moved to approve VC 00-P-029 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY M. CORRADO, VC 00-P-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of an addition 22.5 ft. from rear lot line. Located at 9904 Oleander Ave. on approx. 8,604 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 48-1 ((7)) 54. 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 June 6, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The house is located on a shallow lot.
4. 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 24, 2000, 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.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 June 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 185, June 6, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JOHN M. & NINA S. TOUPS, VC 00-D-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 30.0 ft. from front lot line and 9.5 ft. from side lot line. Located at 1460 Waggaman Ci. on approx. 18,584 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-1 ((7)) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 30 feet from the front lot line and 9.5 feet from the side lot line. A minimum front yard of 35 feet is required; therefore, a variance of 5 feet was requested. A minimum side yard of 15 feet is required; therefore, a variance of 5.5 feet was requested.

Ms. Kelsey, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the applicant wanted to build their home on the subject property that would be a little bit wider and deeper than the current house. Ms. Kelsey stated that the application met all of the required standards for a variance. She stated that the applicant had met with the neighbors and noted the submission of letters in support of the application.

Mr. Toups came forward to address the physical constraints of the land without the variance. He said the lot was 80 feet wide and 220 feet deep and 45% of the rear yard was in the RPA. Mr. Toups stated that the lot sloped from the street to the stream about 50-55 feet. He said the lot was heavily wooded and the existing house was very small.

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

Mr. Kelley moved to approve VC 00-D-025 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN M. & NINA S. TOUPS, VC 00-D-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 30.0 ft. from front lot line and 9.5 ft. from side lot line. Located at 1460 Waggaman Ci. on approx. 18,584 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-1 ((7)) 14. 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 6, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance as indicated in the statement of justification.
3. The lot is exceptionally narrow with exceptional topographical 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.

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

- 1. This variance is approved for the location of the dwelling shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated February 29, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 June 14, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 186, June 6, 2000, (Tapes 1 & 2), Scheduled case of:

9:00 A.M. SANDRA RINEHART, SP 00-B-013 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 9820 Covent Ct. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 438.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Sandra Rinehart, 9820 Covent Court, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a home child care facility with a maximum of 10 children on site at any one time, not including the applicant's children. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance Provisions, subject to the proposed development conditions included in the staff report.

Ms. Rinehart presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she became aware of zoning regulations in early November by a zoning officer. Ms. Rinehart said she was told she could ask for extensions, if needed, due to the fact that there was a possibility of her moving in March. But by the end of December, Zoning had received so many calls from her neighbor regarding the business that her request was denied. She said her neighbors called her prior to her moving to Covent Court to ask her intention with regard to her business and to say it was okay to babysit a few kids, like another neighbor. Ms. Rinehart stated that she was informed by the neighbors that they would not accept 5, 6, or 7 children in a daycare and that they would do whatever it took to make sure that it didn't happen. Ms. Rinehart stated that was why she believed so much false, misleading, and exaggerating information had been sent into Zoning about her daycare. She said in order to comply, she received a letter that stated to either reduce the number of children in her care or to apply for a special use permit, which she had done. Ms. Rinehart discussed her credentials as a qualified day care provider. She said she made available parking in her driveway for parents to drop off and pick up their children. Ms. Rinehart presented a portfolio of her daycare business and a log of the pick-up and drop-off times of her clients over a 10-day period.

Mr. Pammel asked the applicant if she had 2 pit bulls. Ms. Rinehart responded yes. Mr. Pammel asked the applicant if she was given the option of having a favorable response, without the dogs, would that be acceptable. Ms. Rinehart responded that the dogs were part of her family, and that they were completely separated from the children.

Mr. Hart asked the applicant where the dogs kept prior to 7:00 a.m. Ms. Rinehart stated that the daycare was in the basement and the dogs were kept in a kennel in the bedroom behind locked doors.

Mr. Hart stated that dogs had a way of getting out and that it was difficult to expect dogs to be in one place or another all day. Ms. Rinehart stated that her dogs were used to being in one place.

Mr. Hart asked how many times the dogs gotten out of the kennel enclosure or the bedroom. Ms. Rinehart responded that had never happened.

Mr. Hart stated that the times that were discussed by the neighbors about the dogs escaping were times other than between 7:00 a.m. and 6:00 p.m. Ms. Rinehart stated that it had been either in the evening or on the weekend. She stated that her dogs were not dangerous or a threat to children.

Mr. Hart asked the applicant whether she had a business license and when was it obtained. Ms. Rinehart stated that she obtained the license in March.

Mr. Hart asked the applicant about the fenced areas. Ms. Rinehart said she added the fence because of the slope of the lot, which made an unsafe condition for the children.

Mr. Hart inquired about the applicant appearing in court regarding the dogs. Ms. Rinehart stated that the dogs had escaped and frightened a neighbor and the neighbor took them to court stating that they had dangerous dogs. She said the court hearing was dismissed and they had met with the neighbors to find a way to make them feel more comfortable about the dogs.

Mr. Hart asked the applicant if she was comfortable with the proposed development conditions. Ms. Rinehart replied yes.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in support of the application: Michelle Anderson, 47672

Woolcott Square, Sterling, Linda Benson, 5348 Crystal Court, Fairfax, Kristin Myers, 510 Pilers Mill Court, Fairfax, Cheryl Bryant, 8522 Golden Ridge Court, Lorton, Ellen Jackowicz, 5203 Gainesborough Drive, Fairfax, Robert Rockwood, 10203 Commonwealth Boulevard, Fairfax, and Victor Lau, 9807 Bolton Village Court, Fairfax City. They stated that the applicant had a quality, structured day care center that offered consistency for their children. The speakers also indicated that they didn't know the applicant had dogs or that they had only seen the dogs during non-day care hours.

The following speakers came forward to speak in opposition of the application. Hank Harrison, President, Kings Park West Civic Association, 10324 Collingham Drive, Robert Cope, 9821 Covent Court, Carolyn Larosa, 10212 Pumphrey Court, Erin Coper, 9821 Covent Court, James McCrary, 9822 Covent Court, Marcia Gowen, 9819 Covent Court, James Cureton, 9825 Covent Court, and Martha Galarneau, 9825 Covent Court. They expressed concerns relating to traffic, insufficient parking, safety of children in the area, the character of the neighborhood being changed, an illegal deck, previous violations, and the dogs coming in contact with the children.

Ms. Rinehart stated, in her rebuttal, that the reason she was before the Board was to comply with all the regulations. She stated that as soon as she found out that she was lacking in some area with her business, she immediately took care of it.

Mr. Pammel asked the applicant whether she was she originally located in Centreville and how many children did she have at that time. Ms. Rinehart replied yes she was located in Centreville and that she was licensed by the State for up to 8 children.

Mr. Pammel asked the applicant how many children she had when she moved to her current location. Ms. Rinehart replied that because she had moved into a single family home, her license was increased to keep up to 12 children, but she started out with 5 and occasionally she did go up to 12 because she had an assistant. She said she was unaware of the zoning regulations and thought she was following all compliances.

Mr. Hart asked the applicant if there was a fine imposed during the court case. Ms. Rinehart stated that there were two charges, one was a dangerous dog charge and one was for having an unleashed dog and the fine was for having an unleashed dog and the dangerous dog charge was non processed.

Mr. Hart asked staff if the application was denied, could the applicant have 7 children with no employee. Ms. Wilson replied that was correct.

Mr. Hart said one of the things the Board had to find was whether the request was in harmony with the Comprehensive Plan and that the application had to be rigorously reviewed and access had to be oriented to an arterial road. He asked what was the arterial that this was oriented to and how was that standard met. Mr. Hart stated that the property seemed to be deep in the subdivision and he was not sure how that standard was satisfied. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the wording in the Comprehensive Plan specifically stated that cumulative effective institutional uses shall be considered. She said staff typically considered institutional uses things such as commercial child care centers, places of worship, and funeral homes. Ms. Langdon stated that a home child care center was not typically considered to be an institutional use.

Mr. Hart stated that the language he was referencing did not include the language of institutional use but referred to any non-residential use. Ms. Langdon responded that even if you use the language of non residential, that this was one of the uses that was kind of in the middle. She said it really was residential, but it was, similar to a home professional office, a home that was residential with an accessory use. Ms. Langdon said staff had not reviewed these applications as strictly as they would a child care center, which they would say should be on an arterial road. She said many of the home child care facilities were located within residential neighborhoods.

Mr. Kelley asked the applicant how she advertised her business. Ms. Rinehart stated that lately it had been by word of mouth, but sometimes she would put up a flyer on school bulletin boards. Mr. Kelley asked the applicant if she turned away many customers. Ms. Rinehart replied yes she had an average of 3-4 calls every 2-4 weeks.

Mr. Kelley asked staff whether the Board had ever limited any home child care facilities to a one year

approval. Ms. Langdon stated that she didn't recall any that had.

Mr. Ribble asked the applicant if there was any way that the children could get to the dogs. Ms. Rinehart said no.

Ms. Langdon stated that after some thought, she remembered an applicant with a home child care facility that had a limited term approval. She said that applicant's property was located on a cul-de-sac on a pipestem and she had recently come in to renew her application and it was renewed without a term limit.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said there was a lot of material to go over with respect to the subject application and there had been a lot of testimony on both sides of the issues. He said there were concerns that the Board had about the responsiveness of the applicant to the requirements of the County. Mr. Pammel said his feeling was that it was appropriate for a short deferral to obtain an inspection of the premises to ascertain if there were any structural deficiencies with respect to the deck. Mr. Pammel moved to defer decision to July 11, 2000. Mr. Hart seconded the motion which carried by a vote of 3-2. Mr. Kelley and Mr. Ribble opposed the motion.

Chairman DiGiulian said a deferral only required a vote of 3, so the application was deferred to July 11, 2000, at 9:00 a.m.

Mr. Ribble said he voted no because he felt Mr. Pammel's motion for deferral was based on the fact that maybe the Board would approve the application. He said if he were to vote currently, he would not approve it.

Mr. Pammel said he was in a quandry, but the applicant had presented the Board with very good evidence of her ability to operate a child care center. He said he felt it was a credible operation, but he had some questions relative to the location of the site and that the parking concerned him.

Mr. Kelley said he would be prepared to vote for the application but only for, at most, two years. He said the applicant had a history of noncompliance with Ordinance rules and regulations and he would want to make sure the applicant complied. Mr. Kelley said he did not agree that the Board should defer because of the issue with the deck and he didn't feel that was something the Board had gotten into before and he didn't know if it was appropriate for the Board to require inspections before the applicant was granted their special permit. He said he also had concerns about the parking.

Mr. Ribble said he was concerned about the deck as well as some other concerns. He said the State license specifically stated that the applicant was not exempted from maintaining compliance with local Ordinances and laws.

Mr. Hart stated he had concerns about the combination of the pit bulls and the day care. He said there were a couple of development conditions that he would like to look at and that he had concerns about the parking. Mr. Hart said he also had concerns about the structural integrity of the deck.

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Page 189, June 6, 2000, (Tape 2), Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK, SPA 81-A-022-5 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 for a cemetery and mausoleums to permit columbarium and change in development conditions. Located at 4401 Burke Station Rd. on approx. 128.13 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 12. (Admin. moved from 5/9/00 for notices).

Mr. Hart gave a disclosure that another attorney in Mr. Hanes' firm had retained him as an expert witness but that case had since concluded and he didn't believe that would affect his ability to participate in the case.

Mr. Pammel stated that he had a disclosure that he and his wife owned burial plots on the property of the subject application and he didn't feel that was a conflict. He said he would participate in the public hearing until he was told differently.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a cemetery and mausoleums to permit an added columbarium use and to permit a change in development conditions. She said Development Condition # 11 approved in December 1988, in conjunction with the previous amendment application, set June 11, 2000, as the deadline for the completion of construction for all the approved mausoleum structures. The applicant requested that Development Condition # 11 be deleted or amended to permit additional time to complete the construction of the approved structures. Ms. Wilson said staff's proposed development conditions deleted Development Condition #11 and gave an additional 5 years to establish the use. She said per the proposed development conditions, beginning construction of the next mausoleum or columbarium structure would establish the use. The applicant also requested that a columbarium use be approved for the site. She said the plat depicted a total of 9 columbarium walls or statuary structures proposed to be added to the site.

Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable zoning ordinance provisions and recommended approval subject to the proposed development conditions in the staff report dated May 30, 2000.

Ms. Kelsey, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said Neil Daugherty and his son were present. Ms. Kelsey stated that this was a family owned business and Neil Daugherty's father had originally owned the cemetery and it had been in the family for more than 40 years. She said staff recommended a 5 year time frame to commence construction but considering that the applicant had a site plan into the County for almost a year, just to begin the next building phase, it seemed that it would take more than that length of time. Ms. Kelsey said they would appreciate having a 10-year time period. She presented photographs reflecting the screening of the mausoleum. Ms. Kelsey stated that the applicant didn't realize he needed approval for the small columbariums on the site, but that staff had pointed it out to them. Consequently, they amended their application. She said the applicant agreed with staff's conditions, but there was one clarification. She said Condition #12 stated that the family crypt/mausoleum structure should be limited in size to accommodate a maximum of four individual coffins. Ms. Kelsey stated that above ground crypts were becoming more popular and it was difficult to say how many family members would wish to be buried above ground in the family type mausoleum structures. She said there were some crypts that were pre-constructed that would accommodate six and that they would like the number 4 changed to 6 to take care of that possibility. Ms. Kelsey requested a waiver of the 8-day waiting period.

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

Mr. Hart asked Ms. Wilson to address Condition #12. He asked if the Board changed from 4 to 6 coffins would that change anything. Ms. Wilson replied that during staff's analysis and having made site visits, she found that there were a number of above ground crypts and most of them appeared to hold 2 caskets. She said there was one that held three. Ms. Wilson said originally it was stated in the development condition that it be limited to 3 because it was quite a large structure. She said the applicant had asked at that time, that staff change it to four and they complied with that. She stated that their concern was that at what point did a family above-ground crypt become a mausoleum and that they were also concerned with the size of the structure. Ms. Wilson stated that in staff analysis, they concluded that anything over 4 would start to be such a prominent part of the landscape that it might be considered more mausoleum than an above-ground crypt. She said currently there was no formal definition as to when above-ground crypts became a mausoleum and staff decided that four was a reasonable number.

Mr. Hart said there was a letter objecting to the proximity of columbariums to existing residences and he asked how far was the closest house to the closest columbarium. Ms. Wilson said the existing columbarium was 100 feet from the lot line and very well landscaped but she had not looked to see how far back were any of the adjoining property lines.

Mr. Hart asked would a square foot or height limitation be adequate language for the condition. Ms. Kelsey replied that the applicant could work with that but that she didn't know the height of the existing columbariums. She said the applicant estimated that the height would be about 10-12 feet and the width

Page 191, June 6, 2000, (Tape 2), CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK, SPA 81-A-022-5, continued from Page 190

would be about 15-20 feet for six coffins.

Mr. Hart asked staff if they would agree to that. Ms. Wilson stated that those dimensions were taller than any above-ground family crypts that were presently on the subject property and it was rivaling the existing height of some of the mausoleum structures. She said the Ordinance defined mausoleum but did not define above-ground crypts and that staff's concern was not to create more mausoleums by default which required approval from the Ordinance.

Mr. Hart moved to approve SPA 81-A-022-5 for the reasons noted in the Resolution and suggested language relating to the size of the crypts.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK, SPA 81-A-022-5 Appl. under Sect(s) 3-103 of the Zoning Ordinance to amend SP 81-A-022 for a cemetery and mausoleums to permit columbarium and change in development conditions. Located at 4401 Burke Station Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 12. (Admin. moved from 5/9/00 for notices). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for 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 Sect(s) 3-103 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Calvary Memorial Park, Inc. T/A Fairfax Memorial Park, 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), structures and/or use(s) indicated on the special permit plat prepared by DeLashmutt Associates Ltd., dated December 2, 1999, as revised through May 8, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant

to this special permit shall be in substantial conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.

5. Eleven (11)-parking spaces shall be provided for the office use. All parking shall be on-site.
6. There shall be a 100-foot setback from Burke Station Road and Braddock Road, which shall not be used for any burial purposes.
7. The existing vegetation along the northern, southern, eastern and western lot lines shall be deemed to satisfy the transitional screening requirement. All vegetation required for screening purposes shall be maintained in good health. Dead or dying vegetation shall be replaced with like-kind vegetation. Barrier requirements shall be waived along all the lot lines of the special permit property.
8. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.
9. There shall be no chapel within the mausoleum, or use of chimes or bells in conjunction with this use.
10. The number of burial services within mausoleums or columbariums shall be limited to one at a time.
11. The flower shop (as noted on the plat) shall be maintained as an accessory use to the cemetery/mausoleums/columbariums only. No retail sales to the general public for use outside the cemetery grounds shall be permitted.
12. The family crypt/mausoleum structures shall be limited in size to accommodate a maximum of six individual coffins and shall not exceed 2½ times the height of the existing 3-coffin crypt or a maximum of 12 feet in height, whichever is less and shall have a maximum footprint of 400 square feet.
13. All mausoleum and columbarium structures shall be located on the site only as shown on the plat. All structures except the mausoleums depicted on sheet 1 of 3 of the special permit plat identified as "proposed mausoleums" and "existing mausoleums" (approved originally in conjunction with SPA 81-A-022-4) shall be a minimum of fifty (50) feet from all lot lines. The crypt and columbarium structures shall be screened from the view of residential properties by evergreen vegetation between the structure and the closest lot line. Screening vegetation shall have a minimum planted height equal to the height of the crypt or columbarium structure. Mausoleum structures approved in conjunction with SPA 81-A-022-4 shall be screened pursuant to Development Condition # 7 above.

These development conditions incorporate and supercede all previous 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 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, ten (10) years after the date of approval* unless construction on the next mausoleum or columbarium has commenced and been diligently prosecuted. This construction shall be considered Phase I. Establishment of Phase I shall establish the use, as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hart moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

Page 193, June 6, 2000, (Tape 2), CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK, SPA 81-A-022-5, continued from Page 192

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 6, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 193, June 6, 2000, (Tape 2), Scheduled case of:

9:30 A.M. FESTIVE INC., T/A BETTER EVENTS, ROBERTO TORRES, A 2000-PR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that appellant is operating a catering business and party equipment rental business in the I-4 and I-5 zoning districts and is occupying premises without a Non-Residential Use Permit in violation of Par. 5 of Sect. 2-302 and Sect. 18-701 of the Zoning Ordinance. Located at 2719-A Dorr Ave. on approx. 1.69 ac. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((13)) 23A.

William Shoup, Deputy Zoning Administrator, noted that the notices were not in order and suggested a deferral date of August 8, 2000. Mr. Shoup stated that staff was working with the appellant and there was a good chance that the issue might be resolved.

Mr. Pammel moved to defer the subject application to August 8, 2000, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 193, June 6, 2000, (Tape 2), After Agenda Item:

Approval of March 7, 2000 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

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Page 193, June 6, 2000, (Tape 2), After Agenda Item:

Additional Time Request
Thuong N. and Tsan N. Le, VC 97-L-060

Mr. Pammel moved to approve the request for additional time. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting. The new expiration date is March 16, 2002.

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Page 193, June 6, 2000, (Tapes 2 & 3), After Agenda Item:

Request to Schedule Hearing
Clifton Paul and Nancy Craven, A 96-P-049

Mr. Kelley stated that in reading the memorandum from William Shoup, Deputy Zoning Administrator, he didn't see why the Board should not dismiss the appeal.

Mr. Pammel said he would suggest that the Board hear from Mr. Shoup.

Mr. Shoup stated that this was a request to schedule the reconsideration hearing for the appeal and as noted in his May 23rd memorandum, the reconsideration hearing was indefinitely deferred to allow the appellants time to seek special exception approval and implement the special exception. He said the special exception approval was obtained on September 27, 1999, and there was a 6-month time limit requiring them to obtain a Non-Residential Use Permit (Non-RUP), which they did not do. On March 27th of this year, the special exception expired. Mr. Shoup said the appeal should be scheduled for hearing and staff recommended July

25, 2000.

Mr. Kelley asked Mr. Shoup what would the Board talk about. He said he felt it was a waste of time.

Mr. Shoup said the issue on appeal was a 1996 Notice of Violation that they had expanded the plant nursery in violation without special exception approval.

Steve Paleos, Paleos and Kreeger, P.C, came forward stating that he represented the Cravens. He said that for the first time in many years, the Cravens agreed that the Board should reconsider the matter. He said immediately after the special exception was issued, there was a timely appeal made to the Circuit Court. He said currently there was a pending trial to be heard on August 1, 2000, by Judge Leslie Alden. Mr. Paleos stated that the appellant sued on the inaction taken by the Board of Zoning Appeals. He said it was his belief that it was appropriate for the Board of Zoning Appeals to act and to ventilate the legal issues from its perspective, so as to permit the court to rule with the benefit with the Board's advice. Mr. Paleos said that the administrative process had not completely run through its course and as a consequence, the Court was not in a position to rule with the final decision of the BZA. He said he felt that it was a mistake to go forward with that trial, without the BZA acting. Mr. Paleos said there was a reoccurring problem and it was a subtle and difficult problem that deserved the full ventilation and resolution to the best of their ability at each level. He said he had no doubt, unless there was some resolution made, that this would keep going on in the courts and it was a difficult situation for everyone concerned.

Mr. Kelley said he attended every meeting in which this case was on the agenda. He stated that it was done that way to keep Mr. Craven from going out of business. Mr. Kelley said the Zoning Administrator was going to be upheld and he felt that they didn't want to put him out of business without giving him a shot. He said it was now being twisted around.

Mr. Paleos stated that he believed that after months of studying the case, there was a fundamental problem. He said Judge Alden had identified a single issue and everything else had been thrown out. He said there was a concern with the equal protection laws. Mr. Paleos said there was a dichotomy between what the Virginia Supreme Court had said and what the BZA said in one case in 1975. He said there was an anomalous situation, unlike many of the matters coming before the Board, this one required a balancing of older right versus newer rights.

Chairman DiGiulian interrupted stating that Mr. Paleos was arguing the merits of the case.

Mr. Paleos stated that he thought there should be a hearing and requested a date earlier than July 25, 2000.

Mr. Hart asked whether it was a cleaner resolution to vote it up or down rather than do nothing.

Mr. Shoup introduced Cynthia Bailey from the County Attorney's office to answer that question. Ms. Bailey stated she thought it was inappropriate for Mr. Paleos to address the Board of Zoning Appeals, who were litigants, without going through counsel. She said the procedural matter directly implicated the Board of Zoning Appeals. Ms. Bailey stated that the issue before the Circuit Court currently, was a very limited one involving the constitutionality of the reported selective enforcement of the Zoning Ordinance. She said the BZA was not involved in enforcement aspects and therefore, it did not make a difference one way or the other, whether the court took up the reconsideration issue before or after the trial.

Mr. Hart asked if the BZA did nothing, what would be the outcome of the violation.

Ms. Bailey stated that the Circuit Court ruled that the prior Notices of Violation were never appealed and they were a thing decided not subject to attack. She said as to the violation that was reiterated in the 1996 Notice of Violation before the BZA. Ms. Bailey said the BZA would merely rule whether the violations were continuing without being able to modify that decision because it was already made by the Circuit Court.

Mr. Pammel asked if the BZA failed to approve a reconsideration would their original decision stand with the modification and if so how did that relate to the Board of Supervisors approving the special exception which was never implemented.

Ms. Bailey said there were two ways to interpret it. She said one was that by granting the reconsideration request and deferring the matter, the BZA effectively would need to re-rule on the original Notice of Violation

Page 195, June 6, 2000, (Tapes 2 & 3), After Agenda Item, continued from Page 194

or a second interpretation would merely be that the original ruling, which modified the Zoning Administrator's determination, would in fact stand and be reinstated. Ms. Bailey stated that she could look into that further for the Board.

Mr. Pammel stated that this posed interesting alternatives. He said this was perplexing and he thought the BZA needed to meet with counsel. Mr. Pammel moved to defer decision to June 13, 2000.

Chairman DiGiulian stated there was no need to have a motion, the Board just agreed to defer to June 13, 2000.

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Page 195, June 6, 2000, (Tape 3), After Agenda Item:

Request for Out of Turn Hearing
Roger Chris Reinhardt, SP 00-D-034

Mr. Ribble moved to deny the request for an out of turn hearing. Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb 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 12:05 p.m.

Minutes by: Regina Thorn Corbett

Approved on: September 26, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 13, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 197, June 13, 2000, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD A. WRIGHT, VC 00-V-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line and 19.2 ft. from rear lot line. Located at 2006 Volley Ct. on approx. 13,196 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((15)) 43.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard A. Wright, 2006 Volley Court, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the enclosure of an existing carport to be located 6.3 feet from the side lot line and 19.2 feet from the rear lot line. A minimum side yard of 12.0 feet is required and a minimum rear yard of 25 feet is required; therefore, variances of 5.7 feet for the side yard and 5.8 feet for the rear yard were requested.

Mr. Wright presented the variance request as noted in the statement of justification submitted with the application. He stated that he would like to replace the existing carport with an enclosed garage because the carport, which was built in 1974, was structurally unsound. He stated that the carport was starting to deteriorate and after having it inspected for a structural system, he was informed that it would fall down within the next couple of years. Mr. Wright stated that he would like to improve the property by enclosing the overall area with an enclosed garage. He stated that there had been some reports of minor thefts by neighborhood children in the area and that he would like to keep the garage locked. Mr. Wright stated that the proposed garage would not change the look of the neighborhood and that he would use the same floor print that had already been used for the existing carport.

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

Mr. Ribble moved to approve VC 00-V-036 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 6, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD A. WRIGHT, VC 00-V-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line and 19.2 ft. from rear lot line. Located at 2006 Volley Ct. on approx. 13,196 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((15)) 43. 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 June 13, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.

3. The shape of the lot causes the need for a variance.
4. The applicant is enclosing the existing carport that is in a bad and rundown condition.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated March 2, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage addition shall be architecturally compatible with 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.

Ms. Gibb 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 21,

2000. This date shall be deemed to be the final approval date of this variance.

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Page 199, June 13, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at the intersection of Hooes Rd. and Pohick Rd. on approx. 9.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 13A. (Moved from 5/9/00.)

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. Lynne J. Strobel, Agent for the Applicant, Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of special permit for a church and related facilities which proposed a sanctuary, parish hall, and rectory. He said there were two proposed areas of access to the site. The first was located at the mid point of the site, just off Pohick Road, and the second was off Groveland Drive across from Blue Jasmine Court. Mr. Bernal said the complex was to be built in three phases. The first phase was to construct a church sanctuary with 940 seats and 14,000 gross square feet in area. The second phase was to construct a parish hall with administrative offices and contain 10,200 gross square feet in area. The third phase was to construct a rectory that contained 5,800 square feet for a total gross footage of the proposed improvements to be 30,000 square feet. The parking lot would contain a total of 285 parking spaces. The applicant submitted Revised Development Conditions which included several new conditions. Staff reviewed the applicants Proposed Development Conditions and did not support Proposed Development Condition Number 1 because it would result in additional impervious area, and as written could impact Tree Save Areas and proposed transitional screening areas. Staff did not object to the other conditions as proposed by the applicant. However, staff noted that the majority of places of worship with time limits between services usually were conditioned between one and two hours between the end of one service, and the start of another. Staff incorporated the applicant's Proposed Development Conditions in the Revised Proposed Development Conditions distributed to the Board, dated June 13, 2000. However, staff did not include the applicant's Proposed Development Condition Number 1 and had changed the time limit between services to be 60 minutes from the thirty minutes proposed. Staff concluded that the subject application was in harmony with the applicable Comprehensive Plan and was in conformance with the applicable Zoning Ordinance Provisions and recommended approval of SP 00-S-011 subject to the implementation of the Revised Proposed Development Conditions dated June 13, 2000. Staff also noted that on October 19, 1999, the BZA heard a proposed application, SP 99-0-S-044, on the subject property, to permit the church with 940 seats and a private school of education for 250 children. On December 12, 1999, the BZA denied the application, stating that it did not satisfy the standards necessary to be granted, specifically Standards Number 4 that required the proposed use to be such that pedestrians and vehicular traffic associated with such a use would not be hazardous or conflict with existing and anticipated traffic in the neighborhood.

Mr. Hart asked if there were any other substantive changes to the Development Conditions from last week. Mr. Bernal stated there were not. Mr. Hart asked if there was a sign for no parking or some prohibition against parking on Groveland Drive. Mr. Bernal stated that he believed there was.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Strobel stated that the Catholic Diocese of Arlington acquired the 10 acres that was the subject of the application, at the intersection of Pohick Road and Hooes Road, in 1994. She stated that when the property was acquired by the Diocese, a meeting was held with the adjacent residential community to inform the community about the plans for future development. Ms. Strobel testified that representatives of the Diocese distributed drawings and information which identified a proposed church with a sanctuary containing 942 seats. She stated that last December the applicants proposed the construction of a sanctuary and a school with a maximum enrollment of 250 pupils that offered instruction from Kindergarten through 8th Grade. Ms. Strobel stated that the applicant had submitted the special permit application with substantial revisions for the property and that the current proposal was for a sanctuary containing approximately 14,000 square feet, an administration building, a rectory, and that the total proposal was for

30,000 gross square feet for a floor area of 0.07. She stated that the R-1 District permitted places of worship with the approval of a special permit and that the applicant's proposal was less than one half of what was permitted for non-residential uses in the R-1 District. Ms. Strobel stated that the applicant intended to offer masses and religious services typically associated with the Catholic Church. In addition, she stated that the applicant would offer religious instruction, but the most heavily intended uses for the property would be on the weekend during off peak traffic hours. Ms. Strobel stated that the biggest difference in the new application was that the use had gone from seven days a week, to primarily two days per week, and those days were off peak traffic hours. She stated that a rectory had been added to the proposal at the directive of the newly appointed Bishop to the Arlington Diocese who had implemented a new policy that required parish priests to reside at the same location as the sanctuary to better serve parishioners. Ms. Strobel stated that the applicant had made a number of revisions to the proposal to try to address neighborhood concerns and that the most significant of those was the elimination of the school. She testified that the applicant could not agree to the communities request to add a condition stating that a school would never be constructed on the property, because it was difficult to predict the needs and desires of Fairfax County in the next 5 to 20 years. Ms. Strobel stated that there were no current plans for a school at the proposed location and that the buildings shown on the plat were not designed to be converted to a school with regard to building code and size issues. Ms. Strobel stated that in response to some of other community concerns, the sanctuary building had been moved further back from Pohick Road and the distance from the curb to the sanctuary building was approximately 126 feet. She stated that the applicant would either provide an escrow of funds for the construction of a right turn lane in conjunction with the Pohick Road improvements, or construct an interim right turn lane in the unlikely event that the Pohick Road construction would not precede the application. Ms. Strobel testified that the applicant's engineer had reviewed the issue of the turn lanes and the set backs and they believed that there was a sufficient setback in the proposed area. She stated that the engineer provided a 35 foot travel aisle, which was more typically 23 feet, that allowed a full extra lane for people to drop off or pick up parishioners as well as have two through lanes for traffic to flow through the side. Ms. Strobel stated that the footprint of the administration building and the parish hall had been elongated and the building moved closer to the sanctuary to create a greater setback from out the buildings from the residential community. She stated that the rectory had been moved up to a portion of the property that was farthest from the residential community near the Fairfax County Parkway and Hooes Road. Ms. Strobel stated that additional landscaping had been provided around the perimeter of the property and that sidewalks had been added from the roads to the interior of the site. Ms. Strobel stated that the applicant had provided a fence in conjunction with the landscaping along both sides of the Groveland Road access and proposed landscaping, then a fence before the parking lot so that the community would have the benefit of planted vegetation as well as the six foot fence. She stated that the applicant had provided a minimum of 285 parking spaces which exceeded the Zoning Ordinance requirement of 235 spaces. Ms. Strobel also stated that the applicant had proposed a Development Condition that required a minimum 30 minutes time period between services and not 60 minutes. She reasoned that by placing an hour between services, the property would be used for a longer period of time on Sunday. Ms. Strobel further testified that the applicant was willing to employ a police officer to direct traffic on Sundays when the property was most heavily used. She stated that the applicant had included an agreement for no parking signs line along Groveland Drive and would also encourage parishioners to use the park and ride lot that was going to be constructed along Hooes Road. Ms. Strobel stated that there was a limitation on the ringing of bells and that the applicant had made an agreement not to remove the existing gazebo which had been put up by the homeowners association and was on the Diocesan property. She testified that the applicant believed that they had taken all possible measures to ensure that there would be minimal impacts on the community with regard to traffic including a significant dedication of over one acre of land along Pohick Road. Ms. Strobel addressed the concern that the proposed site would experience the same problems that currently existed with St. Bernadette's Church and the Church of the Nativity. She explained that with the number of residential communities in the area, there clearly was a need for a church and that the solution was to be able to provide churches not and strict them from being built. She said that currently the parishioners for St. Raymond's parish were meeting at the Fire Station on Backlick Road and that rather than going to a Fire Station, many chose to go to St. Bernadettes and to Nativity which had been part of the problem of overcrowding at those facilities. Ms. Strobel stated that the applicant had worked very hard to address the concerns of Fairfax County as evidenced by the recommendation of approval in the Staff Report. She stated that the applicant was in agreement with staff's Proposed Development Conditions, except for their disagreement with the sixty minutes between services, and had proposed additional conditions to meet community concerns. She stated that there were also concerns about tree preservation and the design of the Storm Water Management Pond on the opposite side as well as providing a buffer to the community. Ms. Strobel testified that given those

Page 201, June 13, 2000, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011, continued from Page 200

constraints, the applicant had tried to design a facility that would meet its needs as well as be sensitive to the community and the requirements of Fairfax County. She stated that churches provided a number of outreach programs, youth ministries and community services that Fairfax County might not provide. Ms. Strobel stated that the proposal was in conformance with the Ordinance regulations regarding development and was less than ½ of the floor area ratio permitted in the R-1 District and was consistent with information presented to the community in 1994. Ms. Strobel said the applicant was willing to provide a right turn lane into the site in the interim, should Pohick Road improvements not go forward or as a part of the Pohick Road project; however, they did not want to pay for it twice if the right turn lane had to be removed and replaced after the Pohick Road construction. Ms. Strobel stated that there were a number of people who had come out to share their support for the application and asked them to please stand so that they could be recognized by the Board and that not all would have to provide public testimony.

Mr. Ribble stated that it appeared that parcel A-1 as shown on the plat belonged to the church; however, it was not part of the special permit. Ms. Strobel confirmed that he was correct and that it was owned by the Diocese.

Mr. Hart stated that the plat submitted that morning was different than the plat included in the staff report and asked Ms. Strobel to explain the substantive differences between the two. Ms. Strobel stated that staff had raised a couple of minor issues that they wanted changed on the plat. She said the applicant removed the plus or minus sign initially included on the total number of square feet provided on the property, some additional landscaping was provided along the Hoes Road frontage and sidewalks were added from what was being proposed along both road frontages into the site. She said the six foot board on board fence that was omitted from the initial submission on one side of Groveland Drive was now shown on both sides of the access point on Groveland Drive.

Mr. Hart stated that he wanted confirmation that there would be a sidewalk along Groveland Drive that crossed the whole frontage of the property. Ms. Strobel confirmed there would be. Mr. Hart asked how parcel A-1 was shaped. Ms. Strobel stated that it was a very small out lot, between the application property and Groveland Drive, which was created when the property for the adjacent residential subdivision was subdivided and it was deeded over to the Diocese. Mr. Hart asked if any of the 31 notes on the right hand side were different on the current plat than the one they had before. Ms. Strobel stated that she didn't believe any were and that on note 31 they suggested that there would be an additional right of way provided if necessary. Mr. Hart asked if people would have to use the Groveland entrance rather than Pohick Road with regard to the left side where the drop off was for the church. Ms. Strobel stated that people could use Pohick Road to enter the site and either turn left or right to park, and that if they wanted to drop someone off, they could come straight in the drop off area.

Mr. Hammack stated that because of the number of people who had indicated their support, the fact that the application was heard in December, and there were no significant changes to decrease the intensity on the project, he moved that the rules be modified to limit each speaker to 2 minutes and requested that they specifically deal with the land use issues in order to accommodate everyone. The motion was seconded by Mr. Ribble which carried by a vote of 7-0.

The following 31 speakers came forward to speak in support of the application: Carl Verseo, Newington Forest, member of Covenants Committee and Association; Dan Eggbert, Triple Ridge; Julie Bailey, Triple Ridge; Laura Hoskconnely, Barrington, Fairfax Station; Nancy Versio, Rainbow Bridge Lane, Newington Forest; Gene Labe, Lorton; Verga Tanis, Fairfax Station; Mark Atonis, Fairfax Station, Barrington; Carol Burgen, Fairfax County; Jane Dubrengozenhuzel, 8716 Redmond Street, Chapel Acres; Thomas A. Deeds, Afton Glen, 8610 Groveland Drive, Springfield; Jerry Label, 7730 Silver Sage Court, Afton Glen; Pat Hall, Bergoin Forest West; Robert Ward, 6710 Signstricker Road, Springfield; Kathy Campbell, 9129 Fisherman's Lane; Paul Duroso, 8627 Groveland Drive; Robert Knitswickie, Fairfax Station; Laura Loverdier, 8503 Edder Drive, Springfield; Michelle Brickner; Cynthia Knoland, Newington Station; Dianna Deptula, 7921 Colorado Springs Drive, Springfield; Beverly Buzacky; Gerard Schratz; Lisa Bruner; Art Polatano, 7706 Brateto Lane; William Snow, 6021 Chapman Road, Masonneck; Jennifer Raybel, 8221 Silverline Drive, Crosspoint Community; Regina Cole, 8410 Copperleaf Court; Robin Bloom, 8060 Tributary Court, Saratoga; Ireane Bartholomew, 8504 Silverdale Road, Lorton, Beachwood Subdivision; John Koshgrove, 7930 Birdstree Court, Springfield; Kim McGoff, 9310 Davis Drive, Lorton, Southpoint; Cindy Rutley, 9211 Ricehollow Lane, Lorton; Carol Ann McKim, 8708 Arley Drive; Lawrence Richey, Sidesaddle Road, Springfield; Judy Kirk, lives

Page 202, June 13, 2000, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011, continued from Page 201

across from St. Bernadette's church; Nancy Chrisman, 8849 Creekside Way; Willie Panictum, 8921 Magnolia Ridge; and Anita Coons, Redmond Street, Chapel Acres.

The majority of speakers commented that there had not been a survey conducted for the 1800 residents of Newington Forest to vote in support or opposition of the application and that there was strong support within the community and on Groveland Drive. The speakers noted that through traffic surveys and observation of Groveland Drive and Pohick Road that the additional traffic generated by the proposed church, other than taking a few extra minutes on Sundays entering and exiting, would not cause a major traffic hazard. They testified that their growing community was really in need of a church and would enhance the area and become an improvement for their community and would relieve the overcrowding of the other Catholic churches in Fairfax County. They added that the church would provide extra parking of about 50 spaces, which was 20% more than what the County required.

The following speakers came forward to speak in opposition: John Pratt, Chairman of the Springfield District Council; John Crooks, President of Newington Forest Community Association; Neil McBride, President of the Federation of Lorton Communities and Secretary to the South Run Coalition; Steve Koss, Green Garland Drive; Jack Ward, President of Afton Glen Homeowners Association; Hal Neptune, Green Garland Drive, Afton Glen; Elizabeth Hurst, Afton Glen; Elvira Mezodumkowsky, 7726 Green Garland Drive; Larry Davis, Afton Glen; Keith Randall Chapel Acres; Tom Shubert, 7805 Blue Jasmine Court; and Jim Harper, 7810 Blue Jasmine Court.

The speaker expressed the following concerns: a minimum of sixty minutes between services was necessary; future expansion; traffic flow; no place for overflow parking; church would be too big for the parcel; not enough on site parking capacity; church was too large for the small plot; traffic issues safety issues, pedestrian issues, quality of life changed; and the noise generated by the church activities which would greatly change the character of the quiet neighborhood.

Ms. Strobel stated in her rebuttal that traffic would be a part of the use. She stated that the proposed development was a .07 FAR which was less than half of what was permitted in the district for non-residential uses and that the applicant had been proactive in trying to propose development conditions that would mitigate traffic problems. She stated that they agreed to having a police officer and would encourage the use of the park and ride facility. Ms. Strobel stated that they had provided a number of proposed. She stated that the drop off area would be used primarily for activities that were smaller, like weddings and funerals. Finally, Ms. Strobel stated that the proposed use was appropriate on the site and the applicant had proposed a number of Development Conditions to mitigate traffic. She also pointed out that a lot of the traffic was already on the road with people going to St. Bernadettes and to Nativity. She reasoned that the approval of the application would put a church closer to them and provide an opportunity for many people in the neighborhood to walk to church.

Mr. Pammel asked which of the June 13th proposed conditions the applicant did not support. Ms. Strobel stated that their proposal was for 30 minutes between services and they could not support staff suggestion of 60 minutes because the activity of the church would be elongated.

Mr. Pammel asked if the applicant would be willing to have a compromise of 45 minutes. Ms. Strobel stated that they would.

Mr. Hart asked if there would be a problem with extending the church parking restriction beyond the segment of Groveland Drive to include Blue Jasmine Court or a portion of Green Garland Drive. Ms. Strobel stated that they would have no problem with that.

Mr. Kelley asked Ms. Strobel if they could fit in another parking space. Ms. Strobel answered that they had provided a minimum of 285 parking spaces and had proposed, as an additional development condition, to provide re-enforced lawn areas in which grass would grow between concrete bricks so that it would give a greener appearance. She stated that they had offered to work with Fairfax County for providing such areas at time of site plan.

Mr. Ribble asked Ms. Strobel why parcel A was not included in the special permit application even though, according to the survey, it provided access to the site. Ms. Strobel stated that it was an out lot that was

created with the subdivision and by definition could not be developed, however she stated that it was owned by the church and could be used for access.

Mr. Hammack asked staff how the Board could exercise authority over an out lot if it was not included in the actual area under the special permit. Ms. Langdon answered that because the applicant owned the property, they could grant themselves access through it. She testified that they had posed the question to the applicant about why the parcel wasn't part of the application and did not receive an answer.

Mr. Hammack stated that they were still requiring improvements and parking limitations to be imposed on the out lot and that it had been an issue in the last hearing and was never resolved. Ms. Strobel stated that she had a copy of the Deed and testified that the Diocese did not feel comfortable including the out lot as a part of the proposed development. She reiterated that the out lot could not be developed, and was granted to the Diocese for purposes of access.

Mr. Hart made reference to the Deed which stated that the conveyance was subject to all easements, covenants, conditions and restrictions of record. He said that they didn't know what they were and that there was a previous instrument #6025981. Ms. Strobel stated that it was the Deed of Dedication subdivision and easement that had been provided for Afton Glen and there were no conflicts with it. Mr. Hart asked if there was a plat appended to it. Ms. Strobel confirmed that there was.

Ms. Strobel stated that since the Diocese was the owner of the out lot, she wasn't sure that including it in the application made any difference. She stated that it would be appropriate if there was a condition that the Board wanted to place on the applicant; however, it was clear that the applicant would not sell the parcel because it was an out lot, was not developable, and would be used for access. Mr. Hammack stated that if the Diocese decided they didn't want to do certain things in the development conditions, because the out lot was not part of the application, the Board would not have any legal standing. Ms. Strobel answered that the property could only be developed in accordance with the plat and the plat clearly showed access in that location. Mr. Hammack stated that it said only 9.906 acres and that parcel A-1 was included in that. Ms. Strobel stated that they could only develop the property in accordance with the plat and when posed with that question by the County, they provided a copy of the Deed evidencing ownership. She stated that the applicant was more than willing to agree to a development condition that would be binding that would say that adjacent Out Lot A-1 could only be used as show on the special permit plat. Mr. Hammack stated that it would not satisfy them. Mr. Hammack stated that Development Condition number 1 proved what was shown in the application only and A-1 was not part of the application. Ms. Strobel stated that she didn't disagree, but when they were asked to demonstrate legal access to A-1 by the County, they believed they had done that by providing a copy of the Deed.

Mr. Pammel told Ms. Strobel that it was clear that the applicant had access, but that wasn't the issue. He stated that the bottom line was that there were opposed improvements, such as the street improvements and the right turn lane that were part of the application that involved Parcel A-1. He stated that the fact that it was not a part of the application put the Board in a very tenuous situation with respect to applying conditions to a parcel that was not included in the application. Ms. Strobel stated that she understood, but rather than amending the application to include parcel A-1, re-advertise, and come back and do the public hearing, the applicant could provide off site improvements and, as owner of the property, agree to any type of development condition to resolve the issue.

Mr. Hart asked if the Deed of Dedication about parcel A-1 had some open space restriction. Ms. Strobel stated that there were no restrictions to her knowledge.

Ms. Langdon stated that in a recent application for a subdivision variance, there was a parcel subdividing two lots into two lots and the second lot was increased in size to allow it to be a buildable lot. She stated that the access was across another parcel owned by the same applicant but they were two completely different applications. Ms. Langdon stated it was a similar case even though it was a subdivision variance and not a special permit. She stated that it still had a plat that showed the subdivision and the access on another completely different parcel which had been accepted and processed.

Mr. Hammack stated that parking was a real issue and that the church was large and even though it started out with 9.9 acres the parcel would be reduced in size to the effective area of uses. He stated that to some

extent the numbers looked really good on the initial application and that .07 was an excellent figure on FAR. He stated that the applicant was proposing to add a significant number of parking spaces even though they had acknowledged that there were serious parking problems which obviously couldn't be accommodated on the neighborhood streets.

Ms. Strobel stated that she didn't think that the applicant was acknowledging parking problems, she said that they were trying to be responsive to issues that were raised. She introduced Gary Kirkbride, Dewberry and Davis. Mr. Kirkbride stated that they had looked at the plat with the previous application and had identified an overflow parking area which was behind the school. He stated that the school wasn't there anymore and the parish hall, at a much reduced footprint, was in the same approximate location. He stated that on the north side, near the rectory, there were steep grades which were more difficult to get down. Mr. Kirkbride said that they were trying not to push any farther into the limits of disturbance than they already had. Ms. Strobel also stated that the Parcel A-1 was encumbered by a sidewalk and utilities in that area which offered further reason why it was not included as a part of the application.

Mr. Ribble asked if Parcel A-1 was the same as outlot AA. Ms. Strobel stated that it was.

Mr. Kelley suggested an amendment to the development conditions to have the outlot paved as an enforced lawn area for an overflow parking lot. He said that he thought they could ask for off site improvements and that might solve the problem. Ms. Strobel replied that the issue could be resolved with the implementation of a development condition.

Ms. Gibb asked if the applicant thought it was not necessary to make lot A-1 part of the application. Ms. Strobel confirmed that she was correct. Ms. Gibb asked why would the fact that Parcel A-1 was encumbered by a sidewalk weigh into the decision not to include it in the application. Ms. Strobel explained that given the size, shape, and the encumbrances on the property, the sidewalk and the gazebo that was constructed by the homeowners association, the applicant did not feel it was necessary to include it as part of the application. She also said that after her discussion with staff, she understood that by providing a copy of the Deed evidencing ownership, it was not an issue. Ms. Strobel reiterated that the applicant was more than willing to agree to a condition suggesting that the adjacent out lot A-1 would only be used in conjunction with those improvements shown on the special permit plat.

Mr. Hammack asked where the gazebo was on the plat, why it was there, and what would happen to it. Ms. Strobel stated that the applicant had agreed to a development condition with the community not to remove the gazebo because it was constructed by the community. Mr. Hammack asked if the community had the right to use the lot A-1 strip. Ms. Strobel stated that they did not. Mr. Hammack asked if there were any homeowners' rights that allowed people to go in and use the parcel. Ms. Strobel answered that there were not. She also stated that on the plat there were a number of swing sets that had been built on the applicant's property by adjacent homeowners who may have found it difficult to know exactly where their property line was.

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

Mr. Hammack stated that lot A-1 should be included in the application and had to be clarified. He stated that he wanted to know more about the covenants that might apply and whether they would affect the use of lot A-1. Mr. Hammack also stated that it had generally been the position of the Board that the entire application needed to be included. He stated that off site improvements were difficult and that they might have required them on occasion, but they were more in the nature of shared parking arrangements. Mr. Hammack stated that because of the way the development conditions were constructed, particularly Development Condition 1, the Board had no legal authority to require an applicant to do anything that was not in the actual site plan or in the part that was advertised.

Mr. Hammack moved to defer for two weeks in order to obtain more information on the aforementioned issues. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Mr. Hammack stated that he would like a copy of the covenants that applied to the site and anything else in the chain of title that would apply to the uses of parcel A-1 or parcel AA. He stated that he wanted to get a further opinion on the legal issue of whether including A-1 in the application could be done through a

Page 205, June 13, 2000, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011, continued from Page 204

development condition or whether it had to be re-advertised. Chairman DiGiulian asked if there should be any additional testimony. Mr. Hammack answered that he would limit it to just those issues.

Mr. Ribble stated that the Board needed to have a copy of the complete Deed of Subdivision Plat and any limitations as to what could be done with outlot AA or any reservations to the Afton Glen Homeowners Association in that subdivision.

Mr. Hart gave the following checklist of four things that the Board needed: A full copy of the Deed In to the applicant of the little parcel; A full copy of the Deed of Dedication of Section 1 of Afton Glen with all the pages in all the right order; A full copy of the covenants and any amendments or modifications since the creation of the subdivision; A full copy of the plat pending to the Deed of Dedication and any modifications or intervening event before the Deed In to the church.

Mr. Hammack moved to defer to June 27, 2000, at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 206, June 13, 2000, (Tape 1), Scheduled case of:

9:00 A.M. FRANKLIN B. GOLD, VC 00-D-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.3 ft. from side lot line. Located at 1924 Rhode Island Ave. on approx. 10,463 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 8. (Concurrent with SP 00-D-015).

9:00 A.M. FRANKLIN B. GOLD, SP 00-D-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to the minimum yard requirements based on error in building location to permit stoop to remain 7.7 ft. from side lot line. Located at 1924 Rhode Island Ave. on approx. 10,463 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 8. (Concurrent with VC 00-D-039).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Franklin B. Gold, 1924 Rhode Island Avenue, McLean, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for error in building location to allow a reduction to minimum yard requirements based on error in building location to permit a stoop to remain 7.7 feet from the side lot line. A variance was also requested to allow the construction of a deck 10.3 feet from the other side lot line. For the special permit, the Zoning Ordinance requires a minimum side yard of 10 feet; therefore the amount of the error was 2.3 feet or 33%. For the variance, the Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance of 4.7 feet was requested.

Mr. Gold presented the variance and special permit requests as outlined in the statement of justification submitted with the application. Mr. Gold stated that after they found the house, they determined that there was a problem with the actual floor plan of the house and that two things needed to be done. He stated that the existing condition of the stoop, which extended approximately 3 ½ feet onto the sidewalk, was not known prior to their moving in, and was discovered upon application for the deck. Mr. Gold presented photographs to the Board to show that their lot and house were long and narrow and that currently their back yard was only accessible through the door of his mother's bedroom. He submitted a floor plan of the inside of the house and stated that they had to access the house through his mother's bedroom which was a great disturbance to her and had a note from his mother's doctor which supported his application. Mr. Gold testified that in addition to the narrowness of the yard, there was a substantial incline due to a slope which went from the driveway on the other side of the house through the rear of the house. He stated that all the other homes in the neighborhood had decks and that they were the only ones that did not currently have a deck. Mr. Gold stated that the deck would provide them with an opportunity to sit outside and enjoy the quiet neighborhood as well as give his mother privacy and allow her a level access to the outdoors which she needed due to being in a wheelchair. He addressed the letter of opposition from his next door neighbor who

was concerned about the deck being located on his neighbors side of the house and disturbing him. Mr. Gold showed the Board a photograph of the deck which was similar to the type of deck they wanted to build, and said that it was small, unobtrusive, and existed on one of their other neighbors' houses already. He said that it was not out of character with the neighborhood and that there were 18 approved variances, in the same area, where people had actually built up into the side lot line. Mr. Gold stated that he was asking for only 10 feet away from the side lot line which was a mere five feet out. He testified that he had originally planned on a twelve foot deck for more living space, however after talking with his neighbor, scaled it down to a modest 5 feet that would allow them to have access to the back yard.

Chairman DiGiulian called for speakers.

Ms. Wendy King, next door neighbor to the applicant, stated that they had submitted a letter indicating that the proposed side deck exceeded the normal setback requirements on side lot lines and that it would be intrusive in its character. She stated that it was designed to be a side deck that was placed near the front of their home and would normally be considered a back yard activity. Ms. King stated that they were concerned about the noise and the visual appearance of the deck and how it would impact their property.

Ms. Gibb asked Ms. King how far away her house was from the lot line that she shared with the applicant. Ms. King answered that it was approximately 10 feet. Mr. Hammack stated that the staff report indicated 15.2 feet.

Mr. Ribble asked if Ms. King had covered everything that was in her letter, because he had not received a copy of it.

Ms. Gibb asked if there was landscaping along the boundary line between her property and the applicants. Ms. King answered that there were only some low lying bushes and that the window scope of Mr. Gold's house was about 3 levels high from the ground and hers was about two.

Mr. Gold presented a photograph of Ms. King's home and stated that there was a substantial distance between his house and hers. He stated that they were only cutting down on the current distance by 5 feet and that the structures that come out from her house were at least as far as the deck that he had proposed.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 00-D-039 for the reasons noted in the Resolutions

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANKLIN B. GOLD, VC 00-D-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.3 ft. from side lot line. Located at 1924 Rhode Island Ave. on approx. 10,463 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 8. (Concurrent with SP 00-D-015). 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 13, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is slightly in excess of 10,000 sq. ft. and unusual for an area zoned R-2, which requires a minimum of 15,000 sq. ft. in lot size.

- 4. The nonconforming width of the lot is 50 ft., which is unusually narrow.
- 5. The steep terrain is cause for a variance.
- 6. The applicant has satisfied the board of the unusual circumstances that apply to the lot as compared to other lots in the vicinity.
- 7. The variance to permit the 5 ft. deck is minimal and still leaves a 10 ft. 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a deck shown on the plat prepared by Holmes Smith, Land Surveyor, dated January 31, 2000, as revised through March 9, 2000 submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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. Hart and Ms. Gibb 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 21, 2000. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel moved to approve SP 00-D-015 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANKLIN B. GOLD, SP 00-D-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to the minimum yard requirements based on error in building location to permit stoop to remain 7.7 ft. from side lot line. Located at 1924 Rhode Island Ave. on approx. 10,463 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 8. (Concurrent with VC 00-D-039). 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 13, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a stoop shown on the plat prepared by Holmes Smith, Land Surveyor, dated January 31, 2000, revised through March 9, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart 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 21, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 209, June 13, 2000, (Tape 1), Scheduled case of:

9:00 A.M. EUN-YOUNG LEE & WON-JIN LEE, SP 00-B-006 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center. Located at 8313 Little River Tnpk. on approx. 22,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 23. (def. from 5/2/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sung H. Kim, agent for the applicant, 13679 Wildflower Lane, Clifton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were seeking approval to establish a childcare center for a maximum of 15 children. At the May 2, 2000 public hearing the BZA deferred decision on the application, requesting that staff address several specific questions. Those questions were addressed in the addendum to the staff report. In addition, the Board asked the status of the state licensing. As of June 12, 2000, the State Licensing Specialist reported that no license had been issued and the application was still pending. According to the State Licensing Specialist, issuance had been delayed due to confusion on the type of child care facility that was being proposed. Staff was informed by the State Licensing Specialist that a small home child care facility was originally requested, but the applicant currently proposed a childcare center for 15 children. Ms. Wilson stated that in response to citizens concerns, the Board expressed interest in the concerns of a Mr. Harris who lived in the neighborhood and who was blind. Mr. Harris walked daily in the service drive located in front of the application parcel in route to Northern Virginia Community College. Staff had contacted Mr. Harris for his comments. Mr. Harris expressed concern that the service drive was currently overcrowded with parked vehicles of commuters restricting traffic including trash trucks and other large vehicles which traveled in the narrow lane. Mr. Harris comments indicated that he believed the street currently posed a danger to all, not just him, and the situation would be made worse by the proposed use. Mr. Harris stated that he could not attend the present meeting and declined to offer written comments. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the adoption of the Revised Development Conditions dated June 6, 2000, staff recommended approval of SP 00-B-006.

Mr. Kim presented the special permit request as outlined in the statement of justification submitted with the application. The applicant proposed an established child day care center location with the maximum of 15 children at any time with the operation hours from 6:30 a.m. to 8:30 p.m. Mr. Kim said the facility had 2400 square feet with the playground in the back yard and five parking spaces, three of them on the outside and two in the inside parking lot.

Mr. Hammack asked how many children did the applicant expect would have to be picked up between 6:30 p.m. and 8:30 p.m. Mr. Kim stated that currently Ms. Lee had five children and the last child was picked up at 7:00 p.m. Mr. Hammack and Mr. Hart both asked if Mr. Kim would agree to reducing the hours of operation from 6:30 a.m. to 7:00 p.m. for the 15 children. Mr. Kim said she would.

Mr. Hart asked if the last page in the addendum to the staff report was a translation. Mr. Kim confirmed that it was. Mr. Hart asked why Ms. Lee's proposed sign would be 6 foot high. Ms. Lee stated that she was aware that the regulations stated that the maximum height was four feet, so she would abide by the regulation and have a one foot wide and four feet height sign.

Mr. Hart stated that one of the concerns at the previous public hearing was that of creeping commercialism and asked if the sign would be lit. He asked if the development conditions could specify that the light not be illuminated. Mr. Kim said yes.

Mr. Hart asked if it mattered that the driveway encroached on lot 22. Ms. Wilson answered that their driveway was shown encroaching on the property and was really a civil matter between the neighbors and that the access in and out of the garage would provide part of the parking area.

Chairman DiGiulian called for speakers.

Ms. Flora Adams, 8305 Little River Turnpike; Julie Anne Fitzpatrick, 4104 Dunken Drive; Diane Sherrick, 8313 Upper Spring Lane; and Christina Gavadas, 4105 Duncan Drive, came forward to speak in opposition. They expressed concerns relating to the busy narrow road, establishing commercialization in a residential neighborhood traffic impact

Mr. Kim stated in his rebuttal, that the applicant did not want to have lit signage. He said the applicant wanted to serve the community and the parents who were working hard. Mr. Kim stated that there were two parking spaces inside the garage, which would be used by the teachers, and the parents would be coming and going in a discrete fashion, not in a congested, crowded, one hour windows.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 00-B-006 subject to the Revised Development Conditions contained in Attachment 1 to the Addendum dated June 6, 2000, with the following modifications in Development Condition 7, change the time frame from 8:30 p.m. to 7:00 p.m. and change Development Condition 9, to reflect the wording " the signage shall not be illuminated". The motion failed for lack of a second.

Ms. Gibb stated that she was persuaded by the neighbors, the photographs of the access road, and about the nature of the neighborhood being on the verge of creeping commercialism. She stated that she was sympathetic with the neighbors in this instance, with the acupuncturist and the other issues discussed. She stated that the home based center would be an appropriate use and was in favor of it being open until 8:30 p.m., but with just 5 children. Ms. Gibb stated that the Ordinance and Comprehensive Plan were written to encourage child care but they also had the provision for home based childcare which could be used without so much impact on the neighbors and it would look like just a family with five children.

Ms. Gibb then moved to deny SP 00-B-006 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EUN-YOUNG LEE & WON-JIN LEE, SP 00-B-006 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center. Located at 8313 Little River Tnpk. on approx. 22,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 23. (def. for decision from 5/2/00) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 2000; and

Page 211, June 13, 2000, (Tape 1), EUN-YOUNG LEE & WON-JIN LEE, SP 00-B-006, continued from Page 210

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

1. The applicants are the owners of the land.
2. The photographs of the access road indicate cause for denial of the special permit.
3. The residential neighborhood is on the verge of creeping commercialism.
4. A home based childcare center with a maximum of 5 children would be an appropriate use.

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 Sect(s) 3-203 of the Zoning Ordinance.

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

Mr. Ribble seconded the motion which carried by a vote of 5-1. Mr. Hart voted nay and Mr. Pammel was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 14, 2000.

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Page 211, June 13, 2000, (Tape 1), Scheduled case of:

9:00 A.M. BRUCE & CORYN WEIGLE, VC 00-M-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. and stairs 3.3 ft. from side lot line. Located at 6530 Spring Valley Dr. on approx. 24,772 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) 67.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Coryn Weigle, 6530 Spring Valley Drive, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 7.3 feet from the side lot line with stairs located 3.3 feet from the side lot line. In the R-2 District, a minimum 15 foot side yard is required and open stairs were permitted to encroach up to 10 feet. Therefore the applicant requested a 7.7-foot variance for the addition and a 6.7-foot variance for the stairs for the side yard.

Ms. Weigle presented the variance request as outlined in the statement of justification submitted with the application. Ms. Weigle asked that they be given permission to expand to a two car carport, a sunroom replacing the porch and enclose the tool shed area that was currently under the screened porch and have a storage room under the new addition area. She stated that they were requesting the variance not only to garage their two cars and shield them from the sun and weather, but also because they needed secure storage because things had been stolen in the past. Ms. Weigle stated that they had a letter in support from the neighbor on the side that would be encroached upon, and they also had letters of support from many of their other neighbors. She stated that they couldn't put an addition on anywhere else on the property because they were on a very steep slope.

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

Ms. Gibb moved to approve VC 00-M-035 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 6, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRUCE & CORYN WEIGLE, VC 00-M-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. and stairs 3.3 ft. from side lot line. Located at 6530 Spring Valley Dr. on approx. 24,772 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) 67. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 2000; and

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

1. The applicants are the owners of the land.
2. The property is a narrow lot and slopes off in the back.
3. Only one corner of the steps is going to be within 7.3 feet of the side lot line.
4. The applicants will landscape so that the neighboring properties will not be impaired.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and exterior steps shown on the plat prepared by John D. Jarrett, dated October 14, 1965, as revised through February 3, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The garage/sunroom 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. Kelly 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 June 21, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 213, June 13, 2000, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE SCOTT, JR., VC 00-P-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.5 ft. from rear lot line. Located at 3014 Robin Ridge Ct. on approx. 6,031 sq. ft. of land zoned R-4. Providence District. Tax Map 49-3 ((24)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, Patio Enclosures, Inc., 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 9.5 feet from the rear lot line. In the R-4 District a minimum 25 foot rear yard is required; therefore, a variance of 15.5 feet was requested.

Mr. Reames presented the variance request as outlined in the statement of justification submitted with the application. Mr. Reames stated that he stood on the application as submitted and did not offer any further testimony.

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

Mr. Kelley moved to approve VC 00-P-034 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 6, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE SCOTT, JR., VC 00-P-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.5 ft. from rear lot line. Located at 3014 Robin Ridge Ct. on approx. 6,031 sq. ft. of land zoned R-4. Providence District. Tax Map 49-3 ((24)) 6. Mr. Kelly moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance as outlined in the statement of notification.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition (enclosure) shown on the plat prepared by Cervantes & Associates, P.C., dated April 9, 1999, as revised through December 8, 1999, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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.

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 215, June 13, 2000, (Tape 1), Scheduled case of:

9:00 A.M. KENT W. & KATHRYN W. COLTON, VC 99-D-169 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit steps to remain 1.08 ft. and dwelling 8.17 ft. from front lot line, accessory structure to remain 16.8 ft. from front lot line and 12.07 ft. from side lot line, and other accessory structure to remain 14.9 ft. from side lot line. Located at 940 Spring Hill Rd. on approx. 6.97 ac. of land zoned R-1. Dranesville District. Tax Map 20-2 ((1)) 45.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson P. Hanes, Hazel & Thomas, P.C., 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Mr. Hart had a disclosure that less than two years ago, he was retained as an expert witness by another attorney in Mr. Hanes's firm. He stated that there were also three other cases presently in which attorneys from Mr. Hanes's firm were on the other side. He said that none of those matters would affect his ability to participate in the case, but he wanted to make that disclosure.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were pursuing a by-right subdivision of their property and as a result of the requirement of the Subdivision Ordinance, the owners were required to dedicate right-of-way for Spring Hill Road. The action will bring the road right-of-way to within 1.08 feet of the front steps, within 8.17 feet of the existing home, and within 16.8 feet of the existing garage. The applicants requested a variance for the front yard requirement for the structures. In the R-1 District, a 40 foot minimum front yard is required. The applicants also sought approval for a variance from the minimum 20-foot side yard requirement to permit the existing garage to remain twelve. 7 feet from the side lot line, and to permit an additional accessory structure to remain 14.9 feet from the other side lot line after subdivision of the lot. Therefore, the applicant requested a 38.92 foot variance for the front steps, a 31.83 foot variance for the dwelling, a 23.20 foot variance for the garage for the front yard, a variance for the side yard measuring 7.93 feet for the garage, and 5.1 feet for the additional accessory structure.

Mr. Hanes stated that they were trying to subdivide the approximately seven acre parcel, which is zoned R-1, into two lots of approximately a little over 3 acres. Mr. Hanes said that the problem was that when there was a subdivision along Spring Hill Road, a 45 foot dedication would have to be made. He stated that he was not saying they would agree to that, but if it was required, they would need the variance. He said that they had a nonconforming use with the structure which was a garage from the Southerly Property line, and that the barn also needed a set back variance. He stated that the property itself sat above Spring Hill Road and that the topography was very steep and the lot is unusually shaped. Therefore, he said that all of the nine conditions required of the Ordinance were met and that it was in harmony with the adjoining properties. He stated that he had provided the Board with a list and signatures of all the adjoining property owners who had no opposition to the granting of the proposed variances.

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

Mr. Hammack moved to approve VC 99-D-169 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 6, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENT W. & KATHRYN W. COLTON, VC 99-D-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit steps to remain 1.08 ft. and dwelling 8.17 ft. from front lot line, accessory structure to remain 16.8 ft. from front lot line and 12.07 ft. from side lot line, and other accessory structure to remain 14.9 ft. from side lot line. Located at 940 Spring Hill Rd. on approx. 6.97 ac. of land zoned R-1: Dranesville District. Tax Map 20-2 ((1)) 45. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants have met the required standards for a variance.
- 3. The granting of the variance will not be in disharmony 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;
 - 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the dwelling, the dwelling steps and the two accessory structures shown on the plat prepared by Tri-Tek Engineering, dated July 8, 1999, as revised through February 9, 2000, submitted with this application and is not transferable to other land.
2. Sheltering or confining of horses or other livestock shall not be permitted within the subject accessory structures.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel 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 June 21, 2000. This date shall be deemed to be the final approval date of this variance.

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9:30 a.m. NAILS FOR YOU TRAINING ACADEMY, A 2000-PR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination that appellant has established a personal service establishment (nail salon) and is conducting retail sales on property in the C-3 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance, and is operating a school of special education (nail care training academy) without an approved Non-RUP, in violation of Sect. 18-701 of the Zoning Ordinance. Located at 6510 Arlington Blvd. on approx. 10,770 sq. ft. of land zoned C-3 and HC. Providence District. Tax Map 50-4 ((9)) 47A. (Moved from 4/25/00).

William Shoup, Deputy Zoning Administrator, stated that as noted in their June 5, 2000, memo that staff recommended dismissal of the case. He stated that since the memo, and after some conversations with staff, there had been a considerable effort on the appellant's part to comply with the Notice of Violation. Mr. Shoup testified that presently the appellant was very close to getting a nonresidential use permit for a school use, which was the permitted use on the site. He stated that the appellant was there to request the deferral and that under the circumstances staff did not object to a short deferral.

Tu Nguyen, 6071 Jefferson Hill Court, Falls Church, Virginia, stated that he represented Nails For You Training Academy and wanted to request a deferral of the hearing so that they could complete their requirements in order to obtain the nonresidential use permit. He stated that because of the zoning regulation they had to have the building permit plan approved by a certified engineer and because it had fallen into the category of a school which made it more difficult than in normal cases.

Chairman DiGiulian asked Mr. Nguyen how much time he needed. Mr. Nguyen replied that he was not sure but had been told that the approximate time might be one month.

Mr. Hammack asked Mr. Shoup if one month was enough time to defer the case. Mr. Shoup answered that they needed building permit approval and some engineer plans however, with Mr. Nguyen already working with someone on it, one month might be enough time. He stated that the problem was that the Boards agendas were fairly full through the end of July and August.

Mr. Kelley moved to defer the appeal A 2000-PR-003 to August 15, 2000 at 9:30. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Consideration of Acceptance for Appeal
Syed Aslam Ali

Page 218, June 13, 2000, (Tape 1), After Agenda Item, continued from Page 217

Chairman DiGiulian disclosed that his office prepared the site plans for the subject property so he would not participate in the discussion.

Mr. Hammack moved to accept the limited appeal consideration of acceptance in the application for appeal for Syed Aslam Ali subject to the conditions or the limitations expressed in the staff report.

Mr. Shoup stated, for the record, that they had received a letter from the attorney indicating that Mr. Ali could not be present and that he wanted to be heard on the scheduling acceptance issue and asked if it could be put off until the following week.

Mr. Hammack moved to defer the consideration to June 20, 2000. The motion was seconded by Mr. Hart which carried by a vote of 7-0.

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Page 218, June 13, 2000, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing, VC 00-V-076, Windsor Demaine

Susan Langdon, Chief, Special Permit Branch, stated that the Request for the Out of Turn Hearing for VC 00-V-076, Windsor Demaine, was turned in too late the previous afternoon to be put onto the After Agenda. She stated that it was currently scheduled for September 5th, which was within the 90 days.

Ms. Jane Kelsey, Jane Kelsey and Associates, Inc., stated that she submitted that morning a p.s. to her request for the Out of Turn Hearing which she had submitted the previous day. She stated that she was in error about the urgency and had said July or August. She stated that it would be very beneficial if the Board could give the applicant a hearing in July.

Mr. Hammack asked what would be the earliest date that staff could have the report ready and advertise for a hearing. Ms. Langdon answered that they were presently preparing the notices for the August 1st hearing and they had already gone to the coordinators for review.

Mr. Kelley asked Ms. Kelsey to elaborate on the nature of the urgency and if he was losing contracts. Ms. Kelsey confirmed that he had already lost one contract and had been working on trying to sell the property since last August because of a zoning problem that he was unaware he had. She stated that Mr. Demaine had to get the variance before he could actually sell the property. She stated that he had a contingency contract presently, but he had to settle in July.

Mr. Kelley asked when did Mr. Demaine first apply for the variance. She stated that he didn't realize that he needed the variance but had been working with the County since February 2000

Mr. Hammack stated that the application was dated May 24, 2000. Ms. Langdon confirmed that the application was accepted on May 24, 2000.

Ms. Kelsey stated that Mr. Demaine was asked to get additional research which took time with the Zoning Administrator's office. She stated that it did not require staffing so they felt it would be a fairly straightforward application.

Ms. Langdon stated that it would still require that they get the notices ready and would result in more than the 10 cases on August 1st or 8th.

Mr. Hammack stated that they should set the hearing for August 8th. Mr. Kelley stated that he had to settle in July. Ms. Gibb asked what the contract said. Mr. Hammack asked if it gave Mr. Demaine a reasonable time to cure a title. Mr. Hammack asked if the contract had any provision that allowed it to be extended. Ms. Kelsey stated that it did not.

Mr. Kelley moved that they set the hearing for July 24, 2000. He stated that he understood that there was a problem with the notices but he so moved. Ms. Langdon stated that the hearing was on July 25, 2000 and the notices had already gone out. Mr. Kelley stated that they had similar situations in the past and that staff had managed to work it out. The motion failed for lack of a second.

Page 219, June 13, 2000, (Tape 1), After Agenda Item, continued from Page 218

Mr. Hammack asked Ms. Langdon if they could do the notices for August 1st. Ms. Langdon stated that they were currently preparing notices for August 1st.

Mr. Hammack moved to approve the out of turn hearing request for VC 00-V-076, Windsor Demaine. The application was scheduled for August 1, 2000. Ms. Gibb seconded the motion which led by a vote of 7-0.

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Mr. Pammel moved that the Board recess and go into Executive Session for consultation with legal counsel and or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and to other specific legal matters requiring the provision of legal advice by counsel pursuant to Virginia Code Section 2.1-344 A7. Mr. Kelley seconded the motion which led by a vote of 7-0.

The Board recessed into Executive Session and reconvened at 12:39 p.m.

Mr. Pammel moved that the Board of Zoning Appeals certify that to the best of its knowledge only public business matters loftily 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 during the Executive Session. The motion was seconded by Mr. Hart which carried by a vote of vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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Page 219, June 13, 2000, (Tape 1), After Agenda Item:

Request to Schedule Hearing, A 96-P-049, Clifton Paul and Nancy Craven

Mr. Pammel moved to schedule the Appeal A-96-P-049, Clifton Paul and Nancy Craven, for public hearing on August 15, 2000, at 9:30 a.m. Mr. Hart seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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Page 219, June 13, 2000, (Tape 1), After Agenda Item:

Approval of June 6, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hart seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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Page 219, June 13, 2000, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing, SP 00-M-036
Concurrent With VC 00-M-077, Vance and Joyce Hough

Mr. Pammel moved to approve the out of turn hearing. The application was scheduled for August 15, 2000. Mr. Kelley seconded the motion which led by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:44 p.m.

Minutes by: Maria Foltz

Approved on: December 12, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 20, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Page 221, June 20, 2000, (Tape 1), Scheduled case of:

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

9:00 A.M. DIANE G. BURGESS, VC 99-L-190 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots with proposed Lot 2 having a lot width of 124.59 ft. and permit existing 6.0 ft. high fence to remain in front yard of a corner lot. Located at 5955 Kathmoor Dr. on approx. 36,056 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-4 ((2)) 31A pt. and 32A. (In association with RZ 1999-LE-072).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Diane Burgess, 5955 Kathmoor Drive, Alexandria, Virginia, replied that it was.

Catherine Belgin, Staff Coordinator, RZ and SE Branch, made staff's presentation as contained in the staff report. The original request included two variances; however, during the process of the associated rezoning, the applicant agreed to replace the fence, which had previously required a variance, with one which conformed to the Zoning Ordinance requirement. Therefore, the applicant only requested a variance for the reduction in the minimum lot width to permit 124.59 feet for proposed lot 2. The Zoning Ordinance requires 125 feet for a corner lot; therefore a variance of .41 feet or approximately 5 inches was required.

Ms. Burgess presented the variance request as outlined in the statement of justification submitted with the application. She stated that the application was straight forward and that the fence was no longer an issue. She informed the Board that there were several lots in the subdivision with frontage less than her request; therefore, it would have no negative impact on the neighborhood.

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

Mr. Hart moved to approve VC 99-L-190 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DIANE G. BURGESS, VC 99-L-190 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots with proposed Lot 2 having a lot width of 124.59 ft. and permit existing 6.0 ft. high fence to remain in front yard of a corner lot (FENCE REQUEST WAS WITHDRAWN). Located at 5955 Kathmoor Dr. on approx. 36,056 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 81-4 ((2)) 31A pt. and 32A. (In association with RZ 1999-LE-072). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 20, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of two (2) lots into three (3) lots, proposed Lot 2 having a lot width of 124.59 feet, as shown on the plat prepared by R.C. Fields Jr. and Associates, dated October 1999, as revised through November 11, 1999, signed December 1, 1999.

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.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. Pammel and Mr. Ribble seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. THANH TROUNG, ANANDA BUDDHIST MEDITATION INSTITUTE, INC., SP 98-P-051 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 3418 Annandale Rd. on approx. 3.36 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A. (Def. From 12/22/98).

Julie Schilling, Senior Staff Coordinator, informed the Board that the applicants had requested a deferral. She explained that the applicants wished to amend the application to adjust the number of parishioners for the proposed place of worship.

Lynne Strobel, agent for the applicant, stated that the number of parishioners was greater than the original submission and the applicants were also revising the plat to provide additional parking onsite.

Mr. Pammel asked where the application was with respect to the 90-day time limit. Ms. Schilling explained that the application had been indefinitely deferred for a period of 18 months when it became apparent that there was a technical flaw in the creation of the lot.

Mr. Pammel moved to defer SP 98-P-051 until August 15, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 7-0.

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REVISED

9:00 A.M. PEYTON E. & JOAN C. DUNCAN, SP 00-V-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from side and rear lot lines, deck to remain 4.5 ft. from side lot line and gazebo to remain 5.8 ft. from side lot line. Located at 8209 Lorton Rd. on approx. 0.34 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-3 ((1)) 6.

9:00 A.M. PEYTON E. & JOAN C. DUNCAN, VC 00-V-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 5.2 ft. and 7.4 ft. from side lot lines, addition 17.7 ft. from side lot line and fences to remain greater than 7.0 ft. in height. Located at 8209 Lorton Rd. on approx. 0.34 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-3 ((1)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peyton and Joan Duncan, 8209 Lorton Road, Lorton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to the minimum yard requirements based on error in building location to allow a shed to remain 4.0 feet from the side and rear lot lines, a deck to remain 4.5 feet from the side lot line and a gazebo to remain 5.8 feet from the side lot line. The Zoning Ordinance requires a side yard of 20 feet; therefore modifications of 16 feet and 7.3 feet for the shed, 15.5 feet for the deck and 15.2 feet for the gazebo were requested.

The applicants also requested variances to permit the construction of a second story addition to be located 5.2 feet and 7.4 feet from the side lot lines, a second story room addition to be located 17.7 feet from the side lot line and three fences greater than 7.0 feet in height to remain. Variances of 14.8 feet and 12.6 feet for the second story addition, 2.3 feet for the second story room addition and fences greater than 7.0 feet were requested.

Mr. Peyton presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He stated that the original structure was built in the 1930's and the lot was very narrow. He said that the fences exceeding 7.0 feet in height were built because of the higher elevation of the homes to the rear and the east side. Mr. Peyton stated that the error in building location was made

prior to their knowledge that a permit was required. He stated that the approval of the applications would provide them with reasonable use and enjoyment of the property and they would not adversely affect the surrounding property owners.

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

Mr. Ribble moved to approve SP 00-V-017 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PEYTON E. & JOAN C. DUNCAN, SP 00-V-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from side and rear lot lines, deck to remain 4.5 ft. from side lot line and gazebo to remain 5.8 ft. from side lot line. Located at 8209 Lorton Rd. on approx. 0.34 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-3 ((1)) 6. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 20, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of accessory structures (storage shed, deck and Gazebo) as shown on the plat prepared by Larry N. Scartz, dated March 10, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb 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 28, 2000. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble moved to approve VC 00-V-043 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PEYTON E. & JOAN C. DUNCAN, VC 00-V-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 5.2 ft. and 7.4 ft. from side lot lines, addition 17.7 ft. from side lot line and fences to remain greater than 7.0 ft. in height. Located at 8209 Lorton Rd. on approx. 0.34 ac. of land zoned R-1. Mt. Vernon District. Tax Map 107-3 ((1)) 6. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 20, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
- 3. The lot is very narrow and has exceptional topographical 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.

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

- 1. This Special Permit is approved for the location of additions and fences as shown on the plat prepared by Larry N. Scartz, dated March 10, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The additions 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 addition 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.

Ms. Gibb 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 28, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 226, June 20, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-6 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 for a cemetery and mausoleum to permit a funeral home and crematory and change in permittee (columbarium use proposed with SPA 81-A-022-5, BZA hearing 6/6/00). Located at 9900 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 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. Grayson Hanes, 3110 Fairview Park Drive, Suite 1400, Falls

Church, Virginia, replied that it was.

Mr. Hanes explained that the case was to be heard by the Planning Commission on July 12, 2000. He requested a deferral until after that hearing and said that the applicant was aware of the 90-day time limit and was agreeable to the deferral. He requested a hearing date of July 25, 2000.

Mr. Pammel moved to defer SPA 81-A-022-6 until July 25, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 227, June 20, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DOUGLAS & BARBARA HESS, VC 00-S-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from rear lot line. Located at 9337 Mainsail Dr. on approx. 10,990 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((26)) 199.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alec Gibson, 1819 N. Hollister Street, Arlington, Virginia, replied that it was.

Phylis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a one-story addition to be located 8.5 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 16.5 feet was requested.

Mr. Gibson, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property had exceptional shallowness, which was caused by a pipestem lot configuration. He stated that much of the area was assigned to the pipestem, which left a very shallow lot.

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

Ms. Gibb moved to approve VC 00-S-037 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS & BARBARA HESS, VC 00-S-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from rear lot line. Located at 9337 Mainsail Dr. on approx. 10,990 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((26)) 199. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 20, 2000; and

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

1. The applicants are the owners of the land.
2. The lot is exceptionally shallow.
3. The impact of the addition will be 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Alec Winston Gibson, Architect, revised through March 12, 2000 and certified on March 14, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. 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 28, 2000. This date shall be deemed to be the final approval date of this variance.

9:00 A.M. JOHN M. & DEBORAH C. WATSON, VC 00-B-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from side lot line such that side yards total 21.8 ft. Located at 5105 Concordia St. on approx. 15,051 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4 ((5)) (2) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John and Deborah Watson, 5105 Concordia Street, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 6.8 feet from the side lot line such that side yards total 21.8 feet. The Zoning Ordinance requires a minimum side yard of 8.0 feet and a total side yard measurement of 24 feet; therefore, variances of 1.2 feet for the side yard and 2.2 feet for the total minimum side yard were requested.

Mr. Watson presented the variance request as outlined in the statement of justification submitted with the application. He stated that the garage addition was needed to provide shelter for his wife's ailing mother.

Chairman DiGiulian called for speakers.

Suzanne Harsel, (no address given for the record), came forward to speak in support. She voiced her support for the application and said that it was a reasonable request.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 00-B-040 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN M. & DEBORAH C. WATSON, VC 00-B-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from side lot line such that side yards total 21.8 ft. Located at 5105 Concordia St. on approx. 15,051 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4 ((5)) (2) 24. 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 20, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot contains exceptional topographical conditions.
4. 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.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the addition (garage) shown on the plat prepared by Ross, France & Ratliff, Ltd., dated January 22, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 230, June 20, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DANA S. GIBBONS, SP 00-B-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit accessory structure to remain 6.5 ft. from side lot line. Located at 8917 Littleton St. on approx. 21,781 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) R.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dana Gibbons, 8917 Littleton Street, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a modification to minimum yard requirements based on an error in building location to permit an accessory structure to remain 6.5 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet. The amount of error was 13.5 feet or 68 percent of the required minimum yard.

Ms. Gibbons presented the special permit request as outlined in the statement of justification submitted with the application. She said they had removed an old shed and carport from the property and constructed their garage. She explained that the error in building location was done in good faith and there were several garages in the neighborhood located on the same area of the property. She said there was full neighborhood support.

Mr. Pammel asked for clarification if the old shed and carport had been removed. Ms. Gibbons stated that they were.

Mr. Hart asked if there was plumbing in the garage. Ms. Gibbons answered no. He asked if there was a room above the garage. Ms. Gibbons replied that there was storage both above and on the side of the garage.

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

Mr. Pammel moved to approve SP 00-B-016 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANA S. GIBBONS, SP 00-B-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit accessory structure to remain 6.5 ft. from side lot line. Located at 8917 Littleton St. on approx. 21,781 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) R. 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 20, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the garage shown on the plat prepared by R C Fields, Jr. & Associates, dated September 30, 1999, submitted with this application and is not transferable to other land.
- 2. A building permit shall be obtained and final inspections shall be approved within one-hundred and twenty (120) days following issuance of the Building Permit or this Special Permit is null and void.
- 3. The structure noted on the plat as a storage shed with deck shall be removed from the site within thirty (30) days following BZA approval.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart 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 28, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 232, June 20, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHANG S. & CHUNG S. KIM, SPA 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 94-S-033 for a golf driving range to permit change in development conditions, site modifications and building additions. Located at 11501 Braddock Rd. on approx. 46.45 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (Def. From 3/14/00)(Def. From 5/23/00 for decision only)

Chairman DiGiulian noted that the case was deferred for decision only from May 23, 2000.

Lynne Strobel, agent for the applicant, stated that the applicant had three components with the request and the first two did not have any controversy associated with them. She said that they were for additional parking spaces and an equipment building. Ms. Strobel submitted several additional development conditions, which reflected the applicant's suggestion of closing 1 hour earlier through the months of January and February. She said the applicant was agreeable to extend that time period an additional two weeks on either side so the driving range would close at 8:00 p.m. from December 15th until March 15th. She explained that people who were avid golfers attended the driving range in bad weather and in the dark and there was a very loyal clientele that visited the driving range even during the winter months. She informed the Board that the applicant made a very significant effort to address the community concerns. She stated that if the

condition was not acceptable to the Board the applicant wished to go back to the originally approved conditions. Ms. Strobel said that the applicant had installed 400 watt light bulbs in lieu of the 1,000 watt bulbs and that it had made a difference although the neighborhood could not tell due to the vegetation on the trees. She suggested changing Development Condition #10 to reflect barrier requirements be waived along all lot lines, as the applicant had not installed any fencing at the request of several neighbors.

Mr. Hammack asked for staff's position with respect to the proposed revisions to the development conditions. Mr. Bernal stated there were no objections.

Mr. Hammack asked if the citizens that were affected by the driving range were agreeable to the conditions. Ms. Strobel stated that they might still have some issues but she had not heard from two of them. She added that there was no way to please all parties; however, the applicant made significant changes that affected his business to address citizen concern.

Mr. Hart noted that the applicant's revised Development Condition #8 did not reflect an illumination plan and asked whether it needed to be referenced or if there was another measure to control the brightness of the lights. Mr. Bernal replied that an illumination plan did not need to be included in the development conditions because the Zoning Ordinance mandated a maximum foot candle of 0.5 at the lot line and the last reading on the property was .04.

Mr. Hart asked the difference between staff's proposed Development Condition #9 and the applicant's revisions to it. Mr. Bernal replied that staff had no issue with the applicant's revisions, as they were more restrictive than the original application.

Chairman DiGiulian called for speakers.

John Hilton, 5100 Meath Court, came forward to speak in opposition. He said that it was not appropriate to eliminate the illumination plan from the conditions. He stated that the lights from the driving range affected his ability to enjoy his deck in the early evening hours; therefore, the applicant's proposed changes to the hours of operation were moot. He said that the applicant was operating in violation of the Zoning Ordinance and should not be able to operate until the range was brought into compliance.

Mr. Hammack asked Mr. Hilton, what time, during the winter months, was appropriate to turn the lights to the driving range off. Mr. Hilton replied that the lights come on at 5:00 p.m. beginning in November and were too bright. Mr. Hammack asked if he had noticed any change in the illumination with the implementation of the 400 watt bulbs. Mr. Hilton replied that he had not.

Mr. Hart suggested that changes should be made to Development Conditions #10 and #26 to eliminate all barrier requirements, as there were no fences along the western and northern boundary lines. He also noted the word severe was misspelled in Development Condition #13.

The Board discussed with staff and Ms. Strobel the lighting issues entailed in Development Condition #8. The outcome was the following additional language: Each of the fixtures shall have a maximum of one bulb. Each of the six, (6) light poles will have a maximum of three (3) fixtures. Each of the fixtures will have a maximum of one (1) bulb. A minimum of two (2) of the three (3) light fixtures on each pole for the lighting of the driving range shall be limited to bulbs that are a maximum of four hundred (400) watts. The third bulb shall not exceed 1000 watts.

Mr. Hammack moved to approve in part SPA 94-S-033 with the revised conditions submitted by staff dated June 20, 2000, and with the following modifications:

8. A minimum of 2 of the three light fixtures for the driving range should be limited to bulbs that are a maximum of 400 watts. The parking lot lights shall be no more than 12 feet in height and shall be directed into the parking lot. All lights shall be equipped with shields to ensure the glare and nuisance light do not impact adjoining properties. Accessory uses such as the practice holes and putting greens in the entrance driveway shall not be lighted.
9. The hours of operation for the golf driving range and accessory uses shall be limited to 7:00 a.m. to 6:00 p.m., seven (7) days a week, from November 1st until April 30th and from 7:00 a.m. to 10:00 p.m., seven (7) days a week from May 1st to October 31st. The hours of operation for the golf driving

range and accessory uses shall be limited to 7:00 a.m. to 10:00 p.m., seven (7) days a week, beginning May 1st through October 31st except that the club house and maintenance building may be used until 10:30 p.m. There shall be no operation of loudspeakers, machinery, mowing equipment or mechanical ball gathering prior to 9:00 a.m. or after 9:00 p.m.

Mr. Hammack also amended Development Condition #10 to waive the barrier requirements on all lot lines. Mr. Pammel seconded the motion. Mr. Hart mentioned a change to development condition #26 and suggested that the changes to Development Condition #8 be included in the motion.

Mr. Hammack amended his motion to delete the second sentence that related to barrier requirements from Development Condition #26, to correct the misspelling of the word severe in Development Condition #13, and to add the additional language suggested by the Board, to Development Condition #8.

Ms. Gibb stated that 6:00 p.m. was too early to close. Mr. Hammack said he would be agreeable to a closing time of 6:30 p.m. or 7:00 p.m. with ½ hour to close during the winter months. Mr. Hammack explained that the idea for the early closing was to eliminate the impact on the residential neighborhood. Ms. Gibb said that she didn't think the applicant could stay in business with the proposed hours. Mr. Hammack stated that he made the motion for the purposes of discussion. He said the original hours of operation were from 7:00 a.m. to 9:00 p.m. year round.

The Board, staff and Ms. Strobel discussed revisions to Development Conditions #8 and #9. Mr. Hammack amended his motion to incorporate the following revisions to Development Conditions 8 and 9.

8. Illumination of the driving range shall consist of a maximum of six (6) lighted poles, each no greater than thirty (30) feet in height above ground level. The driving range lights shall be extinguished by 8:00 p.m. each night from December 15th until March 15th, by 9:00 p.m. each night from November 1st until December 14th and March 16 until March 31st, and by 10:00 p.m. each night during the months of April through October. All other lighting on site shall also be extinguished by 10:30 p.m. each night during the months of April through October and by 9:30 p.m. during all other months. Each of the six, (6) light poles will have a maximum of three (3) fixtures. Each of the fixtures shall have a maximum of one bulb. A minimum of two (2) of the three (3) light fixtures on each pole for the lighting of the driving range shall be limited to bulbs that are a maximum of four hundred (400) watts. The third bulb shall not exceed 1000 watts. Parking lot lights shall be no more than twelve (12) feet in height and shall be directed onto the parking lot. All lights shall be equipped with shields to assure that glare and nuisance light do not impact adjoining properties. Accessory uses such as the practice holes and putting green, and the entrance driveway shall not be lighted. The applicant shall comply with all County Ordinances applicable to ambient light distribution on adjoining properties.
9. The hours of operation for the golf driving range and accessory uses shall be limited to 7:00 a.m. to 8:00 p.m., seven (7) days a week, from December 15th until March 15th, 7:00 a.m. until 9:00 p.m. seven (7) days a week from March 16th until March 31st and November 1st until December 14th, except that the clubhouse and maintenance building may be used until 9:30 p.m. The hours of operation for the golf driving range and accessory uses shall be limited to 7:00 a.m. to 10:00 p.m., seven (7) days a week, during the months of April through October, except that the clubhouse and maintenance building may be used to 10:30 p.m. There shall be no operation of loudspeakers, machinery, mowing equipment or mechanical ball gathering prior to 8:00 a.m. on weekdays and 9:00 a.m. on weekends or after 9:00 p.m.

Mr. Hammack moved to approve SPA 94-S-033 with the applicant's revised development conditions, and the Board's revised development conditions. Mr. Pammel seconded the motion which carried by a vote of 7-0.

(Subsequent to this approval on June 27, 2000, the BZA granted a request for reconsideration and scheduled a reconsideration hearing for September 19, 2000).

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Page 235, June 20, 2000, (Tape 1), After Agenda Item:

Revisions to the Board of Zoning Appeals By-Laws

Mr. Ribble moved to defer the issue for another week. Mr. Kelley amended the motion to defer the item until after the August recess. There was no second and the motion carried by a vote of 7-0.

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Page 235, June 20, 2000, (Tape 1), After Agenda Item:

Consideration of Acceptance of Appeal
EOP Reston Town Center, L.L.C.

William E. Shoup, Deputy Zoning Administrator, stated that the request was to limit the scope of the appeal which challenged the determination of the Department of Public Works and Environmental Services (DPWES), to approve a site plan for commercial development in the Reston Town Center Urban Core on property owned by Westerra Reston, L.L.C. The property is referred to as Terrabrook.

Mr. Shoup stated that the appeal was timely filed; however, one aspect of the appeal was not properly before the Board of Zoning Appeals (BZA). Mr. Shoup explained that the appellant raised three grounds in the appeal. He said the first one was that Terrabrook failed to satisfy the relevant proffers. He stated that Sec. 18-301 of the Zoning Ordinance mandated that any appeal which related to a proffered condition must be appealed to the Board of Supervisors (BOS) and the appellant did not do that. Mr. Shoup stated that the third ground relating to the proffer issue was not properly before the BZA and asked that the BZA accept the appeal, but limit the scope of the appeal to exclude consideration of the proffer issue that was set forth as the third ground of the appeal. Mr. Shoup recommended a hearing date of September 12, 2000.

Mr. Pammel asked whether or not an interpretation made by Barbara Byron, Division Director, could be appealed to the BZA. Ms. Byron replied that she had received two questions for interpretation and the first related to an issue of the process by which a pending site plan had to go to the Reston Design Review Board and the Planning Commission pursuant to the proffers that govern the Town Center. She said she had answered the first part and the second part had not been answered because of ongoing discussions; however, since it was an issue relating to Proffers it would be appealed to the Board of Supervisors. Ms. Byron explained that the issue that had not been answered related to the allocation of density, which was really the main issue in the case. She said the aspect of the letter, that staff requested the BZA not to accept, was a procedural issue which related to the Proffers and how the site plan was reviewed prior to its approval by DPWES. Ms. Byron stated that she had addressed that issue and as the appellant had not appealed, it was no longer applicable to appeal; however, the main issue regarding the density was still indistinct. She stated that if a mutual resolution of the issue was not found, she would issue a letter and it most likely would be appealed to the BOS.

Joseph Thompkins, agent for the appellant, stated that the issue of the appeal was Terrabrook's failure to submit architectural plans to the Reston Design Review Board and receive approval of those plans before submitting the site plan for approval. He explained that Terrabrook submitted their site plans in September 1999, without submitting their architectural drawings to the Reston Design Review Board for approval until April 2000; therefore, Terrabrook violated the proffered conditions. Mr. Thompkins maintained that the appellant was not appealing a decision of the Zoning Administrator, but a decision of DPWES and their approval of the site plan; therefore, the applicant was appropriately appealing to the BZA. He voiced his concern that if the appellant were to approach the BOS with the appeal, they would refer the appeal back to the BZA.

Chairman DiGiulian called for speakers.

Frank McDermott, agent for Terrabrook, stated that the consistent pattern was that any appeal of an interpretation regarding proffers went before the Board of Supervisors.

Mr. Tompkins, in his rebuttal, reiterated that the issue of the appeal was not an interpretation of a proffered condition, but that the process of the proffered conditions was not followed.

Mr. Hammack stated that the arguments were interesting; however, the BZA had fairly consistently referred any issue regarding proffered conditions back to the County Board.

Mr. Hammack moved to accept the appeal for EOP – Reston Town Center, L.L.C. ("Equity") as recommended by the Zoning Administrator.

Mr. Kelley seconded the motion.

Ms. Gibb stated that she agreed with the appellant that it was a form over substance issue, that it did not involve the interpretation of the proffer but rather that the proffers weren't met. She stated that the BZA should hear the appeal in its entirety as matters of judicial economy.

Mr. Pammel stated he also felt it was a procedural issue. The motion failed by a vote of 3-4. Mr. Hammack, Mr. Kelley, and Mr. Ribble voted aye and Chairman DiGiulian, Ms. Gibb, Mr. Hart and Mr. Pammel voted nay.

Mr. Pammel moved to accept the appeal in its totality. Ms. Gibb seconded the motion which carried by a vote of 4-3. Mr. Hammack, Mr. Kelley and Mr. Ribble voted nay.

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Page 236, June 20, 2000, (Tape 1), After Agenda Item:

Consideration of Acceptance of Appeal
Syed Aslam Ali

Chairman DiGiulian recused himself because his office prepared the site plans for the property that was the subject to the appeal.

William E. Shoup, Deputy Zoning Administrator, stated that the request was to limit the scope of the appeal. He said the appeal was from an April 17, 2000, Notice of Violation pertaining to the appellant's service station operation. He explained that the letter addressed a number of issues which included citing the appellant for food sales activity and for the establishment of canvas covered service bay additions to the building. He stated that, with the exception of those two issues, staff believed the appeal was complete and timely filed. He said that the food sales activity and food bay additions were not properly before the BZA because the two items were the subject of a 1995 Notice of Violation, which was appealed at that time, but was withdrawn after the appellant obtained special exception approval. He said the special exception approval was an attempt to legitimize those activities. Mr. Shoup informed the Board that the special exception approval had expired and the two previously cited violations had never been resolved; therefore, the two violations were no longer appealable. He requested that the BZA limit the scope of the appeal to exclude consideration of the food sales and the addition to the service bay. Mr. Shoup recommended a public hearing date of August 1, 2000, at 9:30 a.m.

Thomas R. Williams, Jr., 6901 Old Keene Mill Road, Springfield, agent for the appellant, stated that the special exception remained valid. He said that use and construction commenced within the recusant time periods; therefore, all alleged violations should be considered when the appeal was heard. He explained that upon the filing of the first appeal in 1995, there was a second violation issued in February of 1999, for which an appeal was timely filed. He said there was no communication from the County regarding the second appeal until the appellant was not allowed to obtain a building permit from Fairfax County. He stated that the appellant was under the assumption that the County had accepted that construction had been implemented according to the terms of the special exception.

Mr. Pammel asked what was the basis for staff's conclusion that the special exception had lapsed. Mr. Shoup replied that the appellant was required to diligently prosecute the special exception within 6 months of the date of the approval of the special exception and that did not occur. He stated that the appellants got the special exception to legitimize the food sales activity and, in that approval, they were required to construct a permanent service bay addition to the service station building. He informed the Board that the construction would have had to commence within 6 months of the approval date and it had not.

Mr. Pammel asked if there was any effort shown to attain a building permit or site plan approval for the additional bay. Mr. Shoup replied that the appellant filed for site plan approval; however, the site plan wasn't submitted within the 6 month period and there never was approval.

Page 237, June 20, 2000, (Tape 1), After Agenda Item, continued from Page 236

Mr. Ribble asked the appellant if there had been any activity. Mr. Williams replied that there had been a wrought iron ornamental iron rail fence installed, separating the service station and an adjoining restaurant, within weeks after the granting of the special exception. Mr. Williams maintained that, had the building permit been issued, the project would have been completed in a timely fashion.

Mr. Hammack asked whether the site plan had been submitted within the 6 month period. Mr. Williams answered that he did not have that information. Mr. Shoup also stated that he did not have that information.

Mr. Hammack moved to accept the application subject to dealing with the issue raised by the Zoning Administrator at the hearing to sort out whether that part of the appeal was properly submitted or not. He stated his preference would be to have the whole hearing at one time rather than have bifurcated sections. Mr. Hammack voiced his curiosity about whether or not the appellant did what was required in order to file all of the submissions within a 6 month period.

Mr. Hammack seconded the motion which carried by a vote of 6-0-1. Chairman DiGiulian recused himself from the discussion.

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Page 237, June 20, 2000, (Tape 1), After Agenda Item:

Approval of June 13, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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Page 237, June 20, 2000, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request
Lawrence E. Junkins
VC 00-B-078

Mr. Pammel stated that the case was scheduled for August 15, 2000, and asked staff if there was any way to move it up on the agenda.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that there were no earlier dates available on the agenda.

Mr. Pammel moved to deny the request. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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Mr. Hart mentioned that Jane Kelsey was in the audience and asked whether she had an issue. Mr. Ribble stated that it was regarding a change in permittee.

Ms. Kelsey stated that she was not expecting to speak to that issue and that she was present to hear the outcome of both appeals.

Mr. Ribble asked if Ms. Kelsey was available to speak to the issue the following week. Ms. Kelsey stated that she would be present.

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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

Minutes by: Lori M. Mallam

Approved on: September 26, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiuliano

John DiGiuliano, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 27, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 239, June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. O-LUCK, INC., T/A HAPPI BILLIARDS & CAFE, SPA 99-M-037 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 99-M-037 for billiard and pool hall to permit change in development conditions. Located at 7127-C Little River Trnpk. on approx. 26,262 sq. ft. of land zoned C-6, HC, CRD and SC. Mason District. Tax Map 71-1 ((23)) C. (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. Bi Kim, 5530 Chesterwood Drive, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit amendment to permit a change in development conditions to allow the billiard and pool hall with an eating establishment to change the hours of operation. The applicant currently operated from 11:30 a.m. to 11:00 p.m., Sunday through Thursdays and 11:30 a.m. to 1:30 a.m., Fridays and Saturdays. The proposed change of hours were from 10:30 a.m. to 3:00 a.m., seven days a week. He said there were no proposed physical changes to the site. Staff was concerned with the request for hours to 3:00 a.m. Mr. Bernal stated that even though there was a very narrow strip of commercially zoned property across John Marr Drive to the rear of the application parcel, directly beyond this strip were the rear yards of single family dwellings. He said those rear yards were approximately 100 feet from the application property. There were parking spaces at the rear of the site which patrons and employees might use which could cause disturbance to the neighborhood from people departing the billiard hall at 3:00 a.m. Staff felt that 2:00 a.m. would be more in line with the surrounding business hours and other special permit approvals for billiard halls adjacent to residential neighborhoods. Previously approved billiard and pool halls had closing hours that ranged from 10:00 p.m. to 2:00 a.m. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, staff recommended approval of SPA 99-M-037 subject to the Proposed Development Conditions dated June 20, 2000.

Mr. Kelley asked if there were other billiard halls open to 3 a.m. Mr. Bernal replied none under special permit approval.

Ms. Kim presented the request as outlined in the statement of justification submitted with the application. She said the 3 a.m. time would not cause any disturbances because the windows were always kept closed. Ms. Kim stated that there was 135 feet between the parking lot and the houses.

Mr. Hart asked the applicant if she had returned her liquor license. Ms. Kim replied that they didn't sell a lot of alcohol and that they sold only beer.

Mr. Hart asked if there was a time limit. Ms. Kim replied that they only sold beer until 1:00 a.m. and after that time they cleaned the tables.

Mr. Hart asked if the extension of hours were granted would they sell beer after 1 a.m. Ms. Kim stated that they would not sell any beer after 1 a.m.

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

Mr. Pammel moved to approve SPA 99-M-037 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

O-LUCK, INC., T/A HAPPI BILLIARDS & CAFE, SPA 99-M-037 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 99-M-037 for billiard and pool hall to permit change in development conditions. Located at 7127-C Little River Trnpg. on approx. 26,262 sq. ft. of land zoned C-6, HC, CRD and SC. Mason District. Tax Map 71-1 ((23)) C. (OTH GRANTED). 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 27, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the criteria for 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 Sect(s).4-603 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, O-Luck, Inc. t/a Happi Billiards and Café 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. Other by-right, special exception and special permit uses may be permitted on the lot without special permit amendment, if such uses do not affect this special permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by John A. Ferri A.I.A. and Associates., dated April 16, 1999 as revised through June 9, 1999, and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modification to the approved special permit may be permitted pursuant to Par. 4 of Sect.8-004 of the Zoning Ordinance.
4. 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.
5. The applicant shall comply with all applicable alcoholic beverage control laws of the Commonwealth of Virginia.
6. Hours of operation shall not exceed 10:30 A.M. to 2:00 A.M., daily.
7. Seating in the eating establishment shall be limited to a maximum of 40 seats. Billiard/pool tables

shall be limited to a maximum of 12.

8. Any and all signs and awnings associated with this use that are affixed to the building shall be architecturally compatible with the shopping center. All Signs shall be subject to and in compliance with Article 12 of the Zoning Ordinance.
9. Parking spaces shall be provided in accordance with Article 11 of the Zoning Ordinance as determined by the Department of Public Works and Environmental Services (DPWES).

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. 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. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 241, June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. FUNATICS, LLC, SP 00-Y-021 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit commercial recreation use. Located at 13955 Metrotech Dr. on approx. 6.85 ac. of land zoned C-8, HC and WS. Sully District. Tax Map 34-4 ((1)) 16E.

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

Mr. Hart stated that he had a disclosure. He said that currently he had several cases in the Circuit Court in Loudoun County where there were attorneys from Mr. Oden's firm on the other side and he didn't believe any of those matters would affect his ability to participate in this case.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of special permit to allow a Group 5 commercial recreation use, to establish a family fun and celebration center. The facility proposed to consist of indoor and outdoor recreational activities. The indoor activities included: several educational game rooms, a duck pin bowling alley, studio areas, a restaurant serving the facility, picnic areas, indoor mechanical rides, climbing areas, and other related educational and recreational activities. The outdoor activities included: a confined batting cage, party and eating areas, zero depth water play area, bumper boats, play maze and play campfire areas. No additional construction to the existing building was proposed. Mr. Bernal stated that the facility proposed the estimated number of patrons to be 947 per day during the peak demand period. The peak demand period was anticipated to be on weekends from late spring through early fall. The proposed number of employees were ten (10) full-time employees and forty (40) part-time employees. The hours of operation were 10:00 a.m. to 8:00 p.m., seven days a week. Mr. Bernal stated that in response to the applicant's inquiries regarding cost of the signalization at Metrotech drive and Centreville Road, staff revised the development conditions to reflect the cost as per the Department of Transportation. He said the Revised Development Conditions were

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dated June 27, 2000. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and therefore, recommended approval subject to the Revised Proposed Development Conditions.

Mr. Oden, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the subject property was located in the middle of a shopping center that was about 50% empty. Mr. Oden stated that the outside activities were far removed from the neighbors. He stated that the proposed use was an extension of the community that was vitally needed. Mr. Oden said the facility would provide entertainment for parents in conjunction with their children. He requested a change in the proposed hours to be Sunday through Friday 10:00 a.m. - 10:00 p.m. and Saturdays 10:00 a.m. - 11:00 p.m. Mr. Oden requested that the applicant have the option to open later during special events throughout the year or when they rented the facility for private parties. He said with respect to the contribution for the stoplight, he felt that was somewhat unusual. Mr. Oden said that the shopping center itself should have made those contributions, but the applicant had agreed to it. He said as he understood the standard language regarding site plans, that if the request required a site plan then they would file one, but in this case they were not changing anything and the applicant wasn't sure that a site plan was needed.

Mr. Pammel stated that with this proposal the applicant might be the source of a revitalization of this center. Mr. Oden said they hoped so.

Mr. Pammel asked if the hours of operation were advertised. Mr. Bernal replied no, that the BZA had the flexibility to change it.

Mr. Hart asked staff if they had a problem if the BZA changed the hours of operation. Mr. Bernal replied no.

Mr. Hart asked whether Development Condition #5 conflicted with Development Condition #3 to the extent that now they were saying that the landscape plan would be reviewed at the time of site plan review. He asked what happened if the Director agreed that there was no site plan. Julie Schilling, in capacity of Acting Branch Chief, Special Permit and Variance Branch, stated that at the time the Director of the Department of Public Works and Environmental Services would review the development conditions to determine whether or not a site plan was needed or what type of site plan was needed, with the requirement for a landscape plan, generally what they would look at was the area of disturbance involved in order to determine whether a site plan was required. She said it might be that a full site plan would not be required.

Mr. Hart said his question specifically was whether Condition #5 inadvertently required a site plan. Ms. Schilling stated that perhaps not a full site plan, it might be a minor site plan. She said they would have to calculate what the amount of disturbed area on the site was and whether the landscaping would trigger that requirement.

Mr. Hart asked about Condition #9 and whether the figure was \$7500 as opposed to \$15,000. Ms. Schilling stated that this was the result of recent discussions with the Department of Transportation and with the applicant. She said the \$7500 was the figure that the applicant was amenable to.

Mr. Oden stated that he had misspoke and requested the hours to extend to 11:00 p.m. on Friday night as well as Saturday night.

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

Mr. Hart moved to approve SP 00-Y-021 for the reasons noted in the Resolution.

Mr. Kelley stated that he was uncomfortable with Development Condition #9 with any amount of money because he hadn't seen it before and he thought it would be the type of fee assessed to the shopping center and not the individual tenant.

Ms. Schilling stated that it was her understanding from the Department of Transportation that it was typical that if someone came in for site plan approval that it was something that was assessed at that time. She said it was unclear at this point whether they would need site plan approval, but the opinion of the Department of Transportation was that the amount of traffic generated from the use, intuitively would be more than what

you normally would see for the previous use on the property and that was generally the recommendation for the development conditions.

Mr. Hart said that area of Centreville Road was very dangerous and it was very difficult to get in and out of the shopping center. He said this was similar to a condition that was included from time to time for special exception applications that were approved by the Board of Supervisors where there was something changing in the vicinity of an area of a bad intersection.

Ms. Gibb noted that in Condition #1, if ever there was a change in name of the permittee that maybe the Board should delete the part that says it was granted to the applicant only and not transferable with further action of the Board and just have that it was for the subject location based on the County Attorney's letter to the BZA.

Chairman DiGiulian stated that he would like to wait to discuss the County Attorney's memorandum.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FUNATICS, LLC, SP 00-Y-021 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit commercial recreation use. Located at 13955 Metrotech Dr. on approx. 6.85 ac. of land zoned C-8, HC and WS. Sully District. Tax Map 34-4 ((1)) 16E. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2000; and

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

- 1. The applicant is the owner of the land.

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 Sect(s).4-803 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicant, FUNATICS, L.L.C. 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. Other by-right, special exception and special permit uses may be permitted on the site without special permit amendment, if such uses do not affect this special permit use.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by John A. Ferri A.I.A. and Associates., dated March 5, 2000, and approved with this application, as qualified by these development conditions.
- 3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit

plat and these development conditions. Minor modification to the approved special permit may be permitted pursuant to Par. 4 of Sect.8-004 of the Zoning Ordinance.

4. 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.
5. At the time of site plan review, a Landscape Plan shall be submitted for review and approval by the County Urban Forester. The plan shall depict a combination of flowering trees and shrubs where possible within the parking islands, and building foundation landscaping plantings to the satisfaction and approval of the County's Urban Forester.
6. All plant materials on the application site (6.74 acres) shall be maintained in good condition, and/or dead and dying plant material shall be replaced as necessary.
7. The hours of operation shall not exceed 10:00 A.M. to 10:00 P.M., Sunday through Thursday and 10:00 A.M. to 11:00 P.M., Friday and Saturday. After hours parties, including the hours of the event, may be permitted with the approval of the Zoning Administrator by written request at least 14 days prior to the event.
8. The number of parking spaces shall be provided in accordance with Article 11 of the Zoning Ordinance as determined by the Department of Public Works and Environmental Services (DPWES). All parking for the use shall be on-site.
9. The applicant shall contribute \$7500 dollars to Fairfax County for the signalization of the intersection of Metrotech Drive and Centreville Road. The contribution shall be made prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the use.
10. The applicant shall provide a parking analysis for the site to ensure adequate parking is provided for the shopping center and shall provide a traffic signal analysis for the intersection of Metrotech Drive and Centreville Road. These shall be reviewed by DPWES and VDOT at the time of site plat review.
11. Any signs and awnings associated with this use that are affixed to the building shall be architecturally compatible with the shopping center. All Signs shall be subject to and in compliance with Article 12 of the Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be 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. 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 5-0-1. Mr. Hammack abstained from the vote and Mr. Ribble was not present for the vote. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 9:34 and reconvened at 9:51.

Page 245, June 27, 2000, (Tape 1), continued from Page

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Mr. Kelley moved to waive the 8-day waiting period for all applications heard on June 27, 2000. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 245, June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at the intersection of Hooes Rd. and Pohick Rd. on approx. 9.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 13A. (Moved from 5/9/00)

Chairman DiGiulian noted that the application had been deferred for decision only from June 13, 2000.

Mr. Hammack asked staff if they had reviewed the material submitted by the applicant concerning Outlots A and B. Julie Schilling, Acting Branch Chief, Special Permit and Variance Branch, indicated that Susan Langdon, Chief, Special Permit and Variance Branch, and Juan Bernal, Staff Coordinator, did meet to review the material.

Mr. Hammack asked for comments from staff relating to the material submitted. Mr. Bernal stated that staff did not have any comments but they had read over the materials that were submitted and they concurred with the letter from by the applicant.

Mr. Hammack asked staff to explain why Outlots A and B should not be part of the special permit application. Ms. Schilling replied that the outlot in question was included for density purposes as part of the Ashton Glen subdivision; therefore, you could not include that in the Floor Area Ratio (FAR) calculations for the church. She said technically the outlot could be included as part of the church application but that area could not be used in the calculation of FAR because the density had already been accounted for in the previous Ashton Glen Subdivision. Ms. Schilling stated that when it was approved, an access road was already shown through the outlot in order to access an old shopping center which never materialized.

Mr. Hammack asked what if the church did not build that entrance, would the special permit still be valid. Ms. Schilling stated that providing that adequate access was taken elsewhere to a public road.

Mr. Hammack asked what would happen if the applicant decided to remove the homeowners association's gazebo. Ms. Schilling stated that staff heard from Land Acquisition in the Department of Public Works and Environmental Services and it was their position that the gazebo, placed where it was currently, was subject to be taken when road improvements occurred. She said the Virginia Department of Transportation would remove it anyway. Ms. Schilling stated that unless it was relocated to another position, the future of the gazebo at its present location was in doubt.

Mr. Hammack asked what if the applicant did not comply with the landscaping requirements on Lots A or B. Ms. Schilling replied that if the landscaping were subject to the development conditions that had been agreed to by the applicant, then that would be a matter of Zoning Enforcement action to enforce the development conditions in effect for the special permit.

Mr. Hammack asked what if the conditions did not apply to those lots. Ms. Schilling stated that if there was a development condition that was subject to the approval of the church, staff would be able to require enforcement.

Ms. Strobel, the applicant's agent, came forward to address the Board's questions. She said that if there was a development condition that stated that the applicant shall demonstrate access with the recordation of an ingress/egress easement at the time of site plan approval, that would provide assurances that access would be provided. Ms. Strobel stated that if there was a desire to provide landscaping on the outlots, the applicant could agree to that.

Page 246, June 27, 2000, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011, continued from Page 245

Mr. Hart stated that there should be a condition about the outlot remaining in common ownership with the other parcel.

Mr. Hammack stated that since the deed into the Diocese was in fee simple, why did the applicant want to maintain the community association gazebo, if the community association had no right to use it. Ms. Strobel replied that they were offering that as a gesture to the community that they would not remove it.

Mr. Hart asked about the signs for overflow parking. Ms. Strobel stated that the applicant had no objection to no church parking signs on Green Garland Street and Blue Jasmine Court.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated there was a lot of opposition from the Ashton Glen community to the proposal from the applicant. He said in Fairfax County, however, church applications were expressly permitted in residential communities and appropriately sited and subject to the conditions set forth in the Ordinance with respect to compatibility to residential neighborhoods and ingress/egress requirements and meeting the other criteria. Mr. Hammack said it was interesting to note that in the past week in receiving background information from Ms. Strobel, that the subject site was originally planned to be commercial at the time it was submitted to the County Board for review. He said when Ashton Glen was approved, the whole 9.9 acres was dedicated to commercial. Mr. Hammack stated that had the developer taken the initiative to develop it at the time, there could have been a shopping center there instead of a church application. He said there were a lot of things about the application that were positive. Mr. Hammack said it was on Hoes Road which was a natural barrier from the community and it was on Pohick Road which was also a main road and met the criteria in the Comprehensive Plan. He said the main drawback to the application was the ingress/egress off Groveland Drive. Mr. Hammack stated that a lot of the church traffic was going to have to use Groveland Drive and that would have some impact on the community. He said the obligation of the Board was to try to look at the application and determine whether the impact was compatible with the neighborhood and whether the application should be approved or disapproved. Mr. Hammack said when the school was included in the application, because of the intensity of the development, it resulted in the BZA denying the application. He said the applicant had returned with a new application, reconfigured the property some, but most importantly, deleted the school which would eliminate the school related impact during the week. Mr. Hammack stated that there was still a lot of traffic generated by the church with a seating capacity of 940 seats. He said the site losing one acre to VDOT, made the site smaller than originally proposed for functional purposes. He said the site had the maximum number of parking spaces which introduced a lot of impervious surface and parking into the residential community, but by way of comparison, it would be no more than a shopping center. Mr. Hammack said his own feeling was that the church was larger in the number of seats than it ought to be. He moved to approve the church with a lesser amount of seating to reduce the impact of the parking on the community to a level he thought was compatible.

Mr. Hammack moved to approve SP 00-S-011 for the reasons noted in the Resolution.

Mr. Ribble stated that the motion was a good one that would help mitigate parking and traffic and that he would support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at the intersection of Hoes Rd. and Pohick Rd. on approx. 9.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 13A. (Moved from 5/9/00) (Def. for dec. only from 6/13/00) 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 27, 2000; and

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

1. The applicant is the owner of the land.

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 Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, Pohick Road, Hoes Road and Groveland Drive (9.906 acres) and is not transferable to other land.
2. This Special Permit is granted only for the church and related facilities as indicated on the special permit plat prepared by Jiri F. Kovats, dated June 5, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the church shall be 850.
6. Notwithstanding Note 20 on the Special Permit plat, two hundred and eighty-five (285) parking spaces shall be provided. All parking for the use shall be on site as shown on the Special Permit Plat.
7. All areas indicated on the plat as "tree save" areas shall be preserved. In addition, a tree preservation plan shall be provided to the County Urban Forester for review and approval at the time of site plan review. The tree preservation plan shall include revised limits of clearing and grading adjacent to the proposed stormwater management pond in order to reduce the clearing limits and achieve maximum preservation of existing trees on the site. If other SWM designs are provided as outlined in condition #10, the vegetation within the proposed SWM pond shall be preserved. Additionally, the limits of clearing and grading adjacent to the Afton Glen Subdivision at the southeast corner of the parking lot shall be reduced to save to the maximum extent possible existing vegetation, which shall be supplemented with landscape material as shown on the plat and outlined below.
8. In order to soften the impact of the non-residential buildings on the adjacent residential subdivision, a landscape plan shall be submitted for review and approval by the County Urban Forester at the time of site plan review and shall depict a combination of flowering and evergreen trees and shrubs along

the perimeters of all parking areas, and building foundation landscaping plantings to the satisfaction and approval of the County's Urban Forester.

9. Transitional screening 1 shall be modified along all lot lines to allow the existing vegetation tree save areas and additional landscaping as outlined in conditions #7 and #8 to satisfy screening requirements. The areas between the parking lot and building adjacent to Groveland Drive and the Afton Glen subdivision shall be further supplemented with evergreen trees and shrubs to the satisfaction of the Urban Forester to provide screening from the parking lot and vehicular lights for the residents along Groveland Drive and in the Afton Glen subdivision. All screening shall be placed on the Afton Glen side of the proposed six foot high board on board fence. Additionally, evergreen trees and shrubs shall be planted along the outside perimeter of the western parking area along the Hooes Road.

The barrier requirements shall be waived except along the southern and southeastern lot line adjacent to the Afton Glen subdivision. In addition to the fence shown on the special permit plat, a six foot high board on board fence shall be provided adjacent to the parking lot from the Groveland Road entrance east to the corner of the parking lot and north to the parish hall.

10. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required to the satisfaction of DPWES. Subject to the approval of DPWES, final stormwater management design shall provide for bioretention mechanisms and/or embankment-only facilities within the site, or other such innovative SWM measures, where practical to preserve existing vegetation, the stream valley and associated wetlands. Locations of any bioretention areas may be adjusted within the site to the satisfaction of DPWES. If the SWM/BMP structure is waived or other alternatives are allowed, the areas shown on the plat between the proposed tree save area and the rectory shall be preserved.
11. Lighting of the church property shall be focused onto the subject property. Parking lot lighting fixtures on the site shall be limited in height to twelve (12) feet. All lighting fixtures shall be full cut-off lights and shall be fully shielded in such a manner to prevent light from projecting off-site. No up-lighting of buildings or signs shall be permitted on the site.
12. The Non-Residential Use Permits for the parish hall or rectory shall not be issued until the VDOT Pohick Road project is opened to traffic.
13. Except as noted herein, the application property shall not have access to Pohick Road until the Pohick Road improvements are constructed in accordance with the design plans prepared by the Virginia Department of Transportation. However, if the above referenced road improvements have not been bid for construction within 30 months from the final date of approval of this special permit, the applicant shall have the option to access Pohick Road subject to the construction of interim access improvements as deemed appropriate by VDOT.
14. Access to the site from Pohick Road shall be a right-in, right-out only and a permanent right turn lane shall be provided into the proposed site entrance on Pohick Road. The permanent right turn lane shall either be constructed at such time as access is provided, or the funds escrowed for construction concurrent with the VDOT Pohick Road project, as deemed appropriate at the time of site plan review. The escrow amount shall be determined by DPWES.
15. Construction traffic shall use Pohick Road as the sole means of ingress/egress to the site, if permitted by VDOT.
16. All right-of-way and easements associated with the Pohick Road project (# R000-029-249, PE 105, C527, B684) shall be provided in fee simple at the time of site plan review or upon demand by the Board of Supervisors.
17. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs,

Page 249, June 27, 2000, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE, SP 00-S-011, continued from Page 248

of the Zoning Ordinance.

18. Groveland Drive and Blue Jasmine Court shall be signed for no church parking between the site entrance and Green Garland Drive and shall be striped for right and left turn lanes at the intersection of Pohick Road and Groveland Drive.
19. A minimum of 45 minutes shall be provided between the completion of one service and the commencement of the next service.
20. No bells (or recorded bells) shall be rung except for between the hours of 9:00 a.m. and 6:00 p.m. The ringing of the bells shall not exceed the duration of thirty (30) seconds.
21. The applicant shall coordinate with the Virginia Department of transportation (VDOT) and Fairfax County Department of Transportation to facilitate the timely completion of improvements to Pohick Road.
22. A police officer shall be employed by the applicant to direct traffic in and out of the application property on Sundays at the intersection of Groveland Drive and Pohick Road.
23. The Applicant, upon approval and authorization by Fairfax County and VDOT, shall notify parishioners of a commuter park-n-ride lot located north along Hooes Road in proximity to the application property. The applicant shall encourage the use of the parking lot by parishioners on Saturdays and Sundays, and carpooling by parishioners to the application property. This obligation is limited to negotiating appropriate arrangements with Fairfax County and VDOT, providing notice of availability, and encouraging use, but shall not be construed as a commitment to provide shuttle bus service.
24. At the time of site plan approval, the Applicant shall record a deed of Public Ingress and Egress to Groveland Drive. The Applicant further agrees that the existing improvements, including a gazebo, constructed on the adjacent parcel shall not be removed by the applicant. Applicant will require the execution of hold harmless agreement related to the gazebo from the adjacent Afton Glen homeowners association.
25. The applicant shall maintain the adjacent outlot, Tax Map 98-1((15))A1, in common ownership with Parcel 13A.

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. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. 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.

Ms. Gibb seconded the motion which carried by a vote of 7-0. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. DAVID SMALL, SP 00-Y-019 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 10.0 ft. from side lot line. Located at 15137 Wetherburn Dr. on approx. 13,890 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 262.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Small, 15137 Wetherburn Drive, Centreville, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the modification to certain R-C lots to permit the construction of a deck 10 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 10 feet was requested.

Mr. Small presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to put a deck in the back of his house. Mr. Small stated that the house was originally built 9 feet from the line and he didn't think a deck would impair too much on that.

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

Mr. Ribble moved to approve SP 00-Y-019 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID SMALL, SP 00-Y-019 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 10.0 ft. from side lot line. Located at 15137 Wetherburn Dr. on approx. 13,890 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 262. 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 June 27, 2000; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location of a deck shown on the plat as revised by David Small, dated April 5, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 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.

Ms. Gibb seconded the motion which carried by a vote of 7-0. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000.

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Page 251, June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL & MARY LAWRENCE, VC 00-Y-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.6 ft. from rear lot line. Located at 6631 Rockland Dr. on approx. 8,800 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((2)) 248.

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

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 20.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 4.4 feet was requested.

Mr. Durosko, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the property was purchased in good faith and the location of the house did not allow for an addition. Mr. Durosko stated that the proposed location was the only place for the addition. He said that the addition would not be detrimental to adjacent property owners and had received approval from the Little Rocky Run Homeowners Association.

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

Ms. Gibb moved to approve VC 00-Y-046 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL & MARY LAWRENCE, VC 00-Y-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.6 ft. from rear lot line. Located at 6631 Rockland Dr. on approx. 8,800 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((2)) 248. Mr. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2000; and

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

1. The applicants are the owners of the land.
2. The request was modest.
3. The house next door has a similar addition.
4. The applicant met the required standards for a variance.
5. The rear yard is shallow because of the location of the house.

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated December 10, 1999, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Page 253 June 27, 2000, (Tape 1), MICHAEL & MARY LAWRENCE, VC 00-Y-046, continued from Page

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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 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 is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 253, June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES L. READLING, SP 00-M-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit existing dwelling to remain 2.0 ft. from side lot line. Located at 4819 Virginia St. on approx. 15,892 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((7)) 51.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Readling, 4819 Virginia Street, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction in minimum yard requirements based on an error in building location to permit an existing dwelling to remain 2 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 13 feet or 87% was requested.

Mr. Kelley asked why this took so long to come to staff's attention. Ms. Wilson stated that the applicant might be able to explain. She said this had been in existence for quite some time.

Mr. Readling stated that his house was built in 1965 and he didn't know his house encroached on the adjacent property until the neighbor purchased the property next door. He said the only thing he could do was to ask the Board to allow his house to remain.

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

Mr. Kelley moved to approve SP 00-M-018 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES L. READLING, SP 00-M-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit existing dwelling to remain 2.0 ft. from side lot line. Located at 4819 Virginia St. on approx. 15,892 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((7)) 51. 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 27, 2000;

and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the existing dwelling shown on the plat prepared by William S. Sikes, Jr., dated February 22, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 7-0. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 254 June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARK ALLEN & SAMMYE JUSTICE, SP 00-Y-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.3 ft. from rear lot line and 8.7 ft. from side

lot line. Located at 11320 Vale Rd. on approx. 27,178 sq. ft. of land zoned R-1 (Cluster).
Sully District. Tax Map 36-4 ((16)) 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. Brian Kelley, Agent, 11015 Clune Court, Fredericksburg, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to minimum yard requirements based on an error in building location to permit an accessory structure to remain 2.3 feet from the rear lot line and 8.7 feet from the side lot line. A minimum rear yard of 16.2 feet is required; therefore, the amount of error was 13.9 feet or 85%. A minimum side yard of 12 feet was required; therefore, a modification of 3.3 feet or 27% was requested

Mr. Kelley, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the applicant wanted to keep the garage in the place where it was currently located. Mr. Kelley stated that at the time of construction, approximately 100 acres had been purchased that was subdivided into smaller parcel. He said the noncompliance was done in good faith. Mr. Kelley said the structure had been there since 1975 or 1976. He said the accessory structure would not create an unsafe condition and would not be detrimental to adjacent property owners.

Mr. Hammack asked whether the garage had electricity. Mr. Kelley replied yes, that it was used to work on vehicles.

Mr. Hart asked how far away was the structure on Lot 3 from the garage. Mr. Kelley stated that there was no structure on Lot 3.

Mr. Hart asked staff what was the minimum side yard for Lot 3. Ms. Wilson replied that it would be a minimum 20-foot side yard for that lot.

Mr. Hammack asked if there were electrical permits for the garage. Mr. Kelley responded yes.

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

Mr. Hammack moved to approve SP 00-Y-020 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK ALLEN & SAMMYE JUSTICE, SP 00-Y-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.3 ft. from rear lot line and 8.7 ft. from side lot line. Located at 11320 Vale Rd. on approx. 27,178 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-4 ((16)) 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 June 27, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the existing accessory structure (garage) shown on the plat prepared by Land Design Consultants, dated February 2000, submitted with this application and is not transferable to other land.
2. A building permit and electrical permit shall be obtained and approval of final inspections shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards

Mr. Pammel seconded the motion which carried by a vote of 7-0. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 256, June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL J. & VIRGINIA F. BROSNIHAN, VC 00-M-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a second story addition 10.0 ft. from side lot line. Located at 4225 Oak Hill Dr. on approx. 15,007 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((6)) 26. (Concurrent with SP 00-M-023).

9:00 A.M. DANIEL J. & VIRGINIA F. BROSNIHAN, SP 00-M-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 10.0 ft. from side lot line. Located at 4225 Oak Hill Dr. on approx. 15,007 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((6)) 26. (Concurrent with VC 00-M-048).

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

Mr. Hammack stated that he would not participate in the hearing because he shared office space with Mr. Smalley.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for an error in building location to allow a garage addition to remain 10 feet from the side lot line. A minimum side yard of 15 feet was required; therefore, the amount of the error was 5 feet or 33%.

The applicant also requested a variance to permit the construction of a second story addition over the existing garage 10 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 5 feet was requested.

Mr. Smalley, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. He said the applicants purchased the property in 1988 and their original survey showed a carport on the southern side of the property, but it was enclosed at the time with lattice work and they had always treated it as if it was a garage. Mr. Smalley stated that the proposed construction had no alternative location on the property. He said they were not trying to move the property closer to the lot line. Mr. Smalley stated that there was no opposition and that the addition would be in harmony with the surrounding area.

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

Mr. Pammel moved to approve SP 00-M-023 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL J. & VIRGINIA F. BROSNIHAN, SP 00-M-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 10.0 ft. from side lot line. Located at 4225 Oak Hill Dr. on approx. 15,007 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((6)) 26. (Concurrent with VC 00-M-048).

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 27, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of a garage shown on the plat prepared by Kenneth W. White, Land Surveyor, dated October 27, 1999 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Hammack recused himself from the meeting. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VC 00-M-048 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL J. & VIRGINIA F. BROSNIHAN, VC 00-M-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a second story addition 10.0 ft. from side lot line. Located at 4225 Oak Hill Dr. on approx. 15,007 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((6)) 26. (Concurrent with SP 00-M-

023). 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 27, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicant presented testimony indicating compliance with the required standards for 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a second story addition shown on the plat prepared by Kenneth W. White, dated October 27, 1999, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The second story 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Hammack recused himself from the public hearing. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 260, June 27, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS L. CLARKSON, VC 00-P-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.1 ft. from front lot line of a corner lot. Located at 2635 Wooster Ct. on approx. 11,554 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (L) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. June Clarkson, 2635 Wooster Court, Vienna, Virginia, replied that it was.

Ms. Schilling noted that there was a revised affidavit dated June 16, 2000, distributed to the Board.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 25.1 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 4.9 feet was requested.

Mr. Hart noted that the plat reflected a shed near Lot 29 and asked why it wasn't part of the application. Ms. Schilling replied that the shed was less than 8½ feet in height and a variance was not needed.

Ms. Clarkson presented the variance request as outlined in the statement of justification submitted with the application. She said the proposed location was the only available place for the addition because of the placement of the house. Ms. Clarkson stated that it would not adversely affect the neighbors.

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

Mr. Hart moved to approve VC 00-P-047 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS L. CLARKSON, VC 00-P-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.1 ft. from front lot line of a corner lot. Located at 2635 Wooster Ct. on approx. 11,554 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (L) 28.

Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The house is placed at an odd angle to the street.
4. There is a double front yard situation.
5. The proposed direction of the addition would be away from the other homes; therefore, causing no 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 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition shown on the plat prepared by Tami A. Lenox, Land Surveyor, dated March 20, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be

obtained.

- 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. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote. Mr. Kelley moved that the Board waive the 8-day waiting period. Mr. Hart 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 27, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 362, June 27, 2000, (Tape 1), After Agenda Item:

Approval of April 11, 2000 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 362, June 27, 2000, (Tape 1), After Agenda Item:

Consideration of Acceptance
Appeal filed by Wolf Trap Woods Homes Association

William Shoup, Deputy Zoning Administrator, stated that on the subject item, staff recommended that the BZA not accept the appeal. He said the appellants were appealing the decision of the Director of Public Works and Environmental Services (DPWES) to consider what was called a "fast track", the approval of the site plan for the McLean Bible Church, which was proposed to be constructed on the subject property. Mr. Shoup stated that Sect. 18-301 of the Zoning Ordinance provided that a person who was aggrieved by any decision of the Zoning Administrator or by any order, requirement, decision or determination, made by any other administrative officer in the administration or enforcement of the Ordinance, could appeal such decision to the BZA. He said as discussed in his memorandum, the process that the appellant was referring to, in the appeal, was set forth under a different chapter of the County Code and it did not involve a decision by the Director of DPWES. Mr. Shoup stated that since there was no determination made in the administration of the Zoning Ordinance, the appeal did not satisfy the criteria of Sect. 18-301 of the Zoning Ordinance. He noted that the site plan was still under review and any appeal that was related to that plan would be premature. Mr. Shoup stated that for those reasons, staff recommended that the BZA not accept the appeal. He said in a letter dated June 22, 2000, the appellant's attorney requested that the processing of the subject appeal be stayed pending the final decision on the site plan and they indicated that they then might appeal that decision once the site plan had been approved. Mr. Shoup suggested that in doing that the appellant agreed that the appeal might be premature, and in the interest of clarity staff suggested that the Board dispose of the appeal rather than defer the acceptance issue as requested and then they can consider the acceptability of any appeal that gets filed with respect to the final decision of the site plan.

Mr. Pammel asked whether the process of an expedited processing of a plan was procedural subject to criteria that was established.

Mr. Shoup indicated that was correct. He said the criteria was set out in Chapter 117 of the County Code and if a site plan submitter met that criteria and chooses to have it reviewed under the expedited process, there

was no discretion and they had that right.

Bill Mauer, Attorney for Wolf Trap Woods, stated that they had filed that appeal and they recognized the administrative aspect. He said under the requirements of the expedited program, consideration was supposed to occur within 14 days. He said they were now here 42 days later without a determination. Mr. Mauer said in the appeal they had set forth a number of issues that went more directly to the merits of the decision that was being made. Mr. Mauer said that the stated purpose behind the appeal with respect to that decision, although that in and of itself might be an administrative matter, it appeared that the issue of concern was that the matter had gone on for 42 days without a determination. He requested a stay of this action. Mr. Mauer stated that the alternative would be that the appeal be granted.

Mr. Pammel stated that he understood the frustration of the Wolf Trap Community and he didn't know the solution. He said there was probably legal recourse, if they had exceeded the amount of time allowed by the Code. Mr. Pammel said the Zoning Administrator had clearly indicated what the issue was and he moved that the Board accept the Zoning Administrator's recommendation and not accept the requested appeal.

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

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Memo from Jane Kelsey
RE: SPA 95-V-031, Sharkeys Inc. D/B/A Fast Eddie's Billiard and Café

Jane Kelsey came forward, stating that she represented the permittee, Brenda Lewis, and Mr. Mark Harmon, the perspective permittee. She said the Board had received her request where she had outlined the procedures that the staff had used up until the time she had left the County. Ms. Kelsey stated that she had discussed the issue with staff who did not agree that this should be the policy of the Board. She said she believed that the Board had received an opinion from the County Attorney's office, but she had not received that information herself. Ms. Kelsey stated that she was advised that was not information she could obtain. She stated that she could not comment on the memo; however, it was her understanding that it was the County Attorney's position that the Change of Permittee as an Action Item should not be taken by the BZA. Ms. Kelsey stated that she was not an attorney, but that she respectfully disagreed, because the words of Condition #1 says that it was granted to the Permittee and that could not be changed without further action by the Board, but it did not say what type of action. She said an action item was an action by the Board and it was in public session. Ms. Kelsey said she respectfully disagreed with the County Attorney's office and with staff. She said that she had all the backup material for all of the previous cases if the Board needed any additional information. Ms. Kelsey noted that both the current permittee and the prospective permittee were present to answer any questions.

Chairman DiGiulian asked if there was anyone present to speak towards the County's position.

Julie Schilling, in capacity of Acting Branch Chief, Special Permit and Variance Branch, stated that it was a determination of the County Attorney's office that since the standard first condition rendering the special permit to the applicant only was a development condition within an approved special permit that was the subject of a noticed public hearing, the condition could only be changed after a noticed public hearing which would be submitted as a special permit amendment.

Ms. Gibb asked if the corporation was sold or the stock in the corporation were sold to the purchaser there would be different shareholders, but the same name and the same effect, would you need a special permit. Ms. Schilling stated that was her understanding. She said in many cases where there was a question about whether an actual change in permittee was occurring or whether it was only a change in name, they would refer those cases to the County Attorney's office. She said in this instance there were new owners and the name would change as well.

Ms. Gibb asked what was the rationale for requiring that a new permittee come before the Board and have a Board action that's been advertised. Ms. Schilling stated that you would be changing the conditions of the

permit without a noticed public hearing.

Ms. Gibb stated that in the memorandum from Pat Taves, it stated that it was the Board's fault and if they didn't have that condition in there then this situation wouldn't happen and the Board should be silent on the issue and let it run with the land. Ms. Schilling stated that when special exceptions were processed the approvals ran with the land. She said staff's preference would be to have the permit run with the land and there would be no difficulty in enforcing conditions that ran with the land. Ms. Schilling stated that any new owner would be made aware of the conditions.

Ms. Gibb asked why did they end up with that condition. Ms. Schilling stated that the condition was set by the Board of Zoning Appeals some time ago.

Ms. Gibb asked was that years ago when Ms. Kelsey was with the County. Ms. Schilling replied that she believed it was some time in the 1980s.

Ms. Gibb asked how come Ms. Kelsey was not entitled to a copy of the opinion from Pat Taves. Ms. Schilling stated that it was her understanding that the memo was privileged between attorney and client.

Ms. Hammack stated that he thought there was a period where the applicant could file an affidavit changing the name and agreeing to comply with all of the former development conditions imposed and the Board would treat that as an after agenda item. Ms. Schilling replied that for a time those were handled that way, but staff was subsequently informed by the County Attorney that they could not continue to handle them as such. She said since they were a condition of the special permit, they could only be changed through a noticed public hearing.

Mr. Hammack said he thought that it had been approved by the County Attorney to do them that way. Ms. Schilling replied that she was not aware of that.

Mr. McDermott came forward from the audience, stating that he happened to be at the public hearing on another matter, but that he was the attorney that handled the special permit in question. He said he was involved when that condition was imposed and he looked at those words, and his reaction at that time was exactly what Ms. Kelsey said. Mr. McDermott said he could understand the BZA wanting to retain control over who was the permittee, and therefore, before there was any transfer it should come back before the Board. He said the Board would not be violating or changing the condition if the Board, as an after agenda item, were to take an action that would allow a transfer.

Mr. Hammack asked when did the County Attorney inform staff that the action was no longer permitted. Ms. Schilling said she believed it was in 1997, but she would have to look it up.

Mr. Hammack asked whether the Board had taken any after agenda change in permittee since then. Ms. Schilling replied no they had been taken up as special permit amendments.

Ms. Kelsey stated that staff brought the issue of all resolutions back to the Board of Zoning Appeals in June and July of 1997. She said along with that was a discussion of Condition #1. She said at that time, as she recalled, David Stroh from the County Attorney's office came and discussed that with the Board and the County Attorney's position was the same then as it was now that the Board should grant to the land and not a particular applicant. She said the Board disagreed with that and said that they would continue to grant to the applicant only. Ms. Kelsey stated that there was a misunderstanding because in the next staff reports that came before the Board, staff had inadvertently left out Condition #1 thinking that was what the Board wanted to do, but the Board quickly informed staff that they were wrong and should not do that anymore. Ms. Kelsey stated that she researched all the Minutes from 1997 from the time of that Executive Session and there were two times when the Board heard Change of Permittees after that, but they were not just for a Change in Permittee, but for a change in numerous other development conditions. Ms. Kelsey stated that in this subject case, the prospective permittee was presenting an affidavit that stated that he would agree with all the development conditions. She said it was not only the 90 day wait period and the filing fee, but you would have to have a plat done correctly which took at least a month, then the applicant would have to go through the site plan process.

Mr. Hammack stated that he was probably one of the members who argued in favor of the applicant only in certain cases. He said for just a change in permittee, he didn't see why action taken by the BZA as an after agenda item was not an action taken by the Board. He said they approved Resolutions, Minutes, and a lot of other things as after agenda items and if that was considered inaction then it would be a nullity. Mr. Hammack asked whether Mr. Taves had considered that.

Ms. Schilling stated that in the case of approving Resolutions after a noticed public hearing, the Board was approving the form of the Resolution that had been decided as part of a noticed public hearing in the consideration of the special permit. She said staff's information from the County Attorney's office was that since it was set up as a specific condition, that changing the substance of that condition without a noticed public hearing should not be done strictly as an after agenda item because it was not a noticed public hearing.

Mr. Kelley said that it would seem that reconsiderations would not be appropriate under action items.

Mr. Hammack said that the reason it was done was because of the 8-day waiting period. He said they also accepted appeals and there was no notice.

Ms. Schilling stated that in the case of a reconsideration a whole new public hearing was set, so that a noticed public hearing of the reconsideration took place.

Mr. Ribble stated that if that was a motion he would second it.

Mr. Hammack stated that he had high regard for the County Attorney's office and their opinions but he thought this one could use a little more thought into it. He said he hated to make a motion that would go contrary to the recommendation of the County Attorney. Mr. Hammack said he almost felt that he would be in a position to argue against his earlier argument made in 1997. Mr. Hammack moved that the BZA not accept the request and require the public hearing because of the development condition. He made a follow up motion that the Board reconsider the procedure.

Mr. Pammel seconded the motion. He said that he suspected that the theory was that you expose it to a public hearing because there might be something out there that the Board didn't know about. He stated that if the Board was just changing the permittee as an action they would never get to that point.

Mr. Hart said he struggled with the issue. He said there were a lot of things that a local government might want to do that seemed very reasonable, but the general assembly hadn't let them do it without jumping through certain hoops and that was his reaction to Mr. Taves' memo. Mr. Hart said it seemed like something the Board should have the ability to do, but the Statute seemed to require that there be a noticed public hearing with the dignity of any other. He said he would reluctantly support Mr. Hammack's motion, but the statute seemed to require it. Mr. Hart stated that he wished there was time find out more.

Mr. Ribble said if that was a substitute motion he would go along with that.

Mr. Hammack asked Ms. Kelsey how soon did she need a decision. Ms. Kelsey stated that this was a small operation and the applicant needed to sell and the prospective permittee wanted to buy.

Ms. Gibb said she felt bad because the Board had put people in this position by the development condition, maybe inadvertently because they didn't understand about the opinion rendered, but if the Board wanted this extra control, which she wasn't sure they were entitled to, over the permittee, maybe they should have added the language "after agenda" in the condition.

Mr. Hammack stated that staff prepared all of the development conditions for the applicant only. He said none of them ran with the land and was told that was the way it was supposed to be done by the County Attorneys.

Mr. Ribble stated that maybe the Board could ask their attorney Brian McCormack.

Chairman DiGiulian noted that there was a motion on the floor to deny the request. The motion failed by a

vote of 3-4. Chairman DiGiulian, Ms. Gibb, Mr. Kelley and Mr. Ribble voted against the motion.

Mr. Ribble moved to defer decision for two weeks to July 11, 2000. Mr. Kelley seconded the motion which carried by a vote of 7-0.

Mr. Kelley said there should be some discussion on what action the Board should take and who they should ask to come and testify when the issue was brought up again.

Chairman DiGiulian asked if the Board wanted to get Brian McCormack to give them an opinion.

Mr. Kelley said yes.

Ms. Gibb asked what about Mr. Taves.

The Board agreed that they would like to hear from both Brian McCormack and Pat Taves.

Mr. Ribble suggested that the Board go into executive session with Mr. McCormack and Mr. Taves and then have the item taken up as an after agenda item in 3 weeks, July 18, 2000.

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

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Page 266, June 27, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration
Chang and Chung Kim, SPA 94-S-033

Chairman DiGiulian noted that there was a request from Elaine McConnell and the Popes Head Civic Association.

Mr. Hart asked staff if the Board could change what they voted on without a full blown reconsideration 90 days away. Ms. Schilling stated that the Board could grant the reconsideration and then set a new public hearing. She said it would negate the previous vote. Ms. Schilling stated that the Board could clarify the development conditions, but for a substantive change in their decision, it would require a new public hearing.

Mr. Hart said if the Board granted a new public hearing, would it wipe out summer 2000 for the applicant. Julie Schilling, Acting Branch Chief, Special Permit and Variance Branch, replied that the applicant had an existing special permit in effect, and would be bound by those conditions.

Mr. Pammel said that at the previous public hearing staff indicated that compliance was obtained at .02 foot candles at the property line which was in the Ordinance. He said that was his understanding, but in reading Ms. McConnell's letter, it stated .00 as being what was required. He said he needed some clarification.

Ms. Schilling stated that it was the difference between the Ordinance requirement that light not exceed .5 foot candles at the property line. She said the illumination plan that was previously proposed in the development conditions stated that there would be no more than .00 foot candles at the property line and that was the difference.

Lynne Strobel, Agent for the applicant, came forward stating that the conditions that were proposed and agreed to by the Board were adequate controls over the lighting of the property. She said there were lower wattage bulbs installed and the applicant had taken readings with the lower wattage bulbs and he found that it came to 0 on the property line. Ms. Strobel stated as a practical matter, the applicant had met the concerns that were raised. She said if this was reconsidered, it would put a substantial burden on the applicant to have to go through the public hearing process again. Ms. Strobel requested that the Board not grant the reconsideration.

Mr. Hammack asked Ms. Strobel whether she had seen a copy of the memorandum to the Board concerning

Page 267, June 27, 2000, (Tape 1), After Agenda Item, continued from Page 266

readings taken by the staff on June 16th. Ms. Strobel replied that the memo was prior to the installation of the remaining 400 watt bulbs that the applicant had currently installed.

Mr. Kelley asked if the Board could defer the request for reconsideration to get another reading with the new bulbs.

Chairman DiGiulian stated that he didn't see any reason why the Board couldn't defer.

Mr. Kelley moved to defer the request for reconsideration to July 18, 2000. Mr. Ribble seconded the motion which carried by a vote 7-0.

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Page 267, June 27, 2000, (Tape 1), After Agenda Item:

Approval of June 20, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions without SPA 94-S-033. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 267, June 27, 2000, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing,
Deepwood Veterinary Clinic, Inc., SP 00-Y-040

Mr. Pammel stated that he would be in favor of moving the application to August 22, 2000. Mr. Hammack seconded the motion.

Mr. Hart stated that there was no meeting then. Chairman DiGiulian stated that Mr. Pammel had just set one.

Chairman DiGiulian asked when the application was submitted. Ms. Schilling replied that the application form was received on May 2, 2000 and it was accepted on June 16, 2000, with the submission of the last piece to the application.

Chairman DiGiulian stated that according to the letter, the applicant stated that they were 2-3 months behind when they submitted the application.

Ms. Schilling stated that the plat was not submitted until June 15th.

Mr. Pammel asked was there anything that was precluding the Board from setting another meeting in August. Chairman DiGiulian stated he was not aware of anything.

Mr. Pammel said there would be other cases that would come up and moved to approve the Request for an Out of Turn Hearing for August 22, 2000. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 267, June 27, 2000, (Tape 1), After Agenda Item:

Approval of Retention of Legal Counsel
At Law # 188771, Jacquie Shonk, VC 00-D-016

Mr. Hammack moved that the BZA retain Brian McCormack to represent the BZA in the above referenced matter. Mr. Pammel and Mr. Ribble seconded the motion which carried by a vote 7-0.

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Request for Reconsideration from the Board of Supervisors
of the Board of Zoning Appeal's
Acceptance of Appeal A 2000-HM-010,
EOP-Reston Town Center (Equity)

Mr. Pammel said that it appeared that even though the Board's concern was procedural, and the entire appeal should have been heard, he said there might be an element that involved the Board entering into proffers and that clearly was not the BZA's responsibility. He moved that the BZA reconsider the part dealing with the proffered conditions which dealt with Site Plan 7067-SP-12-2, where the Department of Public Works and Environmental Services (DPWES) took an action that was subject to the appeal that was presented to the Board. Mr. Pammel stated that the initial two items were within the BZA's scope and he said the Board should continue to have an action that would continue to have parts one and two as being subject to the BZA's review, but part 3 not. Mr. Pammel moved to reconsider on that basis.

William Shoup, Deputy Zoning Administrator, stated that he spoke with the attorney, Mr. Tompkins, who represented the appellant and advised him that the BZA would be taking this action. He said Mr. Tompkins indicated that he could not be present, and he asked Mr. Shoup to convey to the BZA that if it were their intent to reconsider the decision, then could the discussion of the merits be put off until July 11, 2000, to allow Mr. Tompkins an opportunity to be heard.

Mr. Kelley seconded the motion to reconsider the action of the third part of the appeal that dealt with the fact DPWES should not have approved the application because of the failure of the applicant to satisfy proffered conditions.

The motion carried by vote of 6-1. Ms. Gibb voted against the motion.

Chairman DiGiulian stated that they would need a date for the reconsideration.


Mr. Hart moved that the Board schedule the item for July 11, 2000, for decision as an after agenda item as to whether they would accept the third ground in appeal A 2000-HM-010. Mr. Pammel 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 12:00 p.m.

Minutes by: Regina Thorn

Approved on: September 26, 2000


Regina Thorn Corbett, Clerk
Board of Zoning Appeals


John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 11, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 269, July 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. NAZILA KHOSHNEVIS, SP 00-P-022 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 12105 Waples Mill Rd. on approx. 22,000 sq. ft. of land zoned R-1. Providence District. Tax Map 46-1 ((5)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nazila Khoshnevis, 12105 Waples Mill Road, Oakton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to establish a home child care facility with a maximum of ten children on-site at any one time. Staff recommended approval, subject to the development conditions contained in the staff report.

Ms. Khoshnevis presented the special permit request as outlined in the statement of justification submitted with the application. Pointing out the critical need for daycare in Fairfax County, she stated she has worked as a childcare provider for 7 years.

Responding to Mr. Hart's and Ms. Gibb's question, Ms. Khoshnevis explained that she was State licensed to care for twelve children, that she currently provided care for ten children, and she resided on the site.

The following citizens spoke in support of the application: Ken Duffy; 12046 Vale Road, Allan Brandt (no address given); Debra Bradelworth, (no address given); Chris Seigh (no address given); and Norm Davis (no address given). It was explained that the children of these families were under Ms. Khoshnevis' care throughout the past year. They reiterated that her daycare facility met a demand for quality childcare, and that they believed their children were cared for in a warm, safe environment.

Gloria Mudge, 12114 Waples Mill Road; and Bob and Erin Cope, 9820 Coven Court; spoke in opposition to the application, stating the applicant did not reside on the property. They called attention to the applicant's apparent record of noncompliance.

Responding to Mr. Hammack, Ms. Mudge said she frequently saw the applicant enter the facility's driveway early in the morning and often children were already there awaiting her arrival. Ms. Mudge added that her neighbors would concur with this observation.

In response to Mr. Hammack's question, Ms. Wilson stated it was a requirement that the applicant reside on the premises. Mr. Hammack noted that a violation for not residing on the property had been issued to the applicant on March 15, 2000. He stated to be State Licensed, the childcare provider must reside on the property.

Ms. Wilson explained that after investigation by the Zoning Enforcement Inspector, the applicant had moved into the house on the site, and upon approval of the application, the violation would be cleared.

In rebuttal, Ms. Khoshnevis reiterated her long-term ties with the community. For the record, she distributed letters of support from adjacent neighbors. She stated that only once had her charges numbered ten, and that her State licensing was approved for the care of twelve children. She submitted that she was completely unaware of her noncompliance with the Zoning Ordinance. To explain her absences from the site during a workweek, Ms. Khoshnevis stated that a medical condition required scheduling afternoon appointments and during those times, she took the opportunity to run errands. She assured the Board that she was never off the property during a workweek for more than two hours.

In response to Mr. Hammack's query, Ms. Khoshnevis explained that she and her husband resided on the

property but that during a visit from her in-laws, she had moved out for a brief period. Responding to further questioning by Mr. Hammack, Ms. Khoshnevis again stated that she was unaware of having been non-compliant to an Ordinance, however, on one occasion, due to an emergency situation when a parent had dropped off an additional child, she had cared for 13 children.

She told Mr. Hart that only she and her husband lived in the house; that she employed one full-time employee and one part-time employee, the latter whom worked only occasionally. Mr. Hart pointed out that Development Condition #8 allowed only one assistant. She stated that she would comply and that she agreed with all of the proposed Development Conditions.

To clarify for Mr. Hammack, Ms. Khoshnevis explained that her husband owned another house in Fairfax which was currently up for sale. She said that they shared ownership of the day-care house in which they presently resided. She assured Mr. Hammack that she was not involved with any other day-care operation in Fairfax.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny SP 00-P-022 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NAZILA KHOSHNEVIS, SP 00-P-022 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 12105 Waples Mill Rd. on approx. 22,000 sq. ft. of land zoned R-1. Providence District. Tax Map 46-1 ((5)) 6. 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 11, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has knowingly been operating in noncompliance with the County and State Ordinances for some time.
- 3. The applicant only offers assurances that the number of children and assistants will be reduced to the amount required in order to stay in compliance.

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 Sect(s). 3-103 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 6 -1 with Ms. Gibb opposed.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 2000.

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Page 271, July 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS & PATRICIA MONTANIO, VC 00-P-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 9.6 ft. from side lot line. Located at 2445 Sandburg St. on approx. 17,700 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 233.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patricia Montanio, 2445 Sandburg Street, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a second story addition 9.6 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 2.4 feet was requested.

Ms. Montanio presented the variance request as outlined in the statement of justification contained with the application. She submitted that the existing structure was slightly over the set back line and that it was for aesthetic reasons they requested an additional two feet for one window unit. She stated that the proposed design was compatible with the house's existing structure.

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

Mr. Pammel moved to approve VC 00-P-050 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS & PATRICIA MONTANIO, VC 00-P-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 9.6 ft. from side lot line. Located at 2445 Sandburg St. on approx. 17,700 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 233. 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 11, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.
3. The structure of the garage already remains at the set back requested by the applicants.
4. The only additional encroachment needed is for a window protrusion of approximately 2 feet, thus leaving a side yard dimension of 9.6 feet. The Ordinance requirement is 12 feet, so it is a minimal variance 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the second-story addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 4, 2000, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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. Hart seconded the motion which carried unanimously by a 7-0 vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 272, July 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SANDRA RINEHART, SP 00-B-013 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 9820 Covent Ct. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 438. (deferred for decision only from 6/6/00)

Chairman DiGiulian indicated that this application had been deferred, for decision only, from the June 6, 2000, public hearing.

To clarify several issues brought up during the June 6th meeting, Phyllis Wilson, Staff Coordinator, stated

that, as the record indicated, building permits had been issued in 1990 for a garage/storage room addition, a deck onto the rear of the dwelling, and an addition onto the house. She also noted that final inspections were never approved. Ms. Wilson stated that the Code required the installation of an interior handrail along the garage's interior steps. When the inspector visited the site, because no one was home, he was unable to sign-off on the job, and as indicated by the inspector's notes, he never scheduled a return visit. Ms. Wilson said that the applicant was advised of the requirement for the steps. Ms. Wilson stated that, as evidenced by staff's investigations, there was no determination from a legal authority or an animal control officer that the applicant's dogs were considered dangerous or vicious. She said that both Diane Townsend-Cook, a Fairfax County Chief Animal Control Officer, and James Schumacher, a Supervisor for the State Child Care Licensing Specialist Department, had confirmed that the applicant's two dogs never were considered a threat to the children being cared for at the applicant's residence. Ms. Wilson stated that staff continued to recommend approval of the application.

Mr. Hart noted that there was a conflict with Fire Code regulations and the fact that the doors were locked to the basement and the bedrooms. After conferring with the Fire Marshall's office, Ms. Wilson cited that the bigger safety issue was that of leaving the front door unlocked. She explained that the applicant had met the required two escape methods by having an accessible door and window in the basement.

In response to Mr. Hart's question, Ms. Wilson stated that if the property owner contacted the inspector, the approval of the additions could be resolved. Mr. Hart requested that the building inspection approval be listed as one of the Proposed Development Conditions. Ms. Wilson concurred.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to deny SP 00-B-013 for the reasons noted in the Resolution.

Mr. Pammel commented that there was no excuse for failing to make inquiries concerning which County permits are required for a construction project.

Ms. Gibb said she sympathized with the applicant as she could understand a situation where a person would operate a business with the proper State license yet be unaware of a requirement for a County license. She noted the difficulty for a home care facility to be in continual compliance and with the County's critical need for quality child care, she felt that a less stringent enforcement of minor Code regulations was warranted. Ms. Gibb added that, in most cases, the Board was in favor of the operation of home care facilities; however, with Ms. Rinehart's case, she believed this was a difficult decision.

Mr. Ribble affirmed the County's need for day care; however, he concurred with Mr. Hart regarding the traffic problems and the overburdened cul-de-sac.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANDRA RINEHART, SP 00-B-013 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 9820 Covent Ct. on approx. 10,500 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 438. (deferred for decision only from 6/6/00) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 2000; and

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

1. The applicant is the lessee of the property.
2. The applicant has not presented testimony indicating compliance with all of the general standards for

- special permit uses.
- 3. The location of the site is in the middle of a cul-de-sac, deep in the subdivision.
- 4. The colored map indicates the concentration of activity on the street and the photographs taken by the neighbors indicate parking problems.
- 5. Adding another use of this intensity into this neighborhood would not be in harmony with the adopted Comprehensive Plan.
- 6. The applicant has a pattern of noncompliance with applicable Ordinances at various locations.
- 7. The dogs have gotten out before and have a way of getting out.

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 Sect(s). 3-203 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 6-1. Mr. Hammack abstained.

This decision was officially filed in the office of the Board of Zoning Appeals and became final July 19, 2000.

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Page 274, July 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD H. RICE, JR., VC 00-V-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 1908 Stirrup La. on approx. 13,236 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10)) (3) 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. Richard H. Rice, Jr., 1908 Stirrup Lane, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance for a garage addition 5.0 feet from the side lot line. The Zoning Ordinance required a minimum side yard of 12 feet; therefore, a variance of 7 feet was requested.

Mr. Rice presented the variance request as outlined in his statement of justification submitted with the application. He explained that due to his lot's narrow configuration, he intended to build a one-car garage onto the side of his home. He stated that the design was compatible with that of the neighborhood. In response to Mr. Ribble, he affirmed his justification was due to the narrowness of his lot.

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

Mr. Ribble moved to approve VC 00-V-049 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD H. RICE, JR, VC 00-V-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 1908 Stirrup La. on approx. 13,236 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10)) (3) 11. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot is narrow.
4. Several garages and carports have been built with variances in this area and a few have been built that were in need of variances.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 9, 2000, as revised through April 13, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 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.

Ms. Gibb 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 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 276, July 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DANNY R. WILSON & LISA L. BROWN, VC 00-V-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 1800 Rollins Dr. on approx. 11,050 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-4 ((2)) (16) 11A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lisa L. Brown, 1800 Rollins Drive, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to allow the construction of a two-story addition, which included a garage, 5.0 feet from the side lot line. The Zoning Ordinance required a minimum side yard of 10 feet; therefore, a variance of 5 feet was requested.

Ms. Brown presented the variance request as outlined in the statement of justification submitted with the application. She explained the requested 5-foot variance was needed to build an addition with a two-car garage. She pointed out that most of the neighborhood's homes had garages, and that when the Zoning Ordinance was adopted, it rendered their property too narrow.

In response to Mr. Ribble, Ms. Brown said that, after the garage's completion, the shed in the back of their lot would be removed as they would enjoy ample storage space.

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

Ms. Gibb moved to approve VC 00-V-045 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANNY R. WILSON & LISA L. BROWN, VC 00-V-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 1800 Rollins Dr. on approx. 11,050 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-4 ((2)) (16) 11A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 2000; and

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

1. The applicants are the owners of the land.

- 2. The applicants have met the required standards for a variance.
- 3. The lot is narrow.
- 4. The applicants indicate, in their statement of justification, that the grade in the back yard drops off and it is impossible to build the garage in the rear or in any other location.
- 5. In another instance, a variance has been APPROVED for building an addition within 4 feet of the lot line in 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;
 - 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a garage and second story addition shown on the plat prepared by Rebecca L.G. Bostick, dated November 25, 1992, as revised through April 6, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The garage and second story 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. Ribble seconded the motion which carried unanimously 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 19, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. THOMAS H. JENKINS, III & ALYCE A. KATAYAMA, VC 00-D-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.8 ft. from side lot line. Located at 7401 Dulany Dr. on approx. 2.12 ac. of land zoned R-1. Dranesville District. Tax Map 30-1 ((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. Thomas H. Jenkins, III, 7401 Dulany Drive, McLean, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to allow the construction of an accessory structure 7.8 feet from the side lot line. The Zoning Ordinance required a minimum side yard of 20 feet; therefore, a variance of 12.2 feet was requested.

In response to Mr. Hart, Ms. Schilling noted that there was a stream running through the front yard; however, it would not necessarily be shown on the plat. Mr. Jenkins acknowledged that there was a stream running east to west that bisected his front yard.

Mr. Jenkins presented the variance request as outlined in the statement of justification submitted with the application. He explained that his house was situated on the rear of his property along a ridge above a stream, and that his property had virtually two front yards. The variance requested was to construct a storage shed taller than 8 feet and architecturally compatible with the house. Mr. Jenkins said he intended to place the shed close to the parking area. He submitted, for the record, a letter of support from the Hooking Road Homeowners Association. He noted only one homeowner in opposition. Mr. Jenkins pointed out that, because of the common area property between he and his neighbors on Hooking Road, the shed would be farther than 7.8 feet from their properties, and it would not be visible due to an approximate 50-foot elevation.

In response to Mr. Hammack, Mr. Jenkins explained that the necessity to remove several holly trees was the reason they decided against building the storage shed around the west corner of the parking area.

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

Mr. Kelley moved to approve VC 00-D-041 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS H. JENKINS, III & ALYCE A. KATAYAMA, VC 00-D-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.8 ft. from side lot line. Located at 7401 Dulany Dr. on approx. 2.12 ac. of land zoned R-1. Dranesville District. Tax Map 30-1 ((2)) 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 July 11, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants have met the required standards for a variance.
- 3. The stream running through the property, the two front yards and the placement of the house on the lot indicates the need for a variance.
- 4. The applicants have made a very thorough statement of justification in support of their position.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a shed shown on the plat prepared by Steven M. Schwartz, Land Surveyor, dated April 5, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The shed 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. Ribble seconded the motion which carried unanimously by a 7-0 vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 280, July 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CYNTHIA COHEN, VC 00-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from side lot line. Located at 9028 Denise La. on approx. 21,309 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4 ((17)) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cynthia Cohen, 9028 Denise Lane, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story addition that would replace the existing carport with a garage, and build a kitchen and dining room. The addition would be located 12.1 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 2.9 feet was requested.

Ms. Cohen presented the variance request as outlined in her statement of justification submitted with the application. She explained that the carport was there when the house was purchased in 1991, and with the approval of the variance, they planned to replace the existing carport with a garage and build a kitchen and dining room over the new garage. She submitted that this was a minor variance of 1 foot at the north end, and 2.9 feet at the south end of the proposed structure. She pointed out that the existing carport complied with the 10-foot side yard requirement, and that they would not be expanding beyond its footprint.

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

Mr. Hammack moved to approve VC 00-P-042 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CYNTHIA COHEN, VC 00-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from side lot line. Located at 9028 Denise La. on approx. 21,309 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4 ((17)) 16. 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 11, 2000; and

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

1. The applicant is the owner of the land.

- 2. The applicant has met the required standards for a variance.
- 3. The proposed construction is not going to enlarge the footprint of the property.
- 4. The variance is very minor.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a two-story addition shown on the plat prepared by Kenneth W. White, dated March 14, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with 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. 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 July 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 282, July 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE C. & SANDRA S. EDWARDS, VC 00-Y-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. from rear lot line. Located at 13959 Shalestone Dr. on approx. 10,214 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((2)) 413.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence C. Edwards, 13959 Shalestone Drive, Clifton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 12.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 12.7 feet was requested.

Mr. Edwards presented the variance request as outlined in his statement of justification submitted with the application. He stated that the house sat 15 feet from the rear lot line, and that they proposed enclosing an upper deck into a room whose design would be compatible with that of the house. Mr. Edwards stated that he enjoyed favorable support from adjacent neighbors and that there would be minimal visual impact due to the screening by surrounding trees.

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

Mr. Pammel moved to approve VC 00-Y-044 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAWRENCE C. & SANDRA S. EDWARDS, VC 00-Y-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. from rear lot line. Located at 13959 Shalestone Dr. on approx. 10,214 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((2)) 413. 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 11, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony which indicate compliance with the required standards for a variance.
3. The shallow nature of the lot is cause for the granting of a variance.
4. The lot depth at one side is 100 feet and at the other side is 118 feet, leaving an average depth of 109 feet.
5. The dwelling is located on the rear portion of the lot, thus making it difficult to put an addition any place other than where it is proposed.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a room addition as shown on the plat prepared by Kenneth W. White, dated March 29, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Ribble and Mr. Hart 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 July 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Memo from Mr. James P. Zook dated July 11, 2000
In Reference to Meetings Scheduled for August 22, 2000

Chairman DiGiulian, referencing Mr. Zook's July 11th memo (a copy of which is in the file), informed the Board of staff's request to cancel the August 22nd meeting. He explained that two motions from the Board were required, one to accept an 11th case for the August 15th meeting, which exceeded the BZA's 10-case policy, and another motion to cancel the 22nd's meeting. Chairman DiGiulian called upon the Board for action.

Mr. Hammack acknowledged Mr. Zook's request and for purposes of discussion, moved to schedule 11 cases for the August 15th meeting, and to cancel the August 22nd meeting.

Mr. Hart seconded the motion.

Mr. Pammel called the Board's attention to the Deepwood Veterinary Clinic's case that was scheduled for August 22nd and noted the July 11th memorandum because they requested a change in the sequence of their public hearings. He explained that if the Board approved a rescheduling, the clinic's special permit application would be heard after its special exception application, which resolved the issue.

Another issue slated for August 22nd's agenda which warranted a timely resolution, Mr. Pammel pointed out, was an inquiry from Ms. Amy Trevisan regarding difficulty with her application's acceptance. Mr. Pammel noted that the Trevisans were burdened with a monthly payment of \$2,000 for their property that they have been unable to build on.

To explain the Trevisans' status, Ms. Julie Schilling, Staff Coordinator, stated that the applicants' requested variance, which recently was accepted, was scheduled for September 12th. She noted that the September 12th date was actually two weeks sooner than was normally scheduled, and that staff understood from the agent who represented both parties that the date was acceptable.

There being no further discussion among the Board members regarding the Trevisan case, Chairman DiGiulian moved on to the issue of expediting the Beverly appeals.

Responding to Mr. Hammack's query, Mr. Zook explained that the case before them, the Beverly Appeal, which had four accompanying appeals, was scheduled an expedited date of September 5th. He pointed out that in order to have the case ready for the September 5th hearing, considerable staff work was necessary due to the additional research, analysis, coordination and rewriting of the staff report. Mr. Zook maintained that given the additional case work, staff could not meet an earlier hearing date.

Mr. Shoup affirmed that staff would be severely burdened if the Beverly appeal was added to the already heavy caseload for the August meetings. He confirmed that staff already had five appeals, other than the five Beverly appeals, scheduled August 1st, 8th, and the 15th and that there was a substantial amount of work involved with these hearings.

Responding to Mr. Hart's question regarding individual agenda items, Ms. Langdon informed the Board that also scheduled on August 15th were the Buddhist Temple and the Craven Appeal. She added that the appeal filed by Nails for You Training Academy may be resolved and removed from the Agenda. Ms. Langdon pointed out that the typical applications requesting small variances and special permits remained on the agenda.

In response to Mr. Hammack's question concerning whether additional staff work may be required with the Craven Appeal, Mr. Shoup explained that staff anticipated coordination with the County Attorney's Office due to the litigation, and that the Craven Appeal definitely involved substantial work.

Mr. Ribble pointed out that there were two women in the audience who wanted to make comments.

Ms. Amy Trevison, accompanied by her real estate agent, Ms. Christine Ricketts, said she submitted a letter on June 26, 2000, requesting an out-of-turn hearing, and had received a response the day after the letter was mailed, scheduling their case for September 12th. Stating that it would be helpful, she requested an earlier hearing date, if that were possible.

Commenting that he believed additional August meetings were warranted, Mr. Pammel affirmed his opposition to canceling the August 22nd meeting. He stated that the needs of the County's citizens must be addressed, and cited the fact that the Beverlys had limited financial resources and deserved a timely resolution to their appeals.

To clarify several of the comments regarding scheduling, Ms. Langdon stated that staff was unaware Ms. Trevison would be present today to discuss her out-of-turn request, and therefore, staff had not researched the file and did not know what the circumstances were concerning the case. With respect to the Beverly Appeal, Ms. Langdon pointed out that it was scheduled at 76 days, which was well short of the 90 days mandatory time frame.

Mr. Pammel asked that the Board consider accepting Ms. Trevison's request for an earlier hearing date and moved to reschedule her application from September 12th to an earlier date of September 5, 2000. Mr. Kelley seconded the motion which carried unanimously by a 7-0 vote.

Recognizing Mr. Beverly in the audience, Chairman DiGiulian called upon him for comments.

Mr. Arthur Beverly, 10457 Red Granite Terrace, Oakton, Virginia, relayed his experiences dealing with the County while seeking to obtain a variance to construct a new house on his property. He declared his frustration with the County's inconsistencies and red tape. He informed the Board of the dates of, and results from his contacts with several County agencies. (A copy of his Statement of Justification that chronicles his County experiences listing dates, sequence of the events, and the results, is contained in the file).

Mr. Shoup responded to questions from Mr. Hammack concerning the approval time of the variance and the notification procedure. Mr. Hammack pointed out staff's error in overlooking the applicant's correct mailing address as it was recorded on the affidavit.

Mr. Shoup informed Mr. Hammack that the applicant, Mr. Beverly, was denied a building permit because staff had determined his lot was not a buildable lot.

To clarify Mr. Beverly's present situation, Ms. Langdon explained staff's recommendations to Mr. Beverly on the sequence of and procedures for submitting his applications. She pointed out that Mr. Beverly chose to go forward with his variance request instead of the appeal, and that staff sent out the standard letter the week following the hearing that included the findings of fact and the resolutions for the decision on the variance only.

Mr. Beverly commented on the apparent confusion with the letter for his approved variance. He affirmed that he wanted to comply with County Codes and be permitted to replace the antiquated house on his lot with a modern home.

Discussion followed between Mr. Hart and Mr. Shoup concerning the procedural circumstances of Mr. Beverly's appeals. Mr. Shoup explained the necessity to hear all five pertaining appeals on the same day due to all of them having the same underlying set of circumstances. Mr. Shoup stated that staff was aware of two other property owners, beside Arthur and Lenora Beverly, who had submitted formal requests for determinations and had indicated their intention to appeal.

Further discussion ensued with Mr. Shoup responding to Mr. Hart's questions concerning the scheduling of the appeal dates for the five lots. Mr. Shoup pointed out that, for purposes of making the review process more convenient for the BZA, staff sought to hold all five public hearings the same day.

Speaking for staff, Mr. Zook stated that the expectation was to complete all appropriate work within an allotted time frame. He pointed out that staff had the obligation to provide the Board and community a well-positioned, carefully researched and reasoned paper in advance of the public hearing. Mr. Zook submitted that staff's resources were also targeted to other activities, and that staff was past its limit. He assured staff's cooperation in assisting Mr. Beverly through the building permit process.

Mr. Beverly reiterated the justification for his appeal. He noted the unreasonable length of time already expended, and the increasing financial hardship being incurred while working through the County's extensive processes. He pointed out that the other individual property owners wanted only to sell their vacant lots, and

on his small lot, he only sought to replace the existing house with a new house.

Ms. Gibb pointed out that staff made the error in sending the letter to the wrong address. She commented that Mr. Beverly's circumstances were different than the others, and that it seemed unfair for it to take an entire month before Arthur Beverly would have his public hearing.

Mr. Beverly interjected that it was almost two months.

Mr. Zook clarified that the difference in time was that of being heard on August 22, 2000 or September 5, 2000.

Discussion followed among Mr. Beverly, Mr. Shoup and Mr. Zook concerning scheduling and the time required by staff for preparation. Mr. Beverly's appeals were scheduled for September 5, 2000.

Chairman DiGiulian then called the Board's attention to the motion on the floor; whether or not an eleventh case should be accepted for the public hearing on August 15, 2000, and the cancellation of the August 22, 2000 meeting.

Discussion ensued among Board members, Ms. Gibb and Messieurs DiGiulian, Hammack and Hart concerning the August meetings' agenda items, rescheduling possibilities, and the adding or dropping of cases.

Mr. Zook pointed out that the church's daycare application was advertised and 'noticed' for the August 15th meeting. Submitting that a case might be dropped from the August 15th agenda, he requested the Board consider adding an additional case.

Mr. Hammack expressed his sympathy over staff's situation but he failed to understand the perceived difficulty with the time necessary for preparation and presentation of an existing staff report. He pointed out that it only required some additional research. He questioned why a report couldn't be ready on August 22, 2000, if it could be ready for September 5, 2000, that that was only a two-week advance.

Mr. Zook, referencing his July 11th memorandum, again explained that there were demands on staff and the clerical branch for numerous other purposes during the month of August. He reiterated staff's obligation to meet requirements for other tasks.

In deference to Mr. Zook and staff, Mr. Kelley stated, the Board should concede to Mr. Zook's request. He pointed out that this issue was being revisited as, several years ago, the same issue had been addressed.

Chairman DiGiulian voiced his frustration with the inability of the Board to approve Out-of-Turn Hearings. He cited the Board's obligation to the citizens, and that on occasion, he believed citizens were not consistently fairly treated. Chairman DiGiulian noted that Mr. Zook planned to meet with the Board to discuss such situations as these from becoming problematic in the future.

Addressing the Board, Mr. Zook stated that at a later date, he would share the involved procedure staff undergoes to schedule cases. He added that, after the briefing, the Board might better understand that regularly, there are numbers of cases scheduled for earlier than the 90 days. He submitted that the Board of Zoning Appeals apparently did not understand the way cases were scheduled in order to benefit citizens with the earliest hearing dates that could be provided.

Mr. Hammack moved to accept an 11th case on August 15th, and cancel the August 22nd meeting.

Mr. Hart seconded the motion which carried by a vote of 6-1 with Mr. Pammel opposed.

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Approval of March 28, 2000 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Ribble seconded the motion which carried unanimously

Page 287, July 11, 2000, (Tape 1), After Agenda Item, continued from Page 286

by a 7-0 vote.

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Page 287, July 11, 2000, (Tape 2) After Agenda Item:

Consideration of Acceptance for appeal filed by EOP – Reston Town Center, L.L.C. ("Equity")
See Memorandum dated June 12, 2000, from William Shoup, Deputy Zoning Administrator.
(Motion to reconsider approved on June 27, 2000). Deferral requested.
(A copy of the memorandum is contained in the file)

Joseph Tompkins, Esquire, with Equity Office Properties, representing Reston Town Center, reminded the Board of its June 20, 2000, public hearing meeting during which he had presented his argument on this appeal's justification. He pointed out that the application of Ordinance 301, pertaining to aggrievement, was a procedural issue. Mr. Tompkins relayed the series of Board actions, Board of Supervisors and Board of Zoning Appeals, that transpired since the June 20th meeting and he requested the BZA exercise its power to address the three issues and resolve the appeal.

In response to Mr. Hart, Mr. Tompkins clarified that he was not seeking a deferral, and that Mr. Hart was correct with his surmise that this was an appeal of a site plan approval determination by the Department of Public Works & Environmental Services. Mr. Tompkins contended that the proffers' interpretation and the final resolution, was within the purview of the BZA.

Francis McDermott, Esquire, with Hunton & Williams P.C., representing the applicant, Terra Brooke, quoted portions of the June 20th After Agenda Item verbatim, noting that the Board of Supervisors had interpreted its own Ordinance, and through their consistent practice, had determined that matters of proffer interpretation are appealed to the BOS. He proceeded to quote numerous sections of the Ordinance that verified his assertions. He urged the BZA to make the determination that the third issue in contention was that of substantive determination, and not procedural, and should be a BOS determination. He responded to questions from Ms. Gibb concerning procedural circumstances of proffer interpretations. Mr. McDermott stated that proffer interpretations are appealable only to the BOS.

Mr. Tompkins reiterated his reasoning for the BZA to accept the appeal asserting that the proffer issue should not be excluded from consideration. He affirmed as it was properly before the BZA for review and that the Board of Supervisors had already stated that they would not consider it as the appellant was out of time.

Chairman DiGiulian repeated the motion on the floor. He called upon the Board to make a motion on accepting the first two items in the appeal and not the third.

Mr. Pammel moved to accept the EOP – Reston Town Center Appeal consistent with the memorandum submitted by the Deputy Zoning Administrator, Mr. Shoup. Mr. Hammack seconded the motion which carried by a vote of 6-1, with Ms. Gibb opposed.

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As there was no other business to come before the Board, the meeting was adjourned at 11:22 a.m.

Minutes by: Maria D. Foltz
Paula A. McFarland

Approved On: April 2, 2002



Regina Thorn Corbett, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 18, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Page 289, July 18, 2000, (Tape 1) Scheduled case of:

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

9:00 A.M. KLE, INC., SP 00-M-024 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard and pool hall. Located at 4221 John Marr Dr. on approx. 11.0 ac. of land zoned C-6, CRD and HC. Mason District. Tax Map 71-1 ((1)) 103.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Yong Paek, 4905 Fox Creek Court, Chantilly, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to operate a billiard and pool hall and an eating establishment within 5,000 square feet of tenant space. The billiard hall would have 10 tables while the eating establishment would have a maximum of 166 seats. The proposed hours of operation were 10:00 a.m. to 4:00 a.m., 7 days a week. Staff recommended approval of the application with the adoption of the proposed development conditions.

Mr. Hammack asked if any of the other billiard halls in the surrounding area had closing times of 2:00 a.m. Ms. Schilling replied that most of them closed at 2:00 a.m., although the applicant proposed the 4:00 a.m. closing time because they were completely surrounded by commercial operations and office buildings.

Mr. Paek, agent for the applicant, presented the special permit application as outlined in the statement of justification submitted with the application. He reiterated to the Board that the billiard hall would have 10 tables and the restaurant would have a maximum of 166 seats. He explained that the applicant requested a closing time of 4:00 a.m. because they were surrounded by commercial uses. He said there would be a total of eight employees.

Mr. Hammack asked staff if the restaurant would be permitted by-right without the pool hall. Ms. Schilling replied that was correct. Mr. Hammack asked if the Ordinance limited the hours of operation. Ms. Schilling replied that there was nothing in the Ordinance that limited the hours of operation.

Mr. Hart asked if the applicants had acquired a liquor license for the restaurant and if it restricted the hours that liquor could be served. Mr. Paek replied that the applicants had a liquor license and it did not limit the serving hours. Mr. Hart asked whether or not the applicants would be able to serve liquor up until the 4:00 a.m. closing time. Mr. Paek answered that it was possible.

Mr. Hart stated his understanding that there was a last call across the board of 1:00 a.m. to 2:00 a.m. Ms. Schilling stated that it was staff's understanding the establishment could remain open until 4:00 a.m.; however, the serving of alcohol would stop at some point between 1:00 a.m. or 2:00 a.m. She stated that staff would check with the Alcohol Beverage Control Board for clarification.

Mr. Hart asked if the applicant intended to provide trees in the front of the building. Mr. Paek replied that the applicants did not have the funds to provide landscaping that extensive.

Mr. Hart asked if there was any other business in the vicinity open until 4:00 a.m. Mr. Paek answered that the Steak and Ale Restaurant in Alexandria was open until 4:00 a.m.

Mr. Hart asked staff to research with the Alcohol Beverage Control Board, whether or not the Steak and Ale was serving drinks until closing.

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

Mr. Hammack moved to approve SP 00-M-024 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KLE, INC., SP 00-M-024 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard and pool hall. Located at 4221 John Marr Dr. on approx. 11.0 ac. of land zoned C-6, CRD and HC. Mason District. Tax Map 71-1 ((1)) 103. 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 18, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria 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 Sect(s). 4-603 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 4221 John Marr Drive (11.0 acres), and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Harold A Logan, Land Surveyor, dated February 16, 2000, as revised through April 14, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The applicant shall comply with all applicable alcoholic beverage control laws of the Commonwealth of Virginia.
6. Hours of operation shall not exceed 10:00 A.M. to 2:00 A.M., daily.
7. Seating in the eating establishment shall be limited to a maximum of 166 seats. Billiard/pool tables shall be limited to a maximum of 10.

8. All Signs shall be subject to and in compliance with Article 12 of the Zoning Ordinance.
9. Parking spaces shall be provided in accordance with Article 11 of the Zoning Ordinance as determined by the Department of Public Works and Environmental Services (DPWES).

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. 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 July 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 291, July 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. WALTER C. PAGUE, JR., VC 00-P-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.9 ft. from side lot line and 3.4 ft. from rear lot line and 5.7 ft. high fence to remain in front yard. Located at 2960 Hibbard St. on approx. 17,767 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 6. (Admin moved from 6/13/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Franklin Ebersole, 701 Park Avenue, Falls Church, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a detached garage 7.9 feet from the side lot line and 3.4 feet from the rear lot line and to allow a 5.7 foot high fence to remain the front yard. For the detached garage the Zoning Ordinance requires a minimum side yard of 15 feet and a minimum rear yard of 16 feet; therefore, variances of 7.1 feet and 12.6 feet were requested respectively. For the fence, the Zoning Ordinance limits fences in the front yard to a maximum height of 4.0 feet; therefore; a variance of 1.7 feet was requested.

Mr. Ebersole, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He explained that the garage was needed to provide shelter and for a business vehicle. He said that the applicant's wife would utilize the opposite side of the garage for her vehicle. He stated that there was no other location on the property to construct the garage due to drainage and access problems. He informed the Board that the garage would be in character with the neighborhood.

Mr. Pammel asked if the applicant already had an existing garage. Mr. Ebersole answered that there was an existing garage on the property that was used for housing a vehicle and storage. Mr. Hammack asked how far the houses on lots 16B1 and 10 were from the proposed garage. Mr. Ebersole did not have that information. Mr. Pammel stated that he had viewed the property and the house on Lot 16B1 was very close to the property line.

Mr. Hammack asked what was the issue regarding the fence. Ms. Schilling stated that the fence was reflected on the plat; therefore, it was part of the variance request. Mr. Ebersole stated that the applicant was willing to remove the fence if needed.

Mr. Hart asked why the garage could not be located on the south side of the property. Mr. Ebersole replied that there would be significant access problems because a new subdivision was being developed directly across the street from the where the entrance would be. He stated that the southern side of the property had drainage problems and it would be more costly to correct the problem and construct the garage. Mr. Hart asked if the garage could be moved up closer to the parking area. Mr. Ebersole stated that the garage could be moved slightly, but if it were to be moved significantly it would eliminate access to the existing garage.

Mr. Kelley asked how tall the structure would be. Mr. Ebersole replied 15 feet to match the existing roof line.

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

Mr. Pammel stated that he had visited the property and that the proposed garage would cause an impact on the adjoining property because it was located too close to the property line. He suggested that the applicant explore other possibilities for the location of the garage. He said that he had no problem with the fence height because it had been on the property for years and it did not cause any safety factors.

Mr. Pammel moved to approve in part VC 00-P-038 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER C. PAGUE, JR., VC 00-P-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.9 ft. from side lot line and 3.4 ft. from rear lot line and 5.7 ft. high fence to remain in front yard. **(THE GARAGE WAS DENIED)** Located at 2960 Hibbard St. on approx. 17,767 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 6. (Admin moved from 6/13/00). 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 18, 2000; and

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

1. The applicant has not met the prescribe criteria for the granting of a variance.
2. There are other options available for the applicant to construct the garage.
3. The fence is not a safety factor and does not obstruct vision.

This application for the fence 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 **APPROVED IN PART** with the following limitations:

1. This variance is approved for the fence shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 9, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 7-0. Mr. Kelley moved to waive the 12-month waiting period for refileing an application. 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 July 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 293, July 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. JERRY & ANN VERNON, VC 00-V-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. of land. Located at 1111 Waynewood Blvd. on approx. 14,731 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (19) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jerry and Ann Vernon, 1111 Waynewood Boulevard, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit a tree house, to remain in the front yard of a lot containing less than 36,000 square feet.

Mr. and Mrs. Vernon presented the variance request as outlined in the statement of justification submitted with the application. Mr. Vernon explained that the tree house was the result of a 4-H project that his wife was involved in and she had contacted the Building Permit Department of Fairfax County and asked them what the necessary requirement would be to construct this tree house. He said that she was told that there

were no set back or other requirements for the tree house as long as it was attached to a tree on the property and did not encroach onto the neighboring property. He also stated that at that time they were not aware that they had double front yard requirements. Mr. Vernon stated that his wife again contacted the County midway through the project to reconfirm that what she had been told was correct and she was told that it was. He said the tree house took two years to complete and during that time there were no complaints by the neighbors and there was no notice of any zoning violations. He stated that upon completion of the project they received a certified letter from the neighbors requesting that they contact Fairfax County to assure that they were in compliance with the Zoning Ordinance. He said that while they were waiting for a response from the County the neighbors filed a complaint and they were contacted by the County and issued a violation for the tree house. Mr. Vernon went on to say that they did everything they could to conform to the requirements of the County by calling twice and the tree house was built in good faith. He informed the Board that they had the tree house inspected by an engineer to make sure it was architecturally sound.

Mr. Hammack asked Mrs. Vernon if she informed the County of how large the structure would be. She replied that she had done the best she could to describe the dimensions by providing them with the approximate base dimensions and how high off of the ground it was going to be. She explained that she was told by the County that she did not need to obtain a building permit.

Mr. Hart stated that the applicants had described the structure as a tree house; however the pictures depicted something more like a shed on a platform. He asked if the tree was holding up the structure. Mr. Vernon stated that one corner of the tree was holding up the structure and it was designed to minimize stress on the tree.

Mr. Hart asked staff if the structure would be allowed if it were separated from the tree and moved to a different area of the property. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the side yard setback had to be 12 feet, and as long as it was in the side yard and at least 12 feet from the side lot line it would be allowed.

Mr. Vernon pointed out that the structure was temporary and as their children got older it would be removed.

Chairman DiGiulian called for speakers.

Richard Joseph, 1216 Priscilla Lane, came forward to speak in opposition. He stated that the structure threatened his family's safety and privacy because it was too close to the property line, it exceeded height and size limitations and it was located in the front yard. He said that the tree house was parallel to his family's bedrooms. He explained that he had offered to assist the applicants in relocating the structure; however, he received no response from them. Mr. Joseph stated his opinion that the structure was not a tree house, but a free standing structure. He contended that the tree house was unstable and presented a slide show outlining its architectural weaknesses. He explained that the boards were very loose and a heavy wind could cause them to blow off and strike his family's bedroom windows.

JoEllen Joseph, 1216 Priscilla Lane, came forward to speak in opposition. She stated that the petition circulated by the applicant did not reveal all of the facts regarding the application. She stated that the applicants did not request a variance until more than 90 days after they had been cited.

Mr. Vernon, in his rebuttal, stated that they had asked for and were granted an extension to research all of their options before taking action. He said that he understood the neighbor's concern for their safety and reiterated that a professional engineer had certified the structural soundness of the tree house. Mr. Vernon stated that they had responded to the neighbor's letter by contacting Fairfax County to see if the tree house was in conformance. He stated that most of the neighbors who signed the petition had children that played in the tree house.

Mr. Ribble asked who owned the fence that went along the boundary line between the two properties. Mr. Vernon replied that the Joseph family owned the fence.

Chairman DiGiulian closed the public hearing.

Mr. Ribble stated that the tree house was too close to the neighbors and it did not meet the Ordinance.

Mr. Hart moved to deny VC 00-B-052 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JERRY & ANN VERNON, VC 00-V-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. of land. Located at 1111 Waynewood Blvd. on approx. 14,731 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 (5) (19) 1. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have not met the prescribed criteria for the granting of a variance.
3. The property is not unusually shaped.
4. The structure does not restrict all reasonable use of the property.
5. The visual impact of the structure is significantly negative.

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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel suggested that the Board endorse a request for a policy to be established that would preclude building inspectors from responding to telephone inquiries concerning whether permits were permitted or not. He recommended that the County support a program where zoning inspectors or representatives of the zoning office were available in the various governmental centers a specific period of time every week and that it was advertised to people who had questions so they could go to the local governmental center to get information without having to travel to Fairfax.

There was no second to this proposal.

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Page 296, July 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. BERNARD DWYER, JR. & KAREN LEE GARVEY, VC 00-B-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. and roofed deck 6.5 ft. from side lot line. Located at 9305-B Jackson St. on approx. 26,214 sq. ft. of land zoned R-2. Braddock District. Tax Map 78-2 ((1)) 19B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bernard Dwyer and Karen Garvey, 9305B Jackson Street, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested variances to permit the construction of a 1½ story addition to be located 3.5 feet from a side lot line and an extension of the front porch to be located 6.5 feet from the same side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, variances of 11.5 feet for the 1 ½ story addition and 8.5 feet for the porch addition were requested.

Mr. Garvey presented the variance requests as outlined in the statement of justification submitted with the application. He stated that the addition would provide additional living space for his family. He explained that the home backed up to a 200 foot easement from train tracks, which prevented them from expanding the home in any other direction. He said they had full neighborhood support.

Mr. Hart noted that the existing back porch encroached into the 200 foot easement. He asked if the porch addressed in the development conditions was the front porch or the back porch. He also asked if the Board had the jurisdiction to make decisions regarding encroachment into the easement.

Susan Langdon, Chief, Special Permit and Variance Branch, replied that the development conditions addressed the front porch. She said the back porch, as far as the distance from the side lot line, was not under consideration. She noted that there was a set back requirement from railroads of 200 feet for living space and structures in a house. She informed the Board that the issue of the back deck encroaching into the 200 foot easement was not taken up by staff as it was not part of the variance requests.

Mr. Hart clarified to the applicant that the Board was not taking up the issue of the back deck, but only the addition and the front porch.

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

Mr. Pammel stated that staff should be held responsible for obtaining a variance for the back porch encroachment, should the applicant be denied a building permit, as the issue was not included in the variance request. Ms. Langdon replied that the applicant would be able to get a building permit for the

variances. She stated she was unclear of the circumstances regarding the back porch at the time the application was accepted between the applicant and the Applications Acceptance Branch. Mr. Pammel stated that the back porch encroachment was clearly on the Plat and it was the staff's responsibility to correct the error.

Mr. Ribble moved to approve VC 00B-052 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BERNARD DWYER, JR. & KAREN LEE GARVEY, VC 00-B-052 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. and roofed deck 6.5 ft. from side lot line. Located at 9305-B Jackson St. on approx. 26,214 sq. ft. of land zoned R-2. Braddock District. Tax Map 78-2 ((1)) 19B. 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 18, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The applicants are restricted by a 200 foot railroad easement and the placement of the house on the lot.
4. The lot is exceptionally narrow.

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

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

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

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

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

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

1. This variance is approved for the location of addition and porch as shown on the plat prepared by Charles E. Johnson, dated April 12, 1983 and revised by Leroy T. Gravatte, Professional Engineer, dated April 21, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The additions shall be architecturally compatible with 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.

Ms. Gibb 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 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 298, July 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. EUGENE L. LARSON, VC 00-V-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from side lot line. Located at 9223 Presidential Dr. on approx. 22,104 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((3)) 1A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eugene and Jean Larson, 92232 Presidential Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a master bedroom addition to be located 12.6 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance of 2.4 feet was requested.

Mr. Larson presented the variance request as outlined in the statement of justification submitted with the application. He stated that his wife's progressive illness would soon impair her ability to climb the stairs to the bedrooms on the second level of the home; therefore, the addition of a bedroom on the ground floor of the home was needed. He stated that they had neighborhood support.

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

Ms. Gibb moved to approve VC 00-V-054 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EUGENE L. LARSON, VC 00-V-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from side lot line. Located at 9223 Presidential Dr. on approx. 22,104 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((3)) 1A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The applicant is not able to build the addition anywhere else on the property.
4. The variance request is moderate and will have minimal impact on the property next door.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition shown on the plat prepared by Kenneth W. White, dated April 7, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 300, July 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. WILLIAM AND BARBARA WEISS, VC 00-H-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into five lots with proposed Lot 2 having a lot width of 112.8 ft., Lots 3 and 4 having a lot width of 14.42 ft. and Lot 5 having a lot width of 14.04 ft. Located at 609 Jerry La. on approx. 6.06 ac. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 11. (Moved from 5/23/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank Stearns, 11320 Random Hills Road, Suite 600, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the subdivision of 1 lot into 5 lots with proposed lot 2 having a lot width of 112.8 feet, lots 3 and 4, having lot widths of 14.42 feet and lot 5 having a lot width of 14.04 feet. The Zoning Ordinance requires a minimum lot width of 150 feet; therefore, variances of 37.2 feet for lot 2, 135.58 feet for lots 3 and 4 and 135.96 feet for lot 5 were requested.

Mr. Stearns, agent for the applicants, presented the variance request as outlined in the statement of justification submitted with the application. He relayed the applicants wish to keep their family property together and allow each of the children to have a lot next to them for the future. He explained that due to several easements on the property, an Environmental Quality Corridor (EQC), and the amount of lots that needed to be created, the division of the property required a variance. Mr. Stearns informed the Board that the applicants did not want to rezone the property to form a Cluster Subdivision because they were not developers and did not have the funds needed to do this. He asked the Board to delete development conditions 3, 4 and 5 as these conditions would restrict them from clearing and grading outside the building restriction lines, planting and maintaining gardens on the property and would delegate which trees to save on the property. He also requested to amend development condition #2 to ensure the applicants had waiver rights under the Facility Maintenance Manual.

Chairman DiGiulian called for speakers.

The Weiss children came forward to speak in support of the application;

Christopher Weiss, 10005 Oakton Terrace Road; Linda Weiss-Baskerville, 609 Jerry Lane; Heidi Weiss-Grey, no address given for record; Robin Weiss-Harmon, no address given for record. All of the Wise children expressed their wishes to return to the property where they were raised, construct their homes and to raise their children together. They intended to return the property to the state that it was

when they lived there, which included restoring the pond. They informed the Board that they had no intention of selling the land to a developer in the future.

Earl Smith, Vice President, Tangle wood Community Association, (no address given for record), came forward to speak in support of the application. He stated that the neighborhood would like to see the pond reestablished for flood control.

Don Swift, (no address given for record), came forward to speak in support of the application. He stated that there was full neighborhood support for the application and the community was looking forward to the families return to the property.

Richard Schmidt, 608 Roberts Drive, came forward to speak in support of the application. He stated that he supported the application; however, he had some concern that the restoration of the pond would increase the mosquito population in the area.

Mr. Hart asked whether or not the Zoning Ordinance required each lot to have public street frontage or if they just had to have access to a public street. Susan Langdon, Chief, Special Permit and Variance Branch replied that the Zoning Ordinance mandated that each lot have access to a public street.

Mr. Hart asked what the plans were for the pond. Mr. Stearns stated that the dam had been removed so it was not retaining water; however, it was still designated to be a pond. He informed the Board that the children had intentions of rebuilding the dam and reestablishing the pond area.

Ms. Gibb asked staff's position on Development Condition #5. Ms. Langdon stated that the purpose of the condition was to prevent any building in the Environmental Quality Corridor (EQC). Mr. Stearns stated that the applicants did not want to build in the EQC, they only wanted to be able to maintain the area and the development condition prevented any kind of maintenance. Ms. Langdon informed the Board that they could amend the condition to address the applicants' request.

Ms. Gibb asked if the applicants objected to Development Condition #2. Mr. Stearns stated that the applicants requested that the waiver provisions to the Public Facilities Manual be included in the development condition to give the applicants some flexibility when constructing the driveways.

Mr. Hammack asked what the applicants would have to do to request a Cluster Subdivision. Ms. Langdon replied that the applicants would have to file for a special exception. Mr. Hammack asked if they would be required to extend a cul de sac into the property. Ms. Langdon answered that they would. Mr. Hammack asked why the applicants did not want to seek a special exception. Mr. Stearns replied that the applicants did not have the funds to do so.

Mr. Kelley moved to approve VC 00-H-022 with the deletion of the second sentence in Development Condition #2, and the deletion of Development Conditions 3, 4, and 5 and for the reasons stated in the Resolution.

Mr. Pammel stated that in his opinion that the family was preserving an environmental oasis and the County needed more land of this sort.

Mr. Hart stated his that he would not support the motion without Development Conditions 3, 4 and 5. Ms. Gibb stated that she agreed with the applicant and was going to support the application

Mr. Hammack stated that he would not support the motion without Development Conditions 3, 4 and 5.

Mr. Hammack made a substitute motion to defer decision on VC 00-H-022 for one week to allow staff to present language that would satisfy all of the parties to allow these conditions to remain. Mr. Hart seconded the motion which failed by a vote of 2-5. Chairman DiGiulian, Ms. Gibb, Mr. Kelley, Mr. Pammel and Mr. Ribble voted nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM AND BARBARA WEISS, VC 00-H-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into five lots with proposed Lot 2 having a lot width of 112.8 ft., Lots 3 and 4 having a lot width of 14.42 ft. and Lot 5 having a lot width of 14.04 ft. Located at 609 Jerry La. on approx. 6.06 ac. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 11. (Moved from 5/23/00). 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 18, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
- 3. The lots have exceptional topographical conditions.
- 4. The statement of justification fully explains the applicants' situation.
- 5. The applicants' testimony overcame the staff objections listed in the staff report.

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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of one (1) lot into five (5) lots, with proposed Lot 2 having a lot width of 112.8 feet; Lots 3 and 4 having a lot widths of 14.42 feet, and Lot 5 having a lot width of 14.04 feet, in substantial conformance with the plat prepared by Paul B. Johnson, dated November 1999, as revised through May 31, 2000. All development shall be in conformance with this plat as qualified by these development conditions.
2. Lots 2 through 5 shall have access to Jerry Lane from the shared driveway and Lot 1 shall be accessed from Carey Lane as depicted on the variance plat.

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 5-2. Mr. Hammack and Mr. Hart voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 303, July 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. ANDREW C. BRISCOE, VC 00-D-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.1 ft. from side lot line. Located at 6818 Rosemont Dr. on approx. 10,891 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((29)) 42.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Karen Briscoe, 6818 Rosemont Drive, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit construction of a carport addition to be located 2.1 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet and a 5 foot extension is permitted by-right for a carport; therefore, a variance of 4.9 feet was requested.

Ms. Briscoe presented the variance request as outlined in the statement of justification submitted with the application. She stated that the proposed carport would be constructed on an existing concrete pad, which was constructed when the house was built in 1959. She stated that the way the house was situated on the lot prohibited them from building a garage in another location. She submitted a photograph of the location of the proposed carport. She said the carport would be in character with the neighborhood and that she had neighborhood support.

Chairman DiGiulian called for speakers.

James Kartez, (no address given for record), stated that he was in support of the application as long as the applicants abided by the development conditions.

Mr. Hammack asked if the carport could be moved up several feet to shorten the encroachment. Ms. Briscoe stated that the carport would look odd from the front of the home.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 00-D-053 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW C. BRISCOE, VC 00-D-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.1 ft. from side lot line. Located at 6818 Rosemont Dr. on approx. 10,891 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((29)) 42. 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 18, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a special permit.
3. The property has double front yard requirements.
4. The dwelling is located very close to the side lot line where the variance is being sought.
5. It would be difficult to put the carport in a different location.

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 **APPROVED** with the following

limitations:

1. This variance is approved for the carport addition shown on the plat prepared by Sam Whitson, L.S./Land Surveying, dated April 20, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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.

Ms. Gibb 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 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 305, July 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. THELMA W. GARDINER, VC 00-Y-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 11.6 ft. from side lot line. Located at 5131 Pheasant Ridge Rd. on approx. 20,850 sq. ft. of land zoned R-C and 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. Joseph Sullivan, 410 University Drive, Suite 101, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck 2.0 feet in height to be located 11.6 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet and a 5 foot extension is permitted by right for a deck at that proposed height; therefore, a variance of 3.0 feet for the side yard was requested.

Mr. Sullivan, agent for the applicant, presented the variance as outlined in the statement of justification submitted with the application. He stated that the lot was narrow and the house was situated at an angle on the property. He informed the Board that the previous owner was granted a variance to permit construction of the existing sunroom and the applicant desired to construct a deck connecting to the sunroom.

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

Mr. Pammel move to approve VC 00-Y-055 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THELMA W. GARDINER, VC 00-Y-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 11.6 ft. from side lot line. Located at 5131 Pheasant Ridge Rd. on approx. 20,850 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 56-3 ((9)) 61A. 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 18, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The structure on the lot is unusually configured.
4. The deck will be constructed from an already existing sunroom.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the deck shown on the plat prepared by Fred T. Wilburn, Jr., dated February 10, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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. Hart 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 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 307, July 18, 2000, (Tape 1) Scheduled case of:

9:30 A.M. RENAISSANCE APARTMENTS, L.P., AN ENTITY AFFILIATED WITH CHARLES E. SMITH RESIDENTIAL, A 1998-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected and displayed an off-site freestanding sign in violation of Zoning Ordinance provisions. Located at 7631-7659 Leesburg Pk. on approx. 106,847 sq. ft. of land zoned C-3 and HC. Providence District. Tax Map 39-2 ((22)) A. (DEFERRED FROM 2/9/99, 5/11/99, 11/16/99 and 1/18/00).

William E. Shoup, Deputy Zoning Administrator, presented staff's position as contained in the staff report. He stated that the issue of the appeal involved an off site sign advertising the Renaissance Apartment Complex. He informed the Board that the sign was located on the corner of Leesburg Pike and George C. Marshall Drive and the apartment complex was located on a separate lot 2,000 feet away from the sign. Mr. Shoup contended that the Zoning Ordinance stipulated that signs must be located on the same lot as the advertising property and there were no provisions for a sign of this type. He stated that the Board of Zoning Appeals had conducted a hearing on January 18, 2000, and moved to continue the case so that the appellant and staff could discuss the possibility of amending the Zoning Ordinance to allow for some off site signage. He informed the Board that the issue had been added to the Zoning Ordinance Amendment Work Program for consideration to be addressed as part of a Comprehensive Review of the Sign Regulations contained in the Zoning Ordinance. Mr. Shoup said that the Board of Supervisors had not endorsed the separate processing of an amendment to address the appellant's issue. He noted the unlikelihood that the comprehensive review of the Sign Regulations would be completed before the spring of 2001 and that it was debatable that there would be support for allowing such off site signs. Mr. Shoup submitted that the Ordinance clearly stated that the sign in question was not permitted and the appellant did not feel that the Zoning Administrator erred in this determination and that the violation had existed for nearly two years. He requested that the Board uphold the Notice of Violation.

Ms. Strobel, agent for the appellant, stated that the sign was erected and displayed with the permission of the owner of the property on which the sign was located. She stated that the circumstances surrounding the appeal provided a compelling reason to review the pertaining Ordinance provision. She illustrated that Renaissance Apartments and Tysons Glen did not have public street frontage and were not visible from the public streets.

She said that directional signs were critical for citizens to locate the property in a safe and efficient manner. Ms. Strobel informed the Board that the few rental projects in Fairfax that had the magnitude of the one in question, had the added benefit of public street frontage. She noted that approximately 19 persons per week visited the site to look at the property. She said that a survey had been taken and 31% of the those people located the property by the existing sign. She said the complex had a 56% turnover rate in 1999, more than half of the occupants. She explained that signs were critical to continued viability for the apartment complex. Ms. Strobel stated that the Zoning Ordinance was discriminatory because commercial property owners were permitted the right to post signs in different locations due to issues of topography and visibility; however, similar provisions were not available for the owner of a multi-family residential project. She stated that the appellant had been unable to convince the Board of Supervisors to take up this particular provision to process separately from the Ordinance Amendment. She requested that the appeal be indefinitely deferred until the issue was addressed as part of an Ordinance Amendment that would be taken up in 2001. She stated that the sign created a safer situation in that people would know where to turn to access the property.

She submitted an elevation of a sign that could be located on the property in a way that would not harm site distance or visibility but would allow the appellant to have some type of directional sign.

Mr. Hammack asked for a time-frame as to when this issue would be addressed as part of a Zoning Amendment in 2001. Mr. Shoup replied that the issue would be addressed as a part of the Comprehensive Review, which had been delayed due to pressing amendment needs. He noted that staff did not support the appellant's proposal and the trend had been to get away from off site signs. He reiterated that it was debatable that there would be support for allowing signs of that nature.

Mr. Hammack asked for the date of the initial Notice of Violation. Mr. Shoup answered that it was August of 1998. Ms. Strobel explained that the appellant had attempted to persuade their supervisor to take up the issue separately from the Ordinance Amendment, however, he was not willing to do so. She stated that the proposed Ordinance Amendment would not result in unnecessary signs because all proposed signs would have to be approved by the BZA.

Ms. Gibb asked for confirmation that the Supervisor was not willing to take the issue up out of turn. Ms. Strobel replied that the Supervisor did not want to address the issue separately since it was already on their agenda.

Ms. Gibb asked if the Ordinance was in effect when the apartment complex was constructed. Mr. Shoup replied that it was.

Ms. Strobel contended that the supervisor's reasoning was regarding policy and not the merits of the proposal.

Ms. Gibb asked if the sign was in the Sign Overlay District. Mr. Shoup answered that it was not.

Mr. Ribble asked if Tysons Glen was in a similar position. Mr. Shoup replied that Tysons Glen was located near the Renaissance Apartments and was in a similar position.

Mr. Hart asked where the item was on the priority list for the Board of Supervisors. Jane Gwin, Zoning Administrator, replied that the item was on the priority one list to be addressed within the next 12 to 18 months; however, it was just one part of the Comprehensive Sign Amendment and it would take a long time to address all of the issues and reach a resolution.

Chairman DiGiulian called for speakers.

Denise Miller, (no address given for the record), came forward to speak in support. She stated that the 1st floor of their building contained a commercial use and they needed to be able to direct customers to the property. She stated that the sign was used as a point of reference to people that called for directions.

Marshall Hought, 2947 Dominion Way, stated that he had no objection to the sign in question, but did object to all of the temporary signs that were put up and never taken down.

Mr. Hart asked if the current Ordinance allowed some additional signage to be approved on the face of an apartment building. Ms. Gwinn stated that there was a special exception remedy; however, it only applied to the C and I Districts and was not applicable to residential apartments.

Mr. Hart asked for confirmation whether the building was located in a residential district even though there was a commercial use on the 1st floor. Ms. Gwinn replied that the building was residentially zoned. She suggested that the appellant clear the violation and should the Zoning Ordinance be amended, the applicant could act on that amendment.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the decision of the Zoning Administrator regarding appeal application A 1998-PR-033.

Mr. Hammack stated that he agreed with the motion. He said that the appellant had been in violation for two years and that Ms. Strobel had done everything she could possibly do to move the process along; however,

Page 309, July 18, 2000, (Tape 1), RENAISSANCE APARTMENTS, L.P., AN ENTITY AFFILIATED WITH CHARLES E. SMITH RESIDENTIAL, A 1998-PR-033, continued from Page 308

there was no assurance that the Ordinance would ever be amended even if the Board deferred decision again.

Ms. Gibb stated that the Supervisors had the opportunity to take up the issue and for whatever reason declined to do so; therefore, she was in support of the motion.

Mr. Pammel stated that if the Board did not defer decision until the Zoning Ordinance was amended, it would not leave the applicant anything to appeal. He voiced his opinion that the request was very reasonable and he was in support of the motion.

Ms. Gibb seconded the motion which carried by a vote of 6-1. Mr. Pammel voted nay.

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Page 309, July 18, 2000, (Tape 1) Scheduled case of:

9:30 A.M. JAMES H. FALK, JR., A 2000-DR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the lot identified as Tax Map 12-4 ((1)) 27 consists of 10,624 sq. ft. zoned C-8 and 11,620 sq. ft. zoned R-1 and the lot identified as Tax Map 12-4 ((1)) 28 consists of 28,120 sq. ft. zoned C-8 and 3,258 sq. ft. zoned R-1 and that the C-8 zoned portions of Lots 27 and 28 could be the subject of a site plan for any use permitted in the C-8 District. Located at 10121 and 10123 Colvin Run Rd. on approx. 1.23 ac. of land zoned R-1 and C-8. Dranesville District. Tax Map 12-4 ((1)) 27 and 28.

Daryl Varney, Zoning Administration Branch, presented staff's position as stated in the staff report. He informed the Board that the issue of the appeal was the Zoning Administrator's determination that the lots were split zoned and that the C-8 zoned portion was subject to a site plan for uses permitted in the C-8 District. He said the property, which was the subject of the appeal, was located at 10121 and 10123 Colvin Run Road and was further identified as Tax Map Reference 12-4 ((1)) 27 and 28. He explained that with the adoption of the first Zoning Ordinance in 1941, a Rural Business District was established around the intersection of Colvin Run Road and Walker Road. He said that when lots 27 and 28 were recorded, the Rural Business District zoning was already in place and based on property descriptions in the 1941 Zoning Ordinance and zoning map, the Mapping Services Branch determined that the lots were split zoned Rural Business and Agricultural when they were recorded. He added that with the adoption of the 1959 Zoning Ordinance, the Rural Business portion converted to the C-G Commercial District and the Agricultural portion converted to the RE-1 Residential District with the adoption of the current Zoning Ordinance in 1978, the C-G portion converted to C-8 and the RE-1 portion converted to R-1 as described in attachment 7 of the staff report; therefore, the Zoning Administrator determined, in 1991, that the lots were split zoned Rural Business and Agricultural at the time they were recorded and had been split zoned Residential and Commercial since that time. He said that Sect. 2-405 of the Zoning Ordinance mandated that if a lot was recorded prior to the effective date of the current Ordinance and met the requirements of the Zoning Ordinance in effect at the time it was recorded, the lot may be used either as a single lot or in combination with other such lots for any use permitted in the zoning district in which it was located.

Mr. Varney contended that the Rural Business zoned portion of the lots met the requirements of the Zoning Ordinance in effect at the time they were recorded; therefore, the Zoning Administrator further determined in 1991, that Sec. 2-405 was applicable to the current C-8 zoned portion and the C-8 zoned portions combined could be used for any use permitted in the C-8 District even though it did not meet the C-8 lot area requirement. He explained that this determination was reconfirmed in 1998 and again for the appellant in a letter dated April 24, 2000, and that letter was the the subject of the appeal.

James H. Falk, Jr. stated that the case had much community involvement that dated back to 1997. He said the plan was submitted in March of 1997, and detailed letters objecting to the plan were filed with the County in September of 1997, which raised issues about zoning, transitional screening, waivers and traffic. He informed the Board that the community and the citizen's association submitted two additional letters of opposition in February of 1998. He said the County responded by letter on March 25, 1998, which said that the site plan would not be approved until all of the citizen's issues were resolved; however, the plan was approved on March 15, 2000, before the Zoning Administrator's letter of April 24, 2000, which was the subject of the appeal. Mr. Falk submitted that the April 24, 2000, letter was a rationalization that was done to

support an illegal action in the terms of approving a plan which was the subject of protest. He contended that lot 27 had been taxed as a residential lot since its creation and it also was the subject of a rezoning to allow a commercial use; therefore the lot could not have been split zoned. He voiced his opinion that if the lots were split zoned then there should be a 50/50 split instead of 80/20. He stated that a transitional screening waiver was granted in 1997 and expired after 24 months and the waiver was again requested in 1999; however, the second waiver application did not include the new residential development that had been constructed in the area. He submitted that the surveyor purposely did not alert the County about the new residential homes. Mr. Falk requested that the Board revoke the site plan approval until the citizen issues were resolved.

Mr. Hart asked if the appellant disagreed with the County measurements regarding the split zoning of the lots. Mr. Falk replied that the County violated the 1941 Zoning Ordinance because the original split zoning was not taken into consideration when the lots were configured. Mr. Hart stated that the Board determined the size of the districts irrespective of the property lines. Mr. Falk went on to say that there were errors with regard to the two separate survey lines. Mr. Hart asked for clarification as to whether anyone appealed the March 15th site plan approval. Mr. Falk stated that no one was notified of the site plan approval. He said that he had submitted a letter which requested notification of any action with respect to the site plan. He stated that he was notified by Supervisor Mendelsohn's office regarding the approval of the site plan.

Mr. Hart stated his thoughts that the subject of the appeal was the determination of the calculations of the lots and asked Mr. Falk if he believed the Board had any control over revoking the site plan.

Mr. Hart asked whether or not property that had been taxed as Residential had any effect on its zoning classification. Mr. Falk replied that it was just proof of what the original zoning was. Mr. Falk quoted language from the Zoning Ordinance regarding the Historic Overlay District and said that the use encroached upon that district.

Mr. Hart asked if the two separate survey lines were significant. Mr. Varney illustrated the survey lines for the Board and explained staff's calculations of the property lines.

Mr. Hart asked whether the language regarding to the Historical Overlay District controlled the uses on the two parcels in question. Mr. Varney replied that the language only applied to properties within the Historic Overlay District and the two lots in question were outside that district.

Ms. Gibb asked if the lots had been created by metes and bounds and if the zoning lines were ignored. Mr. Shoup replied that was the case and said that the developers had no intentions of coinciding with the zoning lines and that they were just conveying the property according to the description.

Ms. Gibb asked when adjacent owners were notified of site plan issues. Cyrus Salehi, Environmental and Facility Review Division, stated that the notices were sent to property owners one time and they have a time period of 30 days to allow the citizens to review the site plan and submit any concerns. Ms. Gibb asked what the County's obligation was with regard to public concerns. Mr. Salehi replied that the County reviewed all citizen concerns. Ms. Gibb asked what was the process if the site plan expired. Mr. Salehi replied that new notices would be sent upon the request for a new site plan; however, the site plan in question had never expired. Ms. Gibb asked about the transitional screening waiver. Mr. Salehi stated that the waiver was reviewed and Urban Forestry recommended final approval. He went on to say that the notices encompassed the site plan information as well as the transitional screening waiver.

Mr. Shoup noted that the waiver was not addressed in the letter that was the subject of the appeal.

Chairman DiGiulian called for speakers.

Bruce Yahn, 1190 Reese Meadow Court, came forward to speak in opposition. He stated his property line was less than 100 feet from the two lots in question. He stated that he never received any type of notice from the County.

Jerry Emrick, representative for for property owners, Mr. and Mrs. Muhammad Mussasala, came forward to speak. He stated that there was nothing in the appeal papers filed that related to the site plan; therefore, that issue was not properly before the Board neither and was the issue of the waivers. He stated that the Zoning Administrator had the same opinion in 2000 that she had back in 1991 and that the appellant was aware of this. He stated that the decision of the Zoning Administrator was professional and competent and asked the

Page 311, July 18, 2000, (Tape 1), JAMES H. FALK, JR., A 2000-DR-008, continued from Page 310

Board to support that determination.

Mr. Varney reiterated that the issue was about where the zoning districts lay and the plat was properly put before the mapping office.

Mr. Falk stated that his appeal contained 11 issues and the staff report did not challenge the timeliness or the authority of those points other than the notice element; therefore, it was improper for staff to take issue with any points not covered in the staff report. He stated that the property owners were only notified once in 1997 of the original preliminary site plan, even though there were several significant changes. He stated that the Board did have the authority to deal with the transitional screening issue.

Chairman DiGuilian closed the public hearing.

Mr. Pammel stated that the issues were interesting but it really came down to the specific question of what the applicant set forth in the appeal, which was the improper zoning determination of the two lots. He said the staff had prepared a very detailed and thorough analysis of the 1941 Ordinance and how the district was defined. He stated that he could not support the appellant regarding a 50/50 split because it did not coincide with the determination made by the Zoning Administrator. He said that staff had taken the dimensions that were set forth in the designation of the district and that the current zoning was what was established in 1949.

Ms. Gibb stated that the appellant's issues were not with merit under the Zoning Ordinance.

Mr. Pammel moved to uphold the determination of the Zoning Administrator regarding A 2000-DR-008. Mr. Ribble seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

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Page 311, July 18, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration
Chang and Chung Kim
SPA 94-S-033

Susan Langdon, Chief, Special Permit and Variance Branch, stated that there were revised development conditions regarding the application.

Juan Bernal, Staff Coordinator, stated that on June 20, 2000, the Board approved the application and the following week a reconsideration request was heard by the Board and deferred for one week to allow staff to administer a new development condition to address the light meter readings issue. He informed the Board that another light meter reading had been taken and a new development condition has been structured that was acceptable to the applicant and Elaine McConnell.

Ms. Langdon stated that it was an amendment to Development Condition #8.

Mr. Pammel stated that there needed to be a new advertised hearing in order for the Board to change previously approved development condition.

Mr. Pammel moved to approve the request for reconsideration for SPA 94-S-033.

Chairman DiGiulian asked staff for a date. Ms. Langdon replied that a new date had not been discussed and it would have to be readvertised; therefore, it would be a minimum of 30 days before it could be scheduled.

Mr. Kelley stated that the issue was a clarification of a new development condition.

Lynne Strobel, agent for the applicant, stated that the applicant had no objection to the condition and it could be interpreted as a clarification to the discussions that took place at the hearing. She stated that the applicant objected to having to go through the process from the beginning because he had worked very hard to come up with the conditions. She said that he wanted to begin to take advantage of the hours of operation that were approved as it was the summer time and his busiest time of year.

Mr. Hammack asked what purpose the new condition served that the original one didn't. Barbara Byron, Director, ZED, stated that the original condition stated that the light readings would have to be 0.5 and the

new condition stated that with the lights on, the neighboring properties could not be effected any more than with the lights off. She explained that it encompassed the existing condition in terms of ambient light. She stated that the neighbors were concerned that they would have to live with the ambient light along with the increased light from the driving range and the new condition addressed that concern.

Mr. Ribble stated that he had reservations about the revision and supported the motion.

Ms. Byron stated that there had been incidences where the BZA had adjusted the development conditions and that this was not a lesser restriction than what was previously stated. She said that changing the development conditions would not be out of character with actions that they had taken in the past.

Mr. Pammel stated that if the Board was changing the substance of a condition then it had to be opened up for comment from the citizens.

Mr. Edwards, Supervisor McConnell's office, stated that there were four neighbors that were impacted by the lights of the driving range and he had spoken with two of those neighbors who were acting as a conduit for the other two. He stated that he had informed them of the new language and they were in agreement with the language.

Mr. Hart asked if the driving range could be operated if a new hearing was scheduled. Ms. Byron stated that the driving range could only be legally operated under the currently approved conditions under the original special permit, which had the restrictions on the hours and the light trespassing onto adjacent property having to be zero.

Mr. Hammack stated that the additional language was not discussed in the prior public hearing; however, he thought that the language in the original motion was sufficient.

Mr. Ribble seconded the motion which carried by a vote of 4-3. Mr. Kelley, Ms. Gibb and Mr. Hammack voted nay. The public hearing was scheduled for September 19, 2000, at 9:00 a.m.

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Page 312, July 18, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration
Sandra Rinehart
SP 00-B-013

The Board discussed the reasons surrounding the request for reconsideration and decided that the denial was based on location and transportation issues. There was no motion and the request was denied.

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Page 312, July 18, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration
Nazila Khoshnevis
SP 00-P-022

Timothy Sampson, agent for the applicant, stated that the determination to deny was based, in part, on credibility that somehow the applicant, because she had previously been operating without a special permit, now did not deserve the opportunity to obtain a special permit. He stated that the applicant took the steps that she needed to take pursuant to the Notice of Violation, there were no land use related issues identified and she should have been given the opportunity to operate in compliance with the regulations.

Ms. Gibb asked staff if the applicant had to live in the premises. Susan Langdon, Chief, Special Permit and Variance Branch, replied that was correct. Ms. Gibb asked if that was a land use issue. Ms. Langdon replied that it was a standard in the Zoning Ordinance that had to be met.

Ms. Gibb stated that she would be open to reconsideration.

Page 313, July 18, 2000, (Tape 1), After Agenda Item, continued from Page 312

Mr. Hammack said that he believed the applicant's testimony was unconvincing; however, there were land use issues involved such as her moving out of the home for several months and moving other family members in. He stated that there were issues involving the number of employees and whether or not she lived on the premises.

Mr. Hammack moved to approve the request for reconsideration regarding SP 00-P-022.

Mr. Kelley stated that there was a very serious credibility issue with regard to her living in the house. He said the neighbors testified that she did not live on the premises and she said that she did. He went on to say that he did not support the motion.

Ms. Gibb seconded the motion which failed for a lack of four votes. Chairman DiGiulian, Mr. Hart, Mr. Kelley, Mr. Pammel and Mr. Ribble voted nay.

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Page 313, July 18, 2000, (Tape 1), After Agenda Item:

Approval of July 11, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 313, July 18, 2000, (Tape 1), After Agenda Item:

Memo from Jane Kelsey
Sharkeys Inc., d/b/a Fast Eddie's Billiard and Café
SPA 95-V-031

Mr. Hammack moved that the Board go into Executive Session for consultation with legal counsel and briefings by staff members, consultants and attorneys pertaining to actual probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to code Sec. 2.1344A7.

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

Mr. Hammack 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 heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session.

Mr. Pammel seconded the motion which carried by a vote of 7-0. Mr. Ribble recalled that they were going to invite Mr. McCormack into the Executive Session. Chairman DiGiulian stated that he wanted to speak to Mr. McCormack before a motion was made. Susan Langdon, Chief Special Permit and Variance Branch stated that the Board would need to discuss the issue with the County Attorney as staff, upon their recommendation, did not contact Mr. McCormack.

Mr. Ribble moved to defer decision until July 25, 2000, to give the Board time to meet with Mr. McCormack. Mr. Kelley 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 1:50 p.m.

Minutes by: Lori M. Mallam

Approved on: September 26, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 25, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 315, July 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CARMINE A. & JUDY A. CAROSELLA, VC 00-P-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.9 ft. from side lot line and 27.3 ft. from front lot line. Located at 2903 Rosemary La. on approx. 19,821 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((8)) 65B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carmine Carosella, 2903 Rosemary Lane, Falls Church, Virginia, replied that it was.

Julie Schilling, Senior, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 6.9 feet from the side lot line and 27.3 from the front lot line. A minimum side yard of 10 feet is required; therefore, a variance of 3.1 feet was requested. A minimum front yard of 30 feet is required; therefore, a variance of 2.7 feet was requested.

Mr. Carosella presented the variance request as outlined in the statement of justification submitted with the application. He said the position of the easement made it difficult to add a garage and family room. Mr. Carosella stated that the position of the addition would be set back further than the position of the house.

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

Mr. Pammel moved to approve VC 00-P-058 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARMINE A. & JUDY A. CAROSELLA, VC 00-P-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.9 ft. from side lot line and 27.3 ft. from front lot line. Located at 2903 Rosemary La. on approx. 19,821 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((8)) 65B. 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 25, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating that he does have a unique situation and does meet the prescribed criteria set forth in the Zoning Ordinance for the granting of a variance.
3. The addition does not encroach any further into the front yard than the present location of the building.
4. The request for a side yard 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition consisting of a two story attached garage and family room shown on the plat prepared by Harold A. Logan, Land Surveyor, dated April 5, 2000, as revised through April 27, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Hart 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 2, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 317, July 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JACK L. FINLEY, VC 00-L-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.9 ft. from rear lot line and 6.7 ft. from side lot line. Located at 4711 Perch Pl. on approx. 10,500 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((5)) (11) 35.

Chairman DiGiulian noted that the application had been administratively moved to September 5, 2000.

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Page 317, July 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SARAH PARRIS, VC 00-B-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.5 ft. from rear lot line. Located at 10907 Rippon Lodge Dr. on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-3 ((11)) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah Parris, 10907 Rippon Lodge Drive, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 20.5 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 4.5 feet was requested.

Ms. Parris presented the variance request as outlined in the statement of justification submitted with the application. She said the request was to expand the kitchen and family room area. Ms. Parris stated that the lot had a small irregularly shaped back yard. She said the addition would enhance the property and increase the property value. Ms. Parris noted that there were two other houses in the neighborhood to which variances were granted.

Chairman DiGiulian asked Ms. Parris to respond to a letter received in opposition from Mr. and Mrs. Ditko.

Ms. Parris responded by stating that the existing deck would be removed to add the addition. She said the addition would not inhibit the Ditkos' view because they were far away from her property.

Ms. Gibb asked the applicant whether the addition would be closer to the house than the existing deck. Ms. Parris replied that it would.

Ms. Parris stated that she had also received a letter in support of the application.

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

Mr. Hart moved to approve VC 00-B-070 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SARAH PARRIS, VC 00-B-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.5 ft. from rear lot line. Located at 10907 Rippon Lodge Dr. on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-3 ((11)) 21. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is irregularly shaped and located on a cul-de-sac.
4. The lot is heavily impacted by a zigzagging storm drainage easement on the west side so that any expansion of the house would have to be to the rear of the lot.
5. The house is positioned to the rear of the lot.
6. The extension of the house would be minimal and substantially less than the existing deck.
7. The impact of the addition would be 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition shown on the plat prepared by R.C. Fields Jr., Land Surveyor, dated February 22, 1994, revised by Yehuda Nordman, P.E. dated May 19, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. 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 August 2, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. PRESORT SYSTEMS, INC., SP 00-S-025 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a home professional office. Located at 7066 Balmoral Forest Rd. on approx. 2.06 ac. of land zoned R-C (Cluster) and WS. Springfield District. Tax Map 75-3 ((8)) 80.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Hunter, Agent, P.O. Box 2344, Dale City, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to operate a home professional office to print magazine mailing labels in the basement of the dwelling. Approximately 2,000 square feet of the basement was proposed to be used for the home professional office, which calculated to 23% of the gross square footage of the 8,600 square foot dwelling. Mr. Bernal stated that in addition to the two principals, who made the subject property their residence, the applicant proposed to employ two full-time mainframe operators and two part-time consultants. He said the proposed hours of operation were Monday through Friday, 9:00 a.m. to 5:00 p.m. and there would be no customer traffic at the site. Staff concluded that the subject application met all standards for a Special Permit use and was in harmony with the Comprehensive Plan. Staff recommended approval of the application.

Mr. Hammack asked why printing was not considered an industrial use. Mr. Bernal replied that the operation was done on a home-based computer and it would depend on the scale of the production and the weight of the equipment.

Mr. Hammack asked if there were any criteria. Mr. Bernal replied that staff had not found any criteria.

Mr. Hammack asked what was the difference between printing a magazine and printing a label for the magazine since a computer did both. Mr. Bernal replied that staff would have to review the applications on an individual basis and the subject application was for mailing labels and not for the magazine itself.

Mr. Hunter, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said Presort Systems was a high tech operation producing mailing labels by a computer using the Internet. Mr. Hunter stated that the labels were produced in the basement of the applicant's home. He said the basement was approximately 2,000 square feet and 23% of the dwelling. Mr. Hunter stated that the proposed hours of operation were from 9:00 a.m. to 5:00 p.m. He said the business essentially functioned as an extension of data processing services of many companies in the area. Mr. Hunter stated that there were no clients coming to the house and the applicants had not met most of their clients in person. Mr. Hunter stated that there was an interpretation from the Zoning Administrator, dated June 1, 2000, which determined that the definition of "professional" historically covered only doctors, dentists and lawyers, but the subject request would also come under the definition of professional. Mr. Hunter stated that given the fact that the applicants were in the high tech profession, he submitted to the Deputy Zoning Administrator that the definition of profession should be expanded.

Mr. Hammack asked how many labels were produced on a weekly basis. Mr. Hunter deferred the question to the applicant, Mr. Hurley. Mr. Hurley stated that a full box of computer paper labels were produced everyday. He said they carried the boxes out of the house to mail.

Mr. Hammack asked the applicant if he needed four employees to complete one box a day. Mr. Hurley responded that two the employees were highly skilled mainframe operators and handled the technical aspects of the work.

Mr. Hammack asked how many labels were in a box. Mr. Hurley said about 100,000 labels.

Mr. Hammack asked what else was in the 2000 square feet besides a computer. Mr. Hurley said they had about 30 computers networked together. He said there were also desks and a fairly large office.

Mr. Hammack asked how many printers did the applicant have. Mr. Hurley responded that there were two laser printers, not as large as a washing machine.

Mr. Hunter said the home on adjacent Lot 81, was over 200 feet away from the shared property line to the south. He presented photographs depicting the vegetation existing between the subject property and Lot 82. Mr. Hunter stated that the applicant proposed a landscape plan that would add a buffer area between the use and the adjacent residences. He said the applicant was confident that the Zoning Ordinance standards had been met and the application met the definition of a home professional office pursuant to the interpretation provided by the Zoning Administrator.

Chairman DiGiulian asked for a copy of the interpretation.

Mr. Hammack asked if someone such as a collection bureau who did all their work by internet and telephone and wanted to set up an operation would that be a home professional office. Susan Langdon, Chief, Special Permit and Variance Branch stated that each application would have to be reviewed on an individual basis and could possibly be considered a home professional office.

Mr. Hammack said there would be a lot people wanting to move their printing operations into their basements and out of the expensive commercial properties if this sort of thing was permitted.

Mr. Kelley asked how many customers the applicant had. Mr. Hurley replied that they did approximately 200 titles for a company in the Midwest and 125 clients locally. He said they had no intention on expanding.

Mr. Kelley asked the applicant how long had he been in business. Mr. Hurley replied since 1988.

Mr. Hart asked whether a delivery truck ever came to the applicant's business. Mr. Hurley replied that every now and then one came but it was usually for a personal reason.

Mr. Hart asked how a delivery truck could get to the property if the parking spaces in front of the garage were occupied. Mr. Hunter presented a photograph to illustrate that there was enough room for a truck to turn around with the parking spaces occupied.

Mr. Hurley said that typically a delivery truck driver would not come into the driveway, but would just walk across the lawn to the house.

Chairman DiGiulian called for speakers.

Dan and Debra Ryan, 7070 Balmoral Forest Road, came forward to speak in opposition. They expressed objection to having a commercial operation in a residential area.

Mr. Hunter stated, in rebuttal, that the applicant met the requirements for the use and requested that the Board limit the use of the basement to 1000 square feet if that was a concern.

Mr. Hurley stated that they had limited the business because he understood that as a matter of law on that acreage and, given conditions of no signage and no traffic, that they were permitted to have residents working there. He said he thought he was allowed to have two employees and up to two other people associated with the business as consultants. He said that if they decided to grow they knew they would have to get office space.

Mr. Pammel asked the applicant whether he had a business license. Mr. Hurley replied yes.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny SP 00-S-025 for the reasons noted in the Resolution.

Mr. Ribble said the case was interesting but there were too many unanswered questions. He said he did not feel the applicant met the requirements for a special permit.

Mr. Kelley seconded the motion. He said he felt the applicant should get commercial space. Mr. Kelley stated that approving the application would set a precedent.

Ms. Gibb said she didn't have a problem with the application. She said she felt the application met the standards and there was an opinion from the Zoning Administrator that the application was a home professional use. Ms. Gibb said it also met the additional standards for home professional uses, that it was a single family home, and it did not exceed the maximum number of employees. She said the trend in our economy was to have Internet businesses, which did not have much of an impact on the surroundings. Ms. Gibb said the Board should encourage this type of situation.

Mr. Pammel said the business had grown and if the Board allowed this application, others would seek the same considerations from the Board.

Mr. Hammack said that the additional standards of a home professional office required that it be the domicile of a practitioner and he didn't think that printing came under the definition of a home professional office.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PRESORT SYSTEMS, INC., SP 00-S-025 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a home professional office. Located at 7066 Balmoral Forest Rd. on approx. 2.06 ac. of land zoned R-C (Cluster) and WS. Springfield District. Tax Map 75-3 ((8)) 80. 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 25, 2000; and

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

1. The applicant is the agent for the title owners of the land.
2. There were too many unanswered questions and the applicant did not meet the standards required for a special use permit.

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 Sect(s). 3-C03 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 6-1. Ms. Gibb voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 2000.

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9:00 A.M. ELLEN N. FELMAN, SP 00-B-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit addition to remain 10.4 ft. from side lot line. Located at 7502 Hogarth St. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (40) 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. Ellen Felman, 7502 Hogarth Street, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to the minimum yard requirements based on an error in building location to permit an addition to remain 10.4 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 1.6 feet was requested.

Ms. Felman presented the special permit request as outlined in the statement of justification submitted with the application. She said she was not informed that the garage was enclosed without a permit. Ms. Felman stated that the addition enhanced the property. She requested a waiver of the 8-day waiting period.

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

Ms. Gibb moved to approve SP 00-B-027 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELLEN N. FELMAN, SP 00-B-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit addition to remain 10.4 ft. from side lot line. Located at 7502 Hogarth St. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (40) 3. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of a room addition as shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 4, 1993, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 7-0. Ms. Gibb moved to waive the 8-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 July 25, 2000. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. MARTA ALEJOS, SP 00-L-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 9.7 ft. from side lot line. Located at 7506 Mendota Pl. on approx. 15,350 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (56) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marta Alejos, 7506 Mendota Place, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction in minimum yard requirements based on an error in building location to permit an addition to remain 9.7 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 2.3 feet was requested.

Ms. Alejos presented the special permit request as outlined in the statement of justification submitted with the application. She said that before the addition was built she came to the County to check the limitations of construction. Ms. Alejos stated that the architect constructed the deck according the limitations. She said the error was discovered during the time that she was trying to obtain a permit for the second floor.

Chairman DiGiulian asked whether there was a building permit for subject addition. Ms. Alejos replied yes.

Mr. Hammack asked who laid out the footprint of the addition. Ms. Alejos replied it was the architect.

Mr. Hammack stated that the plat showed that the setback was 12 feet on one side and 15 feet on the other side, and the County approved something other than what was constructed.

Ms. Alejos said the architect stated that they had built the addition according to the plat.

Mr. Hart asked how far was the subject property from the common lot line of the house to the west. Mr. Bernal replied that it was 24.5 feet from the shared lot line.

Chairman DiGiulian called for speakers.

Bill Reames, Patio Enclosures, came forward stating that a permit was pulled for the construction of the addition, but when the inspector came, he found that the addition had not been built according to the plan.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 00-L-029 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARTA ALEJOS, SP 00-L-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 9.7 ft. from side lot line. Located at 7506 Mendota Pl. on approx. 15,350 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (56) 9. 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 25, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a room addition as shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 30, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb 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 2, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 325, July 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & CLAIRE MILLER, VC 00-H-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.2 ft. from side lot line. Located at 13370 Point Rider La. on approx. 8,560 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, Patio Enclosures, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 3.2 feet from the side lot line. A minimum side yard of 8 feet is required; therefore, a variance of 4.8 feet was requested.

Mr. Reames, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicants were requesting to enclose an existing deck that would not be any closer to the property line than the existing deck.

Mr. Hammack asked if there would be a new deck. Mr. Reames replied that the applicants were only enclosing a portion of the deck.

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

Mr. Hammack said he was sympathetic with any individual wanting to enclose a deck, but he felt that 3.2 feet was too close to a side lot line. He said the adjacent dwelling was only 16.9 feet from the subject property. Mr. Hammack said he realized these were small lots, but 3.2 feet was too close to allow major construction which would have an impact on the adjoining property. He said the request was for convenience. Mr. Hammack said it was regrettable that houses were allowed to be on small lots. Mr. Hammack moved to deny VC 00-H-056.

Mr. Pammel seconded the motion.

Mr. Pammel said he would be willing to accept something less than a 4.8-foot variance. He said the subject application, as requested, did not leave enough area between the structure and the adjoining property.

Mr. Kelley stated that he agreed with Mr. Pammel and said the Board should ask the applicant to come back in a couple of weeks with a different request.

Mr. Reames asked what would be an appropriate amount for the variance. Mr. Pammel replied a 5-foot

setback would be more appropriate.

Mr. Hammack moved to defer VC 00-H-056 to August 1, 2000, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 326, July 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MELBOURNE H. BAILEY, VC 00-V-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 24.0 ft. from front lot line of a corner lot. Located at 7833 Fordson Rd. on approx. 10,536 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((6)) 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. Melbourne Bailey, 7833 Fordson Road, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 24 feet from the front lot line of a corner lot. A minimum front yard of 35 feet is required; therefore, a variance of 11 feet was requested.

Mr. Bailey presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was narrow and that it would be a great hardship if he could not use the land. Mr. Bailey said that the dwelling would enhance the beauty of the neighborhood. He stated that there had been other variances approved on Fordson Road.

Mr. Hart stated that the property appeared to be a junkyard. Mr. Bailey replied that the property had been cleaned up.

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

Mr. Pammel moved to approve VC 00-V-057 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MELBOURNE H. BAILEY, VC 00-V-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 24.0 ft. from front lot line of a corner lot. Located at 7833 Fordson Rd. on approx. 10,536 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((6)) 4. 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 25, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. This is a small corner lot and there was an inability to construct a reasonably sized dwelling on the property without obtaining a variance to at least one of the front yard 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the dwelling shown on the plat prepared by Huntley, Nyce and Associates, Ltd., dated October 18, 1999, as revised through March 20, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 327, July 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SAYEED & MARIA HASANZADAH, VC 00-P-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.3 ft. from side lot line and 15.6 ft. from other

side lot line. Located at 2708 Chain Bridge Rd. on approx. 2.33 ac. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 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. Paul Kellinger, Agent, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 5.3 feet from one side lot line and 15.6 feet from the other side lot line. A minimum side yard of 20 feet is required; therefore, variances of 14.7 feet and 4.4 feet were requested.

Mr. Kellinger, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was exceptionally narrow. Mr. Kellinger stated that approving the variance would allow the applicant to construct a house that would meet the appearance of the surrounding houses and blend in with the character of the neighborhood. He said they had contacted the neighbors and consequently wanted to amend the application to address some of the neighbors' concerns. Mr. Kellinger said the applicant agreed to have a 15-foot setback to the foundation, but the chimneys would encroach on the property lines and the neighbors would agree to that. He said positioning the house perpendicular to the width of the lot would allow for natural access to Gold Dust Court. Mr. Kellinger said the applicant agreed to keep as many trees as possible. He said the applicant requested to add a development condition to work with the neighbors to have a 20-foot "play" in house location, so that any trees that needed to be saved, could be saved and they would not be locked into one house location. Mr. Kellinger stated that could not agree with staff recommendation of extending Gold Dust Court road. He said the extension of the road would not benefit the applicants or any of the neighbors. Mr. Kellinger stated that the adjacent lot provided adequate buffering for the property.

Mr. Hammack said the Board could not increase the variance sought because of the way it was advertised. He asked staff what was the reason for the extension of Gold Dust Court.

Ms. Wilson stated that was a request in terms of long term planning. She said it was her understanding from the Department of Transportation that in the future, should the properties to the east be redeveloped, the access to the lots should be from Gold Dust Court to avoid any additional entrances on Chain Bridge Road.

Mr. Hart asked whether the subject property was subdividable because it was more than 2 acres. Ms. Wilson stated that there was an interpretation, which declared that the subject property was subdividable, but it might become complicated because of the type of sanitary sewer system that was shown on the plat.

Mr. Hart asked the applicant if the house was rotated 90 degrees, so that the long axis of the house was consistent with the long axis of the lot, would that take out additional trees. Mr. Kellinger stated that it would take out additional trees but also it would not conform to the existing houses but create an anomalous house that would only have 20 feet in the front and rear.

Mr. Hart asked if the dedication for right-of-way for Gold Dust Court was not provided, would that be a development of the subject property inconsistent with the Comprehensive Plan. Angela Rodeheaver, Department of Transportation, responded that with regard to the Transportation part of the Comprehensive Plan, the road was not specifically shown on the Comprehensive Plan to be extended. Ms. Rodeheaver stated that it would be typical for a street such as Gold Dust Court.

Mr. Hart asked if there was text in the Comprehensive Plan about discouraging access to Route 123. Ms. Rodeheaver responded that she didn't know if there was text, but that Route 123 was a primary highway and its intent was to carry through-traffic and to not have individual entrances, but to only have them at median break locations.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in opposition of the application. Ken Sanders spoke on behalf of a couple of residents on Gold Dust Court; Eric Candelori, 2607 Powdermill Lane; Williard Strandberg, 2609 Powdermill Lane; Steven Lee, 2650 Five Oaks Road; George Blake, 2644 Five Oaks Road; Laurel Frost, 2611 Powdermill Lane; Phil Charlwood, 2601 Five Oaks Road; Steve Coleman, 2613 Powder Mill

Lane; Jodi Nelson, Babcock Road; Dick Gongaware, 2643 Five Oaks Road; and Kari Fleischer, 9890 Gold Dust Court. They expressed concerns relating to the sewer line, drainage problems, preserving the character of the neighborhood, removal of trees, a detriment to the value of other homes in the area, and that the application should comply with R-1 standards.

Bill Cordova, General Contractor for the subject application came forward to present clarification regarding the sewer system. He stated that if they came in from Gold Dust Court, that they would have to mill and overlay the street in addition to the street cut. He said a cursory examination proved that to be more expensive than running a line down to Route 123. Mr. Cordova stated that in the preliminary plan they would do their utmost to protect most of the trees but there was no guarantee. He said they would work with the homeowners in the area to protect all the trees that they could.

Mr. Kellinger stated in his rebuttal that the applicant attempted to alter the original plans and to work with the neighbors. He said they had come close to addressing most of the neighbors concerns. Mr. Kellinger stated that the granting of the variance would give the neighbors some input as to how the trees were saved. He said there were concerns with the sewer line and that he would be open to discussing the sewer lines with the neighbors.

Chairman DiGiulian closed the public hearing.

Mr. Hart said the development conditions needed some work and suggested that a brief deferral was appropriate. He said that he was concerned with development condition #1. Mr. Hart stated that the location of the house was no longer what the March 17th plat depicted. He said there should be a condition about the setback from the foundation exclusive of chimneys, and that the chimney material would be brick. Mr. Hart said there should be an additional development condition about submitting the grading plans for the driveway and house to Mr. Candelori for comment. He said he would be more comfortable if staff had proposed language incorporating the above noted concepts. Mr. Hart stated that the location of the sewer was not necessarily germane to the variance. He stated to the applicant that if the parcel would ever be subdivided and another house was to be placed on the property, it would be more logical to go through the expense of putting the sewer line elsewhere than where it was proposed to be located, to avoid future engineering problems which could preclude the second home.

Mr. Hart moved to defer VC 00-P-071 for decision only to September 5, 2000.

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

Mr. Kelley stated that he supported the motion but that he did not like the idea of providing a grading plan to a private citizen to review. Chairman DiGiulian and Mr. Pammel agreed.

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9:00 A.M. WILLIAM SIEBERT, SP 00-M-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit shed and workshop to remain 4.1 ft. from rear lot line and 4.7 ft. from side lot line. Located at 5215 Gilpin Dr. on approx. 11,635 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5)) (17) 181.

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 Siebert, 5215 Gilpin Drive, Springfield, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modifications to minimum yard requirements based on an error in building location to permit a shed and a workshop to remain 4.1 feet from the rear lot line and 4.7 feet from the side lot line. A minimum rear yard of 10 feet is required; therefore, a modification of 5.9 feet was requested. A minimum side yard of 12 feet is required; therefore, a modification of 7.3 feet was requested.

Mr. Siebert presented the request as outlined in the statement of justification submitted with the application. He said his situation was unusual because of the storm drainage easement, which caused drainage and flooding problems for the people behind him and in the rear of his property. Mr. Siebert stated that to resolve the issue of flooding, he built the structure off the ground. He said he tried to build it so that it would not be obtrusive to anyone. Mr. Siebert stated that he had not received any complaints from his neighbors.

Mr. Ribble asked whether the metal shed would be removed. Mr. Siebert replied that it would.

Ms. Gibb asked how a zoning inspection came about. Mr. Siebert replied that someone called the County but he was unaware that he was in violation of any Codes or Ordinances.

Mr. Hart asked if the structure was completed. Mr. Siebert stated that he stopped construction when the County notified him.

Chairman DiGiulian called for speakers.

Nina Pitkin, 522 Monroe Drive, came forward to speak in opposition. She stated that a member of the Board of Supervisors was present at a party that she had hosted and noticed the applicant's structure, which was how the violation was discovered. Ms. Pitkin said she was concerned about how the structure would be finished, noise, and how her property value would be affected.

Mr. Siebert stated in his rebuttal that he did not intend to cause problems with his neighbors. He said the speaker's house was 105 feet from his rear property line. Mr. Siebert submitted photographs reflecting the visibility from his rear yard to the speaker's house.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 00-M-028 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM SIEBERT, SP 00-M-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit shed and workshop to remain 4.1 ft. from rear lot line and 4.7 ft. from side lot line. Located at 5215 Gilpin Dr. on approx. 11,635 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5)) (17) 181. 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 25, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the accessory structure shown on the plat prepared by R. C. Fields, Jr. & Associates, dated October 8, 1999, as revised through March 30, 2000, submitted with this application and is not transferable to other land.
- 2. A building permit and any other permits, if needed, shall be obtained within thirty (30) days following the date of final Board of Zoning Appeals approval, and approval of final inspections shall be obtained.
- 3. The applicant shall plant six (6) evergreens between the accessory structure and the easterly lot line. The evergreens shall be a minimum of six (6) feet in height at time of planting.
- 4. The accessory structure (shed) shall be sealed and stained in a neutral tone.
- 5. The accessory structure shall not exceed 12.5 feet in height.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 331, July 25, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-6 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for a cemetery, mausoleum and a columbarium to permit the addition of a funeral home and crematory. Located at 9900 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 12. (DEF. FROM 6/20/00).

Mr. Pammel gave a disclosure indicating that he owned cemetery plots on the subject property and that he had submitted the matter to the County Attorney for advice and found that it was acceptable for him to participate in the public hearing.

Mr. Hart gave a disclosure that less than two years ago, another attorney in Mr. Hanes' firm retained him as an expert witness, but that those matters had concluded. Mr. Hart stated that he also had cases with other attorneys in Mr. Hanes's firm, but those cases would not interfere with his ability to participate in the public hearing.

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

Mr. Hanes presented a notebook for the record which contained traffic reports, appraisal reports, and various plats that he had also submitted to the Board.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the addition of a funeral home and crematory. On July 12, 2000, a public hearing was held before the Planning Commission to consider the subject application. At that hearing the Planning Commission voted to recommend to the Board of Zoning Appeals denial of the subject application. On Friday, July 21, 2000, in response to issues expressed by staff for the proposed development conditions and to Planning Commission concerns, the applicant submitted a revised plat and a revised landscape plat. The revisions included additional plantings and a masonry wall provided along the north side of the parking area and service court. Parking spaces located closest to the west property boundary were deleted as requested by staff. Ms. Wilson stated that a revised landscape plan was submitted to reflect the plat revisions. The applicant agreed to limit the hours for conducting a viewing and wakes, which were outside peak traffic hours. A separate plat was submitted to the Department of Transportation depicting the areas of existing occupied gravesites, located 100 feet from the right-of-way. There was a condition precluding the dedication of additional right-of-way along Burke Station Road as requested in the original Development Condition #20. Staff recommended approval of the application, subject to the revised development conditions dated July 25, 2000. Ms. Wilson informed the Board that Bruce Douglas, Planning Division, and Angela Rodeheaver, Department of Transportation, were present to answer questions.

Mr. Hanes, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said there were a number of consultants present to give testimony and answer questions relating to their particular expertise. Mr. Hanes stated that since the Planning Commission public hearing, the applicant started a traffic study conducting actual counts, the number of cars, and the times of funerals so that the cemetery would be less obtrusive than it was in the past. He said the applicant suggested conditions with respect to people visiting the funeral home. Mr. Hanes stated that they had also limited the times of funerals and were being very restrictive as opposed to other funeral homes. He said they would have the funerals during off peak hours to alleviate some of the traffic concerns. Mr. Hanes said the plat had been revised to add landscaping to the property and a 7-foot brick wall to the rear of the building to make the building as unobtrusive as possible. He said the building was proposed in this location because it would be using the natural topography, the existing vegetation, sewer and utilities. Mr. Hanes stated that most of the neighbors most affected by the request were in support of the application and had submitted letters. He said the parking had been reduced to 130 parking spaces. Mr. Hanes stated that they were relocating the Braddock Road entrance and providing additional right-of-way by tapering the drive going west on Braddock into the property. He said the sign would also be relocated. Mr. Hanes stated the application met the requirements of the Zoning Ordinance. He introduced, Paul Barkley, to come forward to discuss the architecture of the project. Mr. Hanes stated that Bob Coon would then come forward to talk about the traffic study and Ron Salvatore to talk about the crematorium.

Mr. Barkley presented to the Board the site description, site development, building design, and landscaping and buffering of the residential neighborhood as included in the submissions to the Board.

Bob Coon, Traffic Consultant, came forward informing the Board of the traffic implications of the proposed application as presented in the traffic study that was submitted to the Board.

Mr. Pammel asked Mr. Coon whether there was an onsite inspection. Mr. Coon replied yes that they had been to the site several times during a.m. and p.m. peak hours. Mr. Pammel asked whether they had considered a second ingress/egress easement. Mr. Coon replied that the primary entrance was adequate.

Ms. Gibb asked if the traffic during peak hours was at capacity. Mr. Coon replied no, that the roads could

accommodate more traffic.

Ron Salvatore, manufacturer of crematory equipment, came forward stating the crematory would not be disruptive to the other functions of the cemetery. He submitted photographs of crematories to the Board. Mr. Salvatore stated that the crematory was approved by the Department of Environmental Quality.

Chairman DiGiulian called for speakers.

Melvin Russel, Summerset Homeowners Association; James Reddig, 9711 Doulton Court; John Broten, George Mason Homeowners Association; Julie Levine, 4141 Lenox Drive; Pamela Barrett, Hickory Farm Community Association; Florence Naeve, Chief of Staff of Braddock District Supervisor's Office; Suzanne Harsel, Braddock District Planning Commissioner; Robert Cohen, 9802 Doulton Court; Peter Loomis, 4307 Burke Station Road; and Vera Finberg, 9716 Ceralene Drive, came forward to speak in opposition of the application. They expressed concerns relating to the expansion not being compatible with the neighborhood, traffic, inadequate parking, signage, reduction in property values, no longer park-like setting, commercial enterprise in a residential area, and the funeral home building a massive structure not able to be screened.

Mr. Hanes stated in his rebuttal that a real estate appraiser indicated in a report that there would be no noticeable difference in the value of homes adjoining the cemetery and no adverse impact. He said the Comprehensive Plan recommended that the property be utilized for an institutional use. Mr. Hanes stated that there was no further signage necessary for the use. He said that it was not the intent of the applicant to utilize the crematory for other funeral homes.

Mr. Hanes stated that Condition #7 should be changed to reflect 130 parking spaces as indicated on the revised plat. He asked that the wording of Condition #19, dealing with the right turns lane from Braddock Road into the southern entrance, be changed to reflect the language "as required by VDOT". Mr. Hanes stated that they had addressed every issue raised. He said they supplied the Board with a landscape plan, a line of sight study, and a traffic study. Mr. Hanes stated that there were approximately 90 letters in support submitted to the Board.

Mr. Hart asked whether the applicant had considered reducing the square footage of the building. Mr. Hanes stated that after studying other funeral homes in Virginia, it was determined that the proposed size of the building was necessary to be a practical request. He said the requested building was of a modest size in comparison to others.

Mr. Hart stated that he was concerned with the size of the building and the screening and wondered if there was a way to make it smaller or break up the mass. Mr. Barkley, the architect, stated that they had tried to design a building with less visual impact. He said it was situated down in the hole of the site so that it would not project above the streetscape. Mr. Barkley stated that it would be difficult to significantly reduce the size of the building.

Mr. Hart asked who monitored the crematorium. Ms. Wilson stated that the State Department of Environmental Quality (DEQ) monitored crematoriums. She said Virginia had the strictest guidelines for that type of operation. Ms. Wilson stated that there would be a continuum of inspections.

Mr. Hart asked how frequently was the crematory inspected and by whom. Mr. Salvatore stated that it was typically inspected yearly by a DEQ compliance inspector unless there was complaint.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 81-A-022-6 for the reasons noted in the Resolution. She said there was a lot of interest in the subject application and the Board had received a lot of emails and letters. She said in her reading of the letters and the testimony, that most people's objections to the project were relating to the scale of the building, the fact that the commercial nature might impair property values, and the increase in traffic. Ms. Gibb said that according to staff, if the Board adopted the conditions that were proposed regarding the hours of operation, it would address any issues with respect to traffic. She said the size of the building was mitigated by the size of the property. Ms. Gibb stated that the application met the standards for a special permit. She said a funeral home was consistent with a cemetery use.

Mr. Pammel stated that this was a very difficult case. He said the application was permitted in the district. Mr. Pammel said staff had conducted a rigorous review and the conclusion was that the application should be permitted. He said he walked the site and drove on the streets surrounded the park, and he did not see that there would be significant impact on the surrounding properties. Mr. Pammel said in visiting the site he found that it was difficult to get in and out of the site and would have liked the applicant to consider another access off Burke Station Road. He said that was the most serious flaw to the application and he would not support the motion.

Mr. Hart said that the applicant satisfied the applicable standards for the crematorium. He said the problem that most of the residents had was a problem with the Ordinance allowing the use in a residential area. Mr. Hart said he was still not persuaded the size and the scale of the building was compatible with the surrounding area. He said his preference would have been to try to work out something that would have allowed for a consensus with the community to try to reduce the size and scale of the building. Mr. Hart stated that he would not support the motion.

Mr. Kelley said he had a tough time with the application. He stated that he had visited the site, but the thing that disturbed him most about the application was the traffic coming out of the property. Mr. Kelley said it was not enough to make him vote against the application because there would still be a lot of traffic no matter what. He said the application was sufficient enough for him to support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-6 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for a cemetery, mausoleum and a columbarium to permit the addition of a funeral home and crematory. Located at 9900 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 12. (DEF. FROM 6/20/00). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2000; and

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

1. The applicant is the owner of the land.
2. The request was consistent with the area because the funeral home looked slightly residential in nature and compatible to some degree.
3. The property is not parkland and is owned by someone who has a commercial enterprise and it has been there for a long time.
4. The size of the cemetery property mitigates the size of the building.

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 Sect(s). 3-103 of the Zoning Ordinance.

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

1. These conditions pertain to the funeral home/crematory use only, and DO NOT SUPERCEDE BUT ARE IN ADDITION TO those conditions approved by the Board of Zoning Appeals on June 6, 2000

in conjunction with special permit amendment application SPA 81-A-022-5, which shall remain in full force and effect.

2. This approval is granted to the applicant, Calvary Memorial Park, Inc. T/A Fairfax Memorial Park, and Fairfax Memorial Funeral Home, L.L.C. 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.
3. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by DeLashmutt Associates Ltd., dated December 22, 1999, as revised through July 20, 2000, and approved with this application, as qualified by these development conditions.
4. 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.
5. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.
6. The funeral home/crematory building shall be limited in size to 16,150 square feet of interior floor area, and the garage and crematory unit shall be limited to a total of 3,968 square feet, as depicted in the plat building dimensions.
7. 130 exterior parking/stacking spaces and five (5) garage spaces shall be provided for the funeral home/crematory use. Except for times of use, hearses and similar business vehicles shall be parked and/or stored within the garage. All parking shall be on-site, as shown on the special permit amendment plat.
8. A landscape plan shall be submitted at the time of site plan review for the review and approval of the Urban Forestry Branch. The plan shall be in substantial accordance with Attachment 1A of the Proposed Development Conditions, "Proposed Landscape Schematic," with additions as stated in Development Condition Number 11.
9. (A) At the time of grading plan review, the Urban Forestry Branch will designate the limits of clearing and grading, consistent with the trees shown to be preserved on the special permit plat and Landscape Schematic prepared by Paul H. Barkley, (included in these Development Conditions as Attachment 1A)

(B) The applicant will post with the County at time of site plan approval a letter of credit payable to the County to ensure the saving or replacing of such "individual trees" and all other trees which are outside or beyond the limits of clearing and grading as established at the time of grading plan approval. The letter of credit will be in a form acceptable to the County Attorney and in an amount determined by the County Urban Forestry Branch; however, in no event shall such amount exceed fifteen thousand dollars and no/100 (\$15,000). The applicant will post with the County, within fourteen (14) working days of receipt of a request by the Director of the Department of Public Works and Environmental Services (DPWES), an amount equal to the replacement value of any tree destroyed as established by the Valuation of Landscape Trees, Shrubs and Other Plants. It is the intent of this development condition that at all times, the fifteen thousand dollar and no/100 (\$15,000) letter of credit be held by the County no matter how many requests for replacement funds have been called previously, but in no event shall the amount paid to Fairfax County for tree replacement exceed fifteen thousand dollars and no/100 cents (\$15,000) per letter of credit. In determining the amount of the letter of credit, the Urban Forestry Branch will assign a replacement value to each existing individual tree shown to be saved on the approved grading plans in accordance with the methods contained in the Valuation of Landscape Trees, Shrubs and Other Plants published by the International Society of Arboriculture. Should this letter of credit or any replacement letter of credit be called by the County and the funds expended to restore or replace trees pursuant to Part 4,

Section 12-0400, et seq. of the Fairfax County Public Facilities Manual (PFM) the applicant will post with the County, within 14 working days of receipt of a request by the Director of DPWES a replacement letter of credit payable to the County, in a form acceptable to the County Attorney and the same amount as the original letter of credit required by this development condition. Upon release of the Conservation Bond or other similar bond, the letter of credit will be released.

(C) During construction, the County Urban Forestry Branch shall periodically inspect the project and determine if any of the designated "individual trees" or any trees located outside or beyond the limits of clearing and grading as shown on the approved grading plans are dead or dying due to acts of negligence by the applicant or are due directly to the development of the project. The applicant may then elect to remove and replace such dead or dying trees according to the directions of the Urban Forestry Branch pursuant to Part 4, Section 12-0400 of the PFM or pay to the County the assigned value as defined in the Valuation of Landscape Trees, Shrubs and Other Plants of such dead or dying tree from the letter of credit.

(D) Any funds received by Fairfax County pursuant to this development condition shall be utilized solely to preserve, restore to health or replace trees on the subject property which are shown on the approved grading plans to be saved.

10. The existing vegetation along the eastern lot line shall be deemed to satisfy the transitional screening requirement, with the addition of evergreen trees as shown on the plat.

To the north of the parking lot, in addition to the hedge and new trees shown on the "Proposed Landscape Schematic" (Attachment 1) a row of evergreen trees, a maximum of fifteen (15) feet on center shall be provided. These shall be large evergreens a minimum of six (6) feet in height at time of planting. In addition, between the hedge and the evergreen trees, an architecturally solid masonry wall shall be provided, as shown on the plat. The wall shall be constructed of the same materials and colors as the building, and measure a minimum of seven (7) feet in height. The vegetation and wall shall extend from the western to the eastern corners of the parking lot, as shown on the plat and Attachment 1A.

The existing vegetation along the western lot lines shall be deemed to satisfy the transitional screening requirement, except within the area between the funeral home facility /parking lot and Burke Station Road where additional evergreen trees shall be installed. The evergreen trees to be installed shall be sufficient in number and height to create a year-round visual screen for residential properties to the west, to the satisfaction of the Urban Forestry Branch.

The existing vegetation along the southern lot lines shall be deemed to satisfy the transitional screening requirement, except that the existing trees shown within the limits of clearing and grading for the funeral home/crematory facility, stormwater management pond and turn lane shall be replaced if removed or if irreparably damaged during development, as determined by the Urban Forestry Branch. Any required replacement trees shall be installed within the area between the funeral home facility and Braddock Road, to the satisfaction of the Urban Forestry Branch.

11. All vegetation required for screening purposes, as shown on the special permit plat, shall be maintained in good health. Dead or dying vegetation shall be replaced with like-kind vegetation.
12. Barrier requirements shall be waived along all the lot lines of the special permit property.
13. All signs shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.
14. The maximum number of chapels within the funeral home/crematory structure shall be limited to one (1). The maximum total number of seats contained within the funeral home chapel shall be limited to 272. The maximum number of viewing parlors within the funeral home/crematory structure shall be limited to five (5). The maximum total number of seats contained within each viewing parlor shall be limited to 30.
15. Any dumpster located on the property shall be placed indoors or within an enclosure constructed of brick or architectural block. A gate shall be included on the enclosure.

- 16. Lighting for the funeral home/crematory property shall focus only onto the subject property. Any parking lot lighting fixtures shall be limited in height to twelve (12) feet. All lighting fixtures added for the funeral home/crematory use shall be full cut-off lights, and shall be fully shielded in such a manner to prevent light from projecting onto adjacent residential property.
- 17. Funeral services shall be conducted only between the hours of 10:00 A.M. and 3:00 P.M. Visitations and wakes shall be conducted only between the hours of 2:00 p.m. and 4:00 p.m. and between 7:00 p.m. and 9:00 p.m.
- 18. The architectural design of the funeral home/crematory building shall be in substantial compliance with that shown on drawings included as Attachment 2 to these development conditions. The exterior of the building shall be constructed of brick veneer. The top of the building roofline shall be limited in height to twenty-five (25) feet above the first floor elevation. Chimneys associated with the crematory use shall be limited in height to 3.0 feet above the roofline of the funeral home structure.
- 19. A right turn lane from Braddock Road into the southern entrance shall be constructed to Virginia Department of Transportation (VDOT) standards, in the location as determined by VDOT and the Department of Public Works and Environmental Services at the time of site plan submission. Prior to issuance of a Non-Residential Use permit for the funeral home, any landscaping shown that is removed due to turn lane construction shall be replaced pursuant to Development Condition #11, above.
- 20. Stormwater detention shall be provided to the satisfaction of the Director, Department of Public Works and Environmental Management.
- 21. The crematory shall comply with all County, State and Federal Environmental Regulations and any other regulations applicable to its operation.
- 22. Prior to first submission of the site plan, the applicant shall meet with adjacent property owners and shall provide an opportunity for comment and input on landscape and buffering issues.
- 23. Crematorium services shall not be provided for any other funeral home establishment.

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. Ribble seconded the motion which carried by a vote of 4-2. Mr. Pammel and Mr. Hart voted against the motion. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 338, July 25, 2000, (Tape 1), After Agenda Item, continued from Page 337

Mr. Ribble moved to approve the Additional Time Request. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote. The new expiration date was July 15, 2002.

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Page 338, July 25, 2000, (Tape 1), After Agenda Item:

Additional Time Request,
Yang S. and Sun C. Kim, SP 97-L-031

Mr. Ribble moved to approve the Additional Time Request. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote. The new expiration date was May 19, 2002.

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Page 338, July 25, 2000, (Tape 1), After Agenda Item:

Additional Time Request,
James H. and Nancy R. Howren, VC 96-V-045

Mr. Kelley moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date was June 2, 2002. Mr. Kelley noted that there would be no other extensions granted.

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Page 338, July 25, 2000, (Tape 1), After Agenda Item:

See memo from Jane Kelsey
Sharkeys Inc. D/B/A/ Fast Eddie's Billiard and Café, SPA 95-V-031

Chairman DiGiulian stated that on July 18, 2000, the BZA passed a motion that Mr. McCormack give them an opinion on how they could change the name of a permittee. He said he received a call from the County Attorney stating that it was their sole duty to advise the BZA on legal matters unless there was a conflict of interest. Chairman DiGiulian stated that the County Attorney would not authorize payment for an opinion from Mr. McCormack. He said he had spoken with Mr. McCormack who had offered to research the question and give them a letter of opinion within two weeks. Chairman DiGiulian stated that he would like to defer decision until that time. Mr. Pammel moved to defer decision to August 8, 2000. Mr. Kelley seconded the motion, which carried by a vote of 7-0.

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Page 338, July 25, 2000, (Tape 1), After Agenda Item:

Approval of July 18, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 338, July 25, 2000, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing,
August W. Steinhilber, III, VC 00-Y-101

Mr. Pammel moved to deny the request for an Out of Turn Hearing. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Request for Intent to Indefinitely Defer
Craven Appeal, A 96-P-049

William Shoup, Deputy Zoning Administrator, stated that the appellants requested deferral of the appeal that was scheduled for August 15, 2000, and their request was based on their intent to pursue new special exception approval. He said staff had always been supportive of the idea that the special exception process was the best way to resolve the outstanding issues, but the last time it took about 8 months to get the special exception appropriately filed. Mr. Shoup stated that at that time counsel did not represent the Cravens. He said it was anticipated that a special exception application would be filed expeditiously. Mr. Shoup said if it was the Board's intention to defer the appeal, staff suggested a short deferral to September 12, 2000, and if the special exception application was filed then they could assess the appropriateness of a further deferral to accommodate the special exception public hearing process.

Mr. Pammel moved to defer the appeal to September 12, 2000, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Mr. Hammack moved to allow the County Attorney to discuss the subject of Change in Permittee for special permits with the BZA's counsel, Brian McCormack. Mr. Hart 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 12:50 p.m.

Minutes by: Regina Thorn Corbett

Approved on: November 14, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 1, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 a.m. He explained the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

Page 341, August 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. GENE SCHLEPPENBACH & SHARON PIETZYK, VC 00-D-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. from rear lot line. Located at 8864 Glenridge Ct. on approx. 19,777 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 28-2 ((10)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gene Schleppenback, 8864 Glenridge Court, Vienna, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested permission to construct a sunroom addition 20.1 feet from the rear lot line. A minimum rear yard of 25 feet was required; therefore, a variance of 4.9 feet was requested.

In response to Mr. Hart's question, Ms. Langdon stated that the property line distance from the dwellings on Lots 9 and 10 was unknown because there were no plats available in the files.

Mr. Schleppenback presented the variance request as outlined in his statement of justification submitted with the application. The proposed 9 by 14-foot sunroom addition, he stated, had a height of 27 feet and required a 5-foot variance due to his lot's pie shape and it being particularly shallow where the house sat. Concurring with Mr. Hart, he said that the floor plan consisted of a screened-in porch on the ground floor, and above it on the upper level, a sunroom and a bathroom. He noted that the addition remained within the perimeter of the existing deck and that they were not renovating on the house's living room side because they wanted the addition built off the Master Bathroom and to enjoy additional eating space in the kitchen. Mr. Schleppenback said that his Homeowners Association approved the project, as did his adjacent neighbors. He responded to Mr. Hart's questions concerning the set back distances of lots 9 and 10.

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

Mr. Hart moved to approve VC 00-D-068 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GENE SCHLEPPENBACH & SHARON PIETZYK, VC 00-D-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.1 ft. from rear lot line. Located at 8864 Glenridge Ct. on approx. 19,777 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 28-2 ((10)) 8. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant has presented testimony showing compliance with the applicable standards for a

variance.

3. The lot is strangely shaped with several sides to it.
4. The lot is fairly shallow with respect to the positioning of the house.
5. There is no other location for the proposed addition.
6. There is minimal impact on the neighbors notwithstanding the height of the addition, which is substantially within the perimeter of the existing deck.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a sunroom shown on the plat prepared by Kenneth J. Reed, Architect, dated April 20, 2000 as revised through May 4, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The sunroom 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. Ribble seconded the motion which carried unanimously by a 7-0 vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 9, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. VIRGINIA B. AMBLER, SP 00-P-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.5 ft. from side lot line. Located at 2852 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 24. (Concurrent with VC 00-P-065).

9:00 A.M. VIRGINIA B. AMBLER, VC 00-P-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line and second story addition 8.2 ft. and 9.8 ft. from side lot lines and 7.2 ft. high fence to remain. Located at 2852 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 24. (Concurrent with SP 00-P-031).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alan A. Ambler, 2852 Meadow Lane, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for reduction to minimum yard requirements based on an error in building location to permit an addition to remain 8.5 feet from the side lot line. In the R-4 District, a minimum 10-foot side yard is required; therefore, a modification of 1.5 feet was requested for the existing addition. The applicant also requested approval of a variance to permit construction of a proposed addition which would be located 5.2 feet from the side lot line and a second story addition 8.2 feet and 9.8 feet from the side lot line. The applicant requested that an existing fence 7.2 feet in height be allowed to remain. The current Ordinance required a minimum side yard of 10 feet; therefore, a variance of 4.8 feet was requested for the addition, a variance of 1.8 feet and 0.2 feet was requested for the second story addition, and a variance of 0.2 feet was requested for the existing fence height.

Mr. Ambler, representing his mother, the applicant, presented the special permit and variance requests as outlined in the statement of justification submitted with the application. To maximize the home's 2,000 square feet for a second story addition, he said, two variances, on the north and south sides of the narrow lot, were requested. The undersized dining room required a 4.8-foot variance on the north side for a bay window projection. Mr. Ambler noted that a special permit was necessary after a 1.5-foot encroachment was discovered when the property was surveyed. Concerning the fence height, he explained that Long Fence Company built it in two parts, 1992 and 1996, and in March he faxed them a copy of the survey and applicable contracts, but had yet to receive any response.

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

Mr. Hammack moved to approve SP 00-P-031 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIRGINIA B. AMBLER, SP 00-P-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.5 ft. from

side lot line. Located at 2852 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 24. (Concurrent with VC 00-P-065). 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 1, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the one-story frame addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 12, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 9, 2000. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to approve VC 00-P-065 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 25, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VIRGINIA B. AMBLER, VC 00-P-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line and second story addition 8.2 ft. and 9.8 ft. from side lot lines and 7.2 ft. high fence to remain. Located at 2852 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 24. (Concurrent with SP 00-P-031). 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 1, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the required standards for a variance.
- 3. The lot is very narrow, measuring only 50 feet in width.
- 4. The variance will not change the character of the zoning district.

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

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - 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 **APPROVED** with the following limitations:

1. This variance is approved for the second-story addition and the fence measuring 7.2 feet in height, as shown on the plat prepared by Alexandria Surveys, Inc., dated April 12, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Pammel seconded the motion, which carried unanimously 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 9, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 346, August 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. P. BRADFORD STERL, VC 00-D-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from side lot line. Located at 8506 Lewinsville Rd. on approx. 34,848 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((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. P. Bradford Sterl, 8506 Lewinsville Road, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought approval to permit construction of an addition 15 feet from the side lot line. In the R-1 District, a minimum 20-foot side yard is required; therefore, a 5-foot variance was requested for the side yard.

Mr. Sterl presented the variance request as outlined in the statement of justification submitted with the application. He stated that the proposed garage addition could not be placed closer to the side of the house because it would involve losing two major windows in the Master Bedroom, having to remove a number of mature trees, and moving the driveway.

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

Mr. Pammel moved to approve VC 00-D-060 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

P. BRADFORD STERL, VC 00-D-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from side lot line. Located at 8506 Lewinsville Rd. on approx. 34,848 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 29. 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 1, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony which indicates compliance with the required standards for a variance.
3. The configuration of the dwelling on the lot is at an angle not parallel with the side lot lines, creating the need for a variance.
4. The existing two oak trees on the site would have to be removed if the applicant was forced to comply.
5. The lot does not meet the area requirements for the R-1 District and could therefore be considered sub-standard.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the addition shown on the plat prepared by Scott W. Sterl, AIA, dated May 2, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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 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 unanimously by a 7-0 vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 9, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 348, August 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM & CLAIRE MILLER, VC 00-H-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.2 ft. from side lot line. Located at 13370 Point Rider La. on approx. 8,560 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 34. (def. From 7/25/00 for decision only)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia replied that it was.

Phyllis Wilson, Staff Coordinator, stated that the public hearing was held on July 25, 2000, where the applicants sought approval to construct an addition 3.2 feet from the side lot line. The BZA deferred decision to enable the applicant the opportunity to explore ways that the addition could be moved farther from the side lot line. The applicant submitted revised plats with the proposed addition 5 feet from the side lot line, the minimum required side yard was 8 feet, thus a lesser variance of 3 feet was requested. Revised Proposed Development Conditions dated August 1, 2000, were distributed to the Board reflecting the information contained in the revised plats.

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

Mr. Pammel moved to approve VC 00-H-056 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM & CLAIRE MILLER, VC 00-H-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.2 ft. **(THE BZA APPROVED ADDITION 5.0 FT. FROM SIDE LOT LINE)** from side lot line. Located at 13370 Point Rider La. on approx. 8,560 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((7)) 34. (def. From 7/25/00 for decision only) 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 1, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony which indicates compliance with the required standards for a variance.
3. The dwelling on the lot has an unusual configuration.
4. The lot is small.

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 **APPROVED** with the following limitations:

1. This variance is approved for the addition shown on the plat prepared by Alexandria Surveys, Inc., dated December 29, 1999, as revised through July 26, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 unanimously 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 9, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 350, August 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JOHN D. MADITZ, VC 00-P-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.1 ft. from side lot line. Located at 8404 Wesleyan St. on approx. 10,625 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (J) 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. John D. Maditz, 8404 Wesleyan Street, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition to be located 6.1 feet from the side lot line. The minimum side yard requirement is 12 feet; therefore, a variance of 5.9 feet was requested.

Mr. Maditz presented the variance request as outlined in his statement of justification submitted with the application. He stated that his variance request was to enclose his carport to safely garage his vehicles when out of town and protect them from the elements. Mr. Maditz submitted that many of the neighboring communities had upgraded their homes with garages. He stated that his neighbors supported his garage proposal.

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

Mr. Ribble moved to approve VC 00-P-066 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN D. MADITZ, VC 00-P-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.1 ft. from side lot line. Located at 8404 Wesleyan St. on approx. 10,625 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (J) 5. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 2000; and

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

- 1. The applicant is the owner of the land.

- 2. The applicant has met the required standards for a variance.
- 3. The lot is narrow.
- 4. The applicant is simply enclosing an existing carport.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a garage addition shown on the plat prepared by L. S. Whitson, dated, November 9, 1999, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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.

Ms. Gibb seconded the motion which carried unanimously 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 9, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 352 August 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. GREGG & JOYCE HOLDEN, VC 00-S-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.7 ft. from side lot line such that side yards total 15.7 ft. Located at 6217 Garretson St. on approx. 12,514 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((6)) 109. (Concurrent with SP 00-S-032).

9:00 A.M. GREGG A. HOLDEN, SP 00-S-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 0.7 ft. from side lot line. Located at 6217 Garretson St. on approx. 12,514 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((6)) 109. (Concurrent with VC 00-S-067).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gregg Holden, 6217 Garretson Street, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure to remain 0.7 feet from the side lot line. The minimum side yard requirement was 8 feet; therefore, a modification of 7.3 feet for the shed was requested. The applicant also requested a variance to construct a two-car garage to be located 4.7 feet from the side lot line such that the side yards total 15.7 feet. The minimum total side yards for the District is 20 feet; therefore, variances of 3.3 feet and 4.3 feet for the garage addition were also requested.

Mr. Holden presented the variance and special permit requests as outlined in his statement of justification submitted with the application. Because of his lot's narrowness and topographic elevations, two variances were necessary to permit a 20 x 22-foot garage addition onto his home, he said, and to allow his shed to remain a special permit was required. He explained that a 10-foot sanitary easement through his rear yard limited where he placed his 8 x 10-foot shed, but before its construction he called the County for utility shed regulations. Mr. Holden said he was erroneously informed that wall height could not exceed 8 feet and that sheds had no placement restrictions. After his property was surveyed, he noted, Ms. Virginia Ruffner, from Zoning Evaluation Division, notified him that his shed was in violation of County Code because it was too tall, and that it exceeded mandated setback distances. His shed was too tall, she explained, because measurements were taken from the ground to the peak elevation.

Mr. Holden said that Mr. Congleton from the Zoning Department admitted that the County made a mistake and advised him to apply for the special permit. In response to Ms. Gibb, Mr. Holden explained that the shed was not on a foundation as it was not a permanent structure.

He submitted photographs, responding to Mr. Hart's question, verifying the shed's placement and the irregular shape of his lot. He explained that white vinyl siding, which matched his house, was the building material and that moving the shed was not an option as it was 90% completed.

Mr. Bernal responded to Ms. Gibb's question concerning what the distances were of the houses on Lots 110 and 43 from the shared lot line.

Mr. Holden informed Ms. Gibb how far his shed was from Lot 110; the fact that Lot 110 was quite small; and due to his lot's unusual shape and numerous elevations, his driveway overlooked Lot 110. He was unable to give Ms. Gibb the exact dollar amount of his shed's cost as he was performing the work himself, already had expended several man-hours, had installed a skylight and a hardwood floor, but, on the vinyl siding and roof, he had spent at least \$200.

Chairman DiGiulian closed the public hearing.

Page 353 August 1, 2000, (Tape 1); GREGG & JOYCE HOLDEN, VC 00-S-067; GREGG A. HOLDEN, SP 00-S-032; continued from Page 352

Ms. Gibb moved to approve VC 00-S-067 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGG & JOYCE HOLDEN, VC 00-S-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.7 ft. from side lot line such that side yards total 15.7 ft. Located at 6217 Garretson St. on approx. 12,514 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((6)) 109. (Concurrent with SP 00-S-032). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.
3. The lot is oddly shaped.
4. The house is located at an angle.
5. Only one corner of the proposed garage requires a variance and therefore this is a fairly modest request.
6. The garage cannot be located at any other part of the lot because of the odd shape, the sanitary sewer easement, and the topography of 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 **APPROVED** with the following limitations:

1. This Variance is approved for the location of a two-car garage addition as shown on the plat prepared by Kenneth W. White, dated March 28, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 addition 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 unanimously 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 9, 2000. This date shall be deemed to be the final approval date of this variance.

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Before making a motion on the concurrent special permit case, Ms. Gibb commented that the shed was rather large as well as being less than a foot from the property line; but in deference to Mr. Holden, he had been misinformed by the County when he requested the regulations.

Ms. Gibb then moved to approve SP 00-S-032 for the reasons noted in the Resolution.

Mr. Kelley commented that he ordinarily disapproved of any structure so close to the property line; however, Mr. Holden had followed all appropriate procedures in order to comply and, therefore, he urged that the special permit be approved.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGG A. HOLDEN, SP 00-S-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 0.7 ft. from side lot line. Located at 6217 Garretson St. on approx. 12,514 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((6)) 109. (Concurrent with VC 00-S-067). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 2000; and

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

Page 355, August 1, 2000, (Tape 1); GREGG & JOYCE HOLDEN, VC 00-S-067; GREGG A. HOLDEN, SP 00-S-032; continued from Page 364

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory storage structure (shed) as shown on the plat prepared by Kenneth W. White, dated March 28, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion, which carried unanimously 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 9, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 355, August 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JAMES WOLFFE & SHARYN FRANCK, VC 00-P-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of covered porch 21.5 ft. from front lot line of a corner lot. Located at 2906 Rose Pl. on approx. 9,009 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 89.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Wolfe, 2906 Rose Place, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition to be located 21.5 feet from the front line of the corner lot. The minimum front yard requirement for the District is 30 feet; therefore, a variance of 8.5 feet was requested.

Mr. Wolffe presented the variance request as outlined in his statement of justification submitted with the application. The proposed front porch, he said, was designed to be 30 feet from the curb. He explained that the street running through his rather small subdivision of only six homes was unusually wide and recently was reconstructed and that there were no plans for sidewalk installation or further widening. Mr. Wolffe stated he had the support of his neighbors.

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

Mr. Kelley moved to approve VC 00-P-061 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES WOLFFE & SHARYN FRANCK, VC 00-P-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of covered porch 21.5 ft. from front lot line of a corner lot. Located at 2906 Rose Pl. on approx. 9,009 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 89. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 1, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance as indicated in their statement of justification.

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

Page 357, August 1, 2000, (Tape 1), JAMES WOLFFE & SHARYN FRANCK, VC 00-P-061, continued from Page 356

- 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a front porch addition shown on the plat prepared by Lawrence H. Spilman III, dated May 3, 2000 submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained approved.
3. The addition shall be architecturally compatible with the 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.

Ms. Gibb seconded the motion, which carried unanimously by a 7-0 vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 9, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 357, August 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WINDSOR W. DEMAINE, III, VC 00-V-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 4.2 ft. from side lot line and deck 1.5 ft. from side lot line. Located at 5201 Burke Dr. on approx. 26,906 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((5)) (E) 45B. (OTH REQUEST APPROVED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey & Associates, Inc., representing the applicant, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a dwelling to remain 4.2 feet from the side lot line and a second variance to permit a deck to be located 1.5 feet from the side lot line. The minimum side yard requirement for the District is 15 feet; therefore, variances of 10.8 feet for the dwelling, and 13.5 feet for the deck were requested.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She called the Board's attention to a revised statement of justification she submitted that morning for the record. Also distributed that morning, she added, was an updated chronology attesting to the

history of the property of which she would reference during her presentation. Ms. Kelsey explained that in 1992, in good faith, Mr. Demaine purchased Lot 45 and the adjacent Lot A, as two separate building lots, and contracted to have a garage and kitchen addition constructed. She pointed out that these additions were each evidenced, in approximately the same locations, on a special exception plat approved by the Board of Supervisors in 1981. Ms. Kelsey explained that the lot had topographic conditions that severely restricted its buildable areas and submitted photographs illustrating the lot's physical hardships calling attention to the irregular shape, the severe slope in the rear, and the fact that a good portion was floodplain. Only recently, she stated was Mr. Demaine informed that the garage/kitchen addition was too close to the lot line; that it encumbered his vacant lot next door; therefore, his vacant lot could not be sold as a buildable lot. Ms. Kelsey explained that a covenant on the property prohibited building as close to the front lot line as the Zoning Ordinance permitted and in order for the vacant lot to be used as a separate building lot, a variance was necessary. Ms. Kelsey referenced two court cases contained in the revised Statement of Justification which spoke to the reasonable use and good faith issues similar to this situation. She stated that the variance would not create an adverse impact on any other properties, and that Mr. Demaine's variance request was supported by his neighbors as evidenced by the 14 letters of support. Ms. Kelsey also requested that the Board waive the 8-day waiting period.

Ms. Kelsey concurred with Ms. Gibb's clarification that the building permit for the addition had evidenced two lots that resulted in the later realization of the addition's encroachment. She responded to Ms. Gibb's suggestion for a lot line adjustment as a remedy.

Ms. Kelsey agreed with Mr. Hart's assessment that the building permit was granted because Mr. Demaine owned both lots and the lot line was not considered an issue, but with the possibility of the two lots having separate ownership, the encroachment was now considered a problem. She added that the prospective buyer wanted a lot that was buildable.

In response to Mr. Hart, Ms. Kelsey affirmed that the house was built in 1954 and that both lots were separately platted. She explained that Lot 45B was subdivided in 1951, that a building permit was issued for the original house, and that in 1971, Lot A was created. She affirmed the lot's creation long before the addition.

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

Mr. Pammel stated that according to the plats, it appeared that the both lots had similar widths, and in terms of width on Parcel A, a Boundary Line Adjustment would not resolve the problem without creating a problem.

Mr. Pammel moved to approve VC 00-V-076 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WINDSOR W. DEMAINE, III, VC 00-V-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 4.2 ft. from side lot line and deck 1.5 ft. from side lot line. Located at 5201 Burke Dr. on approx. 26,906 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((5)) (E) 45B. (OTH REQUEST APPROVED). 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 1, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony which indicates compliance with the required standards for a variance.

- 3. The orientation of the structure on the site and the improvements made are cause for a variance.
- 4. It would present a definite hardship if the owner was forced to remove the structures currently in place.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a dwelling and deck as shown on the plat prepared by Kenneth W. White, dated, April 27, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion, which carried by a vote of 5-0-2 with Messieurs Hammack and Ribble abstaining. Mr. Kelley then moved to waive the 8-day waiting period. Mr. Hart seconded the motion, which carried by a vote of 5-0-2 with Messieurs Hammack and Ribble abstaining.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LYND SAY R. & NANCY M. SAFFER, VC 00-P-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 11A having a lot width of 28.82 ft. and dwelling to remain 10.0 ft. from front lot line. Located at 2949 Gray St. on approx. 1.0 ac. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 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. Lyndsay R. Saffer, 2949 Gray Street, Oakton, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested permission to subdivide the lot into two lots with proposed Lot 11 A having a lot width of 28.82 feet, where 100 feet is required by the Zoning Ordinance. The applicant also requested a variance to permit the existing dwelling to remain 10 feet from the front lot line, a front yard of 35 feet is required; therefore, a variance of 25 feet was requested.

Mr. Saffer presented the variance request as outlined in his statement of justification submitted with the application. He stated that due to his lot's narrowness, a variance was required to subdivide it, and on the newly formed second lot, he intended to build a home in which to reside. He said that the size and shape of the lot allowed flexibility for the placement of the house and allowed saving of the majority of trees and vegetation on the rear of Lot 11A. He stated that he met with 3 arborists, including Keith Cline with the Department of Urban Forestry, and information was provided on how to protect trees near construction areas. He explained that the existing house was built in 1910, was in very good condition, and that it would remain 10 feet from the front lot line due to the road easements. Mr. Saffer assured that his request was harmonious with the neighborhood as he was developing at a lower density than the surrounding parcels, and that he had the support of most of his neighbors as evidenced by the July 18, 2000, letter of support (a copy is in the record). To address the sole concern of one neighbor, Mr. Saffer stated that he would add a condition to Appendix 1 of the Proposed Development Conditions that included a 15-foot nondriveway easement.

Discussion followed between Mr. Hammack, Ms. Gibb and Mr. Saffer concerning the 15-foot easement, its location on the plat, and suggested language for a development condition to denote its restriction.

In response to a question from Mr. Hammack, Mr. Saffer's engineer and surveyor, Mr. Roger Bore, with the firm of R.C. Fields and Associates, suggested a resolution that accommodated access to the garage, retained the 15-foot easement. He assured that a copy of the recorded official easement would be provided for the neighbor.

Ms. Langdon responded to Mr. Hart's questions concerning the driveway's width, implications incurred if the house's location was moved, the adherence to required setbacks, and proposed language to address the condition.

Mr. Pammel clarified that the Board's only consideration was the division of the lot.

Mr. Saffer responded to Mr. Hart's question concerning satisfaction of Standard 6 for the variance.

Chairman DiGiulian called for speakers.

Ms. Mary Edwards, 10122 Leecane Court, noted her concern that if the driveway variance was approved, the driveway would be 25 feet from the back door of the home she intended to build. A verbal agreement was made with the applicant, she stated, to move the driveway 15 feet from the property line, to develop a buffer zone and enhance the vegetation if warranted, and then she would support the application if the agreement were in writing. Ms. Edwards noted that one side of her property had substantial problems with run-off created by her subdivision and that her lot was downsized to accommodate a portion of the drainage. She pointed out that, in addition to her own driveway in front, she would also have a driveway in the back, and that a County road ran along her lot's other side.

In response to Mr. Hammack's question, Ms. Edwards explained that her lot, Lot 2, was off Leecane Court, and that for drainage purposes, the house was moved as far back as possible on the lot. She concurred with Ms. Gibb that the detention pond was on Parcel A.

Page 361, August 1, 2000, (Tape 1), LYND SAY R. & NANCY M. SAFFER, VC 00-P-059, continued from Page 360

Mr. Saffer assured that he would add a condition stipulating that the driveway would not be within the 15-foot area of the lot line. He responded to Ms. Gibb's question concerning the existing gravel driveway, explaining that it would be redone and a buffer zone created to run the lot's entire length.

Mr. Hammack suggested that, to avoid future confusion, the plat should conform to the development conditions, as plats were recorded, therefore the development conditions remained consistent with the plat's layout.

Chairman DiGiulian closed the public hearing.

In response to Mr. Hart's concern, Ms. Langdon stated that staff could draft, in one week, two additional development conditions, one to address the 15-foot issue, and the second condition would stipulate conformance of the side yards to the Ordinance.

Mr. Hart then moved to defer for decision only, VC 00-P-059 to August 8, 2000, at 9:00 a.m.

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

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Page 361, August 1, 2000, (Tape 1), Scheduled case of:

9:30 A.M. SYED ASLAM ALI, A 2000-LE-007 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of determination that Special Exception SE 97-L-009 has expired and that appellant's service station is being operated in violation of Zoning Ordinance provisions. Located at 6117 Franconia Rd. on approx. 20,823 sq. ft. of land zoned C-5 and HC. Lee District. Tax Map 81-3 ((5)) 1A.

Chairman DiGiulian disclosed that the applicant's site plans were prepared by his office; therefore, he recused himself. The Chair was turned over to Vice-Chairman Ribble.

Vice Chairman Ribble called on the applicant to identify himself to the Board.

Mr. Syed Aslam Ali stated that he was the owner of the Franconia Texaco Service Station at 6117 Franconia Road, Alexandria, Virginia.

Ms. Margaret Stehman, Zoning Administration Division, presented staff's determination that the Special Exception SE 97-L-007 had expired and that the Appellants' service station was in violation of Zoning Ordinance provisions. SE 97-L-009 was intended to resolve violations set forth in a Notice of Violation issued to the appellant December 5, 1995. A previous appeal by the appellant was deferred 7 times to allow time for processing of SE 97-L-009, which was approved on August 4, 1997 and the appeal was then withdrawn.

The approval of SE 97-L-009 required site plan submittal by November 3, 1997, and construction of the permanent service bay addition to commence on or before February 4, 1998; 6 months after the special exception approval date. On February 4, 1998, the appellant submitted his site plan waiver requests but had not received approvals. The criteria for establishing a 'commencement of construction', are site plan approval, issuance of a building permit, and pouring of footings. Also, as set forth in SE 97-L-009, a request for additional time could have been filed with the Zoning Administrator prior to the expiration date and the Board could have approved a request for additional time to commence construction.

SE 97-L-009 expired on February 4, 1998 due to the appellant's failure to fulfill the criteria for commencement of construction. The applicant did not file a request for additional time.

It is staff's determination that the property is now subject to the conditions associated with the preceeding special exception SE 80-L-049. Following an inspection of the Franconia Texaco it was determined that the property was in non-compliance to the conditions of SE 80-L-049 as there were numerous violations.

Mr. Thomas Williams, 6901 Old Keene Mill Road, Springfield, Virginia, agent for the applicant, presented the appellant's position regarding the validity of the special exception obtained in 1997. An explanation of the

ensuing violations, applications filed, instructions received, fees submitted, information provided, and agreements obtained from the County was presented in chronological order.

Mr. Williams requested the Board rule that the applicant had commenced and continued the use, and commenced the construction activities within the appropriate time period. He responded to questions from Ms. Gibb concerning current Zoning Ordinance violations, signage, banners, storage of supplies, the cargo containers, and the volume of cars and asunder car parts on the site.

Ms. Stehman responded to Ms. Gibb's query regarding the time-frame specifics of the appellant's site plan submittal and approval, what was required for commencement of construction, and the expiration of the special exception. She also explained the criteria for the plan's approval.

Mr. Williams explained to Ms. Gibb the reasons for his client's failure to request an extension of time from the Board of Supervisors, the fence's construction, and the retention of the contractor, architect and engineer to do the site plan. He responded to questions from Mr. Hart concerning particulars of the fence, its design, construction materials, and appropriate landscaping.

Mr. Williams responded to Mr. Hammack's question concerning the processes encountered with the County agencies, the significance of diligent prosecution, and the fees submitted for required applications, bonds, a conservation easement and permits.

Mr. Shoup explained the County's policy regarding revocation of a special exception, notification to an applicant/appellant, and notices of violation. He stated that staff's focus was on the most serious violation, whether the apparent extensive construction of the temporary service bay commenced within the 6-month commencement time-frame, or the attaining approval for additional time.

Mr. Williams responded to Mr. Pammel's questions regarding the establishment of the mini mart.

Mr. Bill Mallan, President of Total Living Construction, stated that he was a Class A General Contractor and a customer of Mr. Ali. He voiced his support of the appellant. He explained the appellant's efforts and the ensuing complications to attain the canopy structure. Mr. Mallan listed the numerous permits required, the retaining of the engineer and architect, the applications submitted, and the resulting discovery that there were several circumstances of non-compliance with Zoning Ordinance provisions.

Mr. Shoup and Ms. Stehman responded to Ms. Gibb's questions concerning the site's issues, those resolved and those outstanding.

In rebuttal, Mr. Williams requested that the Board find the 1997 Special Exception valid, and then the site plan would be processed, the building plan approved, and the project would be completed in six months.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel voiced his concern about unreasonable requirements written into conditions that are part of special exceptions granted by the Board of Supervisors. He pointed out that a probable half or more of the special exception applications granted are unable to meet the six-month requirement due to the length of time taken for the County to review site plans. He said he believed Mr. Ali had presumed that he was diligently processing his special exception requirements. Concurring with Mr. Williams' rebuttal statement, Mr. Pammel called for the resolution of the outstanding issues so that the project could proceed to completion.

Mr. Pammel then moved to overturn the ruling of the Zoning Administrator.

Mr. Kelley commented that with respect to the prior appeal, which was eventually withdrawn, the issue, which the applicant immediately had addressed, concerned parking; the applicant then commenced work on the installation of the fence. As there were a few complaints, Mr. Kelley questioned whether the parking issue was resolved.

Ms. Gibb cited language from the Special Exception Approval letter dated August 20th, which stipulated the remedy required of the applicant to resolve the outstanding issues. She noted that, in her opinion, Mr. Ali had complied to the best of his ability. Ms. Gibb concurred that the preferred solution was to approve a building permit at the earliest date so the appellant would complete a permanent structure.

Page 363, August 1, 2000, (Tape 1), SYED ASLAM ALI, A 2000-LE-007, continued from Page 362

Mr. Hart voiced his support of the motion but commented that both the County and the applicant could share in some of the blame over the apparent confusion with and non-compliance of issues, and that the applicant should have requested additional time. He stated that the SE's development conditions were not specific. He agreed with Mr. Pammel that the submissions and processing time-frames were unrealistically short. Mr. Hart stated that he believed the applicant had commenced with diligence as he understood it.

Mr. Hammack voiced his general concurrence with the comments made by his fellow BZA members.

Vice Chairman Ribble said that he was impressed with the comments made by Mr. Mallan and that Mr. Mallan clearly relayed the extenuating circumstances experienced by the appellant.

Mr. Kelly seconded the motion, which carried unanimously by a 7-0 vote.

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Page 363, August 1, 2000, (Tape 1), Scheduled case of:

9:30 A.M. LILIANE P. AND GEORGE J. KNAKMUHS, A 1999-SP-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a business (Clifton Pottery) without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. Located at 7601 Clifton Rd. on approx. 91,476 sq. ft. of land zoned R-C, C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 12. (DEFERRED FROM 8/10/99 AND 11/16/99. DEF. FROM 1/11/00 FOR DECISION ONLY).

Vice Chairman Ribble called upon the appellant to identify himself for the Board.

Mr. George J. Knakmuhs stated that he resided at 7603 Clifton Road and was the owner of the subject property.

Susan Epstein, Assistant to the Zoning Administrator, stated that the appeal pertained to an April 7, 1999, Notice of Violation that cited the appellants for operating a business, Clifton Pottery, without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. She pointed out that the public hearing had been deferred twice to allow the appellants the opportunity to resolve the outstanding site plan issues. Ms. Epstein noted that the Board of Zoning Appeals conducted the public hearing January 11, 2000, deferring its decision to August 1, 2000, to again allow the appellants additional time to resolve the issues. She pointed out that the appeal had gone unresolved for more than 15 months and that it had been almost 8 years since the last site plan waiver and Non-RUP had expired, and for those reasons, it was staff's position that the appeal should not further be delayed. Ms. Epstein requested that the BZA take action to uphold the Notice of Violation.

Mr. Knakmuhs referenced a January 19, 2000 letter from the County requesting resolution of the site plan issues or sale of the property. The property was listed, he said, and had an interested party who had submitted modification plans and was awaiting the County's response. Mr. Knakmuhs suggested that the requirements made of him would not necessarily meet those of the purchaser and he respectfully requested a deferral of County requirements until the property and remaining inventory were sold. He submitted that he was being unfairly signaled out by the County, and referenced an April 8, 1994, memorandum concerning a neighboring property whose application was deferred indefinitely and pointed out that there were area businesses with numerous outstanding violations. He responded to Ms. Gibb's questions concerning perspective buyers, the status of the current buyer's contract, his property's real estate listing, and the proposed use of the property.

Mr. William Shoup, Deputy Zoning Administrator, interjected that at January's public hearing, they discussed the difficulty with the sale of the property and to date there were no changes.

Mrs. Liliane Knakmuhs, the appellant, voiced dismay and confusion over the County's numerous requirements and the stress and expense it has taken on them in their attempts to comply.

Mr. Knakmuhs responded to Mr. Hammack's question concerning their site plan submission. He responded to Mr. Pammel's and Ms. Gibb's questions regarding the inventory liquidation and the hours of operation.

There being no further questions from the Board, Vice Chairman Ribble closed the public hearing.

Because of the Knakmuhs' circumstances, stated Mr. Hammack, and to allow the appellants time to dispose of their remaining inventory and cease operations, he would further defer the decision on this appeal.

Mr. Hammack then moved to defer the decision on the appeal until the first Board meeting in January, 2001. The motion was seconded by Ms. Gibb and carried unanimously by a 7-0 vote.

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The Chair was turned back to Chairman DiGiulian who called the first After Agenda Item.

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Page 364, August 1, 2000, (Tape 1), After Agenda Item:

Approval of July 25, 2000 Resolutions

Grayson Hanes, Esquire, attorney for the applicant, SPA 81-A-022-6 submitted for the record, an Affidavit reaffirming the Affidavit dated July 18, 2000, and disclosed that Mr. Ron Salvatori and Thomas E. Reed were not considered Agents of the applicant but independent contractors.

Susan Langdon, Chief of the Special Permits and Variance Branch, noted for the record that, to her knowledge, the affidavit was not approved by the County Attorney's office.

Discussion ensued between Mr. Kelley and Ms. Langdon concerning the submission and validity of the affidavit and the fact that there was no representative from the County Attorney's office present.

Ms. Jane Kelsey, Jane Kelsey and Associates, Inc., clarified that the submission date of the revised affidavit was July 25, 2000.

In response to Mr. Pammel's question, Ms. Langdon stated her understanding of submission requirements for affidavits.

Mr. Pammel requested staff provide the Board with the document specifying affidavit submission requirements to be retained for the record.

Mr. Pammel then moved to defer approval of the July 25, 2000, Resolutions to August 8, 2000 and have staff present documentation of the requirements for review and approval of affidavits by the County Attorney.

Mr. Kelley seconded the motion.

Discussion ensued among Ms. Gibb and Messieurs. DiGiulian, Kelley, Pammel and Ribble regarding the possibility of an affidavit issue and the potential effect on whether or not the Resolutions are approved.

Chairman DiGiulian opposed the motion stating that approval of the resolutions was not the issue, but that of Mr. Hanes' disclosure of the agents listed on the affidavit and whether or not the Board had a concern.

Mr. Kelley withdrew his second.

Mr. Hart disclosed that Mr. Reed was considered an expert witness and his firm had utilized Mr. Reed's services. Mr. Hart affirmed that this fact had no bearing on his ability to participate with the proceedings.

There were no other disclosures by the Board members concerning Mr. Reed.

Mr. Pammel then moved that staff provide the Board documentation for affidavit approval by the County Attorney. Ms. Gibb seconded the motion, which carried unanimously by a 7-0 vote.

Mr. Pammel then moved to approve the July 25, 2000, Resolutions. Mr. Ribble seconded the motion, which


carried unanimously by a vote of 7-0.

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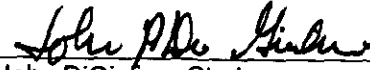
There being no further business to come before the Board, the meeting was adjourned at 11:56 a.m.

Minutes by: Maria D. Foltz & Paula A. McFarland

Approved On: April 2, 2002



Regina Thorn Corbett, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 8, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb, Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 367, August 8, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM B. & JULIE M. HOWARD, VCA 96-V-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line and 15.0 ft. from rear lot line. Located at 2109 Wakefield Ct. on approx. 10,242 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (15) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marilyn Anderson, 8105 Wildflower Drive, Fairfax Station, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition 5 feet from a side lot line and 15 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 10 feet and a minimum rear yard of 25 feet; therefore, variances of 5 feet and 10 feet were requested.

Ms. Anderson presented the variance request as outlined in the statement of justification submitted with the application. She stated that the request was an amendment to an existing variance, which was approved by the Board of Zoning Appeals (BZA) in 1996. She informed the Board that the rear portion of the addition would be further away from the rear lot line than previously approved. She stated that the variance amendment was needed to allow an existing outside stairway to be removed and a new stairway to be constructed inside the home. She requested a waiver of the 8-day waiting period.

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

Mr. Ribble moved to approve VCA 96-H-060 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM B. & JULIE M. HOWARD, VCA 96-V-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line and 15.0 ft. from rear lot line. Located at 2109 Wakefield Ct. on approx. 10,242 sq. ft. of land. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 8, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. There are architectural changes that reflect a staircase being constructed on the inside of the home instead of on the outside.
4. The lot is pie-shaped and has extreme topographical conditions.
5. The house is placed on one side of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Barbara K. Ball, Architect, dated May 3, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Kelley seconded the motion which carried by a vote of 6-0-1. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 8, 2000. This date shall be deemed to be the final approval date of this variance.

9:00 A.M. DAVID A. HERBIG, VC 00-B-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line such that side yards total 23.4 ft. Located at 5124 Richardson Dr. on approx. 12,028 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 34. (Moved from 8/1/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David A. Herbig, 5124 Richardson Drive, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition, to be located 5.5 feet from a side lot line such that the side yards totaled 23.4 feet. The Zoning Ordinance requires a minimum side yard of 8 feet; therefore, a variance of 2.5 feet for the side yard was requested. The Zoning Ordinance also requires a total side yard of 24 feet; therefore, a variance of 0.6 feet was requested for the total side yard measurement.

Mr. Herbig presented the variance request as outlined in the statement of justification submitted with the application. He stated that the variance request was to extend the existing carport and construct a two-car garage. He said that the variance request was minimal and met all of the required standards for the granting of a variance. He informed the Board that the garage would be in character with the neighborhood.

Mr. Hammack noted that there was one letter of opposition and asked the applicant to respond to the issues raised in the letter. Mr. Herbig replied that the neighbor in opposition lived behind his home. He stated that the area of the property that was the subject of the variance was not visible from this neighbor's property and that there was sufficient screening between the two properties; therefore, the construction of the garage would not affect the enjoyment of the neighbor's property.

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

Mr. Hammack moved to approve VC 00-B-072 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID A. HERBIG, VC 00-B-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line such that side yards total 23.4 ft. Located at 5124 Richardson Dr. on approx. 12,028 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((5)) 34. (Moved from 8/1/00) 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 8, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is oddly shaped.
4. The variance requests are minimal.
5. The variance for the garage only involves a corner of the structure.

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

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

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

- 1. This variance is approved for the location of the garage addition shown on the plat prepared by Harold A. Logan Associates P.C., dated May 16, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Ribble 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 August 16, 2000. This date shall be deemed to be the final approval date of this variance.

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Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.2 ft. from side lot line and accessory structure to remain 1.0 ft. from rear lot line and 1.2 ft. from side lot line. Located at 8318 Lilac La. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 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. Jerald Rainey, 8318 Lilac Lane, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for a reduction to minimum yard requirements based on error in building location to permit an enclosed porch addition to remain 10.2 feet from a side lot line. The applicants proposed to enclose the porch for use as living space. The applicants also requested that an accessory structure remain 1.0 foot from the rear lot line and 1.2 feet from a side lot line. Mr. Rainey said the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the amount of error for the side yard was 1.8 feet or 15% for the enclosed porch and 10.8 feet or 90% for the shed. A shed of the proposed 9 feet in height is required by the Ordinance to be located a minimum of 9 feet from the rear property line; therefore, the amount of error within the rear yard is 8 feet or 89%.

Mr. Rainey presented the special permit request as outlined in the statement of justification submitted with the application. He stated that they had no knowledge of the error in building location upon their purchase of the home and the County informed them of the problem upon their request to enclose the existing porch. The enclosure of the porch would enhance the appearance of their home and be beneficial of the neighborhood. He stated that the shed was also in place upon their purchase of the property and it was needed for storage. He requested a waiver of the 8-day waiting period.

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

Mr. Pammel moved to approve SP 00-V-035 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JERALD S. & TERESA M. RAINEY, SP 00-V-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.2 ft. from side lot line and accessory structure to remain 1.0 ft. from rear lot line and 1.2 ft. from side lot line. Located at 8318 Lilac La. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 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 August 8, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the addition and accessory structure (shed) shown on the plat prepared by Louis J. Mataria, dated through April 7, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. Approval of an administrative variance shall be obtained for the location of the garage within the minimum required side yard area.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion which carried by a vote of 7-0. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb 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 8, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 372 August 8, 2000, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH AT NORTHERN VIRGINIA - WHOLE WORD FELLOWSHIP AND TRUSTEES OF THE DOMINION SCHOOL, SPA 78-C-055-3 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 78-C-055 for existing church and related facilities and a school of general education to permit change in development conditions. Located at 10922 Vale Rd. on approx. 17.95 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((1)) 17 and 17A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McBride, Vanderpool, Frostnick and Nishanian, 9324 West Street, Suite 400, Manassas, Virginia, replied that it was.

Mr. Hart disclosed that he had several cases at the Circuit Court in Leesburg and one in Manassas where there were attorneys from Mr. McBride's firm on the other side. He said he had one case where the client had retained Mr. McBride's firm. He stated that none of the matters would affect his ability to participate in the case.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The Board of Zoning Appeals (BZA) previously approved a church and related facilities and a school of general education for the site. The church was approved with seating for 430 and 127 parking spaces. The school was approved for a maximum daily enrollment of 75 students. With the current amendment application the applicant proposed to increase enrollment for the previously approved school from 75 students to 99 students and to modify approved language in Development Condition #16 to delete the provision requiring bussing of students to one that encouraged car pooling. No new construction or other physical changes were proposed for the exterior of the building or on the site. Staff recommended approval of the application.

Mr. McBride presented the special permit amendment request as outlined in the statement of justification submitted with the application. He emphasized that there was no new construction or physical changes associated with the application. He stated that the applicant requested to amend Development Condition #8 to increase the maximum enrollment from 75 students to 99 students. He explained that there were more than adequate recreation and classroom areas on the site to accommodate the proposed increase of students. He stated that the applicant also requested to remove a bussing requirement from Development Condition #16. He said that the requirement was economically infeasible for the size of the school and the cost and the trip lengths were very lengthy because the students were dispersed primarily throughout the Sully and Hunter Mill Districts.

Mr. McBride submitted a traffic analysis that had been performed during a time when the school was implementing car pooling instead of bussing and it was determined that there were no transportation problems relating to the pick up and drop off of the students. He explained that the reasoning for this was because the school operated after the morning rush hour and closed before the evening rush hour.

Ms. Gibb asked whether or not the bussing was currently taking place. Mr. McBride replied that busing had taken place intermittently in the past but had been primarily van pooling instead of bussing due to the cost. Mr. McBride informed the Board that the school had intentions of continuing to van pool.

Ms. Gibb asked staff what was the basis for the implementation of the busing development condition. Ms. Wilson stated that, at that time, the Board was concerned about the traffic generated by the school and had implemented a 5-year term limit to make sure that there was no undue traffic impact on the site. She stated that the Department of Transportation had reviewed the traffic analysis submitted by the applicant and agreed that the proposal would not cause undue impact with the additional 24 students.

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

Mr. Hart moved to approve SPA 78-C-055-3 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE CHURCH AT NORTHERN VIRGINIA - WHOLE WORD FELLOWSHIP AND TRUSTEES OF THE DOMINION SCHOOL, SPA 78-C-055-3 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 78-C-055 for existing church and related facilities and a school of general education to permit change in development conditions. Located at 10922 Vale Rd. on approx. 17.95 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((1)) 17 and 17A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 2000; and

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

1. The applicants are the owners of the land.

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 Sect(s). 3-E03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of the Church at Northern Virginia-Whole Word fellowship and Trustees of the Dominion School, 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), structures and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, dated September 5, 1991, as revised through May 11, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.
5. Hours of operation of the church shall be limited to the hours of normal church operation.
6. The maximum number of church seats shall be limited to 430.
7. There shall be no concurrent use of the existing facility by the church and the private school of general education. The church office may remain open for use by the church pastor and administrative staff during hours of operation of the private school of general education.
8. The maximum daily enrollment of the private school of general education shall not exceed ninety-nine (99) students, ages five (5) to fourteen (14) years, enrolled in grades kindergarten through eight (8).
9. The maximum number of employees of the private school of general education shall be limited to twelve (12) on-site at any one time.
10. Hours of operation of the private school of general education shall be limited to 9:00 a.m. until 3:15 p.m., Monday through Friday, during the months of September through June. No students shall arrive prior to 8:45 a.m.
11. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum and a maximum of 127 spaces, per Department of Public Works and Environmental Management approval. All parking shall be on site and shall be designed according to the Public Facilities Manual (PFM) requirements.

- 12. Transitional screening shall be provided along all lot lines as shown on the special permit amendment plat with supplemental evergreen plants maintained at least six (6) feet in height as shown along the lot line in common with Lots 18 and 19. Any dead or dying plantings shall be replaced as approved by the Urban Forestry Branch.
- 13. Interior parking lot landscaping shall be maintained in accordance with Article 13.
- 14. Barrier requirements shall be waived along all lot lines in favor of the natural existing vegetation and supplemental evergreen plantings as shown on the approved special permit amendment plat.
- 15. The limits of clearing and grading shall be established as shown on the approved special permit amendment plat prepared by Walter A. Phillips, Inc., dated September 5, 1991, as revised through May 11, 2000.
- 16. The applicant shall encourage carpooling, busing or vanpooling for the school use.
- 17. The existing facility shall remain connected to public water and the previously approved on-site sewage disposal system.

These development conditions incorporate and supercede all previous 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 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. 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 16, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 375, August 8, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ETHEL MARLENE MITCHELL, SP 00-V-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.3 ft. from side lot line and 34.4 ft. from front lot line. Located at 5919 Fox Glove Tr. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (6) 24A, 26, 28, 30, 32 and 34. (Concurrent with VC 00-V-064).

9:00 A.M. ETHEL MARLENE MITCHELL, VC 00-V-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.6 ft. from front lot line. Located at 5919 Fox Glove Tr. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (6) 24A, 26, 28, 30, 32 and 34. (Concurrent with SP 00-V-030).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ethel Marlene Mitchell, 5919 Fox Glove Trail, Lorton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for reduction to minimum yard requirements based on error in building location to permit a freestanding carport to remain 6.3 feet from a side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, a modification of 13.7 feet or 68% was requested for the existing carport. The applicant also requested a variance to permit the construction of an addition to be located 24.6 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 50 feet; therefore, a variance of 25.4 feet was requested for the addition.

Ms. Mitchell presented the special permit and variance requests as outlined in the statements of justification submitted with the application. She submitted a letter of support from the homeowners association. She stated that she had the carport constructed where an existing driveway was located and she was not aware of the error at that time. Ms. Mitchell addressed the variance request by stating that the foundation was already in place for the addition.

Mr. Hammack asked if the proposed addition extended closer to the front lot line than the existing dwelling. Ms. Mitchell answered that the distance was the same. Mr. Hammack asked how old was the home. Ms. Mitchell replied that the house was built in 1946.

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

Ms. Gibb moved to approve SP 00-V-030 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ETHEL MARLENE MITCHELL, SP 00-V-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.3 ft. from side lot line and 34.4 ft. from front lot line. Located at 5919 Fox Glove Tl. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (6) 24A, 26, 28, 30, 32 and 34. (Concurrent with VC 00-V-064). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 2000; and

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

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:

- 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;

Page **377**, August 8, 2000, (Tape 1), ETHEL MARLENE MITCHELL, SP 00-V-030, VC 00-V-064,
continued from Page **376**

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the accessory structure (detached carport) shown on the plat prepared by Laura Lee Scott Surveys, Inc., dated March 22, 2000, signed April 16, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 16, 2000. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 00-V-064 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ETHEL MARLENE MITCHELL, VC 00-V-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.6 ft. from front lot line. Located at 5919 Fox Glove Tr. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (6) 24A, 26, 28, 30, 32 and 34. (Concurrent with SP 00-V-030). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is shallow.
4. The applicant is building the addition only 6 inches closer to the front lot line than the existing

- building with enclosed porch.
- 5. The BZA has granted a number of variances in the past that are in the vicinity for roughly the same amount.
- 6. The house was built in 1956.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the addition shown on the plat prepared by Laura Lee Scott Surveys, Inc., dated March 22, 2000, signed April 16, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 16, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LYNSDAY R. & NANCY M. SAFFER, VC 00-P-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 11A having a lot width of 28.82 ft. and dwelling to remain 10.0 ft. from front lot line. Located at 2949 Gray St. on approx. 1.0 ac. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 10. (deferred from 8/1/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lyndsay and Nancy Saffer, 2949 Gray Street, Oakton, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the subdivision of 1 lot into 2 lots with proposed lot 11A having a Lot width of 28.8 2 feet and a dwelling to remain 10 feet from the front lot line. A public hearing was held on August 1, 2000, and the decision was deferred to allow the applicant time to revise the plat. The applicants submitted a revised plat to reflect the driveway 15 feet from the rear of adjacent Lot 2, as requested by the Board.

Mr. Hart asked if there was a corresponding change in the development conditions. Ms. Langdon replied that there were no revised conditions. She suggested amending Development Condition #1 to read August 1, 2000, rather than July 6, 2000.

Mr. Saffer stated that the plat had been revised as to the Board's request.

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

Mr. Kelley moved to approve VC 00-P-059 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LYNSDAY R. & NANCY M. SAFFER, VC 00-P-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 11A having a lot width of 28.82 ft. and dwelling to remain 10.0 ft. from front lot line. Located at 2949 Gray St. on approx. 1.0 ac. of land zoned R-2. Providence District. Tax Map 47-2 (7)) 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 August 8, 2000; and

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

1. The applicants are the owners of the land.
2. The request meets standards as outlined in the Statement of Justification.

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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of the lot shown on the plat prepared by R.C. Fields Jr., dated March 14, 2000, as revised through August 1, 2000. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
2. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Trees designated to be saved shall be protected from damage by construction activity to the satisfaction of the Urban Forester.
3. The limits of clearing and grading shall be no greater than the building restriction lines, at the rear and northern side of lot 11A, and shall be the minimum amount necessary to provide for the development shown on the approved plat. Prior to approval of an overlot grading plan, a tree preservation plan shall be submitted for the review and approval of the Urban Forestry Division of DPWES. The overlot grading plan shall depict the limits of clearing to preserve as much vegetation possible, as determined by the Urban Forestry Division of DPWES.

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. 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 August 16, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROGER CHRIS REINHARDT, SP 00-D-034 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit deck to remain 1.7 ft. from side lot line. Located at 515 Haven La. on approx. 2.02 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((3)) 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. Roger Christopher Reinhardt, 515 Haven Lane, Great Falls, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to construct a detached accessory dwelling unit containing 1,688 square feet. An existing detached garage would be removed and replaced with the accessory dwelling unit. Additionally, the applicant requested a reduction to minimum yard requirements based on an error in building location to permit a deck to remain 1.7 feet from the side lot line.

Mr. Reinhardt presented the special permit request as outlined in the statement of justification submitted with the application. He stated his wish to remove an existing barn to construct a home for his mother.

Mr. Hammack asked if there was an existing garage on the property and if it was being utilized. Mr. Reinhardt replied that there was another garage on the property located near the existing home that was being utilized.

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

Mr. Hammack moved to approve SP 00-D-034 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGER CHRIS REINHARDT, SP 00-D-034 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit deck to remain 1.7 ft. from side lot line. Located at 515 Haven La. on approx. 2.02 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((3)) 5. 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 16, 2000; and

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

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:

- 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 **APPROVED**, 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, 515 Haven Lane (2.02 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by C.B. De Lashmutt, Land Surveyor, dated March 24, 2000, as revised through July 13, 2000, 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 occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than 2 bedrooms.
6. There shall be four (4) parking spaces provided on the site as shown on the special permit plat.
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 regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from its final approval date and may be extended for five (5) year periods with prior approval of the Zoning Administrator in

accordance with Section 8-012 of the Zoning Ordinance.

- 9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County 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 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. Hart 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 16, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 383 August 8, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM A. FREEMAN, III, VC 00-H-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.4 ft. from rear lot line. Located at 13103 Mares Neck La. on approx. 10,651 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 25-3 ((14)) 7.

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 A. Freeman, III, 13103 Mares Neck Lane, Herndon, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a screened porch addition to be located 18.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 6.6 feet was requested.

Mr. Freeman presented the variance request as outlined in the statement of justification submitted with the application. He stated that the screened porch would be in conformance with the character of the neighborhood. He requested a waiver of the 8-day waiting period.

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

Mr. Pammel moved to approve VC 00-H-062 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM A. FREEMAN, III, VC 00-H-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.4 ft. from rear lot line. Located at 13103 Mares Neck La. on approx. 10,651 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 25-3 ((14)) 7. 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 8, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is unusually shallow.
4. There are less feet in the depth of the lot than the frontage; therefore, it poses severe development problems for any additional structures 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch addition shown on the plat prepared by Charles E. Powell dated, May 9, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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. Ribble seconded the motion which carried by a vote of 7-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 385 August 8, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DAVID REEVES, VC 00-Y-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in the front yards of a corner lot. Located at 14518 Flagstaff Ct. on approx. 25,921 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 65-1 ((5)) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Reeves, 14518 Flagstaff Court, Centreville, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit a 6.0 foot high fence to remain in the front yards of a corner lot. The Zoning Ordinance permits a maximum fence height of 4.0 feet in the front yard; therefore, a variance of 2.0 feet was requested.

Mr. Hart requested that staff illustrate how Sect. 2-505 of the Zoning Ordinance, regarding use limitations on corner lots, affected the property in question. Ms. Langdon explained the process of measuring site distance lines and illustrated site distance regarding the property in question. Mr. Hart asked whether the existing fence met the requirements of Sect. 2-505. Ms. Langdon answered that it appeared that one corner of the fence did not meet the requirements.

Mr. Hart noted that the fence was constructed on top of a retaining wall and asked if the wall was a part of the variance. Ms. Langdon stated that this was unusual because the grade was much lower on the front portion of the fence than behind the fence. She explained that normally the measurement would be taken from the lowest place to the highest place and it would include the wall.

Mr. Hart asked if there was a measurement, which revealed how much height the wall added to the fence. Ms. Langdon replied that there was no such measurement.

Mr. Hart stated that the retaining wall extended into a sewage easement and asked if there needed to be any structural study done on it to assure its soundness. Ms. Langdon stated that the Sanitary Sewer Division would be responsible for inspecting the retaining wall. Mr. Hart asked if the inspection had been done. Ms. Langdon replied that was not known.

Mr. Reeves presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that upon the construction of the fence he was not aware of the front yard requirements on his property. He stated that the removal of the fence would be a severe hardship for his family. He stated he built the fence with the permission of his homeowner's association. He informed the Board that there was an athletic field directly across the street from his home and the fence was built to protect his children and his property from the traffic associated with the athletic field. He said that the fence did not cause site distance problems.

Mr. Ribble asked who built the retaining wall. Mr. Reeves replied that he constructed the fence in 1995 to

solve an erosion problem that was caused by development on the adjoining lots.

Chairman DiGiulian referred to a picture illustrating site distance problems on the corner of St. Jermaine Road. Mr. Reeves viewed the picture and contended that there were no site distance problems when a car was at a complete stop at the intersection of St. Jermaine Road.

Mr. Hammack asked whether or not a study had been done to determine where the fence would have to be located on the property to come into compliance with the Zoning Ordinance. Mr. Reeves replied that there was no such study done.

Mr. Hammack stated that the applicant could either shorten the fence to the acceptable height under the Zoning Ordinance or to pull it in to a location on the property that was acceptable under the Zoning Ordinance. Mr. Reeves replied that he did not want to cut the fence down and he was interested in researching how far back the fence would need to be located.

Mr. Hart asked if Mr. Reeves sought permission to construct the fence in the sewer easement. Mr. Reeves stated that he did not think he had to get permission, as it was his property. Mr. Hart asked if the wall was decorative. Mr. Reeves answered that it was a segmental wall constructed of 18 inch blocks.

Chairman DiGiulian called for speakers.

Robert M. Reeves, 110 Haulover Circle, came forward to speak in support of the application. He stated that he was the applicant's father and that he had helped his son build the fence. He said that high traffic areas and parking lots surrounded the house and the fence was needed for their protection. He added that the house was built before all of the busy roads and parking lots were constructed.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that based on the testimony, there was a reason for the fence to be in place; however, it needed to be pulled back from the corner. Mr. Hart noted that the public hearing sign needed to be posted at the area of the property with the highest pedestrian traffic.

Mr. Hart moved to defer VC 00-Y-063 until September 26, 2000, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 386, August 8, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DAVID & CHERI STROUP, DAVID STROUP, SR., VC 00-Y-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 ft. from side and rear lot lines. Located at 5611 Ottawa Rd. on approx. 10,800 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (13) 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. David Stroup, Jr., 5601 Ottawa Road, Centreville, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a garage to be located 8 feet from the rear lot line. The Zoning Ordinance requires a rear yard of 24 feet; therefore, a variance of 16 feet was requested.

Mr. Stroup presented the variance request as outlined in the statement of justification submitted with the application. He stated that this was the only area on the property that could accommodate the garage and allow the cars to have adequate access in and out. He said that several properties in the neighborhood had similar garages and there was full neighborhood support.

Mr. Hammack asked what the applicant's intentions were for the existing carport. Mr. Stroup replied that he intended to enclose the carport to add to his living space at some point in the near future.

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

Mr. Ribble moved to approve VC 00-Y-073 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID & CHERI STROUP, DAVID STROUP, SR., VC 00-Y-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 8.0 ft. from rear lot line. Located at 5611 Ottawa Rd. on approx. 10,800 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (13) 11. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 8, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The garage needs to be located in this area to allow adequate area to turn around and access.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an accessory structure as shown on the plat prepared by Kenneth W. White, dated April 17, 2000, as revised through, May 12, 2000, 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.

Ms. Gibb 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 16, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 388, August 8, 2000, (Tape 1), Scheduled case of:

9:30 A.M. FESTIVE INC., T/A BETTER EVENTS, ROBERTO TORRES, A 2000-PR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that appellant is operating a catering business and party equipment rental business in the I-4 and I-5 zoning districts and is occupying premises without a Non-Residential Use Permit in violation of Par. 5 of Sect. 2-302 and Sect. 18-701 of the Zoning Ordinance. Located at 2719-A Dorr Ave. on approx. 1.69 ac. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((13)) 23A. (Def. From 6/6/00)

Chairman DiGiulian stated that there was a letter requesting a withdrawal of the appeal.

Mr. Hart moved to withdraw A 2000-PR-005. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 388, August 8, 2000, (Tape 1), After Agenda Item:

Memo from Jane Kelsey
RE: SPA 95-V-031
Sharkeys Inc. D/B/A Fast Eddies Billiard and Café

Mr. Kelley asked staff whether an application had been submitted. Susan Langdon, Chief, Special Permit and Variance Branch, replied that an application for a change in permittee had been submitted; however, the application had not yet been accepted. Mr. Kelley suggested that staff schedule the application as soon as possible.

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Page 388, August 8, 2000, (Tape 1), After Agenda Item:

Page 389, August 8, 2000, (Tape 1), After Agenda Item, continued from Page 388

Susan Langdon, Chief, Special Permit and Variance Branch asked for confirmation from the Board that the October 24, 2000, meeting was to be cancelled because the Board room was unavailable. She informed the Board that the scheduling of cases was up to date and there were no out of turn hearing requests pending.

Mr. Ribble moved to cancel the October 24, 2000, meeting. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 389 August 8, 2000, (Tape 1), After Agenda Item:

Approval of August 1, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack 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 10:35 a.m.

Minutes by: Lori M. Mallam

Approved on: December 5, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 15, 2000. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Mr. Kelley moved to waive the 8-day waiting period for all approved applications. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Chairman DiGiulian was absent from the meeting.

Page 391, August 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. VANCE & JOYCE HOUGH, SP 00-M-036 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 9.8 ft. from side lot line and 10.5 ft. from rear lot line and shed to remain 1.1 ft. from side and rear lot lines. Located at 7261 Maple Pl. on approx. 8,500 sq. ft. of land zoned R-4, HC, SC and CRD. Mason District. Tax Map 71-1 ((4)) 55. (Concurrent with VC 00-M-077). (Moved from 9/15/00).

9:00 A.M. VANCE & JOYCE HOUGH, VC 00-M-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to cover more than 30% of the minimum required rear yard. Located at 7261 Maple Pl. on approx. 8,500 sq. ft. of land zoned R-4, HC, SC and CRD. Mason District. Tax Map 71-1 ((4)) 55. (Concurrent with SP 00-M-036). (Moved from 9/15/00).

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joyce and Vance Hough, 7261 Maple Place, Annandale, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Julie Schilling. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an accessory structure, a garage with an attached shed, to remain 9.8 feet from the side lot line and 10.5 feet from the rear lot line. The applicants also requested to allow a detached shed to remain 1.1 feet from the side and rear lot lines. A minimum side yard of 10 feet is required; therefore, modifications of 0.2 and 8.9 feet were requested respectively for the accessory structure and the shed. A minimum rear yard of 25 feet is required for the accessory structure and a minimum rear yard of 11 feet is required for the shed; therefore, modifications of 14.5 feet and 8.9 feet were requested respectively. The applicant also requested a variance to permit accessory structures to cover more than 30% of the minimum required rear yard.

Mr. Hough presented the requests as outlined in the statement of justification submitted with the application. He thanked the County for providing an interpreter for his son. Mr. Hough stated that the property was purchased in good faith and he did not know about the setback issues pertaining to the garage and the shed. He stated that he had checked with the County to make sure everything was okay before he put the house on the market and that was when he discovered the setbacks. He said they were never issued a violation or complaint. Mr. Hough stated that the garage had been built according to a permit that was issued in February 1989, but an error was made when it was built. He said the freestanding shed was elevated to prevent water from entering the shed and damaging some expensive wood that was stored within. Mr. Hough stated that landscaping was provided at the back of the property to serve as buffering. He said they were surrounded by commercial property and they had received no objection from the neighbors. Mr. Hough presented photographs to the Board.

Mr. Hart asked if there was an upstairs to the garage. Mr. Hough stated that it was a storage area. Mr. Hart asked if the garage had plumbing. Mr. Hough replied that there was a bathroom installed when the garage was built. Mr. Hart asked whether there was electricity in the garage. Mr. Hough replied yes.

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

Mr. Pammel moved to approve SP 00-M-036 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VANCE & JOYCE HOUGH, SP 00-M-036 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 9.8 ft. from side lot line and 10.5 ft. from rear lot line and shed to remain 1.1 ft. from side and rear lot lines. Located at 7261 Maple Pl. on approx. 8,500 sq. ft. of land zoned R-4, HC, SC and CRD. Mason District. Tax Map 71-1 ((4)) 55. (Concurrent with VC 00-M-077). (Moved from 9/15/00). 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 15, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a two story garage and detached shed shown on the plat prepared by Harold A. Logan, Land Surveyor, dated April 26, 2000 submitted with this application and is not transferable to other land.

Page 393, August 15, 2000, (Tape 1), VANCE & JOYCE HOUGH, SP 00-M-036, VC 00-M-077, continued from Page 392

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this special permit.

Mr. Pammel moved to approve VC 00-M-077 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VANCE & JOYCE HOUGH, VC 00-M-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to cover more than 30% of the minimum required rear yard. Located at 7261 Maple Pl. on approx. 8,500 sq. ft. of land zoned R-4, HC, SC and CRD. Mason District. Tax Map 71-1 ((4)) 55. (Concurrent with SP 00-M-036). (Moved from 9/15/00). 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 15, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot was small and narrow.
4. The request was simply to develop more than 30% of their rear yard.
5. There was not much flexibility in the location of the structures.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a two story garage and detached shed (covering more than 30% of minimum required rear yard) shown on the plat prepared by Harold A. Logan, Land Surveyor, dated April 26, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this variance

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9:00 A.M. SALLY DROWN, VC 00-Y-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.6 ft. from rear lot line and deck 10.0 ft. from rear lot line. Located at 3349 Fern Hollow Pl. on approx. 12,285 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-3 ((9)) (15) 31.

Mr. Hammack abstained from participating in the public hearing for the subject application because he had represented the applicant in a different matter.

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. Sally Drown, 3349 Fern Hollow Place, Herndon, Virginia, replied that it was.

Charles Burnham, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 16.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 8.4 feet was requested. A variance for the deck was not needed.

Ms. Drown presented the variance request as outlined in the statement of justification submitted with the application. She said the variance was needed because of the way the house was situated on the lot. Ms. Drown stated that the lot was heavily wooded.

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

Mr. Hart moved to approve VC 00-Y-074 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SALLY DROWN, VC 00-Y-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.6 ft. from rear lot line and deck 10.0 ft. from rear lot line. (VARIANCE FOR THE WAS DECK NOT NEEDED) Located at 3349 Fern Hollow Pl. on approx. 12,285 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-3 ((9)) (15) 31. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony indicating compliance with the required standards for a variance.
- 3. The lot is strangely shaped.
- 4. The house is set at an odd angle and positioned to the rear of the lot.
- 5. The front of the lot contains a sanitary sewer easement.
- 6. Based on the testimony and the photographs submitted, there will be minimal 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 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by Larry N. Scartz and dated through April 28, 2000 submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Section 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 5-0-1. Mr. Hammack abstained from the vote. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 396, August 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MICHELE & IVAN SWAIN, VC 00-L-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 25.3 ft. from front lot line. Located at 5933 Dorothy Bolton Ct. on approx. 13,397 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((46)) 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. Michelle and Ivan Swain, 5933 Dorothy Bolton Court, Alexandria, Virginia, replied that it was.

Charles Burnham, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck 25.3 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 4.7 feet was requested.

Ms. Gibb stated that the plat reflected a variance for the house as well. Mr. Burnham replied that a special permit was previously approved for the property.

Mr. Swain presented the variance request as outlined in the statement of justification submitted with the application. He said they purchased the house in good faith. Mr. Swain stated that the backyard was considered a front yard and was adjacent to a wooded area. He stated that most of the neighbors had decks.

Mr. Hart asked if there was a reason that the stairs from the deck could not come from the south side of the property. Mr. Swain stated that they were trying to capture the exit ways from the house.

Mrs. Swain stated that the way the deck was originally designed it would go over the building restriction line.

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

Ms. Gibb moved to approve VC 00-L-075 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHELE & IVAN SWAIN, VC 00-L-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 25.3 ft. from front lot line. Located at 5933 Dorothy Bolton Ct. on approx. 13,397 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((46)) 17. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants met the required standards for a variance.
- 3. The request was fairly modest, only a corner of the deck requires a variance.
- 4. The lot was unusually shaped with three front yards.
- 5. The situation was extraordinary.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a deck as shown on the plat prepared by Charles P. Johnson and Associates dated December 17, 1998, and revised May 23, 2000 submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Section 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 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 398, August 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE E. JUNKINS, VC 00-B-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. from side lot line such that side yards total 15.5 ft. Located at 5017 Powell Rd. on approx. 12,575 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-3 ((7)) 45A.

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 Junkins, 5017 Powell Road, Fairfax, Virginia, replied that it was.

Charles Burnham, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction on an addition 7.5 feet from the side lot line such that side yards totaled 15.5 feet. A minimum total side yards of 20 feet is required; therefore a variance of 4.5 feet was requested.

Mr. Junkins presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose the existing carport to relocate the utility room to the garage area to allow his mother-in-law access without having to use stairs. Mr. Junkins stated that he was not moving any closer to the surrounding properties.

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

Mr. Kelley moved to approve VC 00-B-078 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAWRENCE E. JUNKINS, VC 00-B-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit

construction of addition 7.5 ft. from side lot line such that side yards total 15.5 ft. Located at 5017 Powell Rd. on approx. 12,575 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-3 ((7)) 45A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 15, 2000; and

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

1. The applicant is the owner of the land.
2. The statement of justification indicated that the applicants met the required standards for a variance.
3. The lot is exceptionally narrow.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Larry N. Scartz dated January 24, 1991, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Pursuant to Section 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 400, August 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CRAIG A. PURSER, SP 00-V-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.2 ft. from rear lot line and dwelling to remain 15.3 ft. from rear lot line. Located at 7849 Middy La. on approx. 10,823 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((13)) 30. (Concurrent with VC 00-V-084).

9:00 A.M. CRAIG A. PURSER, VC 00-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from rear lot line. Located at 7849 Middy La. on approx. 10,823 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((13)) 30. (Concurrent with SP 00-V-041).

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig and Gretchen Purser, 7849 Middy Lane Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Juan Bernal. The applicant requested a special permit to permit a reduction to minimum yard requirements based on an error in building location to permit an addition to remain 15.2 feet from the rear lot line and a dwelling to remain 15.3 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, modifications of 9.8 feet and 9.7 feet were requested respectively. The applicant also requested a variance to permit the construction of an addition 14.8 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10.2 feet was requested.

Mr. Purser presented the requests as outlined in the statement of justification submitted with the application. He said the property was purchased in good faith. Mr. Purser stated that the error was discovered during the variance process. He stated that the subject lot was the shallowest lot in the neighborhood. Mr. Purser stated that the error was made 41 years ago. He stated that the neighbors were in support of the applications.

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

Mr. Hammack moved to approve SP 00-V-041 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG A. PURSER, SP 00-V-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to

minimum yard requirements based on error in building location to permit addition to remain 15.2 ft. from rear lot line and dwelling to remain 15.3 ft. from rear lot line. Located at 7849 Midday La. on approx. 10,823 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((13)) 30. (Concurrent with VC 00-V-084). 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 15, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of a dwelling and addition as shown on the plat prepared by Hamid M. Tehrani, dated June 2, 2000, as revised through June 15, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards

Ms. Gibb, Mr. Hart, Mr. Kelley and Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15,

2000. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to approve VC 00-V-084 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG A. PURSER, VC 00-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from rear lot line. Located at 7849 Middy La. on approx. 10,823 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((13)) 30. (Concurrent with SP 00-V-041). 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 15, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant met the required standards for a variance.
- 3. The request will have no impact on the neighbors behind the subject 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 **APPROVED** with the following limitations:

1. This Variance is approved for the location of an addition as shown on the plat prepared by Hamid M. Tehrani, dated June 2, 2000, as revised through June 15, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 addition 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

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this variance.

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- 9:00 A.M. HOWARD I. AND ROSEANNE C. RUBIN, VC 00-M-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 13.3 ft. from side lot line. Located at 3426 Stoneybrae Dr. on approx. 18,615 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 442. (Concurrent with SP 00-M-038).
- 9:00 A.M. HOWARD I. AND ROSEANNE C. RUBIN, SP 00-M-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.3 ft. from side lot line. Located at 3426 Stoneybrae Dr. on approx. 18,615 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 442. (Concurrent with VC 00-M-079).

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. Lynne Strobel, Walsh, Colucci, et al., Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a second-story addition 13.3 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 1.7 feet was requested. The applicant also requested a special permit to allow the reduction to minimum yard requirements based on an error in building location to permit a dwelling to remain 13.3 feet from the side lot line. A minimum side yard of 15 is required; therefore; a modification of 1.7 feet was requested.

Ms. Strobel, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. She said the house was constructed in 1955 and at that time, a carport was constructed on the side of the house, 13.3 feet from the side lot line. Ms. Strobel said as originally

constructed, the carport was a permissible extension into the minimum 15-foot side yard setback. She said over the years, prior owners of the property enclosed the carport rendering it in violation of the 15-foot minimum yard setback. Ms. Strobel stated that the improvements were done in good faith, with no knowledge that the enclosure would render the structure in violation of the minimum side yard setback. Ms. Strobel said the variance requested would not change the existing footprint of the property and would cause no adverse impact on the neighbors. She said the proposed location was the most logical place for the addition because the property was narrow. Ms. Strobel stated that the application met the requirements for a variance and the neighbors were in support of the application.

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

Mr. Pammel moved to approve VC 00-M-079 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOWARD I. AND ROSEANNE C. RUBIN, VC 00-M-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 13.3 ft. from side lot line. Located at 3426 Stoneybrae Dr. on approx. 18,615 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 442. (Concurrent with SP 00-M-038). 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 15, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The request was 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.

- 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the second-story addition shown on the plat prepared by Alexandria Surveys, Inc., dated May 24, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel moved to approve SP 00-M-038 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOWARD I. AND ROSEANNE C. RUBIN, SP 00-M-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.3 ft. from side lot line. Located at 3426 Stoneybrae Dr. on approx. 18,615 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 442. (Concurrent with VC 00-M-079). 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 15, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the addition (enclosed carport) shown on the plat prepared by Alexandria Surveys, Inc., dated May 24, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 406, August 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SILVIA L. ZUNIGA, VC 00-P-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.8 ft. from side lot line. Located at 3008 Fairmont St. on approx. 11,735 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((17)) 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. Joe Ressa, 3432 Glebe Road, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of additions 7.8 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 2.2 feet was requested.

Mr. Ressa, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the property was acquired in good faith. Mr. Ressa stated that the lot was narrow and there were gas lines on the north side making the proposed location the most feasible place for the addition. He said the application met the standards for a variance and the neighbors were in support of the application.

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

Mr. Hart moved to approve VC 00-P-081 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SILVIA L. ZUNIGA, VC 00-P-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.8 ft. from side lot line. Located at 3008 Fairmont St. on approx. 11,735 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((17)) 74. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is narrow.
4. According to the testimony and the statement of the justification, the proposed location is the only place for the additions.

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 **APPROVED** with the following limitations:

1. This variance is approved for the additions (addition and open porch) shown on the plat prepared by Alexandria Surveys, Inc., dated May 17, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 408, August 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MT. PLEASANT BAPTIST CHURCH, SPA 95-H-062-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-062 previously approved for a church and related facilities to permit the addition of a private school of general education, child care center, nursery school, increase in land area and reduction in minimum yard requirements based on error in building location to permit stairs to remain 10.3 ft. from side lot line. Located at 2516 Squirrel Hill Rd. on approx. 4.28 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 27 and 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. David Hunter, Spiritual House Church Planning, P.O. Box 2344, Dale City, Virginia, replied that it was.

Page 409, August 15, 2000, (Tape 1), MT. PLEASANT BAPTIST CHURCH, SPA 95-H-062-2, continued from Page 408

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the addition of a private school of general education, child care center, nursery school, increase in land area and reduction in minimum yard requirements based on an error in building location, to permit stairs to remain 10.3 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 4.7 feet was requested. Staff recommended approval of the application, subject to the development conditions contained in the staff report.

Mr. Hunter, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the request was to allow a school of general education, a childcare center, and a nursery school with a maximum enrollment of 99 students. Mr. Hunter said there would be a before and after school program for the students of the school only. He said the school would be for children ages 6-8 and the nursery school was for ages 4-5. Mr. Hunter stated that no additional construction was proposed, not withstanding the playground. He said the school's hours of operation would be 8:30 a.m. - 3:30 p.m., Monday through Friday and the child care center and nursery school would operate between 6:00 a.m. - 6:00 p.m., Monday through Friday. Mr. Hunter said there would be a staff of 10. He said a shared parking agreement had been submitted and it was on the verge of obtaining approval, subject to the decision of the Board. Mr. Hunter stated that the church obtained special permit approval prior to the development of surrounding properties. He said the church hosted a meeting inviting homeowner associations and neighbors to discuss the church's proposal, but received no response. Mr. Hunter stated that the stairs in question, which were subject to the building in error request, was an engineering error.

Mr. Hart asked whether the shared parking agreement was with another landowner. Mr. Hunter responded that the parking agreement was between the church and school, which were the same owners.

Mr. Hart asked staff whether they agreed with the parking agreement. Ms. Wilson stated that the uses did not overlap and that the agreement was typical of the use.

Mr. Hart asked how close the townhouses were to the shared property line. Mr. Hunter replied that the townhouses were 24 feet from the northern property line.

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

Ms. Gibb moved to approve SPA 95-H-062-2 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MT. PLEASANT BAPTIST CHURCH, SPA 95-H-062-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-062 previously approved for a church and related facilities to permit the addition of a private school of general education, child care center, nursery school, increase in land area and reduction in minimum yard requirements based on error in building location to permit stairs to remain 10.3 ft. from side lot line. Located at 2516 Squirrel Hill Rd. on approx. 4.28 ac. of land zoned R-1. Hunter Mill District. Tax Map 15-4 ((1)) 27 and 28. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the requirements for a special permit.
3. The special permit request has a favorable staff report.

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 Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 2516 Squirrel Hill Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by KJ & Associates, dated May 2000, as revised through July 21, 2000, 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, as may be determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity in the main area of worship shall be 490.
6. Upon issuance of a Non-Residential Use Permit, the combined maximum daily enrollment for the school of general education, child care center and nursery school shall be 99.
7. Upon issuance of a Non-Residential Use Permit, the hours of operation for the private school of general education and the nursery school shall be 8:30 a.m. to 3:30 p.m., Monday through Friday. Upon issuance of a Non-Residential Use Permit, the hours of operation for the child care center shall be 6:00 am to 6:00 p.m., Monday through Friday.
8. The play area/tot lot shall be located as shown on the plat. The limits of clearing and grading, necessary to establish those facilities, shall be strictly adhered to and construction shall be completed in the least destructive manner possible to the surrounding vegetation, to the satisfaction of DPWES.
9. Transitional Screening 1 shall be modified along all property lines as shown on the special plat in order to allow the existing vegetation to remain and satisfy this requirement. Dead or dying trees within all the transitional screening areas shall be removed and replaced as necessary. Replacement trees shall be like-kind and shall measure a minimum of six (6) feet in height.

The barrier requirement shall be waived along all lot lines.

10. Landscaping and building foundation plantings shall be provided around the proposed structure in order to enhance the visual appearance of the building. An evergreen hedge shall be provided along the border of the parking lot along the southern property line in order to prevent the glare of automobile headlights from impacting adjacent residences. The landscaping, foundation plantings and evergreen hedge shall be shown on a Landscape Plan which shall be provided to the County Urban Forester for review and approval at the time of site plan review. All landscaping plantings shall be continually maintained. Dead or dying landscape and foundation plantings shall be replaced with like-kind plants.

11. Interior and peripheral parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-201 and 13-202 of the Zoning Ordinance.
12. Any proposed lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
 - The lights shall focus directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
13. Stormwater Best Management Practices (BMPs) shall be provided as determined by the Department of Public Works and Environmental Services (DPWES) at the time of site plan review.
14. The applicant may seek vacation/abandonment of the existing prescriptive right-of-way and if such is abandoned, may create a private ingress/egress easement of forty-four (44.0) feet in width from McNair Farms Drive to the entrance of the church property and transitioning to twenty-four (24.0) feet and remaining 24.0 feet in width thereafter to the termination of Squirrel Hill Road at Lot 32. Access from McNair Farms Road to the church entrance shall be constructed and maintained in accordance with the Public Facilities Manual (PFM) standards, either by the church or others, not by Fairfax County or the Virginia Department of Transportation.

Right-of-way to 25 feet of the centerline of Squirrel Hill Road from the site entrance to the northern property line shall be dedicated to the Board of Supervisors in fee simple at the time of site plan approval or upon demand, whichever occurs first. A fifteen (15) foot cross section from the centerline to the face of curb from the site entrance north to McNair Farms Drive shall be dedicated for public street purposes as approved by the Director, DPWES.

Construction of a twelve (12) foot cross section from the centerline to a ditch section of the east side of Squirrel Hill Road shall be provided from the site's entrance north to future McNair Farms Drive extended, as determined by VDOT.

South of the entrance, dedication to the Board of Supervisors, in fee simple, to 25 feet from centerline of Squirrel Hill Road shall be provided upon request by the County or VDOT for any imminent roadway project to improve the road. If construction is not completed by the applicant along the entire frontage of the site, ancillary easements to 15 feet of the proposed property line shall be provided at the time of dedication of the right-of-way.

15. In order to minimize disturbance to the existing stone wall on the site, the site entrance shall be maintained in the location, design and dimensions shown on the plat. The stone wall shall be preserved to the maximum extent feasible.
16. Signs shall be permitted provided they are erected in accordance with Article 12 of the Zoning Ordinance.
17. Any trash dumpster located on the property shall be screened by a board-on-board fence, or with plantings which shall completely screen the view of the dumpsters, subject to the approval of DPWES.
18. The historic single family dwelling on the property shall remain and may be used for offices/classrooms. If the dwelling is used for residential use, it shall only be used as the residence of the pastor or a member of the church staff who functions as caretaker for the property.
19. There shall be one hundred and twenty-nine (129) parking spaces provided as shown on the special permit plat. Additional parking for all proposed uses may be permitted to the satisfaction of the Department of Public Works and Environmental Services (DPWES). All parking for this use shall be on site.
20. Limits of clearing and grading shall be as shown on the special permit plat and shall be subject to

review and approval by the Urban Forestry Branch, DPWES.

21. Upon issuance of the Non-Residential Use, a maximum of twenty (20) child care center/nursery school children at any one time shall use the outdoor play area. Upon issuance of the Non-Residential Use, during the hours of operation of the private school of general education, a maximum of ten (10) children at any one time shall use the outdoor play area.

It is noted that these development conditions incorporate and supersede all previous 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 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. 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 6-0. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 15, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 412, August 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THANH TROUNG, ANANDA BUDDHIST MEDITATION INSTITUTE, INC., SP 98-P-051
 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 3418 Annandale Rd. on approx. 3.36 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A. (Def. from 12/22/98 and 6/20/00).

Vice Chairman Ribble noted the request for deferral.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the applicant had requested a deferral and staff suggested a deferral date October 3, 2000.

Vice Chairman Ribble asked if there was anyone present to speak to the deferral request.

Mr. Matson, 3411 Annandale Road, came forward stating that the applicant had activities on the property for more than a year. He said there was an excess of 80 cars on Annandale Road. Mr. Matson said the application, as filed, was laced with contradictions. He said the activities on the property exceeded more than one day a week and the parking often overflowed onto Annandale Road.

Lynne Strobel, agent for the applicant, came forward stating that there was a letter from the State Crest Homeowner's Association referring to parking and traffic issues. She said she was working with the applicant to provide additional parking on site and to revise the application to accurately reflect what was being requested.

Mr. Hammack asked if the applicant was currently operating. Ms. Strobel stated that they were not supposed to be operating and it was her understanding that they were not.

Mr. Hart asked if the Board deferred the special permit application, would it allow the subsequent variance to

catch up with it.

Ms. Strobel stated that there was a swap of property between one of the prior owners of the subject parcel and the Park Authority which created an illegal subdivision. She said she worked with the Park Authority and had gotten them to consent to the filing of a variance, but in order to process the variance, it would take additional considerable expense including surveys and a lot of other expenses that the church had been hesitant to go forward with until such time as they knew whether the subject site would be appropriate for the requested special permit. Ms. Strobel said the special permit should proceed to obtain a decision and the variance would come at a subsequent hearing.

Mr. Hart asked would it be better to hear the applications concurrently to save the Board from having to do everything twice. He said if the special permit were to be granted, the applicant still would need the variance approved before they could operate.

Ms. Strobel said the difference would be that there would be a considerable expense to process the variance.

Mr. Hammack asked would the County take action knowing that there was an illegal subdivision. Ms. Langdon stated that staff was aware of it and she would think the County would want to proceed with the subdivision regardless. She said the question came up about whether the applications had to proceed together and staff indicated that was their preference, but that there was no legal requirement stating otherwise.

Ms. Strobel stated that if required to go through the subdivision process, that would incur additional delays beyond October 3rd. She said a decision needed to be made on the special permit and if the property was not approved for the special permit, she didn't know that the current owner would continue to own the premises. Ms. Strobel said the condition of the property had been existing since 1960 and it was not an issue of safety or public health.

Mr. Kelley stated that it seemed apparent that the applicant was holding some sort of service and he wanted to know what enforcement was doing about it. Ms. Langdon stated that Zoning Enforcement had been to the site several times, but this was one of those situations when Zoning Enforcement went out and indicated there was a violation and one of the remedies was that they apply for a special permit. She said staff did not know whether the use was proceeding or not while they were filing their special permit. Ms. Langdon said she would contact Zoning Enforcement again to indicate the issues.

Mr. Hammack asked whether Zoning Enforcement had cited the applicant with a violation. Ms. Landgon stated that she thought it had been verbal until this point and in response the applicant had filed a special permit application. She said many times when the applicant proceeded diligently, Zoning Enforcement did not issue the violation to allow the application to proceed through the special permit process.

Mr. Kelley moved to defer SP 98-P-051 to October 3, 2000, noting that there would be no further deferrals. 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 413, August 15, 2000, (Tape 1), Scheduled case of:

9:30 A.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, A 96-P-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that continued operation of a plant nursery, which has been expanded absent the approval of a Category 5 Special Exception from the Board of Supervisors, is a violation of Par. 2 of Sect. 15-101 and Par. 2 of Sect. 2-304 of the Zoning Ordinance. Located at 9023 Arlington Blvd. on approx. 3.72 ac. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 44. (MOVED FROM 2/4/97. DEF. FROM 2/25/97. MOVED FROM 5/20/97. CONTINUED FROM 7/22/97. RECONSIDERATION GRANTED 10/28/97. DEF. from 4/21/98 and 9/29/98).

Vice Chairman Ribble noted that there was an Intent to Defer approved on July 25, 2000. Mr. Pammel

Page 414, August 15, 2000, (Tape 1), CLIFTON PAUL CRAVEN AND NANCY CRAVEN, A 96-P-049, continued from Page 413

moved to defer the subject appeal to September 12, 2000, at 9:30 a.m. 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 414, August 15, 2000, (Tape 1), Scheduled case of:

9:30 A.M. NAILS FOR YOU TRAINING ACADEMY, A 2000-PR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination that appellant has established a personal service establishment (nail salon) and is conducting retail sales on property in the C-3 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance, and is operating a school of special education (nail care training academy) without an approved Non-RUP, in violation of Sect. 18-701 of the Zoning Ordinance. Located at 6510 Arlington Blvd. on approx. 10,770 sq. ft. of land zoned C-3 and HC. Providence District. Tax Map 50-4 ((9)) 47A. (Moved from 4/25/00. Def. from 6/13/00 for notices).

Vice Chairman Ribble noted the request for withdrawal. Mr. Hammack moved to withdraw A 2000-PR-003. 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 414, August 15, 2000, (Tape 1), After Agenda Item:

Approval of April 18, 2000 and May 2, 2000 Minutes

Mr. Hart moved to approve the Minutes. 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 414, August 15, 2000, (Tape 1), After Agenda Item:

Approval of August 8, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian 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 10:38 a.m.

Minutes by: Regina Thorn

Approved on: September 26, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 5, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 415, September 5, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JACK L. FINLEY, VC 00-L-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.9 ft. from rear lot line with eaves 1.8 ft. from the rear lot line and 6.7 ft. from the side lot line with eaves 5.3 ft. from the side lot line. Located at 4711 Perch Pl. on approx. 10,500 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((5)) (11) 35. (Admin. moved from 7/25).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jack Finely, 4711 Perch Place, Alexandria, Virginia, replied that it was.

Susan Langdon made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure 2.9 feet from the rear lot line with eave 1.8 feet from the rear lot line and 6.7 feet from the side lot line with eave 5.3 feet from the side lot line. A minimum side and rear yard of 12 feet is required for the structure and 9 feet for the eaves; therefore, variances of 9.1 feet and 7.2 feet were requested for the rear yard and variances of 5.3 feet and 3.7 feet were requested for the side yards.

Mr. Finely presented the variance request as outlined in the statement of justification submitted with the application. He said the garage structure would be built on existing footings and foundation as approved by the County when he purchased the property. Mr. Finely said there was no other location for the garage.

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

Mr. Hammack moved to approve VC 00-L-069 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JACK L. FINLEY, VC 00-L-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.9 ft. from rear lot line with eaves 1.8 ft. from the rear lot line and 6.7 ft. from the side lot line with eaves 5.3 ft. from the side lot line. Located at 4711 Perch Pl. on approx. 10,500 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((5)) (11) 35. (Admin. moved from 7/25). 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 5, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The property description indicates that the lot is triangular.
4. The house is located at the rear of the property and is constrained by storm drainage easements.
5. The footings of the proposed structure have already been approved by the County

6. The proposed garage will not have an impact on adjoining property owners.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a detached garage shown on the plat prepared by Kenneth W. White, Land Surveyor, dated April 4, 2000, as revised through July 20, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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 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 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 September 13, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BURKE UNITED METHODIST CHURCH, SPA 81-S-057-3 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 81-S-057 previously approved for a church and related facilities and child care center to permit increase in land area and building addition. Located at 6200 Burke Centre Pkwy. on approx. 4.87 ac. of land zoned PRC. Springfield District. Tax Map 78-3 ((17)) A1 and A2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Erika Byrd, McQuire, Woods, Battle & Boothe, replied that it was.

Charles Burnham, Staff Coordinator, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment for three additions, and an increase in land area. The additions to the existing structure would take place in three phases totaling 7,810 square feet. Addition 1 was proposed to be 5,510 square feet in size for a Sunday school classroom on the southern side of the existing structure; addition 2 was proposed to be 1,540 square feet in size for classroom space and offices on the southern side of the existing structure; and addition 3 was proposed to be 760 square feet in size for an expansion to the fellowship hall on the northern side of the existing parcel. The applicant also proposed to add parcel A1, which consisted of approximately 1.02 acres to the application site, for a total of 4.87 acres. This parcel was encumbered almost entirely by a floodplain easement. Mr. Burnham stated that the parking lot areas contained a total of 165 parking spaces. The description of the application in the staff report stated 167 spaces, but was correct as listed with 165 spaces in the development conditions. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Mr. Pammel asked what was the maximum Floor Area Ratio (FAR) for this type of use in the R-2 District. Mr. Burnham replied 0.2.

Mr. Hart stated that there was some concern about where the stormwater management pond would be located and if the waiver was not granted would the applicant have to come back for another special permit amendment. Mr. Burnham replied that if a waiver was not granted, the applicant would have to come back before the Board depending on what they had to do to meet the stormwater management conditions.

Ms. Byrd, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said the property was designated in the Burke Master Plan to be a church and was originally developed by right. Ms. Byrd said that the church received special permit approval in 1981 to include a childcare center. She said the church wanted the building additions for classroom, meeting, and office space. Ms. Byrd stated that all previously approved development conditions for the childcare center were being carried forward. She said the seating capacity of the church sanctuary was not being increased. Ms. Byrd said the proposed changes would include the construction of a handicapped accessible entrance. She said the Burke Centre Conservancy and staff supported the application. Ms. Byrd stated that it was her understanding, with regard to Stormwater Management, that the subject property was included in a Best Management Practice and Stormwater Management Plan and a waiver was not required, but the applicant would have to deal with that at the time of site plan approval.

There were no speakers and Chairman DiGiulian closed the public hearing

Mr. Pammel noted that the applicant was very close to obtaining the maximum development for the site. He moved to approve SPA 81-S-057-3 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BURKE UNITED METHODIST CHURCH, SPA 81-S-057-3 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 81-S-057 previously approved for a church and related facilities and child care center to permit increase in land area and building addition. Located at 6200 Burke Centre Pkwy. on approx. 4.87 ac. of land zoned PRC. Springfield District. Tax Map 78-3 ((17)) A1 and A2. 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 5, 2000; and

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

- 1. The applicant is the owner of the land.

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 Sect(s). 6-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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), structures, and/or uses(s) indicated on the special permit plat prepared by Walter L. Phillips, dated May 2, 2000 and revised through August 2, 2000, 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 of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. Location of the storm water management and best management practices pond shall be determined by the Department of Public Works and Environmental Services at time of site plan review.
- 6. The total maximum daily enrollment for the child care center shall be limited to no more than seventy-five (75) children.
- 7. The hours of operation for the child care center shall be no earlier than 9:30 AM and no later than 2:00 PM.
- 8. There shall be thirty-three (33) parking spaces associated with the child care use. A total of 165 spaces shall be provided as shown the Special Permit plat. All parking shall be on site.
- 9. The maximum number of seats shall be limited to 425.
- 10. The barrier requirement shall be waived.
- 11. The existing vegetation along all lot lines shall be retained and shall meet the requirements for transitional screening. The limits of clearing shall be no greater than shown on the special permit plat. The trees planted within the existing buffer strip between the existing parking lot and the property boundary along the Prospect Knolls subdivision shall be maintained in a healthy condition. Any dead, dying or hazardous trees shall be replaced to the satisfaction of the Urban Forestry

Branch, DPWES.

12. Any proposed new lighting of the parking areas shall be in accordance with the following:
- a. The combined height of the light standards and fixtures shall not exceed twelve (12) feet in height.
 - b. The lights shall be of a design which focuses the light directly onto the subject property.
 - c. Full cut off shields shall be installed to prevent the light and glare from projecting beyond the facility.

These development conditions incorporate and supersede all previous 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 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. Hart 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 September 13, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 419, September 5, 2000, (Tape 1), Scheduled case of:

9:00 A.M. SAYEED & MARIA HASANZADAH, VC 00-P-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.3 ft. from side lot line and 15.6 ft. from other side lot line. Located at 2708 Chain Bridge Rd. on approx. 2.33 ac. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 2A. (def from 7/25/00 for decision only)

Mr. Hart gave a disclosure indicating that he and Mr. Ken Sanders, who represented some of the neighbors for the subject application, and him, had offices in the same building but this would not affect his ability to participate in the public hearing.

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

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that on July 25, 2000, the BZA voted to defer decision on the application to September 5, 2000, in order to give the applicant an opportunity to explore the possibility of relocating the proposed dwelling to reduce the amount of variance requested on the side lot lines. The Ordinance requires a minimum 20-foot side yard. Previously the applicants sought approval to permit construction of a dwelling to be located 5.3 from the western side lot line and 15.6 feet from the eastern side lot line. On September 1, 2000, staff received revised plats reflecting a side yard of 15.7 feet on the western side property line and a side yard of 17 feet on the eastern property line. The plat showed a building envelope to permit adjustment of the location of the house to the north and south. Staff presented revised development conditions dated September 5, 2000, to reflect the new date of the plat. Ms. Wilson stated that the applicant submitted revised proposed development conditions.

Mr. Kellinger, the applicant's agent, presented the variance request as outlined in the statement of

justification submitted with the application. He said they worked diligently with the neighboring property owners to ease the burden on their properties. Mr. Kellinger said they had increased the areas on both sides by removing the chimneys and detaching the garage. He stated that they allowed room to move the house to preserve as many trees as possible. Mr. Kellinger stated that they opposed the extension of Gold Dust Court.

Mr. Hart said he had spoken with Ken Sanders who informed him that he had not had time to evaluate the request and asked if a deferral of one week would impair the applicants. Mr. Kellinger replied that one week would be fine.

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

Mr. Hart moved to defer decision on VC 00-P-071 to September 12, 2000. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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9:00 A.M. HELENA J. ASBURY, SP 00-M-037 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 7014 and 7020 Columbia Pike on approx. 5.30 ac. of land zoned C-6, HC, SC and CRD. Mason District. Tax Map 60-3 ((1)) 21, 21A and 21B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Helena J. Asbury, 7014 Columbia Pike, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a billiard hall, which was an existing billiard hall known as The Cue Club. The establishment was approved on July 6, 1995, but the special permit was inadvertently permitted to expire by the former applicant. The current applicant requested essentially the same conditions as previously approved. The applicant requested extended hours of operation which were 10:00 a.m. to 2:00 a.m., seven days a week and one additional employee for a total of 5. The applicant also proposed a reconfigured seating arrangement, which resulted in two additional seats within the establishment. Ms. Wilson stated that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of the application with the implementation of the proposed Development Conditions contained in the staff report.

Ms. Asbury presented the request as outlined in the statement of justification submitted with the application.

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

Mr. Ribble moved to approve SP 00-M-037 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HJA, Inc., SP 00-M-037 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 7014 and 7020 Columbia Pike on approx. 5.30 ac. of land zoned C-6, HC, SC and CRD. Mason District. Tax Map 60-3 ((1)) 21, 21A and 21B. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 5,

2000; and

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

1. The applicant is the lessee of the land.
2. The applicant presented testimony indicating compliance with the required standards for 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 Sect(s). 4-603 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, HJA, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 7014-7020 Columbia Pike, 4000 square feet of tenant space within the 5.3 acre site, and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc, dated October 27, 1997, as revised through June 6, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.
5. The maximum daily hours of operation will be from 10:00 a.m. until 2:00 a.m., daily.
6. After 10.00 p.m., the rear door on the north side of the building shall remain closed.
7. The maximum number of employees on site at any one time for this use shall be five (5); the maximum number of patrons on-site at any one time shall be thirty-six (36); the maximum occupancy shall be posted at forty-one (41).
8. The maximum number of billiard shall be nine (9); the eating establishment is permitted as an accessory use, with a maximum of eleven (11) tables containing a maximum of twenty (20) seats and a counter with eighteen (18) seats within the billiard hall.
9. The applicant shall comply with all alcoholic beverage control laws of the Commonwealth of Virginia.
10. Transitional screening requirements shall be waived and Barrier requirements shall be modified in favor of conditions shown on the 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,

twelve (12) months after the date of approval* unless the use has been established. 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.

Ms. Gibb 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 13, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 402, September 5, 2000, (Tape 1), Scheduled case of:

9:00 A.M. WAYNE C. VERITY, VC 00-B-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. from side lot line such that side yards total 22.1 ft. Located at 9212 Kristin La. on approx. 10,625 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((10)) 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. Wayne Verity, 9212 Kristin Lane, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the enclosure of an existing carport to be located 8.2 feet from a side lot line with total side yards of 22.1 feet. The minimum side yard requirement is 8 feet, therefore; a variance of 1.9 feet was requested for the totaled side yards.

Mr. Verity presented the variance request as outlined in the statement of justification submitted with the application. He said he would be using the existing foundation and roofline to enclose the garage.

Ms. Gibb asked the applicant why he could not build some place else on the lot. Mr. Verity stated that it would be an extreme hardship to move the existing roofline and foundation. He said the previous owner did not finish the garage.

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

Ms. Gibb moved to approve VC 00-B-082 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE C. VERITY, VC 00-B-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. from side lot line such that side yards total 22.1 ft. Located at 9212 Kristin La. on approx. 10,625 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((10)) 22. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 2000; and

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

- 1. The applicant is the owner of the land.

- 2. The applicant met the required standards for a variance.
- 3. The request is a modest 1.9 feet.
- 4. The applicant requested to enclose an existing carport.
- 5. There was no other location for the proposed addition.
- 6. The lot is narrow.

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

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

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

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

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

- 1. This variance is approved for the location of a garage addition shown on the plat prepared by L. S. Whitson, dated April 14, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with 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

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 13, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 424, September 5, 2000, (Tape 1), Scheduled case of:

9:00 A.M. HOWARD L., JR. & DOROTHY A. BARRETT, VC 00-V-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line of a corner lot and 12.0 ft. from side lot line. Located at 7715 Northdown Rd. on approx. 26,578 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((18)) 24. (OTH approved).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Amy Trevison, Agent, 28 Alexandra Street, Alexandria, Virginia, replied that it was.

Mr. Kelly stated that the Board members had received a folder that morning containing letters of opposition and he did not have time to review it. He suggested a deferral because he was not prepared to render a decision without reviewing the material submitted.

Mr. Kelley moved to defer VC 00-V-089 to September 26, 2000, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 424, September 5, 2000, (Tape 1), Scheduled case of:

9:30 A.M. LENORA BEVERLY, A 2000-SU-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located on the W. side of Ordway Rd., approx. 1,000 ft. S. of Compton Rd. on approx. 1.81 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76D.

9:30 A.M. ARTHUR W. BEVERLY, A 2000-SU-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located at 7100 Ordway Rd. on approx. 12,188 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76A.

9:30 A.M. ROLLIE M. BEVERLY, A 2000-SU-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located on the W. side of Ordway Rd., approx. 1,000 ft. S. of Compton Rd. on approx. 1.81 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76B.

9:30 A.M. IRVING O. MAHON AND DAUGHTERS, A 2000-SU-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located on the W. side of Ordway Rd., approx. 1,000 ft. S. of Compton Rd. on approx. 1.81 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76C.

Diane Johnson-Quinn, Zoning Administration, made staff's presentation as contained in the staff reports dated August 25, 2000. She said there were 4 appeals, which were similar and related to the same Deed of Partition, and for convenience staff would make a single presentation. Ms. Johnson-Quinn stated that each property owner was appealing a separate determination issued by the Zoning Administration Division that deemed that his or her property was not a buildable lot. The issue of whether any of these lots was buildable originally arose last winter when a variance application was filed by Arthur Beverly so that he could demolish the old existing house on Lot 76A and build a new house. As noted in the staff report, each of the lots on appeal was part of a tract of land that was originally a rectangular-shaped parcel containing 10 acres. This tract was conveyed to Rosa Naylor and her husband Tasco Naylor on March 7, 1934. The tract contained an existing house which records indicated was built in 1915. She said that over the years, the

Naylor's conveyed portions of their tract for road and utility rights-of-way; 2.08 acres for the UOSA sewage treatment plant located west of their property and a half acre parcel to their daughter Geraldine Ellis and her husband Lawrence. In 1959, the Ellises built a house on their half-acre (Lot 79A) and they currently continued to live in it. Ms. Johnson-Quinn said following Mrs. Naylor's death in 1975, a Deed of Partition was recorded in January of 1979, pursuant to her Will. The Deed of Partition divided the remaining 7.22 acres of land amongst Mrs. Naylor's five children. Mazie Beverly, the now deceased mother of Arthur W. Beverly, the appellant in case A 2000-SU-012, received 0.2798 acre with the old house; Geraldine Ellis received 1.3367 acres; and each of the others received 1.8066 acres of land. The properties were currently zoned R-C which required a minimum lot area of 5 acres and a minimum lot width of 200 feet. Ms. Johnson-Quinn stated that none of the 4 lots met the minimum requirements and in order to be considered buildable lots, pursuant to Sect. 2-405 of the Zoning Ordinance, the lots would have had to comply with the Zoning Ordinance requirements that were in effect at the time the lots were recorded. When the Deed of Partition was recorded in 1979, the 7.22 acre tract of land was zoned R-1 which required a minimum lot area of 36,000 square feet and a minimum lot width of 150 feet for interior lots. None of the 4 lots complied with the minimum lot width requirement of 150 feet and one lot, Lot 76A (inherited by Mazie Beverly in 1979 and then Arthur Beverly in 1999) did not comply with the minimum lot area requirement of 36,000 square feet. Ms. Johnson-Quinn noted that Par. 1 of Sect. 18-603 of the Zoning Ordinance provided that in order for a Building Permit to be issued, a lot must comply with both the requirements of the Zoning Ordinance as well as the Subdivision Ordinance. Since each of the 4 lots failed to comply with at least one of the Zoning Ordinance requirements, pursuant to Par. 1 of Sect. 16-103, no Building Permits could be issued for any of them. She said based on a review of the Deed of Partition and the plat which accompanied it, the Department of Public Works and Environmental Services determined that the subdivision of Rosa Naylor's property was not accomplished in compliance with the applicable Subdivision Ordinance requirements.

Ms. Johnson-Quinn stated that while the individual lots had distinct characteristics or activities since 1979, the issue of whether Building Permits could be issued for any of the 4 lots hinged on the manner in which they were created. She said the facts were clear that none of the lots met the lot width requirements in effect at the time they were recorded, that Lot 76A did not meet the minimum lot area requirement in effect at that time, and that the Deed of Partition did not comply with the Subdivision Ordinance requirements in effect at that time.

Mr. Pammel asked what happened to Lot 76E. Ms. Johnson-Quinn replied that Geraldine Ellis inherited the lot and it met the minimum lot width and the lot area requirements. She said staff did not issue a determination, but that it was also governed by the deed of partition.

Mr. Pammel asked what was the public good to prevent the landowners from developing their land even though there was not a subdivision that met the standards. He said a subdivision was put on record that was approved by the Clerk of the Court.

Ms. Johnson-Quinn said staff did not have the authority to look at a broader issue of public purpose. She said the appellants did not meet the requirements, and staff was forced to rule as they did.

Mr. Hammack asked staff whether they had considered if lot 76A had been created prior to the division of the other lots and if so, what were the Ordinance requirements in 1959 for the creation of the small property. He said staff treated the lot as if it were created in 1978, but in fact, it had been deeded in 1959. Ms. Johnson-Quinn replied that the deed that was contained as an attachment in the report was for Lot 79A and that lot was permitted as a free cut and it met the Zoning Ordinance requirements in 1955 and 1959.

Mr. Hart asked if the creation of the one-½ acre lot in 1959 was okay. Ms. Johnson-Quinn replied yes.

Mr. Hart said no one had addressed what the engineers and lawyers were trying to do with the deed of partition. He said that there appeared to be a law firm involved and an engineer involved in doing the plat. He said it did not seem that they would engage professionals to create a subdivision of unbuildable lots. Mr. Hart asked staff whether they had any information on what they were trying to do.

Ms. Johnson-Quinn stated that one would assume they were not attempting to make unbuildable lots but staff had no information with regard to that matter.

Mr. Hart asked, other than the Clerk at the counter accepting the deed and the check to record the

Page ~~426~~ 425, September 5, 2000, (Tape 1); LENORA BEVERLY, A 2000-SU-009; ARTHUR W. BEVERLY, A 2000-SU-012; ROLLIE M. BEVERLY, A 2000-SU-016; IRVING O. MAHON AND DAUGHTERS, A 2000-SU-018; continued from Page ~~425~~ 425

subdivision, was there some other affirmative act that the County did to allow the subdivision. Ms. Johnson-Quinn replied no.

Mr. Hart asked if that was something that was done wrong. Ms. Johnson-Quinn replied that it was not the job of courthouse employees to review for accuracy or correctness.

William Shoup, Deputy Zoning Administrator, stated that it was his understanding that a number of these sort of problems occurred in the past and there was some coordination with the Clerk's office to make sure that before they recorded a subdivision plat that they looked to see that there was a County stamp of approval. He said that was occurring currently, but he couldn't say whether that was in place in 1979.

Arthur Beverly stated that when the land was divided it was divided into equal parcels for the siblings of his grandmother. He said the subdivision did not come into play at that time. Mr. Beverly stated there was an architect who drew up the plan and divided the land and presented it to the court. He said it was divided as five separate pieces. Mr. Beverly stated it was not divided for subdivision purposes of re-selling. He said it was so that each sibling would have a separate parcel of land.

Ms. Gibb asked if there was a court proceeding. Mr. Beverly stated that it went through the deed of partition with attorneys, but it was not court.

Ms. Gibb asked whether the appellants had asked the attorneys what happened. Mr. Beverly replied that one of them was deceased but he was told by an assistant that it was done in accordance with the laws and rules and at the request of the family at that time.

Ms. Gibb said the Board could not figure out why a reputable engineering firm would create the subdivision and record it without getting approval. He said they would like to hear what their reasons were.

Mr. Beverly said the only thing he received from them was a plat and when asked how it was done, they replied that it was done at the request of the attorneys and that was all the information he had.

Ms. Lachelle Beverly, representing Lenora Beverly, stated that both the attorney's office and the surveyors were saying that they did what the County requested at the time.

Mr. Hammack asked who was in charge of the division of the property. Mr. Beverly replied Geraldine Ellis who was the only survivor of the siblings that were there at the time.

Ms. Beverly stated that Geraldine Ellis was present to speak on her own behalf, but that Ms. Ellis handed the information over to the attorneys and surveyors and they told her that was all that needed to be done. She said that for the last 22 years their family thought the lots were buildable until Mr. Beverly tried to do something with his house. Ms. Beverly stated that most of them were waiting for sewer to come in before they decided what they would do with the land.

Ms. Gibb said she was under the impression that if you had a deed of partition that was sanctioned by the court you didn't have to worry about subdivision. She said you did have to meet the zoning requirements but that you didn't have to fall within the subdivision ordinance. Ms. Gibb asked was her understanding correct.

Mr. Shoup stated that John Foster from the County Attorney's office was present to respond to the question.

Mr. Foster stated that Ms. Gibb was correct. He said the case of Lee v. Cassati addressed an issue where there was a partition suit filed in a circuit court in Virginia. He said what the Supreme Court ruled in that case was that it was not necessary to obtain or receive approval under a local subdivision ordinance to partition the land; however, the local Zoning Ordinance still applied to the property and the owners of those parcels would have to comply with the local Zoning Ordinance before they could do anything with the property.

Ms. Beverly said that Ms. Lenora Beverly never received any of the zoning changes throughout the years because she was out of town.

Mr. Beverly stated that in 1993 the Board of Supervisors directed Fairfax County Housing Authority to do a study on Ordway Road. He said the Board of Supervisors adopted the Ordway Road Conservation Plan on June 27, 1994. Mr. Beverly said this was never mentioned in the staff report. He said the purpose of the plan was as a guide for policies and procedures for future development and improvement of Ordway Road neighborhood. He said the basic goal of the Ordway Road Conservation Plan was to preserve the Ordway Road area as a stable residential community to prevent the area from further deterioration, to improve public facilities, and maintain an ongoing comprehensive planning and citizen process to meet the aforementioned goal. He said some of the public things had been improved because they had added water and sewer since that time. Mr. Beverly stated that some of the goals were to stimulate the rehabilitation of the existing dwellings and ensure that the improvements were enduring and of high quality; to encourage local citizen leadership and participation in the upgrading of the area and in the decision making process; to ensure that public and private improvements were planned, designed and coordinated in a manner which contributed to the esthetic quality of the Ordway Road neighborhood. He said the County and all its agencies, authorities, Boards and Commissions would cooperate and assist the housing department with implementation of the Ordway Road Conservation Plan. He said his request was to replace the 80-year old house with a new house and that was in compliance with the Ordway Road Conservation Plan.

Ms. Beverly said for 22 years the County had recognized the lots as individual lots by sending each lot a separate tax bill to each individual owner. She said the County was also at fault just like the family, the surveyors, and the attorneys who handled the case. Ms. Beverly stated that the Board should not allow their family to suffer because they were not properly informed.

Mr. Hart said asked if the parcels were within the Ordway Road Conservation District in the Comprehensive Plan. Ms. Johnson-Quinn stated that staff was not familiar with the Conservation District and they did not know what the boundaries were.

Mr. Hart said this was an extension of sewer into the R-C District following the Occoquan down-zoning.

Mr. Beverly gave a copy of the Conservation Plan to the Board.

Mr. Hart said that on a computer printout from tax administration, there was a notation that stated "buildable poor lot." He asked staff if they knew the genesis that inspired that comment.

Ms. Johnson-Quinn stated that the appraisers in the Department of Tax Administration put descriptors on the lots, but they were not necessarily a reflection of the zoning. She said the statement could have been related to topography and drainage, but that the tax administration office did not request a determination from zoning on each and every lot.

Ms. Gibb asked staff how long was the one-cut rule in effect. Ms. Johnson-Quinn stated that she believed it was into the 1970s.

Ms. Gibb asked was there one or two cuts. Ms. Johnson-Quinn stated that it had to do with the definition of a subdivision. She said subdivision was deemed to be any creation of lots less than 5 acres.

Ms. Gibb asked how come another one of the subject lots wasn't allowed under the free-cut. Ms. Johnson-Quinn stated that she didn't believe that the ruling was in effect in 1979 when the deed of partition was created, but also, the appellants had already divided up the 2 acres for the UOSA Sewage Treatment Plant.

Ms. Gibb said she thought that anything given to a governmental authority was considered separate and would not be counted.

Ms. Johnson-Quinn stated that in 1979 subdivision was required for any division under 5 acres.

Ms. Gibb stated that she would like to obtain an explanation from the engineer.

Mr. Hammack said he would also like to hear from the law firm to find out what they were asked to do.

Mr. Beverly stated that it had been over a year since the beginning of this process and every time they

appeared before the Board another question arose about why something had not been done. He said they asked staff to do a study that should have had all the facts that they found.

Ms. Gibb stated that the Board was trying to help the appellant

Mr. Hammack stated that the plat that was put on record showed that no title report was furnished and it only showed delineated parcels and the total area. He said it did not have any stamp reflecting subdivision approval.

Mr. Hammack asked staff what procedures were in place for coordination between the tax department and zoning when a deed or site plan was recorded. Mr. Shoup stated that tax administration recorded what they received from land records. He said there was no further coordination and zoning never checked back to see whether the lots were legal lots.

Mr. Hammack said the Board was curious because they did not know what the lawyers were asked to do and why they were asked to do it or whether they contacted the County and were given erroneous information. He said there were a lot of unanswered questions about how the deed of partition got recorded.

Geraldine Ellis came forward stating that what the family had asked the surveyors to do was to deed off the land so that each sibling would have their own individual piece of land. She said, at the time, she thought that was what had been done.

Mr. Hammack asked whether Ms. Ellis was ever informed about having to comply with zoning requirements. Ms. Ellis said no.

Mr. Hart said that in an appeal the appellants had the burden showing the Board that the Zoning Administrator was wrong. He said everyone was acutely aware that something was wrong with the way the parcels were created. Mr. Hart said he asked what the intent was because his suspicion was that whatever was intended in 1979 was not to create this situation. He said what he was trying to understand was why an attorney and an engineer would create a division of unbuildable lots.

Ms. Gibb said the burden of proof lied with the appellant. She said the case was very complicated and difficult and the Zoning Ordinance had changed many times and the appellant needed to have someone research the history.

Mr. Pammel asked staff whether the properties were sewerred. Ms. Johnson-Quinn stated that she believed there were sewers available on Ordway Road to a certain point.

Mr. Pammel asked how many parcels that were involved in the appeals had the ability to have public sewer. Mr. Beverly replied that there were three lots at the present time.

Mr. Pammel asked why would the County expend funds to the magnitude that they had for public sewer when the property was zoned one unit to five acres.

Mr. Pammel asked whether staff was aware of whether community development block grant funds were spent as part of the infrastructure improvements for this conservation area. Ms. Johnson-Quinn stated that staff was not aware of anything related to that issue.

Mr. Pammel stated that he would like for staff to research that and inform the Board if there were federal funds spent for the utility extensions.

Mr. Hart stated that there were a number of homes between Route 28 and Ordway Road and there had been a problem over the years with failing septic fields and that there was a discussion of that in the Area III volume in the Comprehensive Plan about why sewer would be extended to the R-C District. He said they wanted to promote the stability of existing housing stock.

Chairman DiGiulian called for speakers.

Page 429, September 5, 2000, (Tape 1); LENORA BEVERLY, A 2000-SU-009; ARTHUR W. BEVERLY, A 2000-SU-012; ROLLIE M. BEVERLY, A 2000-SU-016; IRVING O. MAHON AND DAUGHTERS, A 2000-SU-018; continued from Page 428

Lawrence Ellis and Edward Wright came forward to speak in support to the appellant. They stated that Mr. Beverly should be allowed to improve the existing house on the property.

Mr. Ribble said he would like to defer the appeal to allow the appellants time to speak with the attorneys again. He moved to defer the appeal to September 19, 2000 at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 429, September 5, 2000, (Tape 1), After Agenda Item:

Approval of May 23, 2000 Minutes

Mr. Hart moved to approve the Minutes. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 429, September 5, 2000, (Tape 1), After Agenda Item:

Additional Time Request
Trustees of Crossroad Baptist Church, SPA 90-M-036

Mr. Pammel moved to approve the Additional Time Request. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration date was December 1, 2000.

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Page 429, September 5, 2000, (Tape 1), After Agenda Item:

Approval of BZA Meeting Dates for first half of 2001

Mr. Pammel moved to approve the BZA Meeting Dates for the first half of 2001. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 429, September 5, 2000, (Tape 1), After Agenda Item:

Consideration for Acceptance for Appeal
Merrifield View Homeowners Association

Mr. Hart stated that Mr. Thomas, the agent for the appellant, was a former employee of his and he recused himself from the subject matter.

Ward Thomas, Board of Directions of Merrifield View Homeowners Association, came forward stating that the site plan had not been approved yet but felt it would make sense to hear the matter sooner than later because if a 35 foot screening yard was required than it was clear that there would be some significant changes to the site plan. He said they did not file the appeal within the 30 days that were required, but the association took reasonable steps to try to find out what was going on.

Mr. Thomas stated that he was not aware that there would be a piece-meal approval of the site plan.

Ms. Gibb asked if it was better to have one issue of the site plan appealed as opposed to the entire site plan. William Shoup, Deputy Zoning Administrator, stated that staff was concerned because there were a number of preliminary decisions that lead up to site plan approval. He said they were not effective until the site plan itself was approved.

Mr. Shoup stated that it was staff's position that the site plan approval itself was what authorized the work to commence and that was the final decision that allowed the activity to take place.

Page 430, September 5, 2000, (Tape 1), After Agenda Item, continued from Page 429

Ms. Gibb asked Mr. Shoup how could he be certain that the appellant would receive notice that the site plan was approved. Mr. Shoup said he had spoken with the Department of Public Works and Environmental Services to discuss that issue and they assured him that this application had been flagged to ensure that Mr. Thomas would be notified when the site plan was approved.

Chairman DiGiulian called for speakers.

Barnes Lawson Jr. came forward stating that he represented Uniwest. He stated that they would rather have a decision now rather than later. Mr. Lawson stated that they had met with the community and had made a lot of progress towards addressing the concerns. He said they were willing to continue that dialogue.

Mr. Shoup noted that there were specific requirements in the Ordinance for an appeal and this appeal did not come close to constituting that.

Ms. Gibb moved to deny the acceptance of the appeal because it was not timely filed. She said maybe the issues could be worked out between the parties. Mr. Pammel seconded the motion which carried by a vote of 6-0-1. Mr. Hart abstained from the vote.

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Page 430, September 5, 2000, (Tape 1), After Agenda Item:

Request for Intent to Defer
EOP-Reston Town Center, L.L.C

Mr. Pammel moved to approve the request for Intent to Defer. Mr. Hammack seconded the motion which carried by a vote of 7-0. The appeal was deferred to October 10, 2000.

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As there was no other business to come before the Board, the meeting was adjourned at 10:57 a.m.

Minutes by: Regina Thorn Corbett

Approved on: December 19, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 12, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 431, September 12, 2000, (Tape 1), Scheduled case of:

9:00 A.M. NANCY SUSAN KIRK & ROBERT STERLING KIRK, VC 00-D-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 5B having a lot width of 12.26 ft. Located at 1702 Dalewood Pl. on approx. 35,145 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((43)) 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. Barnes Lawson, Jr., Agent, Lawson & Frank, 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, replied that it was.

Charles Burnham, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of the property from one lot into two with the proposed new lot having a lot width of 12.26 ft. Mr. Burnham stated that if the application was approved, Lot 5A would have in a total of 19,384 square feet and Lot 5B, 15,761 square feet. A minimum lot width of 80 feet is required. Staff did not believe the request met all variance standard requirements.

Mr. Lawson presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lawson stated that Mr. & Mrs. Kirk were life long residents of Fairfax County and stated that they had resided at the application property since 1987 when they bought their lot from a subdivider and built their home. He stated that the purpose of the request was for them to help their son, and his family, own their own home. Mr. Lawson stated that he had asked the Kirk's to demonstrate that a house constructed on the lot would be compatible with the surrounding neighborhood and discuss with their neighbors the proposed plan to ensure that there would be no opposition to the request. Mr. Lawson distributed a package to the Board containing letters of support from surrounding property owners and an architectural plan of the proposed home. He stated that he did not believe that staff was fair with their analysis of denial of the application. He stated that the lot had a unique shape and was a pipestem lot when measured. Mr. Lawson stated that the bulk of the lot contained enough area for three lots and enough width for two lots. He stated that because of the topography, an easement, and a floodplain, the applicant was unable to add to their existing home, despite the large size of the lot. Mr. Lawson stated that there was no impact on adjoining property due to the .10 foot piece of land owned by the Fairfax County Park Authority and screening vegetation toward the rear of the property. He stated that the application was a hardship and asked the Board to approve the variance application.

Chairman DiGiulian called for speakers in support of the application.

Alan Coal, 1704 Dalewood Place, McLean, Virginia, came forward to speak in support of the application. Mr. Coal stated that he believed it was a good idea to build the home and stated that the impact would be minimal and, that due to an existing circular driveway on the application property, a new driveway would not be necessary for the new home to be built.

Mrs. Coal, 1704 Dalewood Place, McLean, Virginia, stated that the lot looked unusual due to the large space between the houses and that it would be a very natural addition. She said everyone in the neighborhood agreed to the construction.

Linda Heath Lawrence, former owner of the lot (no address given for the record) stated that her father was the developer of the application property. She stated that his original design was to have two lots in that location and was unsure why it was not developed in that manner. She also stated her support for the application.

Chairman DiGiulian called for speakers in opposition of the application.

Mark Buffkin, 6531 Divine Street, McLean, Virginia, came forward to speak in opposition of the application.

He stated that the subject property was directly behind his property line, across the 10-foot right-of-way of the Park Authority property. He stated that his neighbor at 6533 Divine Street had the same concerns. Mr. Buffkin stated that the construction of the new home would affect his property due to the issues of storm drainage, tree removal, and parking. He stated that he requested that if the application was to be approved, he would like a condition of approval to have storm water runoff drain toward Pimmitt Run and not into any adjoining neighbor property. He requested that the mature trees, within the Park Authority right-of-way, remain to absorb runoff and to provide screening due to the close proximity of the new home to be constructed. Mr. Buffkin asked that the construction of the driveway be placed in front or to the south of the proposed home due to parking related issues.

Mr. Lawson came to the podium to rebut the opposition and presented to the Board proposed development conditions to accommodate Mr. Buffkin's concerns. He stated with regard to the stormwater runoff issues, that the applicant would have a grading plan prepared, which would, to the extent possible, preclude additional stormwater runoff into neighboring single family lots. Mr. Lawson stated that all off-street parking would utilize the existing driveway and would be placed to the south or east of the proposed home. Mr. Lawson also proposed a change to Development Condition #4 and stated that the Park Authority area would not be disturbed.

Mr. Hart questioned the driveway issue. Mr. Lawson stated that there would be no problem in utilizing the existing driveway but stated that final designs had not been completed.

Mr. Hart asked if at the time of building permit review the stormwater issues be reviewed.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that normally for this type of subdivision, it would be an overlot grading plan approved first, which was a review by DPWES, and stated that at that point, grading and runoff issues would be addressed.

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

Mr. Hammack moved to approve VC 00-D-080 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 22, 2000, with modifications to Condition #4 and the addition of Conditions #7 and #8.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY SUSAN KIRK & ROBERT STERLING KIRK, VC 00-D-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 5B having a lot width of 12.26 ft. Located at 1702 Dalewood Pl. on approx. 35,145 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((43)) 5. 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 12, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants have presented testimony which indicates compliance with the required standards for 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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of one lot into two lots with proposed lot 5B having a lot width of 12.26 feet as shown on the plat prepared by James H. Guynn dated February 17, 1999 as revised through May 5, 2000. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
2. The driveway for lot 5B shall be constructed in accordance with the Public Facilities Manual.
3. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Trees designated to be saved shall be protected from damage by construction activity to the satisfaction of the Urban Forester.
4. The limits of clearing and grading shall be no greater than the rear yard building restriction line, shall not encroach into the Resource Protection Area (RPA)/Conservation Easement or Fairfax Park Authority lands, and shall be the minimum amount necessary to provide for the development shown on the approved plat. Prior to overlot grading plan approval, the Urban Forestry Office shall review the plan and limits of clearing shall be designated to preserve as much vegetation as possible.
5. No structures including decks, patios, and fences shall be located within the RPA or any sanitary sewer easement located on lots 5A or 5B.
6. No grading, cutting, clearing or removal of existing vegetation shall be permitted along the rear property line except as is necessary for noxious weed removal in order for the existing vegetation to grow. Exceptions to the above prohibitions shall be permitted for any required or necessary water

quality or quantity controls or utilities as approved by DPWES.

- 7. The applicant shall have a grading plan prepared which will, to the extent possible, preclude additional storm water run off onto the existing single family lots.
- 8. Off street parking shall utilize the existing driveway, and shall be placed to the south and/or east of the proposed home. A shared parking agreement shall be executed by the parties.

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. Hart seconded the motion which carried by a vote of 5-1. Mr. Kelley voted nay and 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 September 20, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 434, September 12, 2000, (Tape 1), Scheduled case of:

9:00 A.M. LORI WOOD, VC 00-Y-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in front yard of a corner lot. Located at 11916 Appling Valley Rd. on approx. 24,653 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 56-3 ((6)) 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. Lori Wood, 11916 Appling Valley Road, Fairfax, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a 6-foot high fence to remain in the front yard of a corner lot. A maximum height of 4.0 feet is permitted; therefore, a variance of 2.0 feet was requested.

Ms. Wood presented the variance request as outlined in the statement of justification submitted with the application. Ms. Wood stated that she had hired a local, licensed, fence contractor to construct a fence to enclose the back yard and a portion of what she considered a side yard. She stated that the fence was necessary for her two small children and was for their safety and that she was unaware of the issues of the side yard until after the fence was constructed. Ms. Wood reviewed the standards and requested the Board's approval. She further stated that the only affected property owner had no objection to the fence.

Mr. Hart questioned the location of the fence as it appeared on the plat. He expressed his concern that the fence was not located exactly on the property line and appeared to be extended onto an adjoining property.

Ms. Langdon stated that Condition #1 was a standard condition, specifically that upon the Board's approval, the fence was allowed to remain in the existing location.

Mr. Hart questioned if the Board was authorized to allow the fence to impede into another property owner's lot. Ms. Langdon stated that there were instances where the condition could state that the fence be moved back on-site.

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

Mr. Hart moved to approve VC 00-Y-083 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 5, 2000.

The Board discussed with the applicant the issue of the fence location. Ms. Wood stated that due to the existing fence on the adjacent property owners' lot, of which she connected her fence to, her fence was now located 6 inches on that adjacent property owner's land. The Board agreed that it was acceptable to allow the fence to remain in its current location.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LORI WOOD, VC 00-Y-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in front yard of a corner lot. Located at 11916 Appling Valley Rd. on approx. 24,653 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 56-3 ((6)) 12. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required standards for 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a wood fence shown on the plat prepared by Kenneth W. White, Land Surveyor, dated May 31, 2000, as revised through June 21, 2000 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 6-0. 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 September 20, 2000. This date shall be deemed to be the final approval date of this variance.

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Mr. Ribble offered the Board's condolences to Supervisor Gerald Hyland for the recent loss of his wife. He stated that Carmine would be missed by the residents of the Mount Vernon District and citizens of Fairfax County.

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Page 436, September 12, 2000, (Tape 1), Scheduled case of:

9:00 A.M. EDUARDO E. VALDEZ, SP 00-L-039 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 4511 Tipton La. on approx. 13,349 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (C) 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. Eduardo Valdez, 4511 Tipton Lane, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow 8 dogs to remain on the application property. Ms. Wilson stated that due to the size of the application property, the applicant could only keep 4 dogs by-right. A minimum of 30,000 sq. ft. of area is required.

Mr. Ribble stated that the applicant referenced in his statement of justification that the dogs had no-bark collars. He asked staff if the collars were effective. Ms. Wilson replied that at the time of site visit, she had parked on the street, and when approaching the house, the dogs could see her; however, there was no attempt by the dogs to bark.

Ms. Gibb questioned the violation. Ms. Wilson stated that it was a complaint from a neighbor.

Mr. Hart asked if the lot was impacted by a floodplain easement. Ms. Wilson replied that the rear portion of the lot was affected by a floodplain area.

Mr. Hart stated that there were 8 dog houses depicted on the plat and asked if there were any provisions which would affect the placement of dog houses within a floodplain easement. Ms. Wilson stated that there were no provisions of which staff was aware of.

Mr. Valdez presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Valdez stated that he was informed by animal control, on one of their many visits, that the complaint was not from an immediate neighbor, but that it was from a neighbor to the rear of his property who was not happy with the chain setups his dogs were on. He stated that the breed of dogs were not the only breed kept on chains, that it was a safe way to keep the dogs out of trouble and gave them more of an area to roam as opposed to a kennel. He stated that the dogs were not aggressive, as the media made Bull

Dogs out to be, and that they did not pose a harm. He stated that the yard was well maintained and that the dogs were very healthy with all current vaccinations. Mr. Valdez stated that he did not use no-bark collars because they were not necessary for his dogs. Mr. Valdez expressed his love and devotion for his dogs and asked for the Board's approval.

Mr. Kelley asked how old the dogs were. Mr. Valdez stated that the range was 1 1/2 to 5 years in age. Mr. Kelley asked if he was breeding the dogs. Mr. Valdez stated that he did breed one litter, but has papers to show that every dog he owned was bought from another breeder as pets, and that is how he went from 6 to 8 dogs, because he kept 2 dogs from that litter.

Mr. Kelley stated that the inspector had referenced 10 dogs. Mr. Valdez stated that 2 dogs were stolen from his yard.

Mr. Ribble asked the average life expectancy of the breed. Mr. Valdez stated between 8 and 10 years.

Ms. Gibb asked what was the neighbor complaint. Mr. Valdez stated that when he purchased the house he removed a lot of trees that had died and disposed of the limbs in his neighbor's rear yard. Upon receiving a letter from the affected neighbor, he stated that he discussed it with her and apologized and removed the debris from her yard. Mr. Valdez stated that he was informed by Animal Control that he would have to file a harassment charge against the neighbor because of her constant complaints of barking, neglect, and abandonment. Mr. Valdez stated that it was unfounded because he took great care of his dogs and had even won awards for his care.

Mr. Hammack asked if all 8 dogs were show dogs. Mr. Valdez stated that all had been showed, except the 2 puppies.

Mr. Hart asked if they dogs had ever gotten loose. Mr. Valdez stated that it was almost impossible for the dogs to get off their chain setups, and stated that if they ever did, they would have to go over a fence which surrounded the entire yard.

Mr. Hart asked staff if there had been any special permits granted by the Board for an increase in the number of dogs on any lot for this breed of dog. Ms. Wilson stated that a distinction had never been made between breeds of dogs, but that special permits had been granted on the number of dogs.

Mr. Ribble asked if any applications had been denied of the same issue. Ms. Langdon stated that it had been several years since an application had been denied, and stated that it was small dogs, which were being breed in a townhouse.

Chairman DiGiulian called for speakers.

Richard Sweezy, 4509 Tipton Lane, Alexandria, Virginia, stated that Mr. Valdez had brought up the value of the properties in the neighborhood and was a good neighbor. He stated that the dogs were very friendly and that Mr. Valdez seemed very concerned about the neighbors' concerns and that he would be willing to address any situation. Mr. Sweezy expressed his concern of safety if one or more of the dogs got loose and said that he did not view them as family pets because they were mainly chained in the rear yard. He stated that the dogs, because there were 10, did not receive normal daily interaction with humans. He expressed his concern of the value of his home due to the number of Bull dogs.

Mr. Ribble questioned Mr. Sweezy when he referenced 10 dogs. Mr. Sweezy stated that he had not counted the number in several weeks, however, that there were 10 dogs at one time.

Mr. Hammack asked what was the level of noise from the dogs. Mr. Sweezy stated that it was surprisingly not noisy considering the number of dogs and that the dogs did not bark on a constant level. Mr. Hammack asked about the maintenance and any debris in the yard. Mr. Sweezy stated that Mr. Valdez was very conscientious in taking care of the yard.

Mr. Kelley asked how many dogs Mr. Valdez owned when he first moved in. Mr. Sweezy stated that he remembered that it was 6.

Karen Basting, 4609 Tipton Lane, Alexandria, Virginia, stated that she resided at her residence for 12 years

and said that there had been a deterioration of the appearance of the house, but expressed her appreciation to Mr. Valdez for his efforts to improve his house. However, she stated that the addition of 8 to 10 dogs in his yard was not good for the neighborhood. Ms. Basting stated that she had noticed an increase in flies and feared rodent activity due to the debris. She expressed her concern about the breed of dog concerning children; therefore, she asked the Board to deny the application.

Thomas Mills, 4705 Tipton Lane, Alexandria, Virginia, stated that his concern was that having 10 dogs represented a dog kennel and he did not feel it was appropriate in a residential neighborhood. Mr. Mills presented letters to the Board from the owners of 4702 and 4704 Tipton Lane. Mr. Mills read the letters to the Board, also expressing their opposition to the application, concerning the danger to the community due to the breed of dog.

Ms. Langdon stated that there was an indication for someone to speak in support. Chairman DiGiulian stated that he would allow the opposition to speak first, and then accept the speaker in support.

Joan Layman, 4603 Tipton Lane, Alexandria, Virginia, stated that she supported the previous speakers' testimony and added that she had been disturbed on several occasions by the barking of the dogs and expressed the concern of the number of dogs regarding resale value of the property. She stated that the neighbor residing at 4601 Tipton Lane, Jimmy and Wanda Dunn, had also expressed the same concern.

Chairman DiGiulian called for speakers in support of the application.

Mrs. Byers, the neighbor directly across the street, stated that she resided at her home for 38 years and stated that her bedrooms faced the street and that they had no problems with the dogs barking excessively. Mrs. Byers said that her grandson maintained the grass for Mr. Valdez and that her grandson had stated that the yard was kept very clean and that they did not distract from the neighborhood. She further stated that the dogs had never gotten loose and that Mr. Valdez had a 6 foot high fence.

Mr. Valdez stated in his rebuttal that his daughter and many children came around the dogs at all times and that they wouldn't hurt anyone if they could get loose. He stated that there was a fly problem when he first moved in, of which he took care of it. Mr. Valdez stated that many of his neighbors owned at least 1 to 3 dogs. He stated that he did not have a kennel, and that 10 dogs were not kept on his property. Mr. Valdez stated that during code days, red in the summer and blue in the winter, he brought the dogs inside.

Mr. Hammack asked if he won prize money if one of his dogs won in a show. Mr. Valdez stated that the prize was usually food, not money.

Mr. Hammack stated that he personally believed that 8 dogs were too many. He asked that if the Board were to limit the number of dogs allowed, how long would it take for removal to an appropriate home. Mr. Valdez stated that he had screened the people who his puppies went to and was unsure how long it would take to ensure that they were placed in a good home.

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

Mr. Ribble moved to deny SP 00-L-039 for the reasons noted in the Resolution.

Mr. Kelley amended the motion asking for a condition which would give the applicant one year to place the dogs in a good home. He stated that he believed Mr. Valdez deserved at least a year, as a good owner, to place the dogs. Mr. Ribble agreed.

Mr. Hart agreed with the motion and stated that he was impressed by the applicant's conscientious and responsible attitude as a pet owner; however, he expressed that the lot was too small for the number of dogs.

Mr. Hammack expressed his support of the motion, to include having one year to bring the application into compliance, and asked staff for specific language.

Ms. Langdon stated that conditions were not adopted when an application had been denied but suggested that the information of the additional year be passed onto the Zoning Enforcement Branch to ensure

compliance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EDUARDO E. VALDEZ, SP 00-L-039 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 4511 Tipton La. on approx. 13,349 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (C) 5. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2000; and

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

- 1 The applicant is the owner of the land.
- 2. The applicant appears to be operating an outdoor kennel for eight dogs on a 13,349 square foot lot, which is not adequate space to keep eight dogs.

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 Sect. 8-917 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 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 September 20, 2000.

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9:00 A.M. STEPHEN G. JOHNSON, VC 00-V-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing less than 36,000 sq. ft. and permit 7.0 ft. high fence to remain in front yard of a corner lot. Located at 8747 Scott St. on approx. 34,209 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) (3) 62.

Mr. Hammack recused himself from the hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Smalley, Agent, 10605 Judicial Drive, B1, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit accessory structures to remain in the front yard of a lot containing less than 36,000 square feet and to permit a 7.0 foot high fence to remain in the front yard of a corner lot. Ms. Wilson stated that the Zoning Ordinance stated that no accessory structure or use, except a statue, basketball standard or flag pole shall be located in any minimum required front yard or any lot containing 36,000 sq. ft. or less. A maximum fence height of 4.0 foot is permitted; therefore, a variance of 3.0 feet was requested for

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the fence.

Mr. Smalley presented the variance request as outlined in the statement of justification submitted with the application. Mr. Smalley stated that the property had several unusual features, including the 200 foot long road, which was the only State maintained gravel road in the County, and came to a dead end. He stated that the structures had existed for a long time and were well screened. Mr. Smalley explained an issue pertaining to the purchase of Outlot A from the owner who had foreclosed on the property. Mr. Smalley presented letters to the Board from neighbors in support of the application. He stated that the garage was mainly used for tools and for boat storage. Mr. Smalley stated that it would cause an undue hardship to remove the structure. He asked for the Board's approval.

Ms. Gibb asked how the applicant had learned that a variance was necessary. Mr. Smalley stated that he had submitted a permit to install a swimming pool, at which point the County informed him of the need for a variance for the buildings. Mr. Smalley stated that he had made improvements over time to the existing structures.

Chairman DiGiulian called for speakers.

Charles Pippins, 8743 Scott Street, Springfield, Virginia, stated that the shed was an improvement to the property because it was well maintained and asked for the Board's approval of the application.

Mary Wools, 7928 Giles Street, Springfield, Virginia, stated that she did not have any problems with the fence, because it has been maintained over the years. She stated that it would be a hardship on the applicant to have the fence removed. Ms. Wools further stated that the buildings were not visible from her property.

Marvin Louck, 8746 Scott Street, Springfield, Virginia, stated that he had no problem with either the buildings or the fence and asked for the Board's approval.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 00-V-086 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 5, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN G. JOHNSON, VC 00-V-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing less than 36,000 sq. ft. and permit 7.0 ft. high fence to remain in front yard of a corner lot. Located at 8747 Scott St. on approx. 34,209 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) (3) 62. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance.
3. The garage and shed are located next to an outlot which may eventually be acquired by the applicant.
4. The garage and shed have substantial space between them and neighboring properties.
5. The garage and shed are screened by a fence causing minimal impact on the neighbors.

- 6. The fence does not present a site distance issue.
- 7. The fence borders on Giles Street which is a gravel road used only by the applicant and acts as a screen for lots 27 and 28.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the accessory structures (garage and shed) and 7.0 foot high fence shown on the plat prepared by Alexandria Surveys, Inc., dated February 17, 1999, as revised through May 11, 1999, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from 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 September 20, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SAYEED & MARIA HASANZADAH, VC 00-P-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.3 ft. from side lot line and 15.6 ft. from other side lot line. Located at 2708 Chain Bridge Rd. on approx. 2.33 ac. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 2A.

Mr. Hart disclosed that an agent who represented some of the neighbors was a partner with an entity which his law firm rents space; however, he stated that he did not believe it would affect his ability to vote on the application.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Kellinger, Huntzeker & Lyon, Agent, 6862 Elm Street, Suite 220, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Wilson stated that the Board heard the application on July 25, 2000, deferring decision to September 5, 2000, in order to give the applicants an opportunity to explore the possibility of relocating the proposed dwelling to reduce the amount of variance requested on the side lot lines. She stated that at the September 5, 2000, meeting, the Board deferred decision to September 12, 2000. Revised plats were received to show a side yard of 15.7 ft. and 17.0 ft. A minimum 20 foot side yard is required.

Mr. Kellinger presented the variance request as outlined in the statement of justification submitted with the application. Mr. Kellinger stated that the exceptional shape of the property severely restricted the ability to construct a home within R-1 zoning. He stated that they had reviewed concerns with the affected homeowners by reducing the size of the house and reducing the western side setback from 5.33 feet to 15.7 feet as well as the eastern side setback from 15.6 feet to 17.0 feet. Mr. Kellinger reviewed the plat with the Board and clarified the area of clearing ensuring, that all trees possible would remain on the property. Mr. Kellinger asked for the Board's approval of the application, with the modifications submitted.

Mr. Hart reviewed the applicant's proposed development conditions with Mr. Kellinger regarding the setback and the location of the garage. Mr. Hart stated that several letters had been received by the Board all in opposition to the application and asked Mr. Kellinger to review the letters and comment.

Mr. Kellinger stated that most of the opposition was in regard to the position of the house. He said with the modifications submitted, most of the concerns were addressed.

Chairman DiGiulian called for speakers.

Bill Strainberg, 2609 Powder Mill Lane, Vienna, Virginia, came forward to speak in opposition of the application. He stated that the concerns were the size and location of the proposed house. He stated that the property was heavily wooded and in reviewing the revised plat, the issue of a garage, driveway, and parking area were also concerns. Mr. Strainberg estimated that 40 mature trees would have to be destroyed in order to build the proposed house. He expressed his concern regarding drainage and damage to trees on the property lines and had hoped that the house could be placed on a different location on the property.

Mr. Hart questioned a street shown on the plat and asked if it was a dedicated street because of the woods shown. Ms. Wilson stated that it was an easement granted by the previous subdivision into outlots and with this application staff had asked that the street be continued to support future development to the east of the site. Ms. Wilson stated that the long term goal would prevent traffic onto Chain Bridge Road.

Mr. Hart expressed his concern with the construction of the proposed driveway which was within the boundaries of a public street and asked if a driveway could be built through the dedicated street. Ms. Wilson stated that there was an outstanding issue with the applicant and the County to determine if that portion of land would be maintained by the State and that it was still an undecided issue. Ms. Wilson stated that at the time of grading and site plan review, the issue would be resolved.

Charles W. Frost, 2611 Powder Mill Lane, Vienna, Virginia, came forward to speak in opposition of the application. Mr. Frost stated that his concerns were addressed in his letter submitted for the record, which included the alignment of the driveway and the removal of 60 to 100 foot trees.

Eric Candelori, 2607 Power Mill Lane, Vienna, Virginia, came forward to speak in opposition of the

application. He stated that approximately 12 neighbors would be affected by the construction of the home and agreed with the previous speakers.

Ken Sanders, speaking on behalf of affected homeowners, stated that the applicant had tried to work with the adjacent property owners to attempt to resolve issues and noted that the lot was narrow; however, not so narrow that a normal size house could be placed on the property.

Mr. Kellinger stated in his rebuttal that there were many different opinions and he believed that the proposed plan was the best solution due to the highly unusual shaped lot, requiring a 3.0 and 4.3 foot variance to the side yards. Mr. Kellinger stated that the request was for a variance of the side yards only, and that the driveway issue and tree save issue would be addressed.

Ms. Gibb asked what could be done on the property by-right without the approval of the variance. Mr. Kellinger stated that a house would be built meeting the setbacks. He stated that the proposed house was 52.3 feet wide.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 00-P-071 for the reasons noted in the Resolution subject to the Revised Development Conditions dated September 1, 2000, with modifications.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SAYEED & MARIA HASANZADAH, VC 00-P-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 5.3 ft. from side lot line and 15.6 ft. from other side lot line. Located at 2708 Chain Bridge Rd. on approx. 2.33 ac. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 2A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony which indicates compliance with the required standards for a variance.
3. The lot is unusual in that a fairly large house could be constructed on it if the orientation of the long axis of the house was consistent with the long axis of the lot.
4. The deficiencies of the Street Access Plan are not associated with the variance 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the dwelling, located shown on the plat prepared by T.E.L.S., LTD., dated March 17, 2000, as revised through August 28, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. As shown on the variance plat dated March 3, 2000 revised August 24, 2000, the distance from the house to the eastern property line will be a minimum of 17' feet. The distance from the house foundation to the western property line will be a minimum of 15.7' feet.
4. The house will be located as shown on the plat with the option to move the house north or south a maximum of 20' feet while maintaining the side yard distances above to preserve the existing trees to the greatest extent possible. The applicant will solicit comments from the Fairfax County Arborist.
5. No chimneys will be placed on the east or west side of the house.
6. Granting of this variance will not preclude the applicant from building additional structures in the future that will comply with the Zoning Ordinance.
7. The applicant will notify the surrounding neighbors through one point of contact upon submission of the grading plan to Fairfax County.

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 4-2. Mr. Hammack and Ms. Gibb voted nay. Mr. Pammel was absent from the meeting.

Page 445, September 12, 2000, (Tapes 1 and 2), SAYEED & MARIA HASANZADAH, VC 00-P-071, continued from Page 444

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 20, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 446, September 12, 2000, (Tape 2), Scheduled case of:

9:00 A.M. STEPHEN M. FOX & DONNA L. HANSEN-FOX, VC 00-P-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a second story addition on existing accessory structure 4.3 ft. from side lot line. Located at 10126 Pine St. on approx. 21,780 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((5)) 25.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen Fox, 10126 Pine Street, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a second story addition to an existing garage 4.3 feet from the side lot line. A minimum side yard of 15.0 feet is required; therefore, a variance of 10.7 feet was requested.

Mr. Fox presented the variance request as outlined in the statement of justification submitted with the application. Mr. Fox stated that there was currently an existing garage. He stated that the garage was used by the previous owner for a recreational vehicle which left a substantial portion of the upper part of the structure useless. Mr. Fox stated that the upper level was currently an open space and requested the addition of a second story, which would increase the height of the structure by 4.0 ft. He stated that the purpose was for storage and a game room/play area for his grandchildren.

Mr. Hammack asked if plumbing would be installed and how long the structure has existed. Mr. Fox stated a bathroom would be included in the renovation and that it was constructed in 1976.

Mr. Fox stated that both adjacent property owners supported the request.

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

Mr. Kelley moved to approve VC 00-P-091 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 5, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN M. FOX & DONNA L. HANSEN-FOX, VC 00-P-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a second story addition on existing accessory structure 4.3 ft. from side lot line. Located at 10126 Pine St. on approx. 21,780 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((5)) 25. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony which indicates compliance with the required standards for a variance.
3. The lot is exceptionally narrow.

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

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

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

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

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

1. This variance is approved for the location of a second story addition to an existing accessory structure (garage) as shown on the plat prepared by Harold A. Logan, dated April 13, 2000, as revised through June 15, 2000, 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.

Ms. Gibb 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 September 20, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MARTA ALEJOS, SP 00-L-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 9.7 ft. from side lot line. Located at 7506 Mendota Pl. on approx. 15,350 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (56) 9. (From 7/25/00 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. Marta Alejos, 7506 Mendota Place, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. Mr. Bernal stated that the application was originally heard by the Board on July 25, 2000, and approved on August 2, 2000; however, subsequent to the public hearing, staff was made aware that the notices were not in order. Therefore, the application had to be reheard. The applicant requested a special permit to permit reduction in minimum yard requirements based on error in building location to permit a building addition to remain 10.4 feet from a side lot line. A minimum side yard of 12.0 feet is required; therefore, a modification of 2.3 feet was requested.

Mr. Hart noted that the dimensions on the plat dated 1954 were different than the 2000 plat. Mr. Bernal stated that the contractor had failed to measure the lot line currently, as noted in the statement of justification.

Ms. Alejos presented the special permit request as outlined in the statement of justification submitted with the application and as presented and approved at the July 25, 2000, public hearing. She stated that she had not sent the notifications to the adjacent property owners for the original public hearing and therefore, the application needed to come back before the Board.

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

Mr. Ribble moved to approve SP 00-L-029 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 18, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARTA ALEJOS, SP 00-L-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 9.7 ft. from side lot line. Located at 7506 Mendota Pl. on approx. 15,350 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (56) 9. (From 7/25/00 for notices). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of a room addition as shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 30, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley 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 September 20, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 448, September 12, 2000, (Tape 2), Scheduled case of:

9:00 A.M. AUGUST W. STEINHILBER, III, VC 00-Y-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.2 ft. from rear lot line. Located at 5427 Gladewright Dr. on approx. 9,552 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((11)) (7) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. August Steinhilber, 5427 Gladewright Drive, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a room addition to be located 16.2 feet from the rear lot line. A minimum rear yard of 25.0 feet is required; therefore, a variance of 8.8 feet was requested.

Mr. Steinhilber presented the variance request as outlined in the statement of justification submitted with the application. Mr. Steinhilber stated that the proposed addition was the same footprint of an existing deck. He stated that there were no lots behind the subject property, due to community association land; therefore, there would be no impact on adjacent property owners. He stated that due to the position of the house on

the lot, the variance was necessary and that the construction of the addition would not affect the integrity of the neighborhood and was necessary due to a growing family and asked for the Board's approval of the application.

Mr. Steinhilber provided the Board with a copy of the Sequoia Farms Homeowners Association Architectural Review Committee approval, which was signed by four immediately adjacent homeowners affected by the construction. He further stated that no mature trees would be disturbed.

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

Ms. Gibb moved to approve VC 00-Y-101 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 5, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

AUGUST W. STEINHILBER, III, VC 00-Y-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.2 ft. from rear lot line. Located at 5427 Gladewright Dr. on approx. 9,552 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((11)) (7) 21. (OTH APPROVED). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony which indicates compliance with the required standards for a variance.
3. The lot is shallow based on the location of the house which is set back quite a distance on the property.
4. The addition cannot be located any where else on the lot because of storm drainage, access, and ingress/egress easements and a walk way.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition shown on the plat prepared by Kenneth W. White, dated July 5, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb moved to waive the 8 day waiting period. Mr. Hart 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 September 12, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 450, September 12, 2000, (Tape 2), Scheduled case of:

9:30 A.M. EOP-RESTON TOWN CENTER, L.L.C. ("EQUITY"), A 2000-HM-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of approval of Site Plan 7067-SP-12-2 by the Department of Public Works and Environmental Services which allows for commercial development on property located in the Urban Core of the Reston Town Center. Located in the N.E. quadrant of the intersection of Town Center Pkwy. and Bluemont Wy. on approx. 30.03 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-1 ((1)) 12E.

Chairman DiGiulian stated that the Board had issued an intent to defer to October 10, 2000.

Mr. Ribble made a motion to defer Appeal Application A 2000-HM-010 to October 10, 2000. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 461, September 12, 2000, (Tape 2), Scheduled case of:

9:30 A.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, A 96-P-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that continued operation of a plant nursery, which has been expanded absent the approval of a Category 5 Special Exception from the Board of Supervisors, is a violation of Par. 2 of Sect. 15-101 and Par. 2 of Sect. 2-304 of the Zoning Ordinance. Located at 9023 Arlington Blvd. on approx. 3.72 ac. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 44. (MOVED FROM 2/4/97. DEF. FROM 2/25/97. MOVED FROM 5/20/97. CONTINUED FROM 7/22/97. RECONSIDERATION GRANTED 10/28/97. DEF. from 4/21/98; 9/29/98 and 8/15/00). (MOVED FROM 9/12/00 FOR NOTICES)

Chairman DiGiulian noted that the notices were not in order.

William Shoup, Deputy Zoning Administrator, stated that the appellant had sent notification; however, two required property owners, homeowners associations, were not notified. He stated that it was discussed with Mr. Craven who had indicated that he notified the properties he was told to notify. Mr. Shoup stated that Mr. Craven indicated that staff did not provide a list to him. Mr. Shoup recommended that the appeal be deferred to October 17, 2000, and that staff would do notifications for the appellant to ensure that the hearing could go forward.

Clifton Craven stated that he was given a list of who to notify by staff, which did not include the homeowners association.

Mr. Ribble made a motion to defer Appeal Application A 96-P-049 to October 17, 2000 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 451, September 12, 2000, (Tape 2), After Agenda Item:

Approval of May 16, 2000 Minutes

Mr. Hammack made a motion to approve the May 16, 2000 Minutes. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 451, September 12, 2000, (Tape 2), After Agenda Item:

Approval of September 5, 2000 Resolutions

Mr. Hammack made a motion to approve the September 5, 2000 Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Deborah Hedrick

Approved on: October 9, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 19, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 453, September 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. NANCY C. & STEPHEN A. MCGUIRE, VC 00-D-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line. Located at 6931 Girard St. on approx. 13,595 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 49.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Caldwell-McGuire, 6931 Girard Street, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a second story room addition and a garage to be located 7.3 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 4.7 feet was requested.

Ms. McGuire presented the variance request as outlined in the statement of justification. She stated that the home was old, the addition was needed to provide additional living space, and that the lot was unusually narrow. She said that the addition and garage would have no negative impact on the neighborhood. Ms. McGuire informed the Board that similar variances had been approved in the neighborhood.

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

Mr. Pammel moved to approve VC 00-D-085 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY C. & STEPHEN A. MCGUIRE, VC 00-D-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line. Located at 6931 Girard St. on approx. 13,595 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 49. 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 19, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is narrow.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

- 1. This variance is approved for the location of a two-story addition as shown on the plat prepared by Kenneth W. White, dated, May 24, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Kelley 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 September 27, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 455, September 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. IRENE VAN SLYKE, A/K/A IRENE A. BROWN, SP 00-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from side lot line. Located at 3417 Reedy Dr. on approx. 22,641 sq. ft. of land zoned R-1. Providence District. Tax Map 59-1 ((12)) 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. Mel Van Slyke, 3417 Reedy Drive, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to minimum yard requirements based on error in building location to allow a workshop to remain 4.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a modification of 16 feet was requested.

Mr. Van Slyke presented the special permit request as outlined in the statement of justification. He informed the Board that he was unaware of the error and explained that the current workshop was constructed to replace a shed that was badly deteriorating and was no longer able to provide any type of storage. He said that he had purchased the workshop from a company who professionally installed it where the old storage shed had been. He stated that it was in character with the neighborhood.

Mr. Hart asked whether the applicants had read and agreed with the proposed development conditions. Mr. Van Slyke stated that they did.

Chairman DiGiulian called for speakers.

John Edy, (no address given for record), came forward to speak. He stated that he was neither opposed to, or in favor of the application. He requested a clearer understanding of the limits of the special permit.

Chairman DiGiulian explained that any other proposed construction within the set back would have to be approved by the Board. Mr. Edy replied that with the explanation given, he had no opposition to the workshop.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 00-P-042 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

IRENE VAN SLYKE, A/K/A IRENE A. BROWN, SP 00-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from side lot line. Located at 3417 Reedy Dr. on approx. 22,641 sq. ft. of land zoned R-1. Providence District. Tax Map 59-1 ((12)) 5. 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 19, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the workshop shown on the plat prepared by Brian W. Smith, Land Surveyor, dated October 24, 1995, revised through June 21, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit and an Electrical Permit shall be obtained and approval of final inspection shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 5-0-1. Mr. Ribble abstained from the vote and 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 September 27, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 456, September 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. ANDREW S. & THERESA G. LATHOM, VC 00-D-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 9101 Weant Dr. on approx. 35,410 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 47A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, 14368 Nandina Court, Centreville, Virginia, replied that it was.

Mr. Hammack recused himself from the hearing stating that he had done some work on an estate issue for a member of Ms. Kelsey's family.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a second story room addition above the existing dwelling and above the proposed garage. The variance requested was for 10 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 10 feet was requested for the second story addition above the proposed garage.

Ms. Greenlief, agent for the applicants, presented the variance request as outlined in the statement of justification. She said the property was located in a subdivision made up of older homes and many of them had been upgraded. She stated that the applicants proposed to enclose the existing one car carport and expand it to a two car garage with living space above. She said the total width of the new garage would be 29.9 feet and it would be located 10 feet from the side lot line. She explained that the subdivision had already existed before it was zoned RE; consequently, very few of the recorded lots in the subdivision met the minimum lot width requirement of 200 feet. Ms. Greenlief informed the Board that the lot in question had the largest ratio of length to width in the subdivision. She said the lot was over three times as long as it was wide and the width of the property was only 100 feet, which was half of what was required in the RE District. She stated that several of the lots in the area had received similar variances in the 1980's and 1990's to upgrade their homes.

Ms. Greenlief mentioned that there was a letter in opposition from neighbors on lots 46A and 45. She explained that the addition would be 70 feet from the neighbor's home to the addition and there was a tree buffer in between the properties. She stated that the applicant was also willing to plant trees along the side of the addition to help with the visual impact.

Chairman DiGiulian called for speakers.

Nick Pfeiffer and Elizabeth Huebner, 9103 Weant Drive, came forward to speak in opposition. Mr. Pfeiffer stated that they had no objection to the expansion of the garage, but they did oppose the second story addition on top of the garage as it would resemble a wall. He said the addition faced their bedroom windows and the majority of the trees that buffered the two properties were dying. He submitted a letter in opposition from the neighbors on the opposite side of the home.

Mr. Hart asked if there was a large height differential between the two homes. Mr. Pfeiffer replied that there was. Ms. Huebner informed the Board that the base of the applicant's garage would be at the top of their fence. Mr. Hart asked how deep was the tree buffer between the two properties. Mr. Pfeiffer stated that the trees were within 10 feet of their home; however, they were mature trees and many of them needed to be taken down.

Becky Hallenger, 9024 Weant Drive, Great Falls, Virginia, came forward to speak in opposition. She stated that the applicant's proposal would project what could be considered a wall too close to the property line and; therefore, diminish the property value of the adjacent homes. She said she supported the one story enclosed two car garage.

Mr. Hart asked what was the maximum height for a home in the RE District. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it was 35 feet. Mr. Hart asked what was the proposed height for the addition. Ms. Langdon replied that it was 21 feet.

Ms. Greenlief, in her rebuttal, stated that the applicant was willing to work with the neighbors as to the design of the addition. She said that the addition could be architecturally designed so it did not resemble a wall. She informed the Board that there were several two-story additions that existed in the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 00-D-088 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW S. & THERESA G. LATHOM, VC 00-D-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 9101 Weant Dr. on approx. 35,410 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 47A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is exceptionally narrow.
4. The location of the septic field, swimming pool and deck preclude putting the garage anywhere else then what was requested.
5. The proposed height of 21 feet will not create an undue impact on the adjacent neighbors.
6. The extensive vegetation that already exists is a substantial buffer of any visual impacts from the addition.
7. There is a development condition that requires architectural compatibility that will address the speakers concerns.
8. There was a litany of variances previously granted for similar lots on the street of the requested distance or less from side lot lines.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a two-story addition as shown on the plat prepared by John A. Kephart, dated, January 12, 2000, as revised through June 19, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack recused himself from the meeting and 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 September 27, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 459, September 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. DANIEL R. & JANE W. RUSSELL, VC 00-D-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.2 ft. from rear lot line. Located at 12202 Meadowstream Ct. on approx. 15,289 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((17)) 394.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dan Russell, 12202 Meadow Stream Court, Herndon, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a sunroom addition to be located 23.2 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 1.8 feet was requested.

Mr. Russell presented the variance request as outlined in the statement of justification. He stated that the rear property line was not straight; therefore, the variance was needed for a corner of the sunroom.

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

Mr. Ribble moved to approve VC 00-D-087 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL R. & JANE W. RUSSELL, VC 00-D-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.2 ft. from rear lot line. Located at 12202 Meadowstream Ct. on approx. 15,289 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((17)) 394. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 19, 2000; and

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

1. The applicants are the owners of the land.
2. The lot is unusually shaped.
3. The rear lot line does not run parallel to the house and thus causes the need for the variance on one small corner.
4. The variance request 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 21, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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.

Ms. Gibb 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 September 27, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN PAUL JAMES, VC 00-D-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line such that side yards total 19.4 ft. Located at 8020 Falstaff Rd. on approx. 16,378 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 327.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Paul James, 1327 Oberon Way, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition to be located 6.0 feet from the side lot line so that total side yards measured 19.4 feet. The Zoning Ordinance requires a minimum side yard of 8 feet; therefore, a variance of 2 feet was required for the addition. The Zoning Ordinance also requires side yards to total a minimum of 24 feet; therefore, a variance of 4.6 feet was required for the total side yard.

Mr. James presented the variance request as outlined in the statement of justification. He explained that the home was purchased with the intent to establish a rental property for the international community. He said that the prospective renters requested an attached garage, which prompted the variance request. He stated that the architectural committee of the homeowners association had approved the garage.

Ms. Gibb asked if there was any other location on the lot to construct the garage. Mr. James replied that there was not due to the location of the home on the lot. Ms. Gibb mentioned that there was a letter in opposition from an adjacent neighbor and asked Mr. James to comment on the issues. Mr. James addressed the concerns regarding drainage by stating that the patio in the back of the house had been regraded to redirect the water to two underground drains; therefore, the amount of water in the front of the property was cut in half. He further explained that there were two swales in the front of the home that drained the water into the street; therefore, drainage would not be an issue. He stated that the air conditioning unit was being relocated to the front corner of the home, thus, eliminating any noise issues.

Mr. Hart asked whether the abutting wall between the two homes would be removed due to the construction of the garage. Mr. James replied that the wall would initially be removed and then replaced with brick of the same type.

Chairman DiGiulian called for speakers.

Charlotte Bassett-Zimmerman, 8106 Burnham Wood Drive, came forward to speak in support. She stated that she was the Vice Chair of the Hamlet's Architectural Control Committee. She endorsed the garage addition and stated the committee's opinion that the garage would improve the usefulness of the property and enhance the appearance of the neighborhood.

Robert Engall, 1329 Oberon Way, came forward to speak in support. He stated that he was a neighbor of the applicant's primary residence, which had recently been under construction. He stated that it was his opinion that the applicant performed quality construction work.

Neils Outzen, 1307 Titania Lane, came forward to speak in support. He stated his opinion that the garage would improve the neighborhood.

Jason Davis, 8018 Falstaff Road, came forward to speak in opposition. He stated that he was concerned with the closeness and the proximity of the addition. He explained that, with the proposed addition, there would only be approximately 11 1/2 feet between the two garages and due to their higher elevation the water would overcome the drainage swale in the front yard and flood the side yards. He said the closeness of the two garages would detract from the appearance of the neighborhood. He stated that there was ample room on the backside of the home to construct the garage which he would have no opposition to.

Mr. Hart asked Mr. Davis to explain the drainage layout of the two properties and how the proposed garage would alter it. Mr. Davis explained that the two lots to the rear of them drained towards their properties and the downspouts from the applicant's home discharged to the proposed construction site; therefore, the excess water would be forced into the swale and therefore flood the side yards.

Mr. James, in his rebuttal, reiterated that there would be no water problems as the yard had been regraded to prevent any drainage problems.

Chairman DiGiulian closed the public hearing.

Ms. Gibb asked whether a grading plan was required as a part of a building permit request. Ms. Wilson stated that storm water runoff design was taken into account and whether it interfered with the overall subdivision design.

Ms. Gibb moved to approve VC 00-D-093 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN PAUL JAMES, VC 00-D-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line such that side yards total 19.4 ft. Located at 8020 Falstaff Rd. on approx. 16,378 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 327. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 2000; and

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

1. The applicant is the owner of the land.
2. The variance request is minimal.
3. Because the lot is narrow, the garage cannot be placed in any other location.
4. Several side yard variances have been approved in the neighborhood.
5. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Peter R. Moran, dated June 23, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Hart 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 September 27, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 463, September 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. MARK E. & LINDA STEINER, VC 00-Y-100 Appl. under Sect(s). 18-401 of the Zoning

Ordinance to permit construction of deck 9.0 ft. and addition 17.3 ft. from rear lot line and deck 5.4 ft. from side lot line. Located at 12134 Westwood Hills Dr. on approx. 20,753 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-1 ((16)) 75. (Moved from 10/3/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Steiner, 12134 Westwood Hills Drive, Oak Hill, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a screened porch addition to be located 17.3 feet from the rear lot line and construction of a deck 9 feet from the rear lot line and 5.4 feet from a side lot line. For the addition, the Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 7.7 feet was required. The Zoning Ordinance requires a minimum 20 foot side yard for the subject lot, but permits a deck of the proposed height to extend to 13 feet in the rear yard; therefore, a variance of 4 feet in the rear yard and 14.6 feet in the side yard was required for the deck.

Mr. Steiner presented the variance request as outlined in the statement of justification. He stated that his home was on extremely steep land and the street was higher than his roofline. He explained that he had a walkout basement with parkland to the rear. He said that the trees from the parkland had grown considerably over the house and saturate the deck with sap and leaves; thus requiring him to request a variance to enclose the deck. He informed the Board that he had full neighborhood support.

Mr. Hammack asked Mr. Steiner to demonstrate the layout of the property for the Board. Mr. Steiner complied.

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

Mr. Hammack moved to approve VC 00-Y-100 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK E. & LINDA STEINER, VC 00-Y-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 9.0 ft. and addition 17.3 ft. from rear lot line and deck 5.4 ft. from side lot line. Located at 12134 Westwood Hills Dr. on approx. 20,753 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-1 ((16)) 75. (Moved from 10/3/00) 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 19, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is unusually shaped.
4. The lot has several topographical considerations that impact its use and 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and deck shown on the plat prepared by Rice Associates, revised through July 10, 2000 and certified on July 11, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. 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 September 27, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 465, September 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. CHANG S. & CHUNG S. KIM, SPA 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning

Ordinance to amend SP 94-S-033 previously approved for a golf driving range and related facilities to permit change in development conditions, site modifications and building additions. Located at 11501 Braddock Rd. on approx. 46.45 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (Reconsideration granted on 7/18/00).

Chairman DiGiulian stated that there was a request for a deferral. Lynne Strobel, agent for the applicant, stated that citizen's requested some additional light readings; however, that could not be done until the month of November when the leaves fell from the deciduous trees along the property line; therefore, they requested that the application be deferred until that time. Mr. Pammel stated that November was too early for all of the leaves to have fallen and suggested a deferral until December 19, 2000. Ms. Strobel replied that she was in agreement.

Mr. Pammel moved to defer SPA 94-S-033 until December 19, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 466, September 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. TYSONS II LAND LLC, SPA 93-P-023 Appl. under Sect(s). 6-204 of the Zoning Ordinance to amend SP 93-P-023 previously approved for a circus to permit change in development conditions and increase in land use. Located at 8025, 8075, 8108 Galleria Dr. and 1750, 1775, 1800, 1801 Tysons Blvd. on approx. 28.06 ac. of land zoned PDC, HC and SC. Providence District. Tax Map 29-4 ((10)) 3B, 3C, 5A, 5B, 5C, 2, 2A1, 2A2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin Tompkins, Reed, Smith, Hazel and Thomas, P.O. Box 12001, Falls Church, Virginia, replied that it was.

Mr. Hart disclosed that he, more than one year ago but less than two, was retained as an expert witness in a case for Reed, Smith, Hazel and Thomas, that had since been concluded.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested an amendment of a previously approved temporary Group 8 special permit to allow changes in development conditions to permit an opening night celebration, an increase to the number of patrons from 2,500 to 2,600, an increase to the land area from 19.95 acres to 28.06 acres and extending the bi-annual performances to the 2000, 2002, 2004 and 2006 calendar years.

Staff noted that they received revised proposed development conditions from the applicant's agent requesting that the use of the special permit not cease upon development of parcels 2A2, 3B and 3C, but the parking spaces be provided elsewhere on the subject property to the satisfaction of the Zoning Administrator. Mr. Bernal explained that staff did not have ample time to consult with the Zoning Administrator regarding these conditions and requested that if approval was given for this special permit, the proposed development conditions in the staff report dated September 12, 2000, be implemented.

Mr. Tompkins presented the special permit amendment request as outlined in the statement of justification. He stated the application was a straightforward renewal of an existing special permit. He explained that the circus had been at the location three times in the past with no negative effect on the neighbors. He requested a waiver of the 8-day waiting period as the opening ceremony was in the very near future. Mr. Tompkins submitted revised Development Conditions to allow 74 parking spaces presently located on parcels 3B and 3C to be able to be relocated to a different area of the application property that was acceptable to the Zoning Administrator in the year 2004 upon construction of a major office building on the adjacent parcel 3A.

Mr. Hammack asked if any of the existing parking interfered with the parking for the office complex in Tysons II. Mr. Tompkins stated that most of the performances began after 5:00 p.m. and the office complex did not fill the minimum parking spaces required; therefore, there was adequate space available for additional parking.

Mr. Hart asked for clarification as to why the applicant's revised development conditions were based on the Zoning Administrator's approval. Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the conditions were received too late the previous evening to be reviewed by the Zoning Administrator.

Mr. Hammack voiced his opinion that the Board could not delegate that kind of authority to the Zoning Administrator and the revised development conditions required a complete public hearing.

The Board discussed the issue of accepting the applicant's revised development conditions or the possibility of the need to schedule a new public hearing. Mr. Hammack stated his opinion that their needed to be a new public hearing to take into consideration the request to relocate the parking.

Mr. Pammel stated that the applicant's request was reasonable and all of the parking was going to be provided on site. He said that it was the standard for all special permits that all off-street parking was to be located on-site; however, it may have to be relocated to a different on-site area due to future development. He also stated that the Zoning Administrator had the ability to determine where on the site the parking could be located.

Mr. Hart stated that it was not something that needed to be dealt with until the year 2004, and the Board did not need to make a decision at that time. Mr. Tompkins stated that there would not be a hardship if the matter were not taken up until 2004 in the form of an amendment.

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

Mr. Pammel moved to approve SPA 93-P-023 with the applicant's proposed development conditions and for the reasons stated in the Resolution. Mr. Hammack seconded the motion for the purpose of discussion.

After additional discussion between the Board members as to whether or not a new hearing needed to be scheduled regarding the parking request, it was decided that the applicant could come back before the Board in 2004 and they would consider the request at that time.

Mr. Hart amended the motion to remove the applicant's proposed development conditions. Ms. Gibb seconded the motion which carried by a vote of 6-0. 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

TYSONS II LAND LLC, SPA 93-P-023 Appl. under Sect(s). 6-204 of the Zoning Ordinance to amend SP 93-P-023 previously approved for a circus to permit change in development conditions and increase in land use. Located at 8025, 8075, 8108 Galleria Dr. and 1750, 1775, 1800, 1801 Tysons Blvd. on approx. 28.06 ac. of land zoned PDC, HC and SC. Providence District. Tax Map 29-4 ((10)) 3B, 3C, 5A, 5B, 5C, 2, 2A1, 2A2. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 2000; and

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

- 1. The applicants are the owners of the land.

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 Sect(s). 6-204 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Tysons II Land LLC 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. Other by-right, special exception and special permit uses may be permitted on the site without special permit amendment, if such uses do not affect this special permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by J. Thomas Tanner, P. E. of Dewberry & Davis LLC, dated July 6, 2000, 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. An opening night celebration shall be permitted to take place in the parking garage structure. The celebration shall only be permitted for one evening on or before opening night. The hours shall be limited to a maximum closing time of 2:00 A.M. The number of guests shall not exceed 800. The applicant shall comply with all applicable alcoholic beverage control laws of the Commonwealth of Virginia.
5. The theatrical production use at the subject site shall be limited to a time period between September and November, bi-annually, including all site preparation and restoration time before and after the production. The Special Permit is approved for the 2000, 2002, 2004 and 2006 calendar years provided the use is operated in accordance with these conditions and there are no parking or other verified violations or disturbances of the surrounding area. The Zoning administrator is granted the authority to extend the permit for six (6) additional years to allow three (3) additional bi-annual performances provided that there are no parking or other verified violation or disturbances to the surrounding area. However, the use shall cease prior to that time if the site is developed in accordance with the proffered Conceptual Development Plan/Final Development Plan, accepted by the Board of Supervisors pursuant to the approval of RZ-84-D-049 or any applicable Proffered Condition Amendments.
6. The hours of operation for performances shall be limited to 1:00 P.M. to 1:00 A.M. daily. There shall be a maximum of two performances per day.
7. The maximum number of tickets sold per performance shall not exceed 2,600.
8. The number of employees and performers associated with this use shall be limited to 125 on-site at any one time. In addition, temporary service personnel as needed are permitted and an adequate number of police officers, security guards or Cirque du Soleil personnel 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.
9. The applicant shall provide an adequate number of parking spaces to accommodate 2,600 patrons which shall be a minimum of 650 spaces located on site. A minimum of 163 parking spaces shall be provided on Lots 5A and 5B, 74 parking spaces on lots 3B and 3C and 413 parking spaces on Lots 2A1 and 2A2 within the parking garage. All parking shall be clearly designated an access to parking clearly signed.
10. There shall be no carnival rides or games operated on-site.
11. All trash and debris shall be contained on the site and shall be picked up two (2) to three (3) times per day and placed in thirty (30) cubic yard closed containers that will be emptied weekly.
12. Any signs, banners or advertising shall conform with Article 12 of the Zoning Ordinance and shall be approved by the Zoning Enforcement Branch.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with

Page 469, September 19, 2000, (Tape 1), TYSONS II LAND LLC, SPA 93-P-023, continued from Page

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. 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb 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 September 19, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 469, September 19, 2000, (Tape 1) Scheduled case of:

- 9:30 A.M. LENORA BEVERLY, A 2000-SU-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located on the W. side of Ordway Rd., approx. 1,000 ft. S. of Compton Rd. on approx. 1.81 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76D. (CONTINUED FROM 9/5/00)
- 9:30 A.M. ARTHUR W. BEVERLY, A 2000-SU-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located at 7100 Ordway Rd. on approx. 12,188 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76A. (CONTINUED FROM 9/5/00)
- 9:30 A.M. ROLLIE M. BEVERLY, A 2000-SU-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located on the W. side of Ordway Rd., approx. 1,000 ft. S. of Compton Rd. on approx. 1.81 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76B. (CONTINUED FROM 9/5/00)
- 9:30 A.M. IRVING O. MAHON AND DAUGHTERS, A 2000-SU-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not a buildable lot under Zoning Ordinance provisions. Located on the W. side of Ordway Rd., approx. 1,000 ft. S. of Compton Rd. on approx. 1.81 ac. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76C. (CONTINUED FROM 9/5/00)

William E. Shoup, Deputy Zoning Administrator, informed the Board that they had not received any information from the Beverly Family which was requested by the Board at the September 5, 2000, hearing.

Diane Johnson-Quinn, Staff Coordinator, stated that staff had researched the Comprehensive Plan to determine why sewer service had been extended along the Ordway Road area and whether or not Community Development Block Grant (CDBG) funds were used in the extension. She explained that there was an Ordway Road Conservation Area Plan adopted by the Board of Supervisors and there was a Comprehensive Plan Amendment to designate the Plan area as well as to allow for the sewer extension and there was also a sewer extension approval. She explained that the area was 95 acres with 24 single family dwelling units which were all 35 years of age, on one acre or smaller lot sizes and all of them were experiencing septic failures or they had privies. She said that due to these health hazards it was determined that sewer service should be extended to that area to preserve the neighborhood. Ms. Johnson-Quinn informed the Board that no CDBG funds were used for the extension although County funds were used.

Arthur Beverly stated that he had received a letter from the attorney, Mr. Charles Seiver, who had prepared the deed, which raised several points regarding the exemption of the property from the 1975 Zoning Ordinance. He stated that Mr. Seiver had reviewed the tape and the staff report and provided the appellant with the file of information regarding the development of the land and the original family will. Mr. Beverly stated that he had reviewed the public records for the conservation area and there were 35 parcels and of those, 25 were noted as buildable but poor lots, 5 were not buildable because the land would not perk and one was noted as a buildable average lot.

Ms. Gibb asked what was the engineer's perspective of the situation. Mr. Beverly stated that the engineer informed him that he performed what was requested on the deed and developed the land accordingly, when he executed the survey, and that he had no knowledge of any exemptions.

Mr. Ribble requested to review the file.

Mr. Hart asked the appellant if he had any information, which provided that the property was under exemption from the 1975 Zoning Ordinance. Mr. Beverly replied that he had no other information besides what was contained in the file and the letter of explanation from his attorney.

Mr. Hart asked whether or not staff had reviewed the file or the letter from the appellant's attorney. Mr. Shoup stated they had not and asked if they could have some time to review the information.

Mr. Hart asked if there were specific exemptions to the Zoning Ordinance in 1979, which exempted certain plats from the requirements of the Subdivision Ordinance and if so, what were they. John Foster, Deputy County Attorney, replied that an answer to the question would require research and consultation with the Zoning Administrator's Office. He stated that even if the representations in the letter were accurate, the message made reference to the Subdivision Ordinance and made no reference to the provisions of the Zoning Ordinance.

There was conversation between Mr. Pammel and Mr. Shoup regarding a possible resubdivision of the lots in question, how many buildable lots could be formed and whether the County had established a Conservation Area and a Capital Improvement Program, which provided funds to connect sewer service to the lots and the surrounding area. The outcome was that the lots were recorded under the current Zoning Ordinance and were then zoned R-1, three of the four lots, which were the subject of the appeal, met the lot area requirement and none of them met the lot width requirement. Because the tract that made up the four lots was slightly more than seven acres, to resubdivide the lots under the current Zoning Ordinance, would only provide one buildable lot out of the entire tract.

The Conservation Area and the Capital Improvement Program did not contemplate allowing the use of land which was not in conformance with the Zoning Ordinance.

Ms. Gibb asked the appellants if they had spoken to their Supervisor regarding the problem. Mr. Beverly replied that he had met with Mr. Frye, and although he agreed with their position, they would have to get approval from the Board of Zoning Appeals.

Ms. Gibb asked staff if the Board of Supervisors could move to rezone the land to suit the appellants. Ms. Johnson-Quinn replied that the Board of Supervisors was reluctant to approve any rezonings in the R-C District because it was in the Occoquan Watershed Area.

Upon review of the file the Board asked for definitions of two provisions of the 1974 Zoning Ordinance Sections which were Section 101 and Section 101-1-7 and asked for a copy of Section 101-1-7 to be faxed to the Boardroom. Mr. Shoup explained the Section 101 was the Subdivision Ordinance and that DPWES administered the Subdivision Ordinance so it would take time to research what was in effect in 1979.

Mr. Beverly asked for clarification of whether or not a house could be remodeled if it was located in the Conservation Area. Mr. Shoup answered that the County could not issue any building permits of any type for the lot because the Zoning Ordinance stated that the lot must be in compliance with all other Ordinances. Mr. Beverly stated that the County made some home improvements to his mother's home in 1998 and asked whether that was allowed under the Zoning Ordinance. Ms. Johnson-Quinn replied that the Housing and Community Development Department reported that they had repaired windows and doors to Ms. Beverly's

Page 471, September 19, 2000, (Tape 1); LENORA BEVERLY, A 2000-SU-009; ARTHUR W. BEVERLY, A 2000-SU-012; ROLLIE M. BEVERLY, A 2000-SU-016; IRVING O. MAHON AND DAUGHTERS, A 2000-SU-018; continued from Page 470

home and the funds were generated through a grant for elderly people and that the funds for water and sewer connection to her home were generated through a loan program.

Mr. Pammel stated his opinion that Federal funds were used towards the connection of the utilities.

Mr. Hart asked whether there was a permit issued to connect water and sewer to the home. Ms. Johnson-Quinn stated that there were no permits in the files.

The Board recessed at 11:34. The Board reconvened at 11:54.

Mr. Hart asked for clarification that Section 101-1-7 had not been amended since 1979. Mr. Foster stated that was correct.

Mr. Beverly, in closing, stated his belief that the Conservation Area Plan that the County constructed for this area was proof that the lots were viewed as buildable lots. He asked Mr. Pammel to elaborate on his comment that Federal Funds were used to assist in the water and sewer connections. Mr. Pammel replied that there was a possibility of some conflict with the way the funds were allocated and what was the ultimate purpose for the lots.

Mr. Shoup stated that Section 101-1-7 did not provide any proof of exemption of the Zoning Ordinance requirements.

Chairman DiGiulian closed the public hearing.

Ms. Gibb said that the County's actions of accepting and recording the lots, taxing the lots as buildable for a period of 21 years, making repairs to an existing home on one of the lots and connecting water and sewer to the lots ratified that the lots were legal and buildable. She stated that the County, by its actions, acquiesced to the legality of the lots. Ms. Gibb said that there were other similar cases in which the Board also reversed the opinion of the Zoning Administrator.

Mr. Pammel stated that the record indicated that the lots were buildable and that there were several issues that concerned him such as the use of public funds mixed in with Federal funds that were used to perform repairs to homes in the Conservation District.

Mr. Hammack stated that the reasons that had been given did not justify the Board to set aside the decision of the Zoning Administrator.

Mr. Hart stated that the division of the property in 1979 did not meet the zoning requirements and that the appellant had not successfully shown that there was a legitimate exemption to allow the lots to be buildable.

Ms. Gibb moved to reverse the determination of the Zoning Administrator regarding appeal application A 2000-SU-009, Lenora Beverly.

Ms. Gibb moved to reverse the determination of the Zoning Administrator regarding appeal application A 2000-SU-012, Arthur W. Beverly.

Ms. Gibb moved to reverse the determination of the Zoning Administrator regarding appeal application A 2000-SU-016 Rollie M. Beverly.

Ms. Gibb moved to reverse the determination of the Zoning Administrator regarding appeal application A 2000-SU-018 Irving O. Mahon and Daughters.

Mr. Ribble seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Hart voted nay and Mr. Kelley was not present for the vote.

Mr. Pammel made a motion that County Staff in conjunction with the County Attorney's office prepare an in-depth analysis of the use of public funds, including federal funds, in this particular conservation area. He specifically requested an answer as to why funds for connecting water and sewer were allocated to Mr. Beverly's home when the County had determined that no improvements could be made to the home.

Page 472, September 19, 2000, (Tape 1); LENORA BEVERLY, A 2000-SU-009; ARTHUR W. BEVERLY, A 2000-SU-012; ROLLIE M. BEVERLY, A 2000-SU-016; IRVING O. MAHON AND DAUGHTERS, A 2000-SU-018; continued from Page 471

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

The Board requested that a copy of the original file regarding the property be included in the file.

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Page 472, September 19, 2000, (Tape 1) After Agenda Item:

Approval of September 12, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions. There was no second and the motion carried by a vote of 5-0-1. Mr. Pammel abstained from the vote and Mr. Kelley 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 12:27 p.m.

Minutes by: Lori M. Mallam

Approved on: December 19, 2000

Regina Thorn Corbett
Regina Thorn Corbett, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 26, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 473, September 26, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CYNTHIA & RUSSELL MESSINGER, VC 00-Y-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from rear lot line. Located at 13513 Brightfield La. on approx. 7,321 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (4) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cynthia and Russell Messinger, 13513 Brightfield Lane, Franklin Farms, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 12.1 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 12.9 feet was requested.

Ms. Messinger presented the variance request as outlined in the statement of justification submitted with the application. She stated that the house was built on the back portion of the lot which had unique topographical conditions: Ms. Messinger stated that there was no other location for the addition. She said there would be a minimal effect on the neighboring property because there were two large pine trees providing screening. Ms. Messinger stated that the neighbors were in support of the application and that the addition would enhance the value of the home.

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

Mr. Hammack moved to approve VC 00-Y-095 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CYNTHIA & RUSSELL MESSINGER, VC 00-Y-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from rear lot line. Located at 13513 Brightfield La. on approx. 7,321 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (4) 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 September 26, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a two-story room addition as shown on the plat prepared by David Hangen, dated May 22, 2000, 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.

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 4, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 474, September 26, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DAVID REEVES, VC 00-Y-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yards of a corner lot. Located

at 14518 Flagstaff Ct. on approx. 25,921 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 65-1 ((5)) 9. (Continued from 8/8/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Reeves, 14518 Flagstaff Court, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, stated that the subject application was continued from August 8, 2000, to allow the applicants to revise the plat at the Board's request to show where the sight distance requirement would be located. He said the Board also had questions regarding the application. The first question was whether a citizen could build a fence within the storm drainage easement. Mr. Bernal stated that according to Bill Rittenour of the Department of Public Works and Environmental Services, a citizen could build a fence in an easement as long as it did not impede access by the County to the facility or impede the purpose of the facility. He said the second question was whether the fence and the retaining wall would be measured as one structure. Mr. Bernal stated that according to the Zoning Administration Division's interpretation files, a fence and a retaining wall would be considered one structure if they were within three feet of each other. He said in this case they would be considered one structure to the height of 9 feet 6 inches. Therefore, staff changed the request to the variance in order to permit a fence greater than 4 feet to remain in the front yard of a corner lot. Mr. Bernal stated that at the request of the Planning Commissioner of the Sully District, a second development condition was added which required the applicant to maintain the fence free from graffiti. He stated that copies of the revised development conditions, dated September 25, 2000, were distributed to the Board.

Mr. Reeves presented the variance request as outlined in the statement of justification submitted with the application. He stated that the reason for the variance was because his back yard was considered a front yard. Mr. Reeves stated that he would move the back part of the fence if necessary. He said he had contacted the Virginia Department of Transportation about moving the stop sign forward a couple of feet and they were currently reviewing the plat to obtain a determination.

Chairman DiGiulian called for speakers.

Robert Reeves, 110 Olive Circle, Montross, Virginia came forward to speak in support of the application. He stated that the retaining wall was placed there because the lawn was washing away. He said the fence was attractive and there were other 6 foot fences in the neighborhood. Mr. Reeves stated that the fence should be allowed to remain.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the application concerned him because in effect there was a 9-foot combination wall and fence on one side. He said that was not something the Board had approved in the past. Mr. Pammel stated that he understood the circumstances but 9 feet at that intersection was a bit much and he was not satisfied that the sight distance criteria had been met. He said he appreciated the fact that this was an unusual situation, which the applicant had an unusual lot that had three front yards with frontage on streets that he did not use. Mr. Pammel said that this was a creation of the developer and it was one of those that he did not think met the standards for the requested variance. He moved to deny VC 00-Y-063.

Mr. Hart seconded the motion. He stated that he would have supported the application if the corner of the fence on St. Germaine would be moved outside of the sight distance line and if the fence that was on top of the wall was lowered.

Mr. Hart asked Mr. Reeves would he agree to lowering the height of the fence and moving the corner out of the sight distance line. Mr. Reeves asked how much should the fence be lowered.

Mr. Hammack said he did not have a problem with most of the fence but only one corner. He said the fence would be irregular in height if it was lowered in the manner in which the Board was requesting.

Mr. Hart said when you were seated in a car at the stop sign, you could not see over the fence. He said the Board was trying to come up with a solution that did not cause an adverse impact for adjoining properties or the people using the intersection.

Mr. Pammel withdrew his previous motion and moved to approve in part VC 00-Y-063 for the reasons noted in the Resolution. He said the fence should be set back 10 feet from both corners.

Mr. Hammack said the case was difficult and suggested that the fence only be moved back on the St. Germane side.

Chairman DiGiulian noted that new plats would be needed. The motion carried by a vote of 7-0.

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Page 476, September 26, 2000, (Tape 1), Scheduled case of:

9:00 A.M. HOWARD L., JR. & DOROTHY A. BARRETT, VC 00-V-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line of a corner lot and 12.0 ft. from side lot line. Located at 7715 Northdown Rd. on approx. 26,578 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((18)) 24. (OTH approved).(Def. From 9/5/00)

Mr. Hammack gave a disclosure stating that he had done legal work for one of the agent's family members, which might be a technical conflict. He recused himself from the meeting.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey & Associates, replied that it was. Ms. Kelsey stated that Lori Greenlief would be making the presentation.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of a dwelling to be located 20.0 feet from the front lot line of a corner lot and 12.0 feet from a side lot line. A minimum front yard of 35 feet is required and a minimum side yard of 15 feet is required. Therefore, variances of 15.0 feet for the front yard and 3.0 feet for the side yard were requested. Mr. Bernal stated that the application had been granted an out-of-turn request and had been continued from September 5, 2000, in order to allow the applicant to address the concerns from the surrounding community. He said copies of the revised affidavit dated September 12, 2000, and a revised plat dated September 11, 2000, had been distributed to the Board.

Mr. Hart asked whether there were revised development conditions. Mr. Bernal replied that the applicant had proposed revised development conditions.

Ms. Greenlief, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said they had submitted a supplemental justification and asked that it be included in the official record. Ms. Greenlief said the application met the required standards. She said the applicant's lot was valuable but because of physical hardships of the lot, it was only valuable to the degree that it was buildable. Ms. Greenlief stated that the lot had an exceptional shape, a septic field easement, marine clay soils, and three front yards that contributed to the hardship of building a dwelling on the property. She said the proposed location was the most logical for the dwelling. Ms. Greenlief stated that the dwelling would not cause an adverse impact on the adjacent residences. She said the applicant agreed to save as many trees as possible and that they would remove the fencing along the road. Ms. Greenlief submitted letters in support of the application and photographs of the houses in the area. She stated that there had been several variance granted in the neighborhood.

Mr. Hart asked staff whether they had reviewed the applicant's proposed development conditions. Mr. Bernal replied that staff had reviewed the conditions and were in agreement with them.

Chairman DiGiulian called for speakers.

William Donohoe, 7720 Southdown Road, John Youngsteiner, no address given, Diane Oksanen- Gooden, 7723 Southdown Road, and Andrew Patterson, 7850 Southdown Road, came forward to speak in opposition. They expressed concerns relating to preserving the character of the neighborhood, increased density, size of structure not being compatible with the community, setting a precedent, the location of the driveway, and that the property could be more acceptably developed.

Mr. Pammel asked Mr. Donohoe to present the other options available for developing the lot. Mr. Donohoe

replied that he was not an engineer, but felt that the applicants could add onto and develop the existing structure or design a house with the constraints of the lot.

Ms. Greenlief stated in her rebuttal that the Barretts offered to sell some of their property to Mr. Donohoe so that he could have a larger lot but that offer was declined. She said Ms. Trevison met with the neighbors who consequently reversed their opinion to support the application. Ms. Greenlief stated that the character of the area had already changed. She stated that the applicant had worked extensively with the architect to find a design that would be reasonable and would fit within the buildable area. Ms. Greenlief stated that the subject property was well below the average Floor Area Ratio. She said the existing home was functionally obsolete. Ms. Greenlief stated that a precedent had already been set in this neighborhood by the other variances granted in the area. Ms. Greenlief requested a waiver of the 8-day waiting period.

Mr. Pammel asked whether there was a formal determination that the best use of the property would be to remove the existing structure. Ms. Kelsey responded that the applicants had four appraisals done on the house and they had all returned stating that the house was obsolete because it basically had no closets. She said there had not been a formal engineering inspection, but visually there were cracks in the wall and that it would be difficult to renovate or add to and it was too close to the lot line.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 00-V-089 for the reasons noted in the Resolution.

Mr. Kelley said the property would be enhanced by moving of the fence.

Mr. Pammel said that in the event that there was an argument made that the shape of the lot created was a self-imposed hardship by reason of how it occurred, back in 1949 when the subdivision occurred, it occurred as a result that there were two residences on the same property which was not consistent with the Zoning Ordinance at the time. He said it was logical to assume that the residences were constructed prior to the adoption of the Zoning Ordinance for Fairfax County.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOWARD L., JR. & DOROTHY A. BARRETT, VC 00-V-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line of a corner lot and 12.0 ft. from side lot line. Located at 7715 Northdown Rd. on approx. 26,578 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((18)) 24. (OTH approved). (Def. From 9/5/00) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The proposed development conditions mitigate potential impacts.
4. The lot is strangely shaped which causes building constraints.
5. The additional justification submitted by the applicant indicates that the lot has a marine clay problem.
6. The evergreens help with screening from Lot 24A.
7. The density or the character of the neighborhood will not change because of the variance 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling as shown on the plat prepared by R. C. Fields, Jr., dated March 17, 2000, as revised through September 11, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction. Approval of final inspections shall be obtained.
3. An easement in the location depicted on the revised plat, shall be provided to the owner(s) of Southdown Road and Gooden Road which is the short curved and narrow street which intersects with Southdown Road, so that intersection might be improved by the owner(s) of those roads to provide safer access to the properties along the northern part of Southdown Road, provided that easement is accepted by said owner(s).
4. A minimum of eight (8) six (6) foot high evergreen trees shall be planted along the common east/west property line with part of lot 24A in the area of the rear garden in order to provide screening for that property.
5. Special construction methods shall be used in the area of the existing specimen tree(s) along the joint property lines of the subject lot and adjacent property (Lot 24A) to ensure to the extent possible that these trees are preserved and not damaged.

- 6. The owner shall take appropriate measures to ensure that there will be no adverse impact from water drainage from the subject property to adjacent properties.
- 7. There will be no vehicular or driveway access from the driveway south to Gooden Road, the curved road to the right.
- 8. The existing 1 1/2 story dwelling, shed and garage shall be removed.
- 9. The existing fences along roadways 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 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 6-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 26, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOSEPH W. FRY, VC 00-B-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from rear lot line. Located at 10807 Steven Lee Ct. on approx. 9,570 sq. ft. of land zoned R-3. Braddock District. Tax Map 68-3 ((16)) 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. David McGilvary, 5922 Fairview Woods Drive, Fairfax Station, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, introduced Jennifer Josiah as a new Staff Coordinator. Jennifer Josiah made staff's presentation as contained in the staff report prepared by Phyllis Wilson. The applicant requested a variance to permit the construction of an addition 11.4 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 13.6 feet was requested.

Mr. McGilvary, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the proposed enclosed porch would replace the existing deck but would cover slightly less feet. Mr. McGilvary stated that there had been similar variances granted in the neighborhood. He said the standards had been met and that the lot was irregularly shaped. Mr. McGilvary said the addition would not be detrimental to adjacent property owners.

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

Mr. Ribble moved to approve VC 00-B-092 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH W. FRY, VC 00-B-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from rear lot line. Located at 10807 Steven Lee Ct. on approx. 9,570 sq. ft. of land zoned

R-3. Braddock District. Tax Map 68-3 ((16)) 11. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant met the required standards for 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated June 12, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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.

Ms. Gibb seconded the motion which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Ms. Gibb 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 26, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. GEORGE J. JILLSON, VC 00-D-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. Located at 6803 Lumsden St. on approx. 10,560 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((19)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George Jillson, 6803 Lumsden Street, McLean, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report prepared by Phyllis Wilson. The applicant requested a variance to permit the construction of an accessory structure in a front yard of a lot containing 36,000 square feet or less.

George Jillson presented the variance request as outlined in the statement of justification submitted with the application. He said the proposal was to build a carport over the existing driveway. He said the side entrance of the house was on a platform, which was one of the reasons the carport could not be attached to the house. Mr. Jillson noted the letters received in support of the application. He said there would be no landscaping changes and the addition would be architecturally compatible with the existing dwelling. Mr. Jillson requested a waiver of the 8-day waiting period.

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

Mr. Gibb moved to approve VC 00-D-094 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE J. JILLSON, VC 00-D-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. Located at 6803 Lumsden St. on approx. 10,560 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((19)) 8. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot is narrow.
4. The carport is located 10.5 feet from the side lot line, which is further away from the lot line than the existing deck.
5. There is no other location for the carport because of the topography of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the accessory structure (garage) shown on the plat prepared by Walter L. Phillips, dated June 28, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 7-0. Ms. Gibb moved to waive the 8-day waiting

period. 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 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 483, September 26, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHARLOTTE ROBINSON, VC 00-M-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.5 ft. from front lot line and 11.5 ft. from side lot line. Located at 6324 Crosswoods Dr. on approx. 16,705 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 613.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charlotte Robinson, 6324 Crossroad Drive, Falls Church, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report prepared by Phyllis Wilson. The applicant requested a variance to permit the construction of additions to include a canopy to be located 14.5 feet from the front lot line. A canopy is permitted to extend 3 feet into any yard; therefore, the minimum yard allowed is 27 feet thus the requested variance was reduced from 15.5 to 12.5 feet for the canopy addition. The applicant also sought approval to permit the enclosure of an existing carport to be utilized as a garage, which was to be located 11.5 feet from the side lot line. A minimum front yard of 15 feet is required; therefore, a variance of 3.5 feet was requested.

Ms. Robinson presented the variance request as outlined in the statement of justification submitted with the application. She presented photographs of the property. Ms. Robinson stated that the proposal to enclose the garage was for security reasons and inclement weather. She said there was no objection from the neighbors.

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

Mr. Kelley moved to approve VC 00-M-097 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLOTTE ROBINSON, VC 00-M-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.5 ft. from front lot line and 11.5 ft. from side lot line. Located at 6324 Crosswoods Dr. on approx. 16,705 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 613. 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 26, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance as indicated in the statement of justification.
3. The staff report indicates that there were other variances approved in the neighborhood.
4. The lot has an exceptional shape.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the additions (enclosed carport/garage and canopy) shown on the plat prepared by SDE, Inc., dated June 26, 2000, signed June 28, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The additions shall be architecturally compatible with the 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. 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 October 4, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. TEMPLE BAPTIST CHURCH, SPA 85-D-009-6 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-D-009 previously approved for a church and related facilities, child care center and school of general education which has an enrollment of 100 or more students daily to permit building addition, site modifications and change in development conditions. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2 ((1)) 7 and 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. David Pittman, Pastor, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report prepared by Phyllis Wilson. The applicant requested a special permit to construct a two-story addition to an existing church building. She said the building addition was to accommodate an additional 288 seats within the sanctuary for a total of 588 seats. Ms. Josiah stated that 59 additional parking spaces were proposed to be constructed on the site. She said the applicant proposed to change the hours of operation to 6:00 a.m. – 6:00 p.m. The applicant also requested flexibility in enrollment between the child care facility and school, with the enrollment of the child care center not exceeding 64 children at any time and the total enrollment of both facilities not to exceed 240 students. Staff recommended approval subject to the proposed development conditions contained in the staff report.

Mr. Pittman presented the request as outlined in the statement of justification submitted with the application. He said the church needed more space and there was no opposition from the neighbors. Mr. Pittman asked to delete development condition #11 dealing with bus service and carpooling.

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

Mr. Hammack moved to approve SPA 85-S-009-6 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TEMPLE BAPTIST CHURCH, SPA 85-D-009-6 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-D-009 previously approved for a church and related facilities, child care center and school of general education which has an enrollment of 100 or more students daily to permit building addition, site modifications and change in development conditions. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2 ((1)) 7 and 7A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony indicating compliance with the required standards for 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 Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following

limitations:

1. This approval is granted to the applicant, Temple Baptist Church, 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), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated January 4, 2000, as revised through June 27, 2000 and approved with this application, as qualified by these development conditions.
3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.
4. 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.
5. With issuance of a Non-Residential Use Permit, the maximum seating capacity for the sanctuary shall be limited to 588.
6. With issuance of a Non-Residential Use Permit, the hours of operation of the child care center shall be limited to 6:00 A.M. to 6:00 P.M., Monday through Friday, and the hours of operation of the school of general education shall be limited to 8:00 A.M. to 3:15 P.M., Monday through Friday.
7. One-hundred eighty-five (185) parking spaces shall be provided in the location shown on the plat. All parking for the uses shall be on-site. Prior to issuance of a Non-Residential Use Permit, all interior and peripheral parking lot landscaping shall be installed as required by the Ordinance, to the satisfaction of the Urban Forester.
8. All transitional screening planting shall be installed and maintained to the satisfaction of the Urban Forester. Dead or dying plants shall be replaced with like-kind plantings, as needed, as directed by the Urban Forester. Transitional screening shall be provided in accordance with the following:

North

Along the northern lot line, the existing vegetation shall satisfy the transitional screening requirement, and shall be supplemented where necessary to replace screening lost due to the construction of the stormwater detention pond, subject to the determination of the Urban Forester.

West

Along the western lot line, the existing vegetation shall satisfy transitional screening requirements.

9. The barrier requirement shall be waived along the north and west lot lines.
10. Upon issuance of the Non-Residential Use Permit for this Special Permit Amendment, the combined maximum daily enrollment of the child care center and school of general education shall not exceed 240. The number of students enrolled in the child care center and the school of general education may fluctuate, but the maximum daily enrollment for the child care center shall not exceed 64 students.
11. A program to encourage and assist organization of student and employee car pools shall be instituted and maintained.
12. Any proposed lighting of the parking areas shall be in accordance with the following:

- The combined height of the light standards and fixtures shall not exceed twelve feet.
 - The lights shall be of a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
 - Shields shall be installed, if necessary, to prevent light or glare from projecting beyond the facility.
13. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
 14. The structure noted on the plat to be a two-story dwelling, shall be for the use of church members and guests for dwelling purposes only.

These development conditions incorporate and supercede all previous 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 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 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 4, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 487, September 26, 2000, (Tape 1), After Agenda Item:

Approval of May 9, 2000, June 6, 2000, June 20, 2000,
June 27, 2000, July 18, 2000 and August 15, 2000 Minutes.

Mr. Hammack moved to approve the Minutes. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 487, September 26, 2000, (Tape 1), After Agenda Item:

Request for Additional Time for The New Jerusalem Church, SP 95-S-071.

Mr. Pammel moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration date is August 21, 2001.

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Page 487, September 26, 2000, (Tape 1), After Agenda Item:

Approval of September 19, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hart 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 10:57 a.m.

Minutes by: Regina Thorn Corbett

Approved on: December 19, 2000

Regina Thorn Corbett
Regina Thorn Corbett, Clerk
Board of Zoning Appeals

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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 3, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 489, October 3, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHRIS CHANDLER, VC 00-M-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 37.33 ft. Located at 6340 Lincolnia Rd. on approx. 1.18 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 47. (Moved from 9/26/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David C. Stewart, Wilkes Artis, P.C., 11320 Random Hills Road, Suite 600, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of one lot into two lots with proposed Lot 1 having a lot width of 37.33 ft. A minimum lot width of 80 feet is required; therefore, a variance of 42.67 feet was requested.

Mr. Hart questioned tree preservation language as referenced in Appendix 5 of the Staff Report. He stated his concern regarding the development conditions not referencing the same information.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that in reviewing the Urban Forestry Appendix, the condition was changed to locate the driveway further from the trees, and stated that other requirements, as noted in the Appendix, such as root pruning, were not necessary if the driveway was moved.

Mr. Hart questioned the problem soils and asked if they affected the location of either house on either lot. Ms. Langdon stated that it could affect the location of the house but that was a requirement the architect or engineer should review while designing the house and proposing its location.

Mr. Stewart, Agent, presented the variance request as outlined in the statement of justification submitted with the application. Mr. Stewart stated that the applicant purchased the property with the intent to subdivide into two parcels so that his sister could build a house next to him. Mr. Stewart stated that there was very strong neighborhood support for the development. Mr. Stewart stated that the applicant had been issued a building permit and had started construction on the second house, located on the back lot. He said that all trees he had been preserved. Mr. Stewart stated that the lot was exceptionally narrow and the application should be considered a hardship and therefore, required the variance. He asked for the Board's approval.

Chairman DiGiulian called for speakers.

David Denison, 6336 Lincolnia Road, Alexandria, stated that the applicant had preserved the trees and therefore, he supported the variance request.

Eugene Smith, 6345 Edgemoor Lane, Alexandria, stated that he was in opposition of the development. He stated that he had resided in the neighborhood for 30 years and that other neighbors were in agreement with him that putting two homes on one lot would affect an area originally designed for large lots per house and would change the integrity of the neighborhood.

Mr. Hart asked Mr. Smith if he knew the Comprehensive Plan recommendations for the area, which was planned for a density of 2-3 homes per acre, and would make the request below the Plan range. Mr. Smith stated that he was not involved in the Plan review and did not know the recommendations.

Mr. Stewart stated that the lot on the rear of the property, which was planned as a pipestem lot, was twice as large as most of the lots it adjoined, including owners who signed a petition in opposition of the application. He stated that two of the owners who had signed the petition withdrew their objection after meeting with Mr. Chandler and reviewing his proposal.

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

Mr. Hammack moved to approve VC 00-M-090 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 26, 2000.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRIS CHANDLER, VC 00-M-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 37.33 ft. Located at 6340 Lincolnia Rd. on approx. 1.18 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 47. (moved from 9/26/00). 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 3, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required standards for a variance.
3. The lot is unusually shaped.
4. The property is located to the north side of Lincolnia Road and is the only lot remaining of its particular size.
5. The proposed variance would allow construction and development of the property within the proposed Comprehensive Plan density within the R-3 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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of one lot into two lots, with proposed Lot 1 having a lot width of 37.33 feet, as shown on the plat prepared by Charles P. Johnson & Associates, dated April 2000, as revised through June 30, 2000. All development shall be in conformance with this plat as qualified by these development conditions.
2. The two proposed lots shall share one common driveway to Lincolnia Road. Appropriate ingress/egress easements shall be provided to accommodate the single ingress/egress point, in conformance with the Public Facilities Manual, to the satisfaction of the Department of Public Works and Environmental Services.
3. The limits of clearing and grading shall be the minimum amount necessary to provide for the development shown on the approved plat and shall depict the limits of clearing to preserve as much vegetation possible, as determined by the Urban Forestry Division of DPWES. Prior to approval of an overlot grading plan, a tree preservation plan shall be submitted for the review and approval of the Urban Forestry Division.
4. Notwithstanding what is shown on the plat, the proposed driveway shall be moved east as far as possible. Tree protection shall be installed at the edge of the driveway, to the satisfaction of the Urban Forester, to protect the row of eastern red cedars shown on the plat along the northwestern property boundary. At time of construction, additional actions to ensure the continued health of this row of red cedars may be required, as determined by the Urban Forester.

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 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 October 11, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DANIEL PAPIERNIK, VC 00-P-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 8611 Crestview Dr. on approx. 21,375 sq. ft. of land zoned R-2. Providence District. Tax Map 59-1 ((18)) 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. Daniel Papiernik, 8611 Crestview Drive, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the enclosure of an existing carport into a garage to be located 8.0 ft. from the

side lot line. A minimum 15 foot side yard is required; therefore, a variance of 7.0 feet was requested.

Mr. Papiernik presented the variance request as outlined in the statement of justification submitted with the application. Mr. Papiernik stated that his family had lived in their home for 8 years and the carport had existed for at least 15 years. He stated that there was concern for safety due to woods located on the side of their property. Mr. Papiernik stated that there was no other location for construction of a new addition and presented the Board with exhibits showing the detriment it would cause on trees to build elsewhere on the property. He requested the Board's approval to permit the enclosure of the existing carport. Mr. Papiernik submitted a letter in support of his application.

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

Mr. Pammel moved to approve VC 00-P-106 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 26, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL PAPIERNIK, VC 00-P-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 8611 Crestview Dr. on approx. 21,375 sq. ft. of land zoned R-2. Providence District. Tax Map 59-1 ((18)) 18. 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 3, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has presented testimony which indicates compliance with the required standards for a variance.
- 3. The lot is unusually shaped.
- 4. The properties that would be impacted the most are those that are located on Prosperity Avenue and have very deep yards; therefore, the structure will not be in close proximity to those dwellings.

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

- 1. That the subject property was acquired in good faith.
- 2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of an addition (two-car garage) as shown on the plat prepared by Brian W. Smith, dated April 27, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with 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. 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 October 11, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 493, October 3, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHRIS AND KIMBERLY KENDZIORA, VC 00-B-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.9 ft. from rear lot line. Located at 5276 Dunleigh Dr. on approx. 13,504 sq. ft. of land zoned R-3 Cluster. Braddock District. Tax Map 69-4 ((14)) 76.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher and Kimberly Kendziora, 5276 Dunleigh Drive, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a deck and screened porch addition to be located 15.9 feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, a variance of 9.1 feet was requested.

Mrs. Kendziora presented the variance request as outlined in the statement of justification submitted with the application. She stated that they lived in their house for 4 years. She stated that their lot was the drainage

lot for their neighbors' sump water. Mrs. Kendziora stated that the lot was heavily wooded and with the combination of the lot continually being wet, it produced a tremendous amount of insects. She requested the Board's approval of the application.

Mrs. Kendziora requested a waiver of the 8-day waiting period if the Board approved the application.

Mr. Hart asked if the porch would extend beyond the current deck. Mrs. Kendziora stated that the construction plans showed demolition of the current deck and that the screened porch would be smaller and further away from the rear property line than the existing deck.

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

Mr. Hart moved to approve VC 00-B-099 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 26, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRIS AND KIMBERLY KENDZIORA, VC 00-B-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.9 ft. from rear lot line. Located at 5276 Dunleigh Dr. on approx. 13,504 sq. ft. of land zoned R-3 Cluster. Braddock District. Tax Map 69-4 ((14)) 76. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony which indicates compliance with the required standards for a variance.
3. The lot is unusually shaped.
4. The porch could only be located to the rear of the property.
5. The submitted photographs indicate cause for the granting of a variance.
6. The impact on the lot to the left would be minimal given the vegetation and the distance from the shared property 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a screened porch addition shown on the plat prepared by Kenneth W. White dated, June 23, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Ribble seconded the motion which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Hart 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 3, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CRAIG & KATHY DUBISHAR, VC 00-D-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 12338 Cliveden St. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((11)) (3) 133.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig Dubishar, 12338 Cliveden Street, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a two-story addition with a basement to be located 15.0

feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, a variance of 10.0 feet was requested.

Mr. Dubishar presented the variance request as outlined in the statement of justification submitted with the application. Mr. Dubishar stated that the request was necessary due to the unique shape of the property. He stated that there was a slope at the rear of the property and if they were required to build to the side yard, it would impact the visual appearance of the front of the property. Mr. Dubishar stated that the addition would be completely hidden from view if permitted in the rear yard. Mr. Dubishar submitted photographs and four letters in support of the application to the Board.

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

Mr. Ribble moved to approve VC 00-D-116 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 26, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG & KATHY DUBISHAR, VC 00-D-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line. Located at 12338 Cliveden St. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((11)) (3) 133. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have met the required standards for a variance.
3. The granting of the variance would not set a precedent for the neighborhood.
4. The topographic conditions on the property, and placement of the house on the lot, are causes for the granting of a variance.
5. There would be minimal visual impact on 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;
 - 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a two-story room addition with basement as shown on the plat prepared by Andrew E. Caldwell, dated June 13, 2000, as certified through July 3, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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.

Ms. Gibb 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 11, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 497, October 3, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DEEPWOOD VETERINARY CLINIC, INC., SP 00-Y-040 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a veterinary hospital ancillary to kennels and boarding stables. Located at 7300 Ordway Rd. on approx. 15.97 ac. of land zoned R-C and WS. Sully District. Tax Map 74-1 ((1)) 22. (Moved from 9/5/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith C. Martin, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, PC, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to operate a veterinary hospital ancillary to kennels and boarding stables. Mr. Bernal reviewed the proposed uses and the hours of operation as contained in the staff report, noting the recommendation of approval.

Mr. Pammel disclosed that his family had used the Deepwood Veterinary services for many years; however, stated that he would still participate in the hearing.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the application proposed a relocation of a very popular and very successful veterinary clinic from its current location to the new location on Ordway Road. Mr. Martin stated that 502 letters of support were submitted to the Clerk to the Board of Zoning Appeals prior to the hearing. Mr. Martin stated that the current location did not meet their needs and therefore, the request for the special permit to the new location. He also submitted a letter of support from the Western Fairfax Civic Association.

Chairman DiGiulian called for speakers.

William Stern, 6423 Overhill Road, Falls Church, Virginia, stated that the clinic was a dedicated, professional, quality service and the new location would not cause significant traffic impacts due to the restricted hours for office visits, which would generally occur before and after peak traffic times and requested the Board's approval of the application.

Barbara Schmidt, employee of Deepwood Veterinary Clinic, read a letter to the Board from Peggy Seneker, 5316 Summit Street, Centreville, Virginia, which stated that the clinic was one of the original businesses of Centreville and had existed for more than 30 years and that the new location would benefit all customers and asked for the Board's approval.

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

Ms. Gibb moved to approve SP 00-Y-040 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 26, 2000.

Mr. Hart commended staff for their work with the citizens on the application.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DEEPWOOD VETERINARY CLINIC, INC., SP 00-Y-040 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a veterinary hospital ancillary to kennels and boarding stables. Located at 7300 Ordway Rd. on approx. 15.97 ac. of land zoned R-C and WS. Sully District. Tax Map 74-1 ((1)) 22. (Moved from 9/5/00). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant's testimony and the detailed staff report indicated compliance with the prescribed criteria 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 Sect(s). 3-C03 of the Zoning Ordinance.

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

1. This Special Permit 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, 7300 Ordway Road, 15.97 acres, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat certified by John L. Marshall, dated, April 2000, as revised through September 18, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The proposed regular hours of operation shall be limited to 7:00 a.m. to 9:00 p.m. daily with emergency call hours from 9:00 p.m. to 7:00 a.m. Overnight use of the facility by employees caring for sick or boarded animals shall be permitted.
6. The area of the building utilized for an ancillary veterinary clinic shall not exceed 36% of the total gross floor area of the building. All veterinary hospital activities shall be ancillary to the kennel and boarding uses. The kennel and veterinary hospital shall be located entirely within the main structure and barn. A maximum of two apartments shall be located within the upper portion of the same structure.
7. The maximum number of employees on-site at any one time shall not exceed eighteen (18).
8. The number of families permitted to reside on the site shall be limited to four (4), in accordance with the number of dwellings permitted on site and shall be veterinarians and/or technicians.
9. A maximum of 36 parking spaces with two loading spaces shall be provided on-site. All parking shall be on-site as shown on the special permit plat.
10. In the event that the trails plan and roadside improvements are not be waived, the applicants shall provide the full required transitional screening I and the barrier requirements along the frontage of Ordway Road.
11. Right-of-way of thirty-five (35) feet from centerline of Ordway Road, as delineated on the special permit plat, shall be dedicated to the Board of Supervisors, in fee simple at the time of site plan review or on demand, whichever first occurs.
12. A right turn lane shall be provided for the proposed site entrance on Ordway Road and shall be constructed to the satisfaction of the Department of Public Works and Environmental Services (DPWES) and Virginia Department of Transportation (VDOT). The site entrance shall meet VDOT requirements, unless waived or modified by VDOT.
13. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required to the satisfaction of DPWES. Should the SWM/BMP structure be waived or other alternatives allowed, the area shown on the plat as potential SWM shall be preserved as undisturbed open space.
14. The limits of clearing and grading shall be no greater than as delineated on the special permit plat and shall be subject to review and approval of DPWES. A minimum of 46% of the site shall remain as undisturbed open space.
15. The number of horses/grazing animals to be allowed onsite shall not exceed the number permitted by the northern Virginia Soil and Water Conservation District recommendations.

16. A conservation plan outlining best management practices for the operation shall be developed and implemented, prior to approval of a non-residential use permit, in coordination with the Northern Virginia Soil and Water Conservation District (NVSWCD). The conservation plan shall include management techniques for the operation, including pasture management, animal waste, composting and nutrient management. All animal waste indoors as well as outdoors in the dog exercise area shall be collected, removed and disposed of either through the sanitary sewer system or collected and taken to a certified landfill as determined by NVSWCD. No animal waste shall be permitted to decay in place or to be washed into the natural drainage from the site.
17. Undisturbed open space shall be a minimum of 46% of the total site and shall not be encroached upon by any animal or human activity. Fencing shall be installed as necessary to prohibit intrusion into the undisturbed open space as determined by DPWES and shall be a minimum of that shown on the plat.
18. The existing vegetation, proposed landscaping and fence as depicted on the special permit plat shall be used to meet transitional screening requirements along the lot lines. The areas between Ordway Road and the parking lot and the existing 2 1/2 story building shall be further supplemented with two rows evergreen trees and shrubs to the satisfaction of the Urban Forester as to provide screening from the parking lot and vehicular lights for the residents across Ordway Road.
19. Lighting of the veterinary facility shall be focused onto the subject use. Parking lot lighting fixtures on the site shall be limited in height to a maximum of twelve (12) feet. All lighting fixtures shall be full cut-off lights and shall be fully shielded in such a manner to prevent light from projecting off-site.
20. All signage shall be in accordance with Article 12 of the Zoning Ordinance.
21. The construction and operation of the kennel and ancillary veterinary clinic shall be approved by the Health Department prior to issuance of a site plan for the use.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 500, October 3, 2000, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. THANH TROUNG, ANANDA BUDDHIST MEDITATION INSTITUTE, INC., SP 98-P-051
 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 3418 Annandale Rd. on approx. 3.36 ac. of land zoned R-3.
 Providence District. Tax Map 60-1 ((1)) 12A. (Def. From 12/22/98, 6/20/00 and 8/15/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, PC, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to convert an existing residence into a place of worship. Ms. Langdon stated that an addition was proposed to add a garage and a basement for a total of 4,068 square feet which would also serve as a residence for 3 monks. Ms. Langdon stated that the original staff report dated June 13, 2000, recommended approval of the application and that on September 5, 2000, the applicant had submitted a revision requesting a maximum of 40 worshipers on site at any one time and a total of 30 parking spaces. Ms. Langdon stated that staff recommended approval of the application with the implementation of the revised development conditions contained in Attachment 1 of the Addendum dated October 3, 2000. Ms. Langdon noted the concern regarding the number of worshipers and stated that Mr. Bruce Miller, Zoning Enforcement, was present in the Board auditorium to address those concerns.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Strobel stated that the application property was adjacent to open space as well as property owned by the Fairfax County Park Authority which would minimize impact on adjacent communities. Ms. Strobel reviewed the history of the application to the Board. Ms. Strobel stated that there were a number of citizens in support of the application present and requested that they stand and be recognized by the Board. Ms. Strobel also submitted letters to the Board in support of the application.

Mr. Hammack asked how many members the temple had at the present time. Ms. Strobel replied that the current membership was 40 members; however, it was 24 members when the application was originally submitted in 1998.

Mr. Hammack asked how the Board could be assured that the membership would not exceed the 40 member maximum. Ms. Strobel stated that the membership increased because there was another place of worship that was no longer available and said that the membership was very stable and if they required additions, they would come back to the Board with the request.

Mr. Kelley stated that the parking request for 30 parking spaces was greater than that needed for 40 members and also questioned a development condition referring to a shuttle bus service needed on religious holidays. Ms. Strobel stated that arrangements had not been made for that service at this time.

Ms. Langdon stated that the condition was brought forward from the previous staff report conditions, which stated that there would be no more than 24 worshipers on site at any one time but that on religious holidays the number could be as high as 44 and have shuttle buses. Ms. Langdon stated that since the applicant had requested to increase their every day numbers, that portion of the condition could be deleted.

Ms. Gibb asked if there would be more worshipers attending on religious holiday than the 40 permitted. Ms. Strobel stated that there would be.

Thanh Troung, stated that the Buddhist calendar celebrated several holidays, including the Buddha Birthday, and said that a different location would be used, such as renting another facility. Mr. Troung stated that wedding ceremonies would also be held at the temple but not funerals.

Bruce Miller, Senior Zoning Inspector, Zoning Enforcement Branch, stated that he had performed site visits on the property on three consecutive Sundays, beginning at 10:00 a.m. and ending by 1:30 p.m., counting the number of vehicles and worshipers on the property. He stated that the greatest number at any one time was 40 and the largest number of vehicles was 19. Mr. Miller stated that he was instructed not to enter the property, but to make his observations off-site; however, noted that there were individuals who prayed at a small altar at the end of the driveway. Mr. Miller stated that no inspections were conducted during the week.

Mr. Hammack asked if any of the vehicles were parked on Annandale Road. Mr. Miller replied that on occasion there were, but never to exceed 4 vehicles, and added that an adjoining property, 3420 Annandale Road, appeared to be used for overflow parking.

Mr. Hammack referred to photographs showing a considerable amount of parking on Annandale Road. Mr. Miller stated that it would have been before he was tasked with making his inspections.

Mr. Hart asked if there were multiple services on Sunday. Ms. Strobel stated that the request was for services to be held from 10:00 a.m. - 1:00 p.m. and 3:00 p.m. - 6:00 p.m.

The Board discussed, in detail, their concern with the number of worshipers and the fact that there was no guarantee the membership would remain at a maximum of 40, as well as their concern with the number of parking spaces requested and the number of vehicles coming and going from the property.

Mr. Ribble asked how long the temple had been in existence. Mr. Troung stated that they had existed in their new location for 2 years and they had held their services at Leewood Park prior to moving to the new location.

Mr. Hammack asked if a meditation institute was the same as a temple. Ms. Strobel introduced Mr. Richard Young, the attorney who filed the original application, to give additional information. Mr. Young stated that it was a corporation functioning as a Buddhist temple which was also considered a tax exempt organization.

Mr. Hammack asked what would be done to the existing residence to make it a place of worship. Ms. Langdon stated that staff only addressed the exterior not the interior changes. Mr. Hammack stated that other churches required a number of seats and/or pews, and asked why this application would be treated any differently.

Ms. Langdon stated that traditional religions could be conditioned to a maximum number of seats; however, there were a number of religions that did not require seats, due to kneeling or standing, and said it was then limited to a maximum number of worshipers. Ms. Langdon stated that there would be no exterior changes, with the exception of the addition and the interior changes would have to go through building permit review.

Mr. Young stated that there were no plans to change the interior of the house, other than what was required to comply with County regulations.

Chairman DiGiulian called for speakers. The following speakers came to the podium to speak in support of the application.

Luan Ta, 7305 Ivy Crest, Annandale, Virginia, stated that the temple would not affect the surrounding area.

Robert Newman, member of the Buddhist Temple (no address given for the record), stated that the meditation was a quite, serene, spiritual environment with no procedures. He stated that the temple contributed to the community by helping feed homeless and asked for the Board's approval.

Bill McKeller, member of the Buddhist Temple (no address given for the record), stated that the temple respected the right of others. He stated that the members kept the exterior of the temple neat and clean and that it was a positive contribution to the community.

Tuyet Nguyen and David Nguyen, 3420 Annandale Road, Falls Church, came to the podium to state that they were in support of the application.

Kim Ha Nguyen, member of the Buddhist Temple (no address given for the record), stated that the temple was a place to train people to become good citizens.

Nim Nguyen (no address given for the record), stated that the temple taught the younger generation to stay free from drugs, gangs and criminal behaviors.

Chairman DiGiulian called for speakers in opposition of the application:

John Peters, 7336 Hill Drive, Annandale, Virginia, stated that his opposition was not based on the premise of a house of worship; however, he was concerned by the constraints imposed on the property. Mr. Peters stated that he had written to Supervisor Gross and to VDOT concerning the severe risks associated with the ability to enter and exit the subject property. Mr. Peters asked the Board to deny the application based on the practical issues of safety.

Constance Frederickson, 7336 Hill Drive, Annandale, Virginia, asked for a maximum number of worshipers and requested that a sign be placed on the north side of Annandale Road informing worshipers that parking would be prohibited.

Ms. Strobel stated that staff proposed a number of conditions with regard to the entrance and access and stated that the applicant would comply with those conditions to make it a safer access point onto the property. She ensured that there would be no parking on Annandale Road, that all parking would be provided on-site, as shown on the revised plat.

The Board discussed in detail their concern with the number of worshipers, as well as their concern with the number of parking spaces requested and the number vehicles coming and going from the property.

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

Mr. Kelley moved to deny the application. Mr. Hart seconded the motion.

The Board discussed the denial motion at length and expressed their concern that a lot of the issues of the application had not been resolved.

Mr. Pammel recommended a deferral instead of a denial motion to give the applicant time to address issues raised by the Board, specifically parking, days, and hours of service.

Mr. Pammel made a motion to defer the application to October 31, 2000. Mr. Hart seconded the motion which carried by a vote of 7-0.

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9:30 A.M. STEPHEN AND BRENDA PALMER, A 2000-MV-017 Appl. Under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have added rip-rap to the banks of the drainage channel on their property which is not in conformance with Condition #14 of SEA 81-V-087 and is, therefore, in violation of Par. 2 of Sect. 9-004 of the Zoning Ordinance. Located at 6404 Wood Haven Rd. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (36) 19A.

Chairman DiGiulian noted that the notices were not in order for this application.

William Shoup, Deputy Zoning Administrator, stated that the appellants had submitted a letter to the Board indicating that they had not received their notification package and therefore could not send their notices. Mr. Shoup noted that the Post Office had attempted to deliver the notification package twice, but it was not accepted by the appellants. Mr. Shoup recommended a deferral to November 14, 2000.

Mr. Pammel moved to defer Appeal A 2000-MV-017 to November 14, 2000. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Consideration of Acceptance
Application for Appeal Filed on behalf of J & M Autoserve, Inc., t/a Beltway Citgo

Mr. Pammel stated that upon reading the staff report, it was noted that the appeal application was complete, whereas the primary issue was that the appeal application was not filed in a timely fashion.

William Shoup, Deputy Zoning Administrator, noted that Mr. Sherman had submitted a letter withdrawing the application because the appeal issue was resolved. Mr. Shoup stated that the appeal request involved signs on the property. He stated that the signs had been brought into compliance.

Mr. Pammel moved to accept the withdrawal of the appeal application. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 504, October 3, 2000, (Tape 2), After Agenda Item:

Request for Additional Time for Stump Dump, SPA 94-D-058

Mr. Pammel noted that staff recommended an additional three month time period to November 3, 2000.

Mr. Pammel made a motion to approve the additional time request for SPA 94-D-058 for a six month period of time. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 504, October 3, 2000, (Tape 2), After Agenda Item:

Request for Additional Time for Margaret Kelley and
the Estate of Holbert K. Farthing, VC 97-D-097

Mr. Pammel made a motion to approve the additional time request for VC 97-D-097 to January 11, 2001. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 504, October 3, 2000, (Tape 2), After Agenda Item:

Request for Reconsideration for David Reeves, VC 00-Y-063

Ms. Gibb asked staff if the issue was the Board's request to move the fence back from the property line.

Ms. Langdon stated that staff had given Mr. Reeves a drawing of what was proposed by the Board indicating the part of the fence that needed to be moved.

Mrs. Reeves stated that they had spoken with the Deputy Director of VDOT who was looking into moving the stop sign forward. She stated that they believed they were in compliance with the 30 foot sight distance. Mrs. Reeves stated that there was no opposition to the application and said that they were not sure why the application was denied due to the fact that there was no opposition and requested the reconsideration.

Chairman DiGiulian stated that the reason he supported the denial request was because the fence was within the sight distance easement.

Mrs. Reeves stated that the fence was 31 feet back and met the sight distance requirements.

The Board discussed their denial motion with Mrs. Reeves and informed her that the Board did not ask for the 6 foot high fence to be removed from the property, only to be moved back 10 additional feet from the property line to meet sight distance requirements.

Mrs. Reeves explained to the Board what they would do to meet the requirements and requested the reconsideration of the application.

Mr. Pammel made a motion to approve the reconsideration request for VC 00-Y-063, subject to an amended plat with new dimensions sought by the applicant, for November 28, 2000. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 504, October 3, 2000, (Tape 2), After Agenda Item:

Approval of September 26, 2000 Resolutions

Mr. Hammack made a motion to approve the September 26, 2000 Resolutions. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Deborah Hedrick

Approved on: October 9, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 10, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 507, October 10, 2000, (Tape 1) Scheduled case of:

9:00 A.M. CATHERINE BIRSACK CONTE, VC 00-V-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 1902 Ancilla Ct. on approx. 11,451 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ronald Conte, 1902 Ancilla Court, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 7.0 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, a variance of 3 feet was requested.

Mr. Conte presented the variance request as outlined in the statement of justification. He explained that the chimney extended 2 ½ feet into the existing carport, making it difficult to get in and out of the car. He said the variance request would provide adequate room for parking both of their cars and would provide shelter for them during inclement weather. Mr. Conte stated that they had full neighborhood support.

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

Mr. Pammel moved to approve VC 00-V-104 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CATHERINE BIRSACK CONTE, VC 00-V-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 1902 Ancilla Ct. on approx. 11,451 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 25. 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 10, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is irregularly pie shaped.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated, May 2, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Hart and Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Kelley and Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 509, October 10, 2000, (Tape 1) Scheduled case of:

9:00 A.M. THOMAS S. CHERRY, VC 00-P-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line. Located at 3115 Northwood Rd. on approx. 11,770 sq. ft. of land zoned R-3. Providence District. Tax Map 48-3 ((26)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tom Cherry, 3115 Northwood Road, Fairfax, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 4 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 8 feet was requested.

Mr. Cherry presented the variance request as outlined in the statement of justification. He informed the Board that the lot was exceptionally narrow and had extreme topographical conditions, which prohibited the construction of the garage anywhere other than what was requested. He stated that he had two toddlers and another child on the way and the garage would also provide protection for them while being strapped into and taken out of their car seats. He stated that their cars had been vandalized in the recent past and the garage would provide additional security for the family. Mr. Cherry stated that several of the homes in the area had similar garages and he submitted photographs of them.

Mr. Hart referred to bushes located in the applicant's side yard and asked whether they would be removed upon construction of the garage addition. Mr. Cherry replied that they would be removed. Mr. Hart asked if the applicant planned on changing the grade of the property. Mr. Cherry replied that there would not be a change in the grade and that there were no drainage problems.

Mr. Hammack asked why the garage needed to be so long. Mr. Cherry replied that the concrete slab of the carport already existed and he was adding on to it.

Chairman DiGiulian called for speakers.

Steven Wideman came forward to speak in opposition. He stated that he was opposed to the garage because it would severely limit the view from their home and because of this it would decrease the value of his home. He said that the crime rate had not increased in the area and the past break-ins were due to unlocked cars.

Mr. Hart asked if there were windows located on the side of the home facing the proposed garage and if his house was located 13 feet from the shared lot line. Mr. Wideman answered that the master bedroom windows faced the proposed garage and that his home was located 13 feet from the shared lot line.

Mr. Hart asked staff if there had been any other variances granted in the neighborhood. Ms. Langdon replied that there had been a 3-foot variance granted for the construction of a greenhouse, which was located on the corner lot on the opposite corner.

Mr. Hart asked what the distance was to the next home with relation to that variance. Mr. Wideman replied that there was no house located next door to that particular lot. He continued stating that the greenhouse had never been completed and it was now an eyesore.

Anthony Ceco, 9909 Barnsbury Court, came forward to speak in opposition. He stated that he lived next door to the property with the unfinished greenhouse. He said that the granting of the variance would set an unwanted precedent in the neighborhood.

Mr. Cherry, in his rebuttal, stated that he did not wish to cause conflict in the neighborhood; however, his proposal would not negatively affect the neighborhood in any way. He said the garage was in character with the neighborhood and the majority of the neighbors were in support of the variance. He said the garage addition would be located below the neighbor's bedroom window.

He mentioned that several years ago a large tree stood where the proposed garage extension was proposed to be and no neighbors ever complained about the tree. He said that many neighbors had adequate parking for two vehicles and he was simply requesting that he have the same.

Mr. Kelley stated that the garage was very large and asked if the applicant had considered making it smaller. Mr. Cherry replied that his attempts to discuss different options with Mr. Wideman were not productive and that he based the size on what several other homes had.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that this was a very close case but stated that he was satisfied that the physical conditions of the lot were unusual enough to grant a variance. He said that this was the only place to locate a garage because of the slope of the backyard and that the lot was very narrow. He stated that the impact of the extension was not significant.

Mr. Kelley stated that he would not support the variance because it was too large. He said he would support a lesser variance. Mr. Hammack stated that he agreed with Mr. Kelley and he could not support the application.

Mr. Hart moved to approve VC 00-P-105 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS S. CHERRY, VC 00-P-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line. Located at 3115 Northwood Rd. on approx. 11,770 sq. ft. of land zoned R-3. Providence District. Tax Map 48-3 ((26)) 1. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
- 3. The lot is very narrow.
- 4. Due to the slope of the backyard there is no other place to put the garage.
- 5. The impact of the extension to have a two-car garage is not going to be that much different from where the carport is now.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated, May 12, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Pammel seconded the motion which carried by a vote of 4-3. Chairman DiGiulian, Mr. Hammack and Mr. Kelley voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 511, October 10, 2000, (Tape 1) Scheduled case of:

9:00 A.M. PAMELA & MARK LEMMER, VC 00-Y-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.7 ft. from front lot line and 6.0 ft. high fence to remain in front yard. Located at 5819 Stone Ridge Dr. on approx. 8,583 sq. ft. of land zoned R-1 and R-3 (Cluster) and WS. Sully District. Tax Map 54-3 ((14)) 115.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark and Pam Lemmer, 5819 Stone Ridge Drive, Centreville, Virginia, replied that it was.

Charles Burnham, Staff Coordinator, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 11.7 feet from the front lot line. The Zoning Ordinance requires a minimum front lot line of 25 feet; therefore, a variance of 13.4 feet was requested. The applicants also requested a fence located in the front

yard to be 6 feet in height. The Zoning Ordinance allows a maximum fence height of 4 feet; therefore, a variance of 2 feet was requested.

Mr. Lemmer presented the variance request as outlined in the statement of justification. He stated that the lot was of unusual shape and size; therefore, the only place to locate the addition was where requested. He said that the existing fence had been in place for a long period of time and was in character with the neighborhood.

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

Mr. Ribble moved to approve VC 00-Y-103 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAMELA & MARK LEMMER, VC 00-Y-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.7 ft. from front lot line and 6.0 ft. high fence to remain in front yard. Located at 5819 Stone Ridge Dr. on approx. 8,583 sq. ft. of land zoned R-1 and R-3 (Cluster) and WS. Sully District. Tax Map 54-3 ((14)) 115. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. This is a pipe-stem lot and due to the topographical conditions there is no other area to construct 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an addition as shown on the plat prepared by Laura Lee Scott Surveyors, Inc. dated April 4, 2000 and revised through August 22, 2000, submitted with this application and is not transferable to other land.
- 2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The addition shall be architecturally compatible with the existing structure.

Pursuant to Section 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.

Ms. Gibb 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 18, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 513, October 10, 2000, (Tape 1) Scheduled case of:

9:00 A.M. HAMID AWAD, VC 00-M-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 3059 Hazelton St. on approx. 13,302 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 81.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hamid Awad, 3059 Hazelton Street, Falls Church, Virginia, replied that it was.

Charles Burnham, Staff Coordinator Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 10 feet from the side lot line. The Zoning Ordinance requires a minimum of 12 feet; therefore, a variance of 2 feet was requested.

Mr. Awad presented the variance request as outlined in the statement of justification. He stated that he had four children and needed to increase the size of the home to provide adequate living space.

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

Ms. Gibb moved to approve VC 00-M-102 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HAMID AWAD, VC 00-M-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 3059 Hazelton St. on approx. 13,302 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 81. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant is enclosing a carport that has existed since 1956.
3. The variance request is modest.
4. The applicant cannot locate the addition in any other area because of the exceptional topography of the lot.
5. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of 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.

Page 515, October 10, 2000, (Tape 1), HAMID AWAD, VC 00-M-102, continued from Page 514

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

1. This variance is approved for the location of a first and second story addition as shown on the plat prepared by Hamid K. Awad, dated June 2, 1992, revised July 12, 2000 submitted with this application and is not transferable to other land.
2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Section 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 515, October 10, 2000, (Tape 1) Scheduled case of:

9:00 A.M. MURRAY AND VIRGINIA SELTZER, VC 00-B-107 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 4.0 ft. and addition 5.0 ft. from side lot line. Located at 5514 Southampton Dr. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((6)) 314.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Virginia Seltzer, 5514 South Hampton Drive, Springfield, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition to the dwelling to be located 5 feet from the side lot line and the construction of a deck to be located 4.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet for the primary structure; therefore, a variance of 7 feet was requested for the addition. The Ordinance also allows an extension into the side yard for decks, but requires a minimum side yard of 7 feet, thus a variance of 3 feet was requested for the deck.

Ms. Seltzer presented the variance request as outlined in the statement of justification. She stated that there was no other place to locate the addition due to the way the house was situated on the lot. She stated that the variance would be in character with the neighborhood and she had full neighborhood support.

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

Mr. Kelley moved to approve VC 00-B-107 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MURRAY AND VIRGINIA SELTZER, VC 00-B-107 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 4.0 ft. and addition 5.0 ft. from side lot line. Located at 5514 Southampton Dr. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((6)) 314. 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 10, 2000; and

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

1. The applicants are the owners of the land.
2. Based on the Statement of Justification submitted by the applicants and the fact of the unusual placement of the house on the lot, the applicants have met the required standards for the granting of 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 **APPROVED** with the following limitations:

1. This variance is approved for the deck and addition shown on the plat prepared by Kephart & Company, dated May 14, 1976 and revised through February 21, 1991, and as revised by GC/a Architecture, Inc. through April 28, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall

be obtained.

- 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.

Ms. Gibb 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 18, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 517, October 10, 2000, (Tape 1) Scheduled case of:

9:00 A.M. DAVID J. AND KRISTINA L. PRACK, VC 00-L-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.1 ft. from front lot line. Located at 6200 Valley View Dr. on approx. 20,000 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 81-3 ((4)) 12C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David J. Prack, 6132 Valley View Drive, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a dwelling to be located 18.1 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 25 feet; therefore, a variance of 6.9 feet was required for the structure.

Mr. Prack presented the variance request as outlined in the statement of justification. He stated that the original parcel of land was divided into half-acre lots in 1947 and they acquired the lot in 1997. He informed the Board that there was a 10 foot access easement in the front of the property thus making the lot very narrow and the variance would provide the applicant with adequate room to construct a house on the property.

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

Mr. Hammack moved to approve VC 00-L-109 for the reason stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID J. AND KRISTINA L. PRACK, VC 00-L-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.1 ft. from front lot line. Located at 6200 Valley View Dr. on approx. 20,000 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 81-3 ((4)) 12C. 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 10,

2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is narrow.
4. There is a 10 foot right-of-way which extends across the front property 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 **APPROVED** with the following limitations:

1. This variance is approved for the dwelling shown on the plat prepared by T.E.L.S., LTD., dated May 5, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

Page 519, October 10, 2000, (Tape 1), DAVID J. AND KRISTINA L. PRACK, VC 00-L-109, continued from Page 518

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 18, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 519, October 10, 2000, (Tape 1) Scheduled case of:

9:00 A.M. HARMON & MANFUL, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 95-V-031-2 Appl. under Sect(s). 4-803 of the Zoning Ordinance to amend SP 95-V-031 previously approved for a billiard hall to permit a change in permittee. Located at 6220 Richmond Hwy. on approx. 2.84 ac. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Mr. Hammack recused himself from the meeting as he had been retained by one of Ms. Kelsey's family members.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a change in permittee for an existing billiard hall. The establishment was approved by the BZA on July 28, 1995.

Ms. Kelsey presented the special permit request as outlined in the statement of justification. She stated that the application was very straightforward and there were no other physical changes in the operation. She submitted revised development conditions requesting that Condition #1 be changed to allow a change in permittee to be executed as an administrative action and to delete the first sentence regarding Article 17 from development condition #4.

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

Mr. Pammel stated that the County Attorney's Office advised the BZA that the correct procedure to granting changes in permittee was to the applicant only.

Mr. Pammel moved to approve SPA 95-V-031-2 with the applicant's proposed changes to development condition #4 and for the reasons stated in the Resolution. Mr. Hart seconded the motion which carried by a vote of 6-0-1. Mr. Hammack recused himself from the meeting.

Mr. Ribble made a substitute motion to approve SPA 95-V-031-2 with the entire applicant's proposed changes to development condition #1. Mr. Kelley seconded the motion which failed by a vote of 2-4-1. Chairman DiGiulian, Ms. Gibb, Mr. Hart and Mr. Pammel voted against the substitute motion and Mr. Hammack recused himself from the meeting.

The Board requested a memo from the County Attorney outlining the correct procedure for the granting of change in permittee applications.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARMON & MANFUL, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 95-V-031-2 Appl. under Sect(s). 4-803 of the Zoning Ordinance to amend SP 95-V-031 previously approved for a billiard hall to permit a change

in permittee. Located at 6220 Richmond Hwy. on approx. 2.84 ac. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. 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 10, 2000; and

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

1. The applicants are the owners of the land.

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 Sect(s). 4-803 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Harmon and Manful, Inc., D/B/A Fast Eddie's Billiard Café, 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. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by R.C. Fields, Jr. and Associates, and dated April 5, 1995, as revised through August 30, 1995 and received by the Department of Planning and Zoning on July 20, 2000, 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 exempt from the provisions of Article 17, Site Plans, since there are no changes proposed. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment Plat and these development conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.
5. There shall be a maximum of twenty-six (26) billiard tables and 163 seats in the facility, 6220 Richmond Highway.
6. The hours of operation of the billiard parlor shall not exceed 10:00 a.m. to 2:00 a.m. daily.
7. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as determined by the Department of Public Works and Environmental Services (DPWES).
8. A six foot high board on board fence shall be provided within ten (10) feet of the northern property line as shown on the special permit landscape plat presented to the Board of Zoning Appeals on July 20, 1995. The barrier requirement shall be waived along all other property lines. Ten (10) feet of planting along the northern property line shall be placed along the outside of the board on board fence and the plant materials shall be approved by the Urban Forestry Branch, DPWES.

9. Transitional screening shall be waived along all other property lines.
10. Interior parking lot landscaping shall be provided as shown on the special permit plat and as approved by the County Urban Forestry Branch, DPWES.
11. Interparcel access shall be provided to Lot 22B to the south and necessary public access easements provided shall be recorded among the land records of Fairfax County.
12. The entrance on Jamaica Drive shall be limited to "Entrance Only" and shall be gated at 9:30 p.m. The entrance shall be narrowed to a one-way width, but shall be a minimum of 18 feet wide to allow access for emergency vehicles.
13. A bench shall be provided at the transit stop on site along Route 1.
14. The applicant shall provide security guard(s) to police the area from the hours of 10:00 p.m. until closing.
15. The applicant shall police the premises for trash and debris on a daily basis.
16. The applicant shall comply with the applicable Alcoholic Beverage Control laws.
17. The applicant shall keep the kitchen doors closed at all times, except for ingress and egress, to minimize the impact of noise on the adjacent community.
18. This amended special permit shall be reviewed by the Board of Zoning Appeals twenty-four (24) months after the date of approval.

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. 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. Hart seconded the motion which carried by a vote of 6-0-1. Mr. Hammack recused himself from the hearing.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 521, October 10, 2000, (Tape 1) Scheduled case of:

9:30 A.M. EOP-RESTON TOWN CENTER, L.L.C. ("EQUITY"), A 2000-HM-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of approval of Site Plan 7067-SP-12-2 by the Department of Public Works and Environmental Services which allows for commercial development on property located in the Urban Core of the Reston Town Center. Located in the N.E. quadrant of the intersection of Town Center Pkwy. and Bluemont Wy. on approx. 30.03 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-1 ((1)) 12E. (deferred from 9/12/00)

Joe Thompkins, Jr., agent for Equity Office and Frank McDermott, agent for Terrabrook, requested a two week deferral as there was an agreement between the two parties thus resolving the issue of the appeal.

Page 522, October 10, 2000, (Tape 1), EOP-RESTON TOWN CENTER, L.L.C. ("EQUITY"), A 2000-HM-010, continued from Page 521

Mr. Pammel moved to defer A 2000-HM-010 until October 31, 2000, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 522, October 10, 2000, (Tape 1) After Agenda Item:

Approval of October 3, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Pammel 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 10:10 a.m.

Minutes by: Lori M. Mallam

Approved on: October 30, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 17, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 523, October 17, 2000, (Tape 1) Scheduled case of:

9:00 A.M. ROGER T. & BARBARA J. RUFÉ, VC 00-V-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.0 ft. from side lot line. Located at 8517 Culver Pl. on approx. 14,198 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (11) 20. (Moved from 10/3/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara Rufe, 8517 Culver Place, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit the construction of an attached garage to be located 1 foot from the east side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 11 feet was requested.

Ms. Rufe presented the variance request as outlined in the statement of justification. She stated that the variance was needed to provide additional storage space in the garage and for protection from inclement weather. She explained that the lot had exceptional topographical conditions, which prevented the garage from being constructed anywhere else on the lot. She informed the Board that several homes in the neighborhood had similar garages.

Mr. Hart asked if the proposed garage was larger than the existing carport. Ms. Rufe replied that the proposed garage was larger by 4 feet. Mr. Hart asked why the carport could not be located on the wider side of the lot. Ms. Rufe explained that the area in question was not feasible for the garage because it was sloped and it contained mature trees and vegetation that she did not want to remove.

Mr. Hart asked if any vegetation would be removed for the proposed garage. Ms. Rufe answered that one bush would be removed and transplanted to another area in the backyard.

Mr. Kelley asked how far the proposed garage would extend over the pad. Ms. Rufe replied that it was an additional 1-foot.

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

Mr. Pammel stated that the case was difficult and he understood the applicant's dilemma; however, he could not support a variance that close to the property line.

Mr. Pammel moved to deny VC 00-V-096. Mr. Hart seconded the motion for the purpose of discussion.

Ms. Rufe asked the Board to consider that the neighbor's home was 40 feet away from the property line and she submitted photographs to illustrate that there would be no detrimental effect to the adjoining property.

Mr. Pammel explained that a variance 1-foot from the property line forced the applicant to intrude on the adjoining property for maintenance purposes and although the current neighbor had no objection to this, a future resident might.

Ms. Gibb stated that the chimney extended a great deal into the existing carport, severely limiting any kind of storage space.

Mr. Kelley made a substitute motion to approve VC 00-V-096 for a 3-foot variance from the lot line and for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGER T. & BARBARA J. RUFÉ, VC 00-V-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.0 ft. from the side lot line. **(THE BZA APPROVED 3.0 FT. FROM THE SIDE LOT LINE)** Located at 8517 Culver Pl. on approx. 14,198 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (11) 20. (Moved from 10/3/00). 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 17, 2000; and

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

- 1. The applicants are the owners of the land.

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

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

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

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

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

- 1. This variance is approved for the garage addition shown on the plat prepared by Philip L. Vander

Myde, AIA, received on June 29, 2000, submitted with this application and is not transferable to other land. **(THE BZA APPROVED THE GARAGE 3 FEET FROM THE SIDE LOT LINE)**

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.

Ms. Gibb seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote and Mr. Ribble was absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 525, October 17, 2000, (Tape 1) Scheduled case of:

9:00 A.M. TU H. VU, VC 00-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line. Located at 8219 Guinevere Dr. on approx. 10,522 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-1 ((21)) 279.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tu H. Vu, 8219 Guinevere Drive, Annandale, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a one-story addition to be located 22 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 3 feet was requested.

Mr. Vu presented the variance request as outlined in the statement of justification. He stated that the variance was needed in order to expand and modernize the existing kitchen. He explained that the rear lot line was skewed and illustrated the property and the proposed layout of the kitchen.

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

Mr. Hart moved to approve VC 00-M-108 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TU H. VU, VC 00-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line. Located at 8219 Guinevere Dr. on approx. 10,522 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-1 ((21)) 279. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is very shallow in depth and the rear lot line is skewed.
4. The impact of the addition will be minimal.
5. The house is very close to all lot lines.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated June 29, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
2. 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack 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 17, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 527, October 17, 2000, (Tape 1) Scheduled case of:

9:00 A.M. JEFFREY C. & ROBERTA L. MCKAY, VC 00-L-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. and 29.9 ft. from front lot lines of a corner lot. Located at 3315 Collard St. on approx. 11,566 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 49. (Moved from 10/3/00).

Chairman DiGiulian noted that this case was administratively moved to October 31, 2000, at 9:00 a.m.

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Page 527, October 17, 2000, (Tape 1) Scheduled case of:

9:00 A.M. THOMAS E. MASON, III, SP 00-M-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 9.6 ft. from side lot line. Located at 6517 Fairland St. on approx. 19,994 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((4)) 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. Thomas E. Mason, III, 6517 Fairland Street, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction in minimum yard requirements based on error in building location to permit an addition to remain 9.6 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a modification of 5.4 feet was requested.

Mr. Mason presented the variance request as outlined in the statement of justification. He stated that he purchased the home in 1980 and at that time the garage already existed. He explained that the error was discovered when he applied for a permit to construct a front porch.

Chairman DiGiulian called for speakers.

James Lowe, 6516 Fairland Street, came forward to speak in support. He stated that he had lived directly across the street from the property in question since 1960 and the garage had been in existence as long as he had been there.

Ms. Gibb moved to approve SP 00-M-048 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS E. MASON, III, SP 00-M-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 9.6 ft. from side lot line. Located at 6517 Fairland St. on approx. 19,994 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((4)) 18. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of the existing addition to the dwelling shown on the plat prepared by Alexandria Surveys, Inc., dated July 7, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack 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 17,

2000. This date shall be deemed to be the final approval date of this special permit.

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Page 529, October 17, 2000, (Tape 1) Scheduled case of:

9:00 A.M. ROBERT L. & PAULA G. MAHAN, VC 00-B-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. and deck 2.1 ft. from side lot line. Located at 8704 Piccadilly Pl. on approx. 14,816 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((5)) 386.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Mahan, 8704 Piccadilly Place, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a mud room addition to be located 10.1 feet from a side lot line and the construction of a deck 2.1 feet from the same lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 1.9 feet for the mudroom and 9.9 feet for the deck, was requested.

Mr. Mahan presented the variance request as outlined in the statement of justification. He said that the location of the existing driveway limited the construction of the addition to one side of the home. He explained that the deck was needed to provide the neighborhood children with a safe place to play as opposed to the street and sidewalk and the mudroom was needed for additional storage. He stated that the adjacent house was an adequate distance away from the shared lot line.

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

Mr. Hammack asked the applicant if the proposed deck would be enclosed. Mr. Mahan replied that there would be open slatted beams across the top to provide shade from the sun.

Mr. Hammack stated that he opposed the variance because it was too close to the side lot line and said the applicant would have to intrude on neighboring property to maintain the deck.

Mr. Kelley said that there would be no maintenance problems because the deck was only 4 feet in height and it was not fully enclosed.

Mr. Kelley moved to approve VC 00-B-110 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT L. & PAULA G. MAHAN, VC 00-B-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. and deck 2.1 ft. from side lot line. Located at 8704 Piccadilly Pl. on approx. 14,816 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((5)) 386. 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 17, 2000; and

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

- 1. The applicants are the owners of the land.

- 2. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.
- 3. Due to the narrowness of the lot, there was no other place to locate the addition and the deck.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of an addition and roofed deck as shown on the plat prepared by Kenneth W. White, dated, June 22, 1999, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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.

Ms. Gibb seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted against

the motion. Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack 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 17, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RAIMUNDO GUEVERA AND SANTA L. MENDIETA, SP 00-L-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.7 ft. from side lot line. Located at 6305 Dana Ave. on approx. 9,230 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 80-3 ((3)) (80) 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. Raimundo Guevera, 6305 Dana Avenue, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator made staff's presentation as contained in the staff report. The applicants requested a reduction to the minimum yard requirements based on error in building location to permit a room addition from an enclosed carport to remain 5.7 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 6.3 feet was requested.

Mr. Hart mentioned several letters stating that the structure was being used as a check cashing business and motel. He asked staff what the structure was being used for and whether or not Zoning Enforcement had been out to the site. Mr. Bernal stated that the room was being used as a bedroom addition and there was a telephone installed in the structure, but the applicant did not do business there. He informed the Board that a complaint had been forwarded to Zoning Enforcement; however, they had not visited the site at that time. Mr. Hart asked if there was a permit required to establish a check cashing business in a residence. Mr. Bernal replied that a home occupation permit was required and that the applicant did not have one.

Mr. Bernal served as an interpreter for Mr. Guevera while he presented the variance request as outlined in the statement of justification. Mr. Guevera stated that the structure had already existed upon his purchase of the home and the error was discovered when he applied for a permit to install a bay window at the front of the structure.

Mr. Hammack asked if the previous owner had applied for a building permit to enclose the carport. Mr. Bernal replied that they had not.

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

Mr. Hammack moved to approve SP 00-L-047 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAIMUNDO GUEVERA AND SANTA L. MENDIETA, SP 00-L-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.7 ft. from side lot line. Located at 6305 Dana Ave. on approx. 9,230 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 80-3 ((3)) (80) 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 17, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of an addition as shown on the plat prepared by Charles E. Janson, Land Surveyor, dated November 10, 1998, submitted with this application and is not transferable to other land.
- 2. An Electrical Permit and approval of final inspections shall be obtained.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack 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 17, 2000. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. MICHAEL AND JEANNE MOORE, SP 00-Y-046 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 12.0 ft. from side lot line. Located at 6154 Ridgemont Dr. on approx. 13,175 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (6) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael J. Moore, 6154 Ridgemont Drive, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a modification to minimum yard requirements for the R-C District, to permit the construction of a screened porch addition to be located 12 feet from the side lot line. The Zoning Ordinance requires a side yard of 20 feet in the R-C District; therefore, the applicant requested a side yard modification of 8 feet.

Mr. Moore presented the special permit request as outlined in the statement of justification. He stated that in order to construct a functional deck it needed to extend to the end of home; therefore, a special permit was needed. He informed the Board that several neighbors had been granted similar special permit requests and that he had full neighborhood support.

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

Mr. Pammel moved to approve SP 00-Y-046 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL AND JEANNE MOORE, SP 00-Y-046 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 12.0 ft. from side lot line. Located at 6154 Ridgemont Dr. on approx. 13,175 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (6) 9. 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 17, 2000; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of a room addition as shown on the plat prepared by John E. Krobath, Land Surveyor, dated May 13, 1991, as revised by Jeanne M. Moore and Michael J. Moore, stamp dated July 18, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Hart seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the 8-day waiting period. Mr. Hammack 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 17, 2000.

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Page 534, October 17, 2000, (Tape 1) Scheduled case of:

9:00 A.M. ZOROASTRIAN CENTER AND DARB-E-MEHR OF METROPOLITAN WASHINGTON D.C., SP 00-H-026 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit a place of worship, child care center and nursery school. Located at 2347 Hunter Mill Rd. on approx. 6.81 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26. (MOVED FROM 7/25/00, 8/1/00, and 9/12/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marie Travesky, 3900 Jermantown Road, Fairfax, Virginia, replied that it was.

Mr. Hart disclosed that council for Mr. Horvath (one of the neighbors) was on the other side of a case that his firm had currently in the Circuit Court of Fairfax County. He stated that it would not affect his ability to participate in the application.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit to construct a place of worship and a childcare center and nursery school with a total maximum daily enrollment of 75 children. The proposed church building contained a total of 21,483 square feet with a floor area ratio (FAR) of 0.08. The maximum FAR permitted in the R-E district is 0.15

The existing dwelling and garage were proposed to be retained on the site for use by a member of the clergy or a caretaker. Access to the site was proposed through a shared entrance along the southern lot line from Hunter Mill Road. The existing driveway was proposed to be maintained with the existing mature cedars and used as pedestrian access only. A septic field was proposed near the front of the site along Hunter Mill Road and is subject to the approval of the Fairfax County Department of Health.

Typical religious services were proposed to be held on Saturdays from approximately 4:00 p.m. until 10:00 p.m. Religious education classes were proposed to be held on Sundays from 11:00 a.m. until 5:00 p.m. The proposed hours of operation for the child care/nursery school were from 6:30 a.m. to 7:00 p.m., Monday through Friday. The childcare center was proposed to be housed within the proposed building. An outdoor recreation play area comprised of approximately 7,500 square foot was proposed east of the existing

dwelling.

The proposed parking lot area was to be located along the southern lot line, south of the worship center adjacent to the Church of the Good Shepherd and to contain a total of 67 parking spaces. A minimum of 45 spaces is required for this use by the Zoning Ordinance.

An Environmental Quality Corridor and Resource Protection Area paralleled the Angelico Branch stream along the eastern side of the lot and was proposed to be encumbered by a conservation easement restricting the area to undisturbed open space.

Staff noted that revised development conditions dated October 17, 2000, were distributed. It was staff's position that the subject application was in harmony with the Comprehensive Plan and was in conformance with the applicable Zoning Ordinance provisions and therefore recommended approval of SP 00-H-026 but only subject to the approval of the revised development conditions dated October 17, 2000.

Mr. Hammack asked for an explanation of evening peak traffic hours with relation to the application site. Mark Canale, Department of Transportation, explained that the p.m. peak hours were any one-hour period between the hours of 4:00 p.m. and 6:00 p.m.

Ms. Gibb asked if there had been Zoning Enforcement questions. Gary Cook, Senior Zoning Inspector, related the history of complaints with relation to the subject property. He stated the complaints consisted of a large group of people having an outdoor party late at night on a Sunday. Mr. Cook informed the Board that he had made several trips out to the site on different days of the week and had not seen any activity at all.

Ms. Travesky presented the special permit request as outlined in the statement of justification. She stated that the application was amended to remove Phase 2 and to relocate the entrance of the property. She explained that the Foundation purchased the property in 1992 and the site was chosen because there were 50 families of that faith living in the area. She stated that the FAR was .08, which was half of what was permitted by the Zoning Ordinance. She explained that the services were held on Saturday evenings and the religious education classes, with a total enrollment of 40 children, were held on Sunday mornings. Ms. Travesky stated that proposed enrollment for the daycare center was up to 75 children. She said that the site was heavily wooded and a conservation easement had been designed to leave the rear of the property in its present state with the exception of the storm-water management facility.

Ms. Travesky informed the Board that the development of the facility improved the safety of Hunter Mill Road because the entrance would be shared with the Church of the Good Shepherd and the entrance would be aligned with Hunters Valley Road. She explained that the layout would decrease the unsafe movements that were currently being made to enter the application site. She said the architecture of the building would be in character with the surrounding area. She stated that the closest home was on lot 21A, which was over 270 feet away from the church and the closest building on lot 21A was a barn. She stated that the applicant had mailed two informational letters to the surrounding citizens and the homeowner associations in the area. She informed the Board that they also held a meeting to address the citizen's concerns and only 9 people from the community attended. She said that they also had a meeting with the Good Shepherd Methodist Church and they had no objection to the application. Ms. Travesky stated that the applicant had complied with all of the standards for the granting of the special permit.

Ms. Gibb asked for an explanation of Phase 2. Ms. Travesky replied that it was an addition to the building with no specific purpose; therefore, it was deleted from the plat.

Mr. Hart asked for the total membership. Ms. Travesky answered that they had a congregation of around 60 to 80 families which amounted to approximately 240 people. She stated that members would have to be born into the religion. Mr. Hart asked for an explanation of the social aspect of the religion. Ms. Travesky replied that the social time took place after the religious services and it consisted of sharing a meal. Mr. Hart asked if the social activity occurred outdoors. Ms. Travesky explained that the outdoor activity which led to the complaint was a group of young people maintaining the site and playing volleyball. Mr. Hart asked what the functions were for several abandoned buildings on the site. Ms. Travesky answered that they consisted of one house and two storage facilities. Mr. Hart stated that he was concerned about underground fuel tanks located beneath the structures. He suggested that there be an environmental assessment on that area of the property. Mr. Hart asked for clarification of whether there was to be a lighted torch on the front of the

building. Ms. Travesky stated that there were to be no flames outside the building and no bonfires would be located on the application site. Mr. Hart asked whether an analysis of the septic field had been done. Ms. Travesky stated that the health department had approved 4 different septic fields on the property. She stated that there was a potential septic field on the front of the property, however a well had been approved on the property line of the adjacent property, which was located within 100 feet of the proposed septic system. She stated that the area would still be more than adequate for the church and the childcare facility. Mr. Hart asked whether the proposed daycare facility would be leased out or if it would be run by the congregation. Ms. Travesky replied that it was standard for churches to lease out the operation of the childcare center and that the childcare center was open to the community and not limited to church members.

Mr. Hart asked staff whether a special exception was needed to lease the childcare center. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the applicants would be responsible for the operation of the childcare center; therefore, no special exception was needed.

Mr. Hart asked if the parking lot was illuminated. Ms. Travesky stated that the lighting would be located only around the parking lot and there was a development condition related to the lighting.

Mr. Hart asked if the construction of the shared entrance would be a shared responsibility between the two churches. Ms. Travesky stated that matter was to be taken up between the two churches.

Ms. Gibb asked where the members of the church currently met. Ms. Travesky replied that it was usually at a hotel in Fairfax.

Mr. Hammack asked for comments regarding the citizen's concerns that the church would expand into a tri-state meeting center and also what the parking procedures were with regard to scheduled events where the projected attendance was to be over the capacity of the church. Ms. Travesky replied that some members lived in Maryland and D.C., however, there weren't enough members to overcome the capacity of the church. She stated that there was adequate parking to accommodate most of the scheduled events. She went on to say that on any occasion where they knew they would become over the capacity of the church, they would go offsite and rent a ballroom in a hotel.

Chairman DiGiulian called for speakers.

The following citizens came forward to speak in support of the application:

Kelsy Shrafe, President of the Zoroastrian Association, (no address given for record); Beram Autici, Priest of the Zoroastrian Community; (no address given for record); Linda Sheriery, 11202 Cranbrook Lane; Sherena Ballian, (no address given for the record);

The citizens stated they supported the application for the following reasons:

The applicants were in agreement with the proposed development conditions; the Zoroastrain community was very small and made up of religious refugees; there were no more than 10,000 Zoroastrians in the United States; the applicants had addressed neighborhood concerns to the best of their ability; there was a Zoroastrian public in the surrounding are; and the church and daycare would not generate enough vehicles to severely impact traffic on Hunter Mill Road.

The following citizens came forward to speak in opposition of the application:

Steven Horvath, (no address given for record); Richard Taylor, 10300 East Hunter Valley Road; William J. Keene, 2400 Hunter Mill Road; Josephine Bianci, (no address given for the record); Walter Schlie, 2190 Hunter Mill Road; Fred Schoeneborn, 2433 Sunny Meadow Lane; Jane Freeman, 2367 Hunter Mill Road; Daniel Chute, 10411 Hunters Valley Road; Michael Zhakowski, 10216 Vale Road; Juan Manuel Decardenes, 10413 Hunters Valley Road; Martine Kebaish, 2333 Hunter Mill Road; Peggy Claybrook, 10200 East Hunter Valley Road; Jennette Toomy, (no address given for record); Patty Facer-Icke, 1927 Hunter Mill Road; Pat Harrington, 4160 Chainbridge Road; Hadi Fakarani, (no address given for record); Lisa Saghafi, 41166 Cantor Lane; Amanda Gorog, 2626 Hunter Mill Road; Nancy Brown, 10309 East Hunter Valley Road; Sherry Taylor, 10300 East Hunter Valley Road; Tarek El-Mawan, 9755 Thornbush Drive; George Brown, 2523 Hunter Mill Road; Adel Kebaish, 2333 Hunter Mill Road; John Burke,

Sunnymeadow Lane; Michael J. Nathan, 2417 Sunnymeadow Lane; Linda Burn, 10509 Hunters Valley Road;

The speakers expressed concerns relating to:

the facility and the daycare center greatly exacerbating the already congested traffic on Hunter Mill Road; the church continuously holding loud outdoor social activities well past dark; the application not being in harmony with the surrounding area as it was made up of two acre lots with single family homes and was zoned R-2; the church was not community based, but it was a gathering point for the tri-state area; the proposed playground affecting the natural flow of water to the creek behind the site; the additional construction causing flooding of the streams nearby; there were already 8 churches within a 2 mile radius and the proposed use was too substantial for the area; the proposed septic field could not facilitate the church and daycare facility; the proposed septic field was located too close to a neighboring well; the application was not in harmony with the Comprehensive Plan; the social events and the daycare center would diminish the peace and tranquility of the area; the police had been called to investigate loud activity from the site in the early hours of the morning; the majority of the citizens in the area never received any kind of notification for the community meetings that were held; there were concerns that the graduations of school age children would increase enrollment for the grade schools in the area, which were already at full capacity; there was concern about the applicants planting vegetation in the vicinity of overhead electrical wires located on the adjacent property; and the facilities increasing the commercial traffic to the area. The citizens provided copies of the applicants webpage promoting a bonfire for the subject site and several Sunday events;

James Nolan, Pastor, Church of the Good Shephard, came forward to address comments made about the Church of the Good Shephard. He explained that the Church was happy with their existing driveway, which provided direct access to Hunter Mill Road; however, they were willing to abide by the proposed changes because that was a part of an agreement that was made upon the development of the Church of the Good Shephard. He stated that the agreement was to share a driveway with whomever developed the adjacent lot for the benefit of the traffic flow on Hunter Mill Road. He went on to say that the agreement stated that any cost from constructing the shared driveway would be the responsibility of the new developer. He mentioned that the Church had submitted a letter to the Board reflecting their concerns regarding the shared driveway. He stated that the Church's lack of opposition was based on their religious commitment to welcome the stranger and not due to any profit from the shared driveway.

Ms. Travesky, in her rebuttal, submitted a list of the members of the church that lived in the community. She also submitted several promotional flyers indicating all of the activities that the church held offsite. She stated that the applicants were allowed to meet on the site for Board meetings, to maintain the site and to have parties. She informed the Board that none of the events that were advertised on the applicants website had been held since January of 2000. She stated that the maximum attendance for the advertised prayer meetings was 4 to 5 individuals. She said that the facility would be used in the same fashion as the Methodist church. Ms. Travesky said that three single family homes would generate the same amount of traffic as the proposed facility. She informed the Board that the power lines in question were located well into the adjacent neighbor's property; therefore, there would not be an issue upon the clearing of the land.

Ms. Travesky reiterated that the applicants had satisfied all of the requirements for the granting of a special permit and requested approval of the special permit.

Mr. Hammack stated that the issue of the Center being referred to as Center of the Zoroastrian Association made it seem like there was a large following. He asked if that term was a general reference to the members of the Church and the community. A member of the church (name and address not given for the record), replied that all of the activities held by the Association were only attended by the members of the faith and they were followed by some sort of social activity.

Mr. Kelley asked where the applicant's would park overflow parking. Ms. Travesky suggested the Board include a development condition which would mandate that the applicants needed to determine the total number of members that would be attending large ceremonies in advance so other arrangements could be made if the number was over the capacity of the church.

Mr. Kelley asked why the nursery school and daycare needed to be granted at that time. Ms. Travesky answered that the facilities were needed to serve the community center.

Ms. Gibb asked staff what the guidelines were in the Zoning Ordinance as far as what was and was not considered a church related use. Susan Langdon, Chief, Special Permit and Variance Branch, replied that there were no specific guidelines. She said that the Zoning Ordinance described the use as a Church or Place of Worship and related facilities and in this case a childcare center was requested which was another specific use in the Zoning Ordinance; therefore, it was advertised as a specific use in addition to the church and related facilities. She said that it was understood that certain activities went hand in hand with a place of worship and that was the reason for the meeting halls.

Mr. Pammel requested the daily average traffic count on Hunter Mill Road and asked that in the future that be included in the staff report. Mr. Canale answered that there were 17,986 vehicles on Hunter Mill Road in a 24 hour period.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that the evaluation of such cases was difficult and was done in the context of the Ordinance and the Standards. Mr. Hart stated that he had concerns about whether or not the use was harmonious with the area, the traffic on Hunter Mill Road, the safety of cars obtaining access into the proposed daycare center, the issue regarding the location of the septic field. He requested more information regarding an interim left turn lane into the facility.

Mr. Hammack stated that he was concerned about the size and location of the septic field and if it had to be reconfigured due to its close proximity to the neighboring well. He said it could result in the reconfiguration of the buildings.

Mr. Pammel explained that the traffic problems on Hunter Mill Road were not a product of development in Oakton or the corridor, but from Reston and Herndon. He stated that Herndon and Reston were becoming employment centers equalling the scale of Tysons Corner. He said it would get worse and the traffic problems needed to be addressed. He stated that the traffic from the proposed use would not significantly impact the traffic on Hunter Mill Road.

Chairman DiGiulian requested that the applicant's soil engineer provide the specific location and size of the septic field.

Mr. Hart moved to defer decision on SP 00-H-026 to December 12, 2000, at 9:00 a.m. 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 538, October 17, 2000, (Tape 1) Scheduled case of:

9:30 A.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, A 96-P-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that continued operation of a plant nursery, which has been expanded absent the approval of a Category 5 Special Exception from the Board of Supervisors, is a violation of Par. 2 of Sect. 15-101 and Par. 2 of Sect. 2-304 of the Zoning Ordinance. Located at 9023 Arlington Blvd. on approx. 3.72 ac. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 44. (MOVED FROM 2/4/97. DEF. FROM 2/25/97. MOVED FROM 5/20/97. CONTINUED FROM 7/22/97. RECONSIDERATION GRANTED 10/28/97. DEF. from 4/21/98, 9/29/98, 8/15/00, 9/12/00).

William E. Shoup, Deputy Zoning Administrator, stated that the appellants had requested a deferral.

Mr. Hart disclosed that the appellant's attorney was involved in a case where he represented another defendant in the Circuit Court. He stated that his client was not adverse and the matter would not affect his participation in the appeal.

Mark Moorstein, agent for the appellants, stated that the issue of vested rights regarding the appeal was proposed to be heard by the Virginia Supreme Court and he requested a deferral until that issue was heard. He explained that if the Virginia Supreme Court determined that they would not hear the case then the issue of vested rights would be moot. He stated that the Board of Supervisors would be making a decision to approve changes to the Special Exception Ordinance that would include the items that the appellant was

currently in violation for selling. He stated that a deferral was needed to see if those Ordinance changes were accepted; therefore, making that portion of the appeal moot.

Chairman DiGiulian asked how long of a deferral was needed. Mr. Moorstein replied that the appeal to the Supreme Court was filed in mid September and normally the timeframe was 30 to 60 days; therefore there would be some result in mid December. He stated that the Special Exception Ordinance was in the process of being amended and would also be finished in December; therefore, a two-month deferral was needed.

Chairman DiGiulian called for speakers with respect to the question of deferral.

Robert Chisholm, 3165 Readsborough Court, came forward to speak in opposition. He stated that the appeal had been deferred too many times and asked that the Board hear the appeal.

Mr. Shoup stated that staff objected to a deferral. He explained that it had been four years since the Notice of Violation was issued. He stated that much had taken place during that time; however, they were not much closer to resolving the issues than they were four years ago. He said that many of the delays had been to allow time for the appellants to take some actions to resolve the case, yet they were still at square one. He said the appellants had more than enough time to resolve the violations and asked that the appeal be heard. Mr. Shoup added that Mr. Moorstein referenced a proposed Zoning Ordinance Amendment, which was to deal with the issue of items that could be sold at plant nurseries that fell under special exception approval. He stated that the amendment was under study; however, that was not a reason for deferral because the special exception could accommodate any future changes to the Ordinance with respect to the sale of the items.

Freida Robey, 2525 Ogden Street, came forward to speak in support of the deferral. She stated that she was in support of whatever needed to be done to assist the appellants

Ms. Gibb asked what was included in the previous Special Exception that the appellants could not abide by. Mr. Moorstein stated that the original Special Exception made the incidental activity that had occurred on the site from the mid 1970's illegal.

Mr. Pammel asked if public water and sewer was also an issue in the deferral. Mr. Moorstein stated that the appellants were able to comply with installing public water and sewer in order to find a resolution.

Mr. Hammack noted that there was a letter in the package stating that the appellants were not willing to install public water and sewer. Mr. Moorstein stated that it was true at one time, however, progress had been made to resolve that issue.

Mr. Hammack asked for an explanation of the procedural posture that the appeal had come back to the Board and what was the issue that the Board needed to take into consideration.

Jan Brodie, Deputy County Attorney, explained the history of the appeal and stated that the appeal was before the Board to reconsider the 1996 Notice of Violation from the Zoning Administrator that the expansion required special exception approval and the appellants were selling items on the property that were in violation of the 1975 BZA decision.

Mr. Hammack asked if the issue of the 1975 decision was the original decision on appeal. Mr. Moorstein stated that it was.

Mr. Hart asked if there were any special exceptions pending and if there were any other issues of the appeal pending to any other body. Ms. Brodie answered that there were no other special exceptions pending and there were no other issues before any other body.

Mr. Hammack stated that there was no reason to defer the appeal.

Mr. Kelley stated that he was not in favor of putting the appellant out of business; therefore, he was in support of a deferral.

Mr. Hammack stated that the decision would limit the appellant to sell the items allowed under the existing

Special Exception and that it was not an issue of putting the appellant out of business.

Mr. Hart stated that he was willing to support this deferral however, he would not support any further deferral requests from the appellants.

Mr. Kelley moved to defer A 96-P-049 until January 9, 2001, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 5-1. Mr. Hammack voted against the motion and Mr. Ribble was absent from the meeting.

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9:30 A.M. CHARLES W. AND DEBORAH M. BESLEY, A 2000-SP-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that Parcels 9 and 9A did not meet minimum lot area requirements of the R-C District when created, were not legally subdivided and are not buildable under Zoning Ordinance provisions. Located at 11600 and 11601 Henderson Rd. on approx. 3.71 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-2 ((1)) 9 & 9A.

William E. Shoup, Deputy Zoning Administrator, explained that the appellants had requested a deferral as they had recently retained council.

Chairman DiGiulian called for speakers with respect to the question of deferral.

Charles Beasley stated that he realized his need for counsel and that was the reason for the deferral.

David Schnarre, 6366 Pineview Court, came forward to speak in opposition of the deferral. He explained that he represented the Occoquan Watershed Coalition, an association of 69 homeowners associations. He stated that the appeal was straightforward and the law was clear and requested that the appeal be heard.

Lee Scalzott, 8010 Wolf Run Schoals Road, came forward to speak in opposition of the deferral. He stated that he lived directly across from the property in question. He stated that the situation had been ongoing since April and the appellants had adequate time to retain counsel. He stated that the appellants were builders and real estate agents and should be aware of the Zoning Ordinance. He requested that the appeal be heard.

Atila Pupos, 11611 Henderson Road, came forward to speak in opposition of the deferral. He stated that he lived adjacent to the property in question. He said that the appellants had ample time to retain counsel and requested that the appeal be heard.

David Dankworth came forward to speak in support of the deferral. He stated that he was the owner of one of the parcels in question. He stated that the appeal involved his family and the appellants were working to resolve the issues. He requested that the Board defer the appeal.

Mr. Hammack asked the appellant the name of his attorney. Mr. Beasley replied that he had retained Tim Sampson, as his counsel.

Ms. Gibb moved to defer A 2000-SU-019 until December 19, 2000, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-1. Mr. Pammel voted against the motion and Mr. Ribble was absent from the meeting.

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Request for Reconsideration
Thomas S. Cherry
VC 00-P-105

Page 541, October 17, 2000, (Tape 1), After Agenda Item, continued from Page 540

There was no motion therefore, the request was denied.

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Page 541, October 17, 2000, (Tape 1) After Agenda Item:

Approval of October 10, 2000 Resolutions

Mr. Hammack and Mr. Kelley moved to approve the Resolutions. Mr. Pammel and Mr. Hart 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 1:13 p.m.

Minutes by: Lori M. Mallam

Approved on: December 19, 2000

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 31, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 543, October 31, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JUNIOR EQUITATION SCHOOL INC., SP 00-S-044 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a riding and boarding stable. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-3 ((1)) 36; 66-4 ((1)) 15. (Moved from 10/3/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Golden, Agent, 2791 North Quebec Street, Arlington, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for an existing riding and boarding stable, known as the Junior Equitation School, Inc. The request was essentially the same conditions as previously approved except for an increase in horses boarded on the site. The applicant also proposed the elimination of riding lessons performed by the applicant and horse shows on the site. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval with the implementation of the development conditions contained in the staff report.

Mr. Golden, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the applicant was a good neighbor and there had been no complaints. Mr. Golden stated that there was no longer a school on the property.

Mr. Hammack asked if the applicant was in agreement with the conditions. Mr. Golden replied yes.

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

Mr. Hammack moved to approve SP 00-S-044 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUNIOR EQUITATION SCHOOL INC., SP 00-S-044 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a riding and boarding stable. Located at 6429 Clifton Rd. on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-3 ((1)) 36; 66-4 ((1)) 15. (Moved from 10/3/00) 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 31, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for 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 Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 6429 Clifton Road (17 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by KJ & Associates dated August, 2000, through August 8, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. No students shall be taught by Junior Equitation School, Inc., however riding lessons may be arranged by the individual boarders and may be scheduled between 9:00 a.m. and 6:00 p.m. daily.
6. The maximum number of parking spaces on site shall be fourteen (14). All parking shall be on-site as shown on the Special Permit Plat prepared by KJ & Associates dated August, 2000 through August 8, 2000. Excluding horse trailers owned by the applicant and/or permanently on site, there shall be no more than three (3) horse trailers on site at any one time on Mondays through Fridays and no more than five (5) at any one time on Saturdays.
7. A conservation plan outlining best management practices for the operation shall be developed and implemented, prior to approval of a non-residential use permit, in coordination with the Northern Virginia Soil and Water Conservation District (NVSWCD). The conservation plan shall include management techniques for the operation, including pasture management, animal waste, composting and nutrient management. No animal waste shall be permitted to decay in place or to be washed into the natural drainage from the site.
8. The maximum number of horses on site at any one time shall be seventeen (17).
9. The existing light poles shall be in conformance with the glare standards specified in Article 14 of the Zoning Ordinance. If it is determined that these standards have been violated, the lights shall be removed or altered through the use of shields (to be made fully shielded) or other methods to prevent glare from projecting onto adjacent properties or the roads. There shall be no lighting of the riding ring after 6:00 p.m.
10. The site entrance shall meet Virginia Department of Transportation (VDOT) requirement, unless waived or modified by VDOT.
11. The Transitional Screening requirements shall be waived along all lot lines. The existing fencing shall be deemed to satisfy the barrier requirement.
12. There shall be no horse shows nor shall there be other special functions permitted on site.

13. The existing house on the site shall be used solely as a residence for the owner or caretaker of the subject 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 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. 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. 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 November 8, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 545, October 31, 2000, (Tape 1), Scheduled case of:

9.00 A.M. CAROLYN JOLLY, VC 00-D-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line and 29.0 ft. from front lot line. Located at 1539 Brookhaven Dr. on approx. 20,001 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((2)) (2) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carolyn Jolly, 1539 Brookhaven Drive, McLean, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a two-story addition to the dwelling to be located 10 feet from the north side lot line and 29 feet from the front lot line. A minimum side yard of 15 feet and a minimum front yard of 35 feet are required; therefore, variances of 5 and 6 feet were requested.

Ms. Jolly presented the variance request as outlined in the statement of justification submitted with the application. She said she needed more space in her house and the garage would be consistent with other homes in the neighborhood.

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

Mr. Pammel moved to approve VC 00-D-112 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CAROLYN JOLLY, VC 00-D-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line and 29.0 ft. from front lot line. Located at 1539 Brookhaven Dr. on approx. 20,001 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-3 ((2)) (2) 1. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 2000; and

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

1. The applicant is the owner of the land.
2. The encroachment 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Kenneth W. White and revised by Rast Architectural Studio, Inc., dated 7/12/00, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 6-0-1. Mr. Ribble abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN H. AND MARIA CLAITOR, VC 00-M-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from side lot line. Located at 6344 Carolyn Dr. on approx. 10,737 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 147.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Claitor, 6344 Carolyn Drive, Falls Church, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the enclosure of an existing carport for use as a garage to be located 10.1 feet from the north side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 1.9 feet was requested.

Mr. Claitor presented the variance request as outlined in the statement of justification submitted with the application. He said the purpose for enclosing the carport was to shield the cars from the natural elements. Mr. Claitor said the neighbors were in support of the application because it would be pleasing to the eye. He said there were several other enclosed carports in the area.

Mr. Hart asked if the carport was being extended in the rear. Mr. Claitor replied yes, but it would still be 27 feet from the rear lot line.

Mr. Hart asked staff whether Lot 148 was 15 feet away from the subject property. Ms. Josiah replied yes.

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

Mr. Hart moved to approve VC 00-M-114 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN H. AND MARIA CLAITOR, VC 00-M-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from side lot line. Located at 6344 Carolyn Dr. on approx. 10,737 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 147. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 31, 2000; and

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

- 1. The applicants are the owners of the land.

2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The request is to enclose an existing carport.
4. The variance request is dimensionally minimal.
5. There would not be any impact on the neighborhood because of the architectural compatibility requirement as contained in the development 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.

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Peter R. Moran, dated July 9, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 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

Page 549 October 31, 2000, (Tape 1), JOHN H. AND MARIA CLAITOR, VC 00-M-114, continued from
Page 548

Mr. Ribble 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 November 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 549, October 31, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHERYL AND KHOSRO FARAHANI, SP 00-D-051 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit addition to remain 6.7 ft. from side lot line, such that side yards total 37.34 ft. Located at 1111 Morningwood La. on approx. 20,800 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 11.

Jennifer Josiah, Staff Coordinator, noted that the applicant had requested a deferral.

Jane Kelsey, Agent, Jane Kelsey and Associates Inc., came forward stating that the applicant would like to defer the application to the first available date in November.

Chairman DiGiulian called for speakers to the deferral request.

Doug Bywater, 2740 Chainbridge Road, came forward to speak in opposition to the deferral request. He said he would not be available on November 7, 2000.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the next available date would be December 5, 2000.

Mr. Pammel moved to defer SP 00-D-051 to December 5, 2000 at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 6-0-1. Mr. Hammack recused himself from the vote.

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Page 549, October 31, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY C. & ROBERTA L. MCKAY, VC 00-L-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. and 29.9 ft. from front lot lines of a corner lot. Located at 3315 Collard St. on approx. 11,566 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 49. (Moved from 10/3/00) and 10/17/00 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. Jeffrey McKay, 3315 Collard Street, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition to the dwelling, to be located 10 feet from the front lot line of Ridge Drive and 29.9 feet from the front lot line of Collard Street. A minimum front yard of 35 feet is required; therefore, variances of 29 feet and 5.1 feet were requested.

Mr. McKay presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to expand the kitchen area. Mr. McKay stated that he had spoken with his neighbors who supported the request. He said the lot was deep and narrow and there had been 38 variances approved in the subject subdivision. Mr. McKay stated that a commercial revitalization program surrounded the property.

Ms. Gibb asked the applicant whether he had seen the letter submitted in opposition. Mr. McKay replied that he had and after submitting a drawing to the neighbor, their concern had been addressed.

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

Mr. Ribble moved to approve VC 00-L-111 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY C. & ROBERTA L. MCKAY, VC 00-L-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. and 29.9 ft. from front lot lines of a corner lot. Located at 3315 Collard St. on approx. 11,566 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 49. (Moved from 10/3/00 and 10/17/00 for notices). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The application met the required standards for a variance.
- 3. The lot is narrow with double front yards.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated June 6, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the 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.

Ms. Gibb and 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 November 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 551, October 31, 2000, (Tape 1), Scheduled case of:

9:00 A.M. **THANH TROUNG, ANANDA BUDDHIST MEDITATION INSTITUTE, INC.**, SP 98-P-051
 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 3418 Annandale Rd. on approx. 3.36 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A. (Def. from 12/22/98, 6/20/00, 8/15/00) (Def. For decision only from 10/3/00).

Lynne Strobel, Agent, came forward stating that the application was deferred from several weeks ago so that additional information could be provided to the Board. She noted a letter submitted to the Board with revised development conditions. Ms. Strobel stated that there was also a revised plat submitted.

Chairman DiGiulian asked Ms. Strobel if the applicant was in agreement with the conditions. Ms. Strobel replied yes. She said the condition helped to provide additional assurances with regard to the maximum number of people that would be on site. Ms. Strobel said that it was clear that there would be no special services on the site on high holidays. She stated that the applicant consistently held special services at alternative locations and there was a development condition to address that. Ms. Strobel stated that there was a concern that there were too many parking spaces provided. She said they reduced the number of parking spaces to 25 in hopes that it would be a middle ground and to provide assurances that there would be sufficient parking, but not too much parking to encourage attendance beyond the maximum permitted at the site. Ms. Strobel stated that the development conditions reflected that there would be no weddings or funerals on the site. She said "no parking" signs would be provided in front of the property with the permission of the Virginia Department of Transportation (VDOT). Ms. Strobel said they would endeavor to place the signs in front of the adjacent properties with their consent.

Mr. Hammack asked what were the high holidays. Ms. Strobel stated that there were two high holidays, Buddha's birthday and Buddhist Memorial Day. She said the dates were based on the lunar year so there were no specific dates. Ms. Strobel said the type of service held at the property was quiet because the Buddhist did a lot of meditation and self-reflection, which would be non-obtrusive and cause no impact on the neighbors.

Ms. Gibb asked how far down the street would the "no parking" signs be located in front of the adjacent neighbors' properties. Ms. Strobel said they had envisioned just the properties immediately adjacent to the

application, but they could go further if that was the desire of the Board. She said they did not want to conflict with the neighbors' desire.

Ms. Gibb asked staff whether VDOT had suggestions on this type of issue. Susan Langdon, Chief, Special Permit and Variance Branch, stated that her understanding was that VDOT responded to the request from the applicant and reviewed what they had asked for.

Mr. Hammack asked if funeral or wedding ceremonies were typically held at the site. Ms. Strobel stated that weddings would typically take place at the person's home and funeral services would take place at a funeral home.

Mr. Hart asked what measures would be taken when the 41st person arrived at the site. Ms. Strobel said that was a difficult question for any type of special permit use. She said if there was a problem at one particular site that was consistent, then that problem becomes apparent, it would then be addressed. Additionally, there were development conditions that would enforce that. Ms. Strobel stated that the subject congregation was very small and they had divided the congregation into informal groups, which would further limit when people would be arriving.

Mr. Hart asked what was the time frame of the variance. Ms. Strobel stated that the variance application had been submitted but they were waiting for further surveys. She said the applicant was ready to pursue it as soon as possible once they knew if they could use the property for the purposes that they wanted. Ms. Strobel noted that there was a development condition that placed a limitation on obtaining that approval.

Mr. Hammack asked what would happen if there was insufficient sight distance. Ms. Langdon replied that the applicant would have to take whatever measures VDOT indicated needed to be taken to meet the sight distance requirements and if they couldn't then the special permit could become null and void.

Ms. Gibb stated that maybe it would be better to list lot numbers in Condition #14. Ms. Langdon stated that maybe the condition needed to be reworded because it was not staff's intention to limit it to the two adjacent properties, but they were envisioning anywhere between the two streets.

Ms. Gibb suggested condition wording that "Annandale Road shall be signed for no parking for the Ananda Buddhist Meditation Institute along the site's frontage". She said she didn't want to make it so onerous that neighbors were afraid to have it signed because they couldn't have visitors come.

Ms. Langdon stated she didn't know whether VDOT was that specific when they restricted parking.

Mr. Hammack stated that people in the neighborhood parked on Annandale Road regularly and the Board was considering off site limitations where a lot of neighborhood parking occurred.

Ms. Langdon said that's why staff added the wording of "with permission of the property owners".

Ms. Gibb asked Ms. Strobel how she came up with the revised conditions. Ms. Strobel stated that she met with staff and prepared the conditions.

Ms. Langdon stated that they discussed the Board's discussion at the last public hearing and the concerns that the Board had and based the conditions on those concerns.

Mr. Kelley said he had no idea why the parking spaces should be reduced from 30 to 25 in light of the parking discussion.

Ms. Langdon stated that was a direct comment from the Board at the last public hearing. She said the Board thought that there was too much parking on site and felt it should be reduced. She said the applicant was willing to keep the 30 parking spaces.

Mr. Hart stated that he would not have a problem with 30 parking spaces.

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

Mr. Gibb moved to approve SP 98-P-051 for the reasons noted in the Resolution.

Mr. Kelley stated that he could not support the motion if it included Condition #14 which would take parking away from the residents.

Mr. Pammel stated that if all parking was on site the Condition #14 was not needed.

Mr. Ribble said he supported Mr. Kelley's opinion.

Mr. Hammack stated that he supported Mr. Kelley's opinion. He said he was concerned that there was an applicant who agreed not to have services on high holidays, which would be in comparison to other religions without Easter and Christmas. Mr. Hammack said there was something inconsistent about putting development conditions in that said you could not conduct your religion on the site the way you really would. He said it was sort of an acknowledgment that it did not satisfy the standards in the community because it was too intense a use. Mr. Hammack said this was a site with a history of some non-compliance and concerns over parking were generated by the use of the site.

Mr. Pammel moved a substitute motion to approve the special permit to delete Condition #14. Mr. Kelley seconded the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THANH TROUNG, ANANDA BUDDHIST MEDITATION INSTITUTE, INC., SP 98-P-051 Appl. under Sect(s) 3-303 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 3418 Annandale Rd. on approx. 3.36 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A. (Def. from 12/22/98, 6/20/00, 8/15/00) (Def. For decision only from 10/3/00). 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 31, 2000; and

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

- 1. The applicants are the owners of the land.

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 Sect(s) 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 3418 Annandale Road (3.36 acres), and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Walter C. Sampsell Jr. dated August 12, 1998, as revised through October 20, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of worshipers on the site shall not exceed forty (40) at any one time.
6. Notwithstanding what is show on the approved special permit plat, thirty (30) parking spaces shall be provided. All parking shall be on-site as shown on the special permit plat, except that five (5) additional spaces shall be provided directly south of park space one (1).
7. The barrier requirements along the southern and western property boundaries shall be waived. A six-foot high solid wood fence shall be constructed along the eastern property boundary adjacent to the gravel parking lot, including the five (5) additional spaces. A row of evergreen trees, a minimum of six feet in height at the time of planting and a maximum of 10 feet apart, shall be planted within a four foot wide area located between the fence and the property line. These evergreens shall be maintained in good condition and replaced as needed with plant materials of like kind, subject to the review and approval of the Urban Forestry Branch of DPWES. Existing vegetation shall be deemed to satisfy the transitional screening requirements along the southern and western property boundaries, and shall be maintained in good condition. No vegetation shall be cleared beyond that shown on the approved Special Permit, except for dead or dying plant material.
8. No wedding or funeral ceremonies shall be held on site.
9. Services for high holidays shall not be held on site.
10. No loudspeakers are permitted outside of the building.
11. All signs shall be constructed in accordance with the provisions of Article 12 of the Zoning Ordinance.
12. Prior to approval of a Non-Residential Use Permit for the Place of Worship, the applicant shall file for and obtain approval of a variance from the minimum lot width requirements from the Board of Zoning Appeals, and a subdivision plat from the Department of Public Works and Environmental Services (DPWES). If the variance and/or the subdivision plat is not approved, the special permit shall be rendered null and void.
13. There shall be no outside storage of construction materials or trash on the site.
14. Right-of-way dedication along the Annandale Road frontage in an amount to match dedication on adjacent parcels, shall be conveyed to the Board of Supervisors in fee simple on demand, or at the time of site plan approval, whichever comes first.
15. To provide proper access from the site to Annandale Road, the entrance shall be designed and constructed in accordance with VDOT standards and shall be aligned, if determined feasible by DPWES and VDOT, with Statecrest Drive.
16. Sight distance from the entrance shall be evaluated at the time of site plan review and shall be in accordance with VDOT standards as determined by DPWES and 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 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 6-1. Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 555, October 31, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JAMES W. & ANNE C. TURCOL, VC 00-B-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line such that side yards total 15.6 ft. Located at 10802 Broadwater Dr. on approx. 12,510 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 77-1 ((6)) 183A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Turcol, 10802 Broadwater Drive, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to enclose an existing carport to construct a two-car garage to be located 7.2 feet from a side lot line such that the side yards total 15.6 feet. An 8-foot minimum side yard with total side yards of 20 feet is required for an R-3 cluster district; therefore, variances of 0.8 and 4.4 feet for the garage addition were requested

Mr. Turcol presented the variance request as outlined in the statement of justification submitted with the application. He said most of the neighbors had garages and there were no objections from them. Mr. Turcol stated that he would be enclosing an existing carport and it would be architecturally compatible with the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing

Mr. Kelley moved to approve VC 00-B-115 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES W. & ANNE C. TURCOL, VC 00-B-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line such that side yards total 15.6 ft. Located at 10802 Broadwater Dr. on approx. 12,510 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 77-1 ((6)) 183A. 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 31, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The addition would be no wider than what presently exists.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition (enclosure of existing carport) as shown on the plat prepared by Robert Simpson, dated June 1, 1998, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with 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. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not

Page 557, October 31, 2000, (Tape 1), JAMES W. & ANNE C. TURCOL, VC 00-B-115, continued from
Page 556

present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 557 October 31, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER KELLY & ELLEN PHALEN, VC 00-D-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.1 ft. from front lot line of a corner lot. Located at 6924 Mount Daniel Dr. on approx. 12,930 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((19)) (G) 35, 36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ellen Phalen, 6924 Mount Daniel Drive, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition to be located 21.1 feet from the front lot line of a corner lot. The minimum front yard required is 30 feet; therefore, a variance of 8.9 feet was requested.

Ms. Phalen presented the variance request as outlined in the statement of justification submitted with the application. She stated that they were building a new house and the proposed garage would not fit without a variance. Ms. Phalen stated that the neighbors were in support of the application.

Mr. Pammel noted that the existing house extended 30 feet into the setback.

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

Mr. Pammel moved to approve VC 00-D-113 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER KELLY & ELLEN PHALEN, VC 00-D-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.1 ft. from front lot line of a corner lot. Located at 6924 Mount Daniel Dr. on approx. 12,930 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((19)) (G) 35, 36. 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 31, 2000; and

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

1. The applicants are the owners of the land.
2. The lot is irregularly shaped with dual frontage.
3. The request is reasonable due to the unusual configuration of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition (garage) as shown on the plat prepared by Elizabeth L. Thurber, dated April 29, 2000, signed July 3, 2000, 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 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 2000. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. KHALIL SORBI, A 2000-MA-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination revoking appellant's Home Occupation Permit for a karate school and the determination that appellant is therefore operating a school of special education without special permit approval in violation of Zoning Ordinance provisions. Located at 6477 Little River Tnpk. on approx. 13,850 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((9)) (A) 5, 6, 7 and 8. (Def. from 9/19/00).

Chairman DiGiulian noted that the appellant had requested a deferral.

William Thomas, Agent, came forward stating that he wanted to request a deferral. He said he did not send notices because he had been in discussions with the Zoning Administration Division about Dr. Sorbi's status under the home occupation permit, when the deadline for the notices was approaching. Mr. Thomas said he thought they were inches away from satisfying zoning. He said they were not able to do that within the time frame. Mr. Thomas said Dr. Sorbi had a special permit filed with the County. He said if Dr. Sorbi could run his home occupation permit, with a limited number of karate students, in a way that satisfied the community and the zoning staff, then he would be in a good situation for the special permit. Mr. Thomas said he thought the best route was to get the home occupation permit reissued and bring the use into compliance. He said he specifically did not send the notices because he didn't want a situation coming before the Board before it was right. Mr. Thomas said he would appreciate more time to continue conversation with zoning staff on the home occupation permit while the special permit was processing.

Chairman DiGiulian asked how much time was needed. Mr. Thomas replied a month would be fine.

Mr. Kelley asked why the appeal had been previously deferred. Mr. Thomas said the request for deferral was filed before the notices were due, but he was still providing documentation to zoning staff. He said it was deferred to continue that process.

Mr. Kelley said he did not see that as a legitimate reason not to process the notices. He said he would vote against the deferral because the notices should have done.

William Shoup, Deputy Zoning Administrator, said he had been in good faith discussions with the appellant trying to get the issues resolved. He said the issue dealt with staff's revocation of the appellant's home occupation permit. Mr. Shoup said the two key use limitations at issue was whether or not this was the appellant's primary residence, which Mr. Thomas was providing documentation to establish that, and also the number of students were limited and he could not have more than 4 students at any one time and no more than 8 in a day. He said it appeared close that staff would consider reissuing the home occupation permit; however, recent observations indicated that Mr. Sorbi was operating with more than 4 students coming to the property at one time. Mr. Shoup stated that he informed Mr. Thomas a couple of days prior that staff would not be reissuing the home occupation permit. He said staff deferred the appeal administratively one time prior in a good faith effort to see if the appellant could resolve the issues. Mr. Shoup stated that staff would object to any further deferral and asked the Board to dismiss the appeal.

Mr. Hart asked if there was a requirement in the Ordinance indicating that the appellant was responsible for sending the notices and what happened if you did not. Mr. Shoup stated that the Ordinance required that the notices are sent and there was nothing in the Ordinance that procedurally would have allowed it to happen the way it did.

Mr. Kelley stated that was why he found it unacceptable, because it was a requirement and it made it worse because it was done deliberately.

Chairman DiGiulian asked if the appellant was still operating. Mr. Thomas replied yes.

Mr. Hammack said he didn't like delays, but the Board had granted deferrals many times before. He moved to defer the appeal to December 12, 2000. Mr. Hart seconded the motion for purposes of discussion.

Mr. Hammack said that in making the motion, he did not condone failure to send out notices whether it was innocent or intentional. He said the Board should be a little harder on some of the appellants, because the Board tended to be more lenient in some cases if there seems to be progress being made.

Mr. Pammel stated that Mr. Shoup had made his case clear and indicated that he had notified the appellant

that the home occupation permit would not be renewed and given the circumstances, he felt the Board needed to support the Zoning Administrator.

The motion failed by a vote of 2-5. Chairman DiGiulian, Mr. Ribble, Mr. Kelley, Ms. Gibb and Mr. Pammel voted against the motion and the deferral request was denied.

Mr. Pammel moved to dismiss the appeal. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 560, October 31, 2000, (Tape 1), Scheduled case of:

9:30 A.M. EOP-RESTON TOWN CENTER, L.L.C. ("EQUITY"), A 2000-HM-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of approval of Site Plan 7067-SP-12-2 by the Department of Public Works and Environmental Services which allows for commercial development on property located in the Urban Core of the Reston Town Center. Located in the N.E. quadrant of the intersection of Town Center Pkwy. and Bluemont Wy. on approx. 30.03 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-1 ((1)) 12E. (deferred from 9/12/00 and 10/10/00)

Chairman DiGiulian noted the request for withdrawal. Mr. Hammack moved to withdraw the appeal. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 560, October 31, 2000, (Tape 1), After Agenda Item:

Request for Additional Time
All Dulles Area Muslim Society, SP 96-D-038

Mr. Pammel moved to approve the request for additional time for SP 96-D-038. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date was September 17, 2001.

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As there was no other business to come before the Board, the meeting was adjourned at 10:36 a.m.

Minutes by: Regina Thorn Corbett

Approved on: January 16, 2001



Regina Thorn Corbett, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 7, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 561, November 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. EDMUND MCWILLIAMS, VC 00-P-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 2835 Cherry St. on approx. 6,879 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((11)) 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, 6826 Park Hill Drive, Lorton, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an enclosed sunroom addition to the dwelling to be located 6.2 feet from the northern side lot line. The Ordinance requires a minimum side yard of 10 feet; therefore, a variance of 3.8 feet was requested.

Mr. Reames, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the proposed location and size of the addition produced the most minimal variance that could be requested.

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

Mr. Hammack moved to approve VC 00-P-131 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDMUND MCWILLIAMS, VC 00-P-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.2 ft. from side lot line. Located at 2835 Cherry St. on approx. 6,879 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((11)) 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 November 7, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the enclosed sunroom addition shown on the plat prepared by Alexandria Surveys, Inc., dated July 26, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Pammel 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 November 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 562, November 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. GRANT H. & JANINE C. PECKHAM, VC 00-L-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line. Located at 5523 Dunsmore Rd. on approx. 12,000 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 44.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grant Peckham, 5523 Dunsmore Road, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the enclosure of an existing carport for use as a garage, to be located 8.9 feet from the northern side lot line. The Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 3.1 feet was requested.

Mr. Peckham presented the variance request as outlined in the statement of justification submitted with the application. He said he would be using the current wall and subfooters for the addition. Mr. Peckham stated that the addition would be in keeping with the style of garages in the neighborhood and would increase his property value. He said the addition would not cause any adverse impact on the neighbors.

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

Mr. Pammel moved to approve VC 00-L-126 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GRANT H. & JANINE C. PECKHAM, VC 00-L-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line. Located at 5523 Dunsmore Rd. on approx. 12,000 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 44. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The variance request is just to enclose a carport and there will be no further expansion 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the garage shown on the plat prepared by Colburn & Associates, Inc., dated August 21, 2000 as revised through August 28, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 3. The 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 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. Hart 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 November 15, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JAMES T. MCMANUS, VC 00-P-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure in front yard on a lot containing 36,000 sq. ft. or less. Located at 2979 Westhurst La. on approx. 36,000 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((12)) (2) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, 14368 Nandina Court, Centreville, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a detached garage as an accessory structure, to be located in the front yard of a lot containing 36,000 square feet in area. The Zoning Ordinance does not permit accessory structures in the front yard of any lot containing 36,000 square feet or less in area.

Ms. Greenlief, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the applicant purchased the property in good faith in 1990. Ms. Greenlief stated that the property was a pie-shaped lot with 3 front yards. She said the accessory structure would not cause any adverse impact on the neighbors. Ms. Greenlief stated that there was no other location for the structure because of the easement drainage. She said there would be no vegetation removed. Ms. Greenlief stated that all the neighbors had been contacted and there was no opposition.

Mr. Hart asked if the vegetation would remain. Ms. Greenlief replied yes.

Mr. Hart asked what was the height differential between the garage floor and the street. Ms. Greenlief replied between 6 and 8 feet.

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

Mr. Hart moved to approve VC 00-P-118 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES T. MCMANUS, VC 00-P-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure in front yard on a lot containing 36,000 sq. ft. or less. Located at 2979 Westhurst La. on approx. 36,000 sq. ft. of land zoned R-1. Providence District. Tax Map 47-1 ((12)) (2) 5. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is an oddly shaped corner lot with the driveway going backwards to a pipestem.
4. The lot is heavily impacted by a sewer easement.
5. The photographs indicate the topography situation on the lot.
6. The location chosen for the garage will be of minimal impact to 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the detached garage shown on the plat prepared by Land Design Consultants, dated July 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 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 6-0-1. Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 566, November 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. EARL SHELTON & DOROTHY YOUNG, VCA 98-P-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 98-P-099 to permit a modification to the previously approved building footprint for an accessory structure. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20. (Concurrent with SP 00-P-049).

9:00 A.M. EARL SHELTON, SP 00-P-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 11.8 ft. from side lot line. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20. (Concurrent with VCA 98-P-099).

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

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction to minimum yard requirements based on an error in building location to permit a deck and associated staircase to remain 11.8 feet from a side lot line. A minimum 20-foot side yard is required; therefore, a modification of 8.2 feet was requested.

The applicant also requested approval of an amendment to a previously approved variance to permit an accessory structure with 9.53 square feet greater and 3.6 feet in height greater than what was previously approved.

Mr. Pasley, the applicant's agent, presented the variance and special permit requests as outlined in the statement of justification submitted with the application. He said there was a change in the area of the building because there was a sewer line in front that he discovered would interfere with the initial building. Mr. Pasley said the original plan was to have the stairway right next to the door, but the applicant could not make a turn to get the materials through the doorway so he made a deck to allow for room to turn. He said that was the reason for the special permit request. Mr. Pasley stated that the deck was built without approval and they were trying to correct the mistakes.

Mr. Hart asked whether the footprint changed because of a sewer. Mr. Pasley replied there was sewer line to a septic field that had been abandoned.

Mr. Hart asked why the structure higher was than what was approved. Mr. Pasley stated that there was an overhang to the front of the garage to provide a shield from the elements. He said he made the overhang 6 feet, which raised the top of the roof.

Mr. Hart asked was it a design change that the owner decided on or was there a physical constraint. Mr. Pasley responded that the applicant wanted to keep the area in front of the doors dry so water would not go inside.

Mr. Hart asked if there was a building permit issued. Ms. Josiah replied that there was a permit issued for the original structure. Mr. Hart asked if the building permit authorized the building to be taller than what was approved. Ms. Josiah said the building permit did not state that.

Mr. Hart asked if the plans corresponded to the variance that was there. Ms. Josiah stated that they would have to research the file for that answer.

Mr. Hammack asked Mr. Pasley if he was the contractor. Mr. Pasley replied yes but that the applicant did most of the work. Mr. Hammack asked Mr. Pasley if he was licensed in Fairfax County. Mr. Pasley replied yes.

Susan Langdon, Chief, Special Permit and Branch, responded to Mr. Hart previous question by stating that the building permit did not specify the height of the structure.

Mr. Hammack asked if the variance put a 20-foot height on the structure. Ms. Langdon replied yes.

Mr. Hammack asked if the height was computed to the peak of the roof. Ms. Landon replied that the Ordinance required that accessory structures be measured to the peak, so the plat did not specify the peak, it just said the height would be 20 feet. Ms. Langdon stated that the height was 23.6 feet to the peak as reflected on the plat submitted with this application.

Mr. Hammack asked was there supposed to be a room on top of the garage originally. Mr. Pasley stated that there was storage above the garage.

Mr. Ribble asked Mr. Pasley if there was a reason they had to change the pitch of the roof. Mr. Pasley said the part that overhangs the front, raised the roof.

Mr. Hammack asked who made the decision to change the roof. Mr. Pasley replied that the applicant made the decision.

Mr. Hammack asked why the applicant did not show a deck and a staircase on the original application. Mr.

Page 568, November 7, 2000, (Tape 1); EARL SHELTON & DOROTHY YOUNG, VCA 98-P-099; EARL SHELTON, SP 00-P-049; continued from Page 567

Pasley stated that the deck was an after thought because he needed the space to turn on the stairway when taking items into the area above.

Mr. Hammack asked how far away was the house on the adjacent property to the north. Ms. Langdon replied that there was commercial development to the north.

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

Mr. Ribble stated that he would like to hear from the owner along with the contractor. He said it was hard to determine a good faith effort without the owner being present.

Mr. Ribble moved to defer VCA 98-P-099 and SP 00-P-049 to November 14, 2000, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 568, November 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. RAMAN L. & VINA R. PATEL, VC 00-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.1 ft. from rear lot line. Located at 9105 Ashmeadow Ct. on approx. 5,944 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 108-1 ((6)) 193.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Raman Patel, 9105 Ashmeadow Court, Lorton, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a family room addition to the dwelling to be located 16.1 feet from the rear lot line. The Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 8.9 feet was requested.

Mr. Patel presented the variance request as outlined in the statement of justification submitted with the application. He said the variance was requested to have a family room to offer a year-round feeling of nature without the affects of weather or mosquito bites.

Mr. Ribble asked Mr. Patel if he reaffirmed the statements of land use hardships as indicated in the statement of justification. Mr. Patel replied yes.

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

Mr. Ribble moved to approve VC 00-V-121 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RAMAN L. & VINA R. PATEL, VC 00-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.1 ft. from rear lot line. Located at 9105 Ashmeadow Ct. on approx. 5,944 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 108-1 ((6)) 193. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant met the required standards for a variance.
3. The statement of justification indicates that the lot is narrow.
4. The location of the house on the lot causes the need for 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the family room addition shown on the plat prepared by Cervantes & Associates, P.C., dated August 8, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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.

Ms. Gibb 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 November 15, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 570, November 7, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS D. & ANNE D. GOODALL, VC 00-V-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19 ft. 2.5 in. from rear lot line. Located at 7302 Park Terrace Dr. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((8)) 47.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Goodall, 7302 Park Terrace Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a room addition in order to expand the kitchen area to be located 19 feet, 2½ inches from the rear lot line. The minimum rear yard requirement is 25 feet; therefore, a variance of 5 feet, 9½ inches was requested.

Mr. Goodall presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was shallow and the existing kitchen was small and out of date. Mr. Goodall said he had spoken with adjacent neighbors who had no opposition. He said the addition would not be detrimental to the neighborhood.

Mr. Hart noted a letter received from Mr. Borges on Lot 49 and asked how much further would the addition extend into the rear yard. Mr. Goodall stated that it would not extend further than the existing concrete slab.

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

Mr. Kelley moved to approve VC 00-V-117 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS D. & ANNE D. GOODALL, VC 00-V-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19 ft. 2.5 in. from rear lot line. Located at 7302 Park Terrace Dr. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((8)) 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 November 7, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant met the required standards for a variance.
3. The lot is exceptionally shallow.
4. The statement of justification indicates 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a room addition as shown on the plat prepared by R.C. Fields, Jr., dated, March 13, 1987, as revised by L. Layton Golding III, Architect, received dated August 9, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. 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 November 15, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ANTHONY PODESTA, VC 00-M-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 6106 Beachway Dr. on approx. 28,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 891.

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

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure (garage) to be located in the front yard of a lot containing 36,000 square feet or less.

Mr. Divito, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said there was a 50-foot wide sewer easement that went diagonally across the property. Mr. Divito stated that the angle of the original house was dictated by the easement. He stated that the proposed location was the only place for the addition.

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

Ms. Glbb moved to approve VC 00-M-122 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY PODESTA, VC 00-M-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 6106 Beachway Dr. on approx. 28,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 891. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented written and verbal testimony indicating compliance with the required standards for a variance.
3. The topography of the lot is unusual.
4. The lot is crossed by a sanitary sewer easement which makes construction of anything in front of the sewer easement impossible.
5. The garage is modest in nature and is located in the only place possible.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an accessory structure as shown on the plat prepared by Hamid M. Tehrani, dated July 2, 2000, revised through July 31, 2000, 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.

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 November 15, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ANTIOCH BAPTIST CHURCH, SPA 90-S-057 Appl. under Sect(s). 3-C03 and 3-103 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church and related facilities to permit increase in land area and parking spaces. Located at 6531 Little Ox Rd. on approx. 13.60 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 87-1 ((1)) 2, 2A, 6.

Susan Langdon, Chief, Special Permit and Variance Branch stated that it had been discovered that the notices were done incorrectly and the public hearing would need to be deferred. She suggested a hearing date of December 5, 2000.

David Houston, Agent, came forward and apologized for the notice error. He concurred with the deferral date.

Mr. Hart moved to defer SPA 90-S-057 to December 5, 2000, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 574, November 7, 2000, (Tape 1), Scheduled case of:

9:30 A.M. THOMAS A. & ANNE C. DIBENEDETTO, A 2000-DR-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that Special Exception Amendment SEA 91-D-021 has expired, and that the April 10, 2000 letter from the appellants did not constitute a proper request for additional time. Located at 6913 Old Dominion Dr. on approx. 11,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((7)) (11) 6, 7, 8.

Dolores Kinney, Zoning Administration Division, stated that the appeal was a determination that Special Exception Amendment, SEA 91-D-021 had expired and that a letter from the appellant dated April 10, 2000, did not constitute a proper request for additional time, pursuant to Sect. 9-015 of the Zoning Ordinance. A special exception was granted to the appellants in 1987 to operate an office use in the R-3 District. After subsequent special exception approvals and amendments, SEA 91-D-021 was granted on January 14, 2000, to continue the existing office use for a period of seven years, provided that a Non Residential Use Permit (Non-RUP) was obtained within 3 months, which resulted in a deadline date of April 24, 2000. The special exception indicated that pursuant to Sect. 9-015, the approval would expire without notice if the Non-RUP was not obtained within the specified time. The approval provided that the Board could grant additional time to establish the use if a written request for additional time was submitted prior to the expiration of the special exception amendment. The request needed to include the specific amount of time requested, the basis for the amount of time requested, and why additional time was requested. The appellant did not obtain the required Non-RUP within the 3-month time frame. Ms. Kinney stated that a letter from the appellant dated April 10, 2000, was received on April 12, 2000, by the Zoning Administration Division requesting information on all the permitted uses for the subject property. She said the letter made no mention of a request for additional time and it was not considered a request for additional time and could not be evaluated in that context. The appellants acknowledged that their April 10, 2000, letter did not address the specifics of Sect. 9-015 and the special exception amendment approval for a request for additional time, but argue that it met the intentions of requirements. Ms. Kinney said that the appellants claimed that they had demonstrated their diligence through the pursuit of previous special exception approvals and maintained contact with the Zoning Administrator during the 90-day period after the special exception approval in January, 2000. The appellants' primary concern was that the cost and time involved to obtain a new special exception was must too expensive as compared to simply granting the request for additional time. Staff acknowledged the appellants concerns; however, a specific deadline was established and specific criteria was indicated in the approved special exception amendment with regard to seeking additional time if the Non-RUP deadline could not be met to which the appellants did not adhere. The April 10th letter was not a request for additional time to establish the office use; it did not specify the amount of additional time requested and it did not indicate an explanation of why additional time was required. The letter did not constitute a proper request for additional time pursuant to the approved special exception amendment.

Mr. Hammack asked if the appellant did anything toward implementing the special exception. Ms. Kinney replied not for the recent amendment.

Chairman DiGiulian said he believed the appellant obtained a building permit. Ms. Kinney stated that the appellant did not obtain a building permit for the recent approval. She said the only information staff had on the most recent amendment was the letter dated April 10, 2000.

Ms. Gibb asked if it was normal to obtain the Non-RUP permit within 3 months. Ms. Kinney said that because the appellants had previous special exceptions and amendments, the most recent approval was most like an extension of the previous use. William Shoup, Deputy Zoning Administrator, stated that when there was a use similar to the subject use, the time frame would be cut down considerably to ensure that the use continued to operate in compliance.

Ms. Gibb asked did the previous special exceptions have the same time frame in obtaining the Non-RUP. Ms. Kinney replied that the timeframes varied between amendments.

Michele Rosati, Agent, stated that previously the appellants had been working without counsel. She said 3 months was a very short time to obtain a Non-RUP. Ms. Rosati said the letter from staff with the development conditions for the special exception was dated February 16, 2000. She said the appellant stated that he had been in telephone contact within the 90-day period with staff and had attempted to contact them about the issue of the permitted uses. Ms. Rosati said that on April 26th the appellant came to the County to find out why he hadn't received a response to his letter. She said the appellants thought they were meeting the spirit and the intent of the requirements and responding to the substance, if not the form. She said the urgency in the appellant's letter was clear. She said it was unfortunate that staff did not answer the letter at all before the 90 days elapsed and they did not point out that the appellants were approaching the 90-day deadline. Ms. Rosati said the appellant did not contend that it was not their responsibility, but they had diligently pursued all of their development approvals and had kept up the property admirably. She said they had given all the signs of keeping a simple business up and running and keeping the property generating useful revenue.

Mr. Hammack asked why did the appellants ask what were the permitted uses. Ms. Rosati stated that the appellants did not understand the conditions of the special exception. She said it was an odd question, but that it seemed to her like a cry for help.

Ms. Rosati said the cost of filing a new special exception was considerable, but said the argument was not purely financial. She read from her letter stating that "it would seem unduly onerous to acquire this after a good faith mistake by conscientious applicants who truly thought they were complying with the letter as well as the spirit of the approval". Ms. Rosati asked that their initial letter and justification be deemed a request for a 6-month extension, which had past. She said they would like to change the request to 8 months if it was the Board's intention to rule in favor of the appellant.

Mr. Pammel said it was unfortunate that the County did not respond and they needed to get better about that. Mr. Shoup stated that staff was reviewing the request and once it was discovered that they were beyond the expiration date, it was felt that the only response that should be provided was that it had expired.

Mr. Pammel stated that the response came 3 months after the letter was sent. Mr. Shoup stated that staff was assessing the letter to see if there was a way to consider whether or not the letter constituted an additional time request.

Mr. Hart asked if it was the appellant's contention that the letter satisfied the standards for an additional time request. Ms. Rosati stated that the appellant thought they did what needed to be done. She said they expected to be guided.

Mr. Hart asked if the Board of Supervisors could waive the filing fee. Mr. Shoup replied that there were provisions to waive the filing fees, but there were specific criteria that would need to be met. Mr. Shoup said he didn't think the subject application would meet those criteria.

Ms. Rosati said that the appellant had experiences with unexpected additional engineering expenses for amendments. She said it was not an inexpensive or a simple process.

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

Mr. Hammack moved to uphold the Zoning Administrator's decision. Mr. Hammack said the language in the letter dated February 16, 2000, was clear stating that the Board of Supervisors could grant additional time. He said from that language, the Board of Zoning Appeals did not have the authority to grant the additional time. Mr. Hammack said the letter could not be construed as an additional time request because it did not ask for additional time. He said the appellant could request a waiver of the special exception fees and Board of Supervisors could make that determination. Mr. Hammack stated that he believed the Zoning Administrator's determination was correct.

Mr. Hart seconded the motion.

Mr. Pammel asked was the date that the request was made verbally, was that the April 26, 2000. Ms. Kinney stated that she was not aware that the appellant came to the County.

Page 576, November 7, 2000, (Tape 1), THOMAS A. & ANNE C. DIBENEDETTO, A 2000-DR-021, continued from Page 575

Mr. Pammel said if April 26, 2000, was the date that the appellant came to the County, according to his calculations, the request would be within the 90-day timeframe. Mr. Shoup stated that it was not a written request and staff had no knowledge of who the appellant had discussion with.

Mr. Hart said he agreed with Mr. Hammack. He said the appellant had made a good presentation of the equities of the situation. Mr. Hart said this was another example of if the BZA had a broader question to consider, then he would be voting the other way. He stated the question the BZA as confronted with was if the Zoning Administrator was correct or not under the Ordinance. Mr. Hart stated that the BZA often has additional time requests that were done without the benefit of counsel. He said it was not difficult to request additional time. Mr. Hart said the Zoning Administrator was correct.

The motion carried by a vote of 7-0. The Zoning Administrator was upheld.

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Page 576, November 7, 2000, (Tape 1), After Agenda Item:

Additional Time Request
Hoa Dinh Ngo, VC 97-L-112

Mr. Ribble moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date was August 2, 2001.

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Page 576, November 7, 2000, (Tape 1), After Agenda Item:

Additional Time Request
Cornwell Farm, L.L.C., SP 97-D-040

Mr. Ribble moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 7-0. The new expiration date was August 4, 2001.

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Page 576, November 7, 2000, (Tape 1), After Agenda Item:

Additional Time Request
McLean Little League, SP 98-D-027

Mr. Ribble moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 7-0. The new expiration date was May 19, 2001.

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Page 576, November 7, 2000, (Tape 1), After Agenda Item:

Approval of October 31, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote 7-0.

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Page 576, November 7, 2000, (Tape 1), After Agenda Item:

Request for Intent to Defer
Ralph Duke, A 1999-HM-026

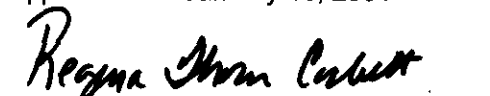
Mr. Kelley moved to approve the request for Intent to Defer. Ms. Gibb seconded the motion which carried by a vote of 7-0. The appeal was deferred to March 27, 2001 at 9:30 a.m.

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Minutes by: Regina Thorn Corbett

Approved on: January 16, 2001



Regina Thorn Corbett, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals



A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 14, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley, James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 579, November 14, 2000, (Tape 1) Scheduled case of:

9:00 A.M. BIKAN S. & DALJIT K. OCTAIN, VC 00-S-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less and permit a fence greater than 4.0 ft. in height. Located at 12660 Braddock Farms Ct. on approx. 25,000 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((6)) 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. Bikan Octain, 12660 Braddock Farms Court, Clifton, Virginia, replied that it was.

Mike Adams, Department of Planning and Zoning, made staff's presentation as contained in the staff report. The applicants requested a variance to permit an accessory structure, which is a pool, to be constructed in the front yard of a corner lot. They also requested to permit a fence greater than 4.0 feet in height to remain in the front yard of a corner lot. The Zoning Ordinance mandates that accessory structures should not be located in any front yard containing 36,000 square feet or less; therefore, a variance was requested for the installation of the pool. The maximum fence height allowed by the Zoning Ordinance is 4.0 feet; therefore, a 2.0 foot variance was requested for the fence.

Hugh Hughes, Rice and Associates, 4001 Westfax Drive, Chantilly, Virginia, spoke on behalf of the applicants and presented the variance request as outlined in the statement of justification submitted with the application. He explained that the lot in question had frontages on three separate roads; therefore, the set back requirements presented an undue hardship on the property. He explained that the fence surrounded the subdivision for screening purposes and it had been in place for several years.

Mr. Hart asked staff if the fence surrounded the entire subdivision. Susan Langdon, Chief, Special Permit and Variance Branch, replied yes.

Chairman DiGiulian called for speakers.

Mr. Singh, (no address given for record), read a letter in opposition from an adjoining neighbor. The neighbors were opposed to the construction of a fence on the common property line.

Chairman DiGiulian asked the applicants if they had plans to construct a fence along the common property lines. Mr. Octain replied that they had no such plans.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 00-S-124 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BIKAN S. & DALJIT K. OCTAIN, VC 00-S-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less and permit a fence greater than 4.0 ft. in height. Located at 12660 Braddock Farms Ct. on approx. 25,000 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((6)) 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 November 14, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot contains double front yards on two major thoroughfares.
4. The actual placement of the house is reversed so the orientation is in the other direction.
5. The degree of traffic on the surrounding roads and the nature of the use justify the variance for the fence and for the structure.

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

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

1. This variance is approved for the location of an accessory structure (pool) and a fence as shown on the plat prepared by Rice Associates, dated June 8, 2000, signed August 17, 2000, 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.

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 November 29, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JAMES A. LEAVENGOOD, VC 00-V-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 14.4 ft. from rear lot line and construction of addition 15.5 ft. from rear lot line. Located at 1901 Mallinson Way on approx. 33,418 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((23)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Turner, 124 South Royal Street, Alexandria, Virginia, replied that it was.

Mike Adams, Department of Planning and Zoning, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a dwelling to remain 14.4 feet from the rear lot line and the construction of an addition 15.5 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, the applicant requested variances of 10.6 feet and 9.5 feet.

Mr. Turner, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that there was a Conservation Easement that extended along the front of the property. He submitted an illustration of the layout of the property. He stated that the dividing line between Lots 1 and 2 was determined to be a rear lot line, which impacted the construction of the addition as well as the dwelling. He stated that he had full neighborhood support.

Mr. Hammack asked for an explanation of the interpretation of the rear lot line. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the Zoning Ordinance mandated that with respect to corner lots the yard opposite the shortest front yard was the rear yard and the other side yard becomes the side yard.

Ms. Gibb disclosed that the firm represented the seller of the property to Mr. Turner and that would not affect her ability to vote objectively.

Mr. Pammel moved to approve VC 00-V-123 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES A. LEAVENGOOD, VC 00-V-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 14.4 ft. from rear lot line and construction of addition 15.5 ft. from rear lot line. Located at 1901 Mallinson Way on approx. 33,418 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((23)) 1. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony indicating compliance with the required standards for 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a dwelling and addition as shown on the plat prepared by Ronald J Keller, dated July 14, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. Hart 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 November 29, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. IBRAHIM M. & ABDUL W. GHEYASZADA, VC 00-M-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1A having a lot width of 15.7 ft. and proposed Lot 1B having a lot width of 97.02 ft. Located at 3366 Bannerwood Dr. on approx. 1.22 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 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. Jane Kelsey, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Mr. Hammack recused himself from the meeting as he had represented one of Ms. Kelsey's family members.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the subdivision of one lot into two lots with proposed Lot 1A having a lot width of 15.7 feet and proposed Lot 1B having a lot width of 97.02 feet. The Zoning Ordinance requires a minimum lot width of 100 feet. Lot 1B, proposed at the front of the site, would contain the existing dwelling and would be 25,925 square feet in size. Lot 1A, proposed at the rear of the site, would contain 27,401 square feet.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She informed the Board that the applicants lived in the existing home on the property and the applicant's brother wanted to build a new house on the back of the property. She said the lot was very long and narrow and was surrounded on three sides by Pine Ridge Park. She stated that the lot was fairly flat and rolled slightly toward the rear where there was a sudden high ridge, which measured 8 to 10 feet in height. She said the ridge was located directly off the northern lot line and extended toward the park. She informed the Board that the lot could have been subdivided into four lots had the parcel been turned lengthwise along Bannerwood Drive. Ms. Kelsey proposed a development condition, which mandated that the driveway be paved.

Ms. Gibb asked if the proposed driveway was to be paved all the way through to the back lot. Ms. Kelsey replied yes.

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

Mr. Hart moved to approve VC 00-M-120 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

IBRAHIM M. & ABDUL W. GHEYASZADA, VC 00-M-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1A having a lot width of 15.7 ft. and proposed Lot 1B having a lot width of 97.02 ft. Located at 3366 Bannerwood Dr. on approx. 1.22 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 13. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicant's agent presented testimony indicating compliance with the required standards for a variance.
- 3. The statement of justification and the agent's presentation specify the reasons for approval.
- 4. The application meets the standards in the Zoning Ordinance, specifically because the short end of the lot is along the street.

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 **APPROVED** with the following limitations:

- 1. This variance is approved for the subdivision of one lot into two lots with proposed Lot 1A having a lot width of 15.7 feet and proposed Lot 1B having a lot width of 97.02 feet as shown on the plat prepared by SDE, Inc., dated June 2, 2000, revised August 7, 2000. All development shall be in substantial conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for each of these lots.
- 2. The driveways for both lots shall be consolidated to provide one entrance to the site from Bannerwood Drive. The entrance shall be at the northeast corner of the site. The entrance and driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual

Page 585 November 14, 2000, (Tape 1), IBRAHIM M. & ABDUL W. GHEYASZADA, VC 00-M-120, continued from Page 584

as determined by the Department of Public Works and Environmental Services (DPWES). The pipestem driveway shall be paved.

3. Limits of clearing and grading shall be the minimum necessary to provide for the development of the site as determined by the Urban Forestry Branch, DPWES.

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. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack recused himself from the hearing.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 29, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 585, November 14, 2000, (Tape 1) Scheduled case of:

9:00 A.M. RONALD K. & DONNA M. ASHWELL, VC 00-Y-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.1 ft. from rear lot line. Located at 11626 Ayreshire Rd. on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-2 ((10)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donna Ashwell, 11626 Ayreshire Road, Oakton, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the enclosure of an existing screened porch to be located 19.1 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 5.9 feet was requested.

Ms. Ashwell presented the variance request as outlined in the statement of justification submitted with the application. She explained that they wanted to enclose the existing screened porch to provide additional living space. She stated that they had approval from their homeowners association.

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

Mr. Kelley moved to approve VC 00-Y-125 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD K. & DONNA M. ASHWELL, VC 00-Y-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.1 ft. from rear lot line. Located at 11626 Ayreshire Rd. on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-2 ((10)) 30. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2000; and

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

1. The applicants are the owners of the land.
2. The statement of justification specifies the reasons for approval.
3. The variance request is minimal.
4. The placement of the dwelling on the lot precludes the construction of the addition in any other location.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition (enclosed porch) shown on the plat prepared by Paciulli, Simmons & Associates, Ltd., dated through March 23, 1983, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be in substantial conformance with the architectural renderings submitted with this application.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice,

Page 587, November 14, 2000, (Tape 1), RONALD K. & DONNA M. ASHWELL, VC 00-Y-125, continued from Page 586

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.

Ms. Gibb 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 November 29, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 587, November 14, 2000, (Tape 1) Scheduled case of:

9:00 A.M. LAURA L. COOK, VC 00-P-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.0 ft. from side lot line and addition 8.4 ft. from side lot line. Located at 8512 Crestview Dr. on approx. 43,560 sq. ft. of land zoned R-1. Providence District. Tax Map 59-1 ((2)) 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. Laura Cook, 8512 Crestview Drive, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story garage addition to the dwelling to be located 8.4 feet from the western side lot line. The applicant also requested the construction of a 16-foot high shed to be located 10 feet from the western side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, variances of 11.6 feet and 10 feet were requested respectively.

Ms. Cook presented the variance requests as outlined in the statement of justification submitted with the application. She stated that the home was built in 1942 and currently had a small garage and she wanted to expand the garage to provide additional living space. She stated that the area for the proposed shed was chosen because it was the only area where the construction would not involve the removal of trees. She stated that she had neighborhood support and the application met all the standards for the granting of a variance.

Mr. Hammack asked whether the house on Lot 34 was aligned with her home. Ms. Cook replied that the house on the adjacent property was more to the front of the property. She informed the Board that the neighbors on Lot 34 had originally mailed in a letter in opposition of the variance; however, they had since rescinded that opposition because they thought the variance was for a different property.

Mr. Hart asked if there was any vegetation between the side of the proposed garage and the neighbor on Lot 34. Ms. Cook replied that there were some tall bushes that were recently removed and the area was vacant. Mr. Hart asked why the shed could not be moved towards the middle of the property. Ms. Cook answered that there were trees located in that area of the property.

Ms. Gibb stated that the pictures illustrated that there was an open area towards the middle of the property and asked why the shed could not be located there. Ms. Cook illustrated the layout of the property for the Board and stated that her initial drawing of the area was incorrect.

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

Mr. Hammack moved to approve VC 00-P-127 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAURA L. COOK, VC 00-P-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.0 ft. from side lot line and addition 8.4 ft. from side lot line. Located at 8512 Crestview Dr. on approx. 43,560 sq. ft. of land zoned R-1. Providence District. Tax Map 59-1 ((2)) 35. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant presented testimony indicating compliance with the required standards for a variance.
- 3. The lot is relatively narrow compared to its length.
- 4. The house is sited in such a way that it is on the left side of the lot and there would be no alternative location to construct the addition to the house.
- 5. The shed is far removed from any dwellings.

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

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

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

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

1. This variance is approved for the location of the two-story garage addition and shed shown on the plat prepared by B.W. Smith and Associates, Inc., dated through August 24, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be in substantial conformance with the architectural renderings submitted with this application.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 29, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 589, November 14, 2000, (Tape 1) Scheduled case of:

9:00 A.M. EARL SHELTON & DOROTHY YOUNG, VCA 98-P-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 98-P-099 to permit a modification to the previously approved building footprint for an accessory structure. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20. (Concurrent with SP 00-P-049).

9:00 A.M. EARL SHELTON, SP 00-P-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 11.8 ft. from side lot line. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20. (Concurrent with VCA 98-P-099).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Earl Shelton, 2915 Fairhill Road, Fairfax, Virginia, replied that it was.

Chairman DiGiulian stated that the hearing was deferred to hear testimony from the applicant regarding whether the error was made in good faith.

Mr. Ribble asked whether the contractor or the applicant had made the error. Mr. Shelton replied that he had made the error.

Mr. Hammack asked if the applicant understood that he could not build anything outside of what was previously approved by the Board. Mr. Shelton explained that there was a pipe, which extended down the middle of the property and he assumed it was a sewer line so he dug around the pipe; therefore, he varied from the previously approved plat. Mr. Hammack noted that he also added a deck and stairs that were not approved. Mr. Shelton stated that, because he had extra lumber he built the stairs. He stated that he would be willing to remove the stairs at the Board's request. Mr. Hammack asked the applicant why he had constructed the roof 4 feet higher than what was approved. Mr. Shelton stated that he did not understand the arc of the plane and he thought the trusses he used increased the roof height.

Mr. Hart asked why the roof was four feet higher than what was approved. Mr. Shelton explained that he put a higher pitch on the roof than what was approved and the overhang on either side raised the roof 3 feet.

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

Mr. Ribble stated that the applicant had not made the error in good faith.

Mr. Ribble moved to deny SP 00-P-049. Mr. Hart seconded the motion which carried by a vote of 4-3. Ms. Gibb, Mr. Kelley and Mr. Pammel voted against the motion.

Mr. Hammack changed his vote to Nay and the motion failed.

Mr. Ribble stated that he made the motion based on the applicant's willingness to remove the deck.

Mr. Hart stated that was also his reasoning for his vote.

Ms. Gibb stated that the error was the fault of the property owner however, it was the result of an error in location of the building subsequent to the issuance of the building permit.

Ms. Gibb moved to approve SP 00-P-049 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EARL SHELTON, SP 00-P-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 11.8 ft. from side lot line. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20. (Concurrent with VCA 98-P-099) (DEFERRED FOR DECISION FROM 11/7/00). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a porch/deck shown on the plat prepared by David H. Richardson, dated August 11, 2000 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 4-3. Chairman DiGiulian, Mr. Hammack and Mr. Hart voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 29, 2000. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble moved to approve VCA 98-P-099 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EARL SHELTON & DOROTHY YOUNG, VCA 98-P-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 98-P-099 to permit a modification to the previously approved building footprint for an accessory structure. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20. (Concurrent with SP 00-P-049)(DEFERRED FOR DECISION FROM 11/7/00). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants and their contractor presented testimony indicating compliance with the required standards for 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 **APPROVED** with the following limitations:

1. This variance is approved for the amendment to the approved detached garage footprint shown on the plat prepared by David H. Richardson, dated August 11, 2000, submitted with this application and is not transferable to other land.

Ms. Gibb 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 November 29, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 592, November 14, 2000, (Tape 1) Scheduled case of:

9:00 A.M. JOSEPH AND MARY ELLEN DISILVIO, VC 00-B-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line. Located at 8923 Walker St. on approx. 22,113 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) 40.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary Ellen DiSilvio, 8923 Walker Street, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a two-story garage addition with a family room to be located 4.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 16 feet was requested.

Mr. Kamstra presented the variance request as outlined in the statement of justification submitted with the application. He stated that applicants wanted to enlarge the existing one-car garage, which was located 4.0 feet off the property line, to accommodate two cars and to construct a family room addition above the garage which would attach to the home via a staircase. He stated that the neighbors were in full support of the application.

Mr. Hammack asked how far away the homes on the adjacent lots were from the proposed addition. Mr. Kamstra replied that the homes on either adjacent lots were a large distance away from the proposed addition. Mr. Hammack asked for a description of the family room. Mr. Kamstra replied that the family room addition was not a full story, however it had a peaked roof. He submitted an architectural drawing of the proposed addition.

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

Ms. Gibb moved to approve VC 00-B-128 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH AND MARY ELLEN DISILVIO, VC 00-B-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line. Located at 8923 Walker St. on approx. 22,113 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((8)) 40. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The lot is quite narrow.
- 3. The addition is being located in the same location that an existing garage is located so there is still mature vegetation between the proposed addition and the property next door.
- 4. The impact of the variance will be minimal.
- 5. The applicants presented testimony indicating compliance with the required standards for 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of a two-story addition as shown on the plat prepared by Kenneth W. White, dated, April 25, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. 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 November 29, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 594, November 14, 2000, (Tape 1) Scheduled case of:

9:00 A.M. VK ASSOCIATES I LIMITED PARTNERSHIP, SP 00-Y-052 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation uses. Located at 14564 Lee Rd. on approx. 7.50 ac. of land zoned I-5 and WS. Sully District. Tax Map 44-1 ((1)) 14; 34-3 ((1)) 23F1.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the applicant had requested a deferral until December 19, 2000. She stated that staff supported the request.

Mr. Kelley moved to defer SP 00-Y-052 until December 19, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 7-0.

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9:00 A.M. PARADISE LEARNING CENTER/DELIVERANCE PRAISE TEMPLE, SP 00-B-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 5102 Thackery Ct. on approx. 1.41 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 6A. (Moved from ind. Def)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vanessa Weathers, 5102 Thackery Court, Fairfax, Virginia, replied that it was.

Chairman DiGiulian stated that there was a request for a deferral from the Planning Commission for the purpose of an administrative hearing. He asked the applicant to speak to the deferral request. Ms. Weathers stated that she was not in support of a deferral. She said that she notified the neighbors accordingly and she requested that the Board hear the case.

Chairman DiGiulian called for speakers.

Suzanne Harsel, 5107 Concordia Street, Fairfax, Virginia, came forward to speak to the issue of deferral. She informed the Board that she was the Planning Commissioner who had requested the case be deferred for an administrative hearing. She explained that the case had land use ramifications and she wanted her body of Land Use Advisors to hold a meeting, discuss the issues and then make a recommendation to the Board of Zoning Appeals.

Bob Meadows, 5105 Thackery Court, came forward to speak to the issue of deferral. He stated that he was also speaking for the neighbors who lived at 5106 and 9616 Thackery Court. He said that they were in support of a deferral because of the discrepancies in the staff recommendations to the Board.

Donald Weathers, 5102 Thackery Court, came forward to speak to the issue of deferral. Mr. Weathers requested that the Board hear the case because the use that was being requested was the same use that had been at the facility since 1968.

Florence Naeve, Supervisor Bulova's Office, came forward to speak to the issue of deferral. Ms. Naeve stated that Supervisor Bulova was also in favor of a deferral because some additional information had surfaced that staff had not been aware of that was critical from a land use and transportation prospective. Susan Langdon, Chief, Special Permit and Variance Branch reiterated that some additional information had surfaced which staff had to look into further. She informed the Board that the applicant had originally indicated that she was in agreement with the deferral. She said that staff was in agreement with the deferral.

After some discussion regarding a deferral date, Mr. Pammel moved to defer SP 00-B-055 until December 19, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 7-0.

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9:30 A.M. PREFERRED REAL ESTATE INVESTMENTS, INC., A 2000-MA-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that proposed structural alterations to existing building would terminate the nonconforming status of the building for a warehouse use and would result in the relinquishment of all rights to reestablish a warehouse use on the property. Located at 6315 Bren Mar Dr. on approx. 13.53 ac. of land zoned I-3. Mason District. Tax Map 81-1 ((1)) 9A.

Susan Epstein, Zoning Administration Division, presented staff's position as contained in the staff report. At issue was the appeal of the Zoning Administrator's determination that proposed structural alterations to an existing building would terminate the nonconforming status for a warehouse and would result in the relinquishment of all rights to establish the warehouse use on the property. The property is developed with a building containing approximately 200,000 square feet of warehouse use and 94,000 square feet of office use. The property was initially developed in the 1960's as a warehouse distribution office. At the time of its development the property was zoned IP and warehousing was a permitted use. When the current Zoning Ordinance became effective the property was rezoned to the I-3 district which does not permit warehousing. At that time, the warehousing use became nonconforming subject to the provisions of Sect. 15-103 of the Zoning Ordinance. The appellant proposed modifications to the building for a tenant who will be conducting

an office use so that the building would look more like an office building. At issue in the appeal is what effect with the proposed modifications to the existing building for the permitted office use, have on the status of the nonconforming warehouse use. Paragraph 1 of Sec. 15-103 provides that no structural alterations may be made in any building where a nonconforming use is conducted. A structural alteration is defined in the Zoning Ordinance as a change or rearrangement in the structural parts or in the means of egress or an enlargement whether by extending on a side or by increasing in height or by moving from one location or position to another. Proposed modifications involve adding new doors and new windows. This constituted a structural alteration because the means of egress would be changed and it clearly constituted the rearrangement of structural parts. Consequently, a structural alteration of any type made anywhere within the building that houses a nonconforming use would negate the nonconforming status of that use. As such, the proposed structural alterations could be approved but the appellant would lose the nonconforming warehousing rights.

Ms. Gibb asked why windows were a means of egress. Ms. Epstein replied that they were cutting out a part of the building; therefore, changing the building itself. She stated they were also adding a door to the building. Ms. Gibb asked why changing the windows was considered different than changing the façade. Ms. Epstein stated that the façade was considered the outside layer of the building and the windows would actually alter the way that the building was originally constructed.

Mr. Hammack asked if the Zoning Ordinance contained any definition of structural alterations with regard to windows and doors. Ms. Epstein replied that it did not, however, windows were alterations to the structure and the installation of doors would alter the means of egress. Mr. Hammack stated that was strictly staff's interpretation and there was no definition of structural alteration in the Ordinance. Mr. Shoup replied that it was a common understanding that the installation of a door would change the means of egress. Mr. Hammack asked if a change to an existing door would be a structural change. Mr. Shoup answered that it would not be, however, the installation of a new door would be considered a structural alteration.

Mr. Pammel asked what would happen to the nonconforming rights if a wheel chair ramp were added to the structure. Mr. Shoup stated that would be considered an exclusion that was covered under the Zoning Ordinance, which related to providing accessibility improvement. Mr. Pammel asked for clarification that any improvements could be done which related to the American Disability Act (ADA).

Mr. Shoup replied that was correct. Mr. Hammack asked if the structural changes that were requested related to the ADA. Mr. Shoup replied that the appellants paperwork had not reflected accessibility needs.

Mr. Hart asked if there were any interpretations or cases which related to accessibility improvement. Mr. Shoup referred to the definition in the Ordinance which related to the accessibility exclusions based on the ADA guidelines. He reminded the Board that the appellants had not included any handicap accessibility information in the appeal application.

Keith Martin, attorney for the appellants, stated that the appellants business entailed purchasing older industrial properties and converting some of the buildings into office use. He said that the property at issue was an old warehouse that was an eyesore in the community; therefore, the neighborhood was in favor of the remodeling. He stated that he building had 200,000 square feet of warehouse use and 94,000 square feet of office existing. He informed the Board that the appellants had lease obligations to convert 100,000 square feet of the 200,000 square feet of warehouse for office use. He stated that the doors and windows were essential to remodel the warehouse to resemble an office. He explained that, although the windows and doors were solely for the permitted office use, it was not permitted under the current Zoning Ordinance as long as there was a warehouse use. He informed the Board that no alterations could even be made to the existing office use as long as there was a warehouse use. He said that if the warehouse use was discontinued, the alterations could be made for the office use, however, any nonconforming use of warehouse could not resume in the remaining portion that was not converted to office.

Mr. Martin stated that the two issues of the appeal were the alteration of doors and windows and the permitted use of office space and discontinuation of the nonconforming use of warehouse. He stated that staff had determined that any alterations were prohibited while the nonconforming use was being conducted. He explained that a legal nonconforming use could remain, however, if it was discontinued and then initiated again for an uninterrupted two year period, it could still become a legal nonconforming use.

Mr. Martin stated that it was staff's position that the intent of the Ordinance was to permit legal nonconforming uses to continue but to encourage their redevelopment to conforming uses. It was implicit that the prohibited structural alterations were those which directly benefitted or prolonged the nonconforming use, not the permitted use, and the windows and doors would be solely for the permitted office use, thereby diminishing floor area available to warehouse. There were to be no alterations to any part of the building occupied by warehouse use. He said that staff strictly construed the Ordinance to determine that no alterations were allowed even though they were solely for the permitted use.

Mr. Martin stated that the Ordinance mandated that any nonconforming use could be continued but could not be enlarged or extended and no structural alteration could be made in any building in which such use was conducted. He stated that the Zoning Ordinance did not mention absolute preclusion of the warehouse use once the alterations had been made. He contended that staff had taken a strict approach with regard to the structural alteration issues but had not with regard to the issue of absolute preclusion.

Mr. Martin explained that if the warehouse use were discontinued and the 100,000 square feet of warehouse was converted to office use, the appellants could not afford to leave the remaining 100,000 square feet of warehouse space vacant until they had another opportunity to convert it to office use.

He stated that the building had been used as a warehouse, which was a legal nonconforming use and the Ordinance was not specifically clear on the term conducted.

Mr. Hammack asked if the firewall created a new structure and would that be a rearrangement in the structure and means of egress; therefore, would it be precluded entirely. Mr. Martin stated that was the determination that had been made by staff and the appellants were not appealing that determination.

Ms. Gibb asked if the appellants could remodel the warehouse under the ADA guidelines. Mr. Martin stated that that issue had not been discussed with staff. Ms. Gibb asked if a firewall needed to be constructed between the office and the warehouse. Mr. Martin stated that a firewall was not needed. Ms. Gibb asked if the Ordinance mandated that a window was a structural change. Mr. Shoup replied that there was not. Ms. Gibb stated her opinion that windows were not structural changes and that all doors should be handicap accessible. Mr. Martin stated that all of the doors would be designed to meet ADA guidelines.

Mr. Hart asked how many doors were proposed. Mr. Martin stated there would be several doors. Mr. Hart asked if there were any other changes proposed to the structure of the warehouse space. Mr. Martin replied that it was just windows and doors. Mr. Hart stated that he agreed with Ms. Gibb regarding the issue of the windows and that the doors should be designed to meet ADA requirements. Mr. Hart asked if there were any guidelines available from the ADA regarding ingress and egress issues.

Mr. Shoup stated that the Ordinance was clear in that if a nonconforming use was discontinued for a period of two years or more, then the nonconforming right was lost and if a structural alteration was made in a nonconforming building then the nonconforming right was also lost.

Mr. Hammack asked if there was any provision which stated that nonconforming uses could be reduced without losing all of it. Mr. Shoup stated that was correct under the circumstances of structural alteration. Mr. Hammack stated that staff's position was based on their interpretation of what was a structural alteration. Mr. Shoup stated that was correct.

Mr. Hammack asked if alterations could be made that did not include windows or doors. Mr. Shoup stated they could reduce the square footage devoted to the nonconforming use as long as it did not violate any other provisions regarding the nonconforming right. Mr. Hammack asked if any improvements could be made to the existing office space. Mr. Shoup stated that no alterations could be made anywhere in the building due to the nonconforming use. He stated that the intent of the Ordinance was to strictly limit nonconforming uses, not to perpetuate them.

Mr. Martin stated that the intent was not to do anything which would prolong the nonconforming use and constructing doors and windows for the permitted use did not impact the life of the nonconforming use.

Mr. Hammack asked if the appellant had any drawings of the proposed alterations to the building. Mr. Martin answered that drawings had been submitted to the County for building permit purposes. Mr. Hammack

stated that the appeal was based on the letters and paperwork that was submitted to Zoning Administration. Mr. Martin stated that was correct.

Mr. Hart stated that he wanted to know more about the type of doors that were proposed and whether or not they were in line with ADA guidelines.

Mr. Hammack stated his opinion that it was premature to make a decision because they didn't have the specifics of what was proposed.

Ms. Gibb stated that although the appellants were not required to install doors within the ADA guidelines, they could voluntarily comply and she would think that in this circumstance they would.

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

Mr. Pammel stated that the restrictions of the Ordinance with regard to nonconformity was to protect the interest of individuals who built the property in accordance with the standards in effect at the time that they did the development. He stated that the Ordinance specifically stated that nonconforming uses could be enlarged or expanded, however, this was not applicable if the nonconforming use was being reduced in size. He said there was no language in the Ordinance which stated that all nonconforming rights would be lost based on making alterations to reduce the nonconformity.

Mr. Hammack stated that part of the appeal stated that the nonconforming status for the warehouse use would be terminated and would result in the relinquishment of all rights to reestablish a warehouse use on the property. He stated that it was premature for the Zoning Administrator to make that decision.

Mr. Pammel moved to reverse the Zoning Administrator with regard to Appeal A 2000-MA-022. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 598, November 14, 2000, (Tape 1) Scheduled case of:

9:30 A.M. STEPHEN AND BRENDA PALMER, A 2000-MV-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have added rip-rap to the banks of the drainage channel on their property which is not in conformance with Condition #14 of SEA 81-V-087 and is, therefore, in violation of Par. 2 of Sect. 9-004 of the Zoning Ordinance. Located at 6404 Wood Haven Rd. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (36) 19A. (DEF. FROM 10/3/00 FOR NOTICES).

Jack Reale, Zoning Administration, made staff's presentation as contained in the staff report. He stated that the issue of the appeal was the determination that the appellants had disturbed a protective drainage channel in their back yard by placing rip rap along the banks of the channel in noncompliance of the development condition approved under SE 81-V-087. The special exception was originally approved to allow the developer, who is the SE applicant, to build on four lots within the flood plain. The drainage channel in question is located within an area which had been designated as an Environmental Quality Corridor, (EQC) and was also located within a delineated wetland. Condition 14 of the SEA approval prohibited filling and ground disturbing activity within the identified EQC wetland area which was depicted on the SE plat. The appellants were advised of the limitations under the condition but failed to seek advice from staff regarding potential alternative methods to address the perceived erosion problem. The intent of the development condition was to strictly prohibit land disturbance from occurring within the wetlands delineation limits and to protect this area in such a way as to be consistent with the developer's justification statement which indicated that the drainage channel would not be encroached upon and would be preserved in its natural state. Based on the intent of the approved condition it was staff's position that the appellant had conducted an unauthorized activity which was not in compliance with the binding development conditions. The placement of fill in the protective wetland area of the property could only be permitted through an approved amendment to the existing special exception.

Ms. Gibb asked if there was a definition in the Ordinance that mandated that rip rap was fill. Mr. Reale stated that there was no such definition, and that fill could be described as many different types of material to

fill in an area. He said that rip rap could be included as one of the materials for fill. Ms. Gibb stated that rip rap was a separate appendix on the Joint Permit Application for Virginia Marine Resource Association. She stated that if rip rap were considered to be the same then it wouldn't be separate on the application. Mr. Reale stated that it was unclear how that organization differentiated between fill and rip rap. Ms. Gibb asked whether the appellant was in violation of the SEA if rip rap was not considered to be fill. Mr. Reale replied that the development condition encompassed more than whether or not fill could be placed, it stated that any form of land disturbing activity was prohibited and placing the rip rap was such a disturbance. Ms. Gibb asked if the purpose of the condition was to prohibit any land disturbing activity. Mr. Reale stated that was correct. Ms. Gibb asked if the removal of the rip rap would also be land disturbing. Mr. Reale stated that removing it would disturb the land, however conversations with the Virginia Institute of Marine Science revealed that there would be a negative result in the short-term but in the long-term the restoration to a natural state would be highly preferred from an environmental standpoint. Ms. Gibb asked if there was rip rap on the channel that connected to the property on the adjacent property. Mr. Reale explained that there was rip rap on the adjacent property, however that property was not covered under the limitations of the SE. Ms. Gibb stated that she thought the solution to the erosion problem was to install rip rap. Mr. Reale stated that rip rap was one of many environmental factors that had to be considered to solve erosion problems. He said that the applicant never gave staff the opportunity to present alternative methods to the problem and there were many vegetative applications that could have been more appropriate, less evasive and less damaging to the natural environment. He stated that the development condition specifically addressed keeping the drainage channel in its natural state. Ms. Gibb stated that although the appellant did not discuss fill options with staff, it could have been decided that rip rap was the appropriate option to prevent erosion. Mr. Reale stated that he was not certain that rip rap would have been the only option and that there were a number of combination options that could have been experimented with. He reminded the Board that under the conditions of the SE, the applicant was required to go through the process to amend the SE to get approval for the placement of the rip rap.

Mr. Kelley stated that he and Mr. Ribble visited the subject property. He asked if the appellant would have to remove the rip rap if the Zoning Administrator's decision was reversed by the Board. Mr. Reale answered that the two alternatives would be to remove the rip rap or apply for special exception amendment to allow the rip rap to stay in place. Mr. Kelley stated that if the rip rap were removed the appellant's back yard would deteriorate into the drainage channel. He asked if the County would step in to assist the appellant at that time. Mr. Reale stated that the County recently had plans to provide some drainage improvements to the area, however due to budgetary problems the plans were abolished.

Mr. Hammack asked why the rip rap on the adjacent property was not covered under the existing SE. Mr. Reale replied that it was not covered because the property was developed a number of years after the appellant's property and the improvements had already taken place within the segment of the drainage channel. Mr. Hammack asked if it was then in violation of the Zoning Ordinance. Mr. Reale stated that it was not because the Condition 14 was not in effect in the other application that applied to the adjacent property. Mr. Hammack stated that the original plat revealed a narrow channel and erosion had caused the channel to widen significantly so the rip rap might not be in the channel that was originally delineated. He asked for staff's position regarding that statement. Mr. Reale stated that if there were actual dimensions that reflected the situation then it would have played a role in the determination as to what method of erosion stabilization would have been required, however, given the strict language of the conditions, there may still have been a need for the applicant to have the special exception amended to have that placement. Mr. Hammack stated that the applicant had submitted an application, which was returned to him for more dimensions. He asked if staff had reviewed that application. Mr. Hammack suggested that the rip rap on the adjacent property might have had a negative effect erosion wise on the appellants' property. Mr. Reale stated it was hard to determine what effect rip rap, whether it being up or down stream, had on the appellants' property. Mr. Reale stated that the initial application that was made to the Virginia Marine Resources Commission was forwarded to the County Wetlands Board and staff reviewed that application and presumably reviewed the drawings and dimensions that were a part of that application. He noted that the application was still pending and the Virginia Marine Resources Commission had asked the appellant to submit additional information in support of the application and the appellant was not responsive in submitting that information.

Mr. Kelley asked what the process, time limit, and cost was for the approval of a Special Exception Amendment. Mr. Reale replied that there was a certain amount of time to get all of the information needed for the acceptance of an SEA and then a public hearing before the Planning Commission was needed and

then an additional public hearing before the Board of Supervisors for decision on the application. He said the process could typically run nine months or longer. He said the cost for the amendment was \$2,970.00. Mr. Kelley stated that there were also other costs associated with that fee. Mr. Reale stated that there were engineering costs involved in submitting a revised plat and some additional costs.

Ms. Gibb asked if the original SE was on more property in addition to the property in question. Mr. Reale replied that it involved a series of lots adjacent to one another and involved four different homes. Ms. Gibb asked if they all needed to be on the application. Mr. Reale stated that any revised special exception application plat would have to include all of the owners. Mr. Shoup informed the Board that in the past there had been cases where an application on just a portion of the property were accepted; therefore, there was a possibility that perhaps the appellant could just submit an SEA on his lot only.

Stephen Palmer, 6404 Woodhaven Road, Alexandria, Virginia, stated that he did file a joint permit application and he had responded to the Virginia Marine Resources Commission about the additional information that was needed. He said that he was under the impression that he had satisfied the requirements needed for submission; however, he would provide any additional information needed. Mr. Palmer stated that the rip rap was placed on only the banks and behind and in front of the rip rap, some of the vegetation was clipped back as not to disturb the underlying vegetation. He stated that the banks themselves were nearly comprised of mud; therefore, they were eroding. He said that he had not altered the natural state of the bank; but he had preserved them if anything. He said he had reviewed the possibility of installing erosion preventative plantings, however, it was determined because of the filtered lighting in the area, this route was not feasible and he then installed the rip rap as a last recourse.

Ms. Gibb asked how much the rip rap cost to purchase and install. Mr. Palmer answered that the rocks were approximately three to four hundred dollars and the labor was about seven hundred dollars and the process took approximately two days.

Mr. Kelley asked how far away the rip rap was from the appellants' deck. Mr. Palmer answered that at the narrowest portion it was 25 to 30 feet away.

Mr. Hart asked the appellant to elaborate on a conversation he had had with a member of Fairfax County regarding the rip rap. Mr. Palmer stated that he had spoken with the planner of the day and based on that discussion he had the impression that rip rap was not considered to be fill.

Mr. Hammack asked if the Ordinance contained a definition of fill. He stated that he was under the impression that fill was dirt or debris. Mr. Reale stated that fill was not defined in the Zoning Ordinance. Mr. Hammack stated that if the Condition 14 were taken literally it would preclude any ground disturbing activity in the backyard including flag poles, birdhouses, swing sets, etc. Mr. Reale replied that was correct. He stated that the developer was to inform the purchasers of the restrictions and they were to strictly abide by them.

Mr. Ribble asked what the County had done as far as erosion control for the area. Mr. Palmer stated that his property and the adjacent property were at the lowest point; therefore, the water run off surrounded the homes on both properties. He stated that originally the County had planned to move the drainage channel back to the right of way located directly behind his property, however that would not have provided much relief. He stated that instead the County installed a berm and a floodgate which protected his property.

Mr. Hammack asked if there was any information that was given to the purchasers of the property regarding different options for erosion prevention. Mr. Reale stated that the developer was mandated to inform the purchasers of the development conditions of imposed by the SE.

Mr. Palmer stated that the rip rap was necessary to not only preserve his home but also the natural state of the land.

Mr. Hammack stated that the case was difficult in that the appellant had tried to do everything correctly by submitting the appropriate applications and he was basically trying to protect his property from erosion. He said that the County approved the development of the property and adjacent wetlands and had the developer give notice to the purchasers of the SE that permitted the development but it really didn't tell them all they needed to know. He said that because there was no definition of fill, it misled the purchasers as to their

Page 601, November 14, 2000, (Tape 1), STEPHEN AND BRENDA PALMER, A 2000-MV-017, continued from Page 600

options and that adding rip rap did not constitute ground disturbing activity. He stated his opinion that the case should be deferred to give the appellant adequate time to file a special exception amendment.

Mr. Kelley stated that he was in opposition to the deferral. Mr. Kelley stated that staff hinted that had the appellant spoke with staff, the likelihood was that rip rap would have been the solution suggested by staff. He said that the Board should not put the appellants through the expense and trouble of applying for an SEA. He said the appellants had done a good job with installing the rip rap and tried to do all of the right things and it just didn't work out the right way.

Ms. Gibb stated that she agreed with Mr. Kelley and the installation of the rip rap did not fall within the prescribed activities in Condition 14 and the applicant just tried to preserve his land. She said the County had recognized the problems with erosion and did not have the money to repair all of the problems; therefore, the owners were left with doing what they could to preserve their property.

Chairman DiGiulian stated that he also was not in support of the deferral. He said that he did not believe rip rap constituted fill and all the appellants did was try to preserve their backyard.

Mr. Hart stated that he agreed that Mr. Palmer's intentions were on the right track; however, Condition 14 was in place to allow the County to oversee the wetlands.

Ms. Gibb stated that the expense and length of the SEA process was too much to have the appellants incur.

Mr. Kelley stated that Condition 14 was too confusing for the homeowners to abide by and there were several home owners that had already violated the condition in good faith.

Mr. Hammack stated that if a homeowner purchased a home they also take all of the problems associated with the property. He stated that the owners were put on notice of a special exception and the County Board is the one who should make the decision regarding whether rip rap is fill or ground disturbing activity.

Mr. Hart stated that there was a Zoning Ordinance Amendment before the Board of Supervisors to reduce certain fees to a homeowner for a Special Exception.

Mr. Hammack moved to defer decision for 6 months to allow the applicant adequate time to make a special exception amendment. Mr. Hart seconded the motion which failed by a vote of 2-4. Chairman DiGiulian, Ms. Gibb, Mr. Kelley and Mr. Ribble voted against the motion and Mr. Pammel was not present for the vote.

Mr. Kelley stated that he did not think rip rap was fill and that the appellants took steps that most reasonable people think should have been adequate to have the problem resolved.

Ms. Gibb stated her belief that the placing of the rip rap did not fall within the prescribed activities in Condition 14 and for that reason it was not a prescribed activity and what the applicant did was in compliance with the spirit of the conditions which were to preserve the stream and the land.

Mr. Kelley moved to reverse the decision of the Zoning Administrator regarding A 2000-MV-017. Mr. Ribble seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Hart voted against the motion and Mr. Pammel was not present for the vote.

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Page 601, November 14, 2000, (Tape 1) After Agenda Item:

Request for Additional Time
Fox Mill Woods Swim and Tennis Club
SPA 81-C-093-4

Mr. Kelley moved to approve these additional time requests. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date is May 27, 2003.

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Page 602, November 14, 2000, (Tape 1) After Agenda Item:

Request for Additional Time
Lynn and John Hill
VC 98-P-010

Mr. Kelley moved to approve these additional time requests. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date is October 10, 2002.

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Page 602, November 14, 2000, (Tape 1) After Agenda Item:

Request for Additional Time
St. Katherine's Greek Orthodox Church of Northern Virginia
SP 93-M-119

Mr. Kelley moved to approve these additional time requests. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date is October 6, 2001.

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602

Page 602, November 14, 2000, (Tape 1) After Agenda Item:

Request for Additional Time
St. Mary of Sorrows Catholic Church
SPA 77-A-041-2

Mr. Kelley moved to approve these additional time requests. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote. The new expiration date is April 25, 2003.

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Page 602, November 14, 2000, (Tape 1) After Agenda Item:

Approval of April 25, 200 Minutes

Mr. Ribble moved to approve the Minutes. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 602, November 14, 2000, (Tape 1) After Agenda Item:

Consideration of Acceptance
Application for Appeal
Anthony V. Anzalone

Mr. Shoup stated staff's position that the appeal was not timely filed. He stated the issue involved landscaping features on an adjoining lot. He stated that Mr. Anzalone claimed that they caused drainage problems on his lot. He referred to his November 6th memo, which pertained to the long history regarding this issue. He explained that Mr. Anzalone was first notified that there was no Zoning Violation back in November of 1992 and he did not appeal that decision. He stated that since that time there was a letter authored by the County Attorney, Mr. Bobzien, in which Mr. Anzalone did appeal in 1997. He said that the Board of Zoning Appeals refused to accept that appeal on the grounds that it was not timely and was not a proper appeal. That decision went to the Circuit Court and they upheld that decision. Mr. Shoup stated that Mr. Anzalone had again asked the Zoning Administrator to offer a determination on the issue and her response was that, based on the history, no further determination was needed and Mr. Anzalone had appealed that decision to the Board.

Mr. Shoup stated that the Board had previously ruled and the Circuit Court had previously ruled and what Mr. Anzalone was trying to do was challenge that same 1992 decision and as a result the appeal was not timely

Page 603, November 14, 2000, (Tape 1), After Agenda Item, continued from Page 602

filed. He pointed out that the appeal was submitted well after the August 8, 2000, letter where Ms. Gwinn stated that no further determination was needed.

Anthony V. Anzalone, 9808 Danske Court, stated that although he had been before the Board in the past, he was not trying to challenge the 1992 decision. He asked the Board why he was held to a 30 day time period when Ms. Gwinn took 8 months to respond to his interpretation request.

Chairman DiGiulian informed him that the 30-day time period was a State law. Mr. Anzalone stated that the State law was unconstitutional. He stated that he was upset because he was not given the opportunity to speak in 1997.

There was discussion between Chairman DiGiulian and Mr. Anzalone regarding his testimony. Chairman DiGiulian informed him that the only testimony that was to be heard at that time needed to refer to the issue of acceptance of the appeal. Mr. Anzalone then asked the Board to accept his appeal.

Mr. Hart stated that the situation was complicated based on the volume of paper that was given to the Board, however, it was a simple issue. He said the Zoning Administrator's determination was dated August 8, 2000, and both the requirements of the Code and the Ordinance provision, mandated that an aggrieved party had 30 days following the determination to file an appeal. He said the appeal was stamped in on October 26, 2000, and the date was also handwritten to reflect October 26, 2000, which was well over the 30-day time period. Mr. Hart stated that the appeal was not timely filed.

Mr. Hart moved that the Board not accept the appeal on the basis that the October 26, 2000, filing was not timely. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 603, November 14, 2000, (Tape 1) After Agenda Item:

Approval of November 7, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions. There was no second and the motion carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 603, November 14, 2000, (Tape 1) After Agenda Item:

Approval of July 25, 2000 Minutes

Ms. Gibb moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 603, November 14, 2000, (Tape 1) After Agenda Item:

Intent to Defer
Apolonia Gloria Fuentes
A 2000-PR-027

Mr. Hammack recused himself from the meeting as he represented one of Ms. Kelsey's, agent for the appellant, family members.

Chairman DiGiulian asked when the appeal was currently scheduled. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it was scheduled for December 12, 2000.

Mr. Hammack asked what the appeal involved. William E. Shoup, Deputy Zoning Administrator, informed the Board that it was an appeal of a determination that the appellant was operating a child care center, in

violation of the conditions that were a part of a special permit use that the Board of Zoning Appeals authorized on March 7, 2000. Mr. Shoup said that they were issued a Notice of Violation that they were conducting the use in violation of the conditions and without a non-residential use permit. They never got site plan approval. The appellant appealed that Notice of Violation and they were requesting a deferral to March of 2001, to allow time for them to pursue minor site plan approval. They had submitted an application for minor site plan approval and it was returned for revisions and they were currently working on the revisions. Mr. Shoup informed the Board that at the time of the Notice of Violation, they were operating with up to 12 children, which is the maximum that the BZA authorized. Since the Notice of Violation was issued and the appeal was filed, the appellant had reduced the number of children to 7, which was what they could do by right as an accessory use. However, she continued to have a non-resident employee at the site, which was still a violation of the Zoning Ordinance. Ms. Fuentes had indicated that she could not let that individual go. Mr. Shoup said that she had come close to being in compliance upon waiting for the site plan approval, but she was still not totally in compliance. Mr. Shoup stated for those reasons staff had reservations about deferring the application.

Mr. Hammack asked how long the appellant had to get a Non-Rup under that approval. Mr. Shoup replied that the appellant had the standard 30 months to implement the use.

Ms. Gibb stated that it took a while to get a Non-Rup issued and that for health and safety issues, Ms. Fuentes was better off with the extra employee. Ms. Langdon stated that the Zoning Ordinance did not allow extra employees for home childcare facilities with 7 children or less. Mr. Ribble moved to defer A 2000-PR-027, until March 20, 2001, at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack recused himself from the meeting and Mr. Pammel 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 12:30 p. m.

Minutes by: Lori M. Mallam

Approved On: February 13, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 28, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the following case out of order.

Page 605, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DAVID REEVES, VC 00-Y-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yards of a corner lot. Located at 14518 Flagstaff Ct. on approx. 25,921 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 65-1 ((5)) 9. (Continued from 8/8/00. Reconsideration Granted 10/3/00.)

Chairman DiGiulian noted that the notices were not in order. Susan Langdon said staff had spoken with the applicant and suggested a deferral date of January 23, 2001.

Mr. Ribble moved to defer VC 00-Y-063 to January 23, 2001, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 605, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. FRANKYE JO C. HARTSOOK, SP 00-Y-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.3 ft. from rear lot line and 3.9 ft. from side lot line. Located at 5703 Regimental Ct. on approx. 8,546 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 54-3 ((10)) 7. (Concurrent with VC 00-Y-130).

9:00 A.M. FRANKYE JO C. HARTSOOK, VC 00-Y-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. from rear lot line. Located at 5703 Regimental Ct. on approx. 8,546 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 54-3 ((10)) 7. (Concurrent with SP 00-Y-054).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frankye Jo Hartsook, 5703 Regimental Court, Centreville, Virginia, replied that it was.

Mike Adams, Planning Technician, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure (shed) to remain 10.3 feet from rear lot line and 3.9 feet from side lot line. A minimum rear yard of 11 feet is required and a minimum side yard of 10.0 feet is required. Therefore, modifications of 0.7 and 6.1 were requested.

The applicants also requested a variance to permit construction of a basement addition to be located 7.4 feet from rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 17.6 feet was requested.

Ms. Hartsook presented the requests as outlined in the statement of justification submitted with the application. She said the request was for a sunroom addition and to have wheelchair accessibility. Ms. Hartsook said the shed was already there and asked that it be allowed to remain. She stated that the back of the property was adjacent to woods, so the request would not affect any of the neighbors.

Chairman DiGiulian asked how long had the shed been there. Ms. Hartsook replied that the shed was there when she purchased the property two years ago and she was not sure how long it had been there prior to then.

Mr. Hammack asked how far the shed was from the house on Lot 6. Susan Langdon, Chief, Special Permit

and Variance Branch replied 14 feet.

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

Mr. Hammack moved to approve SP 00-Y-054 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANKYE JO C. HARTSOOK, SP 00-Y-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.3 ft. from rear lot line and 3.9 ft. from side lot line. Located at 5703 Regimental Ct. on approx. 8,546 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 54-3 ((10)) 7. (Concurrent with VC 00-Y-130). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2000; and

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

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:

- 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 APPROVED, with the following

Page 607, November 28, 2000, (Tape 1), FRANKYE JO C. HARTSOOK, SP 00-Y-054, VC 00-Y-130, continued from Page 606

development conditions:

1. This Special Permit is approved for the location of an accessory structure shown on the plat prepared by Thomas F. Conlan, dated through August 23, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble and Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 2000. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack moved to approve VC 00-M-130 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANKYE JO C. HARTSOOK, VC 00-Y-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. from rear lot line. Located at 5703 Regimental Ct. on approx. 8,546 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 54-3 ((10)) 7. (Concurrent with SP 00-Y-054). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the requirements for a variance.
3. The extension is low and would only bring the basement sunroom out to the approximate depth of an existing deck.
4. The addition backs up to County property and it would not have any impact on adjoining neighbors.
5. The addition would not be detrimental to 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;
 - 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 **APPROVED** with the following limitations:

- 1. This Variance is approved for the location of a basement addition as shown on the plat prepared by Thomas F. Conlan, dated through August 23, 2000, 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 basement 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 addition 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 not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 608, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT G. & CATHERINE M. TAYLOR, VC 00-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 5.2 ft. from side lot line. Located at 2405 Drexel St. on approx. 10,593 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 243.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert and Catherine Taylor, 2405 Drexel Street, Vienna, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a carport addition to be located 5.2 feet from the northern

side lot line. A minimum side yard of 7 feet is required; therefore, a variance of 1.8 feet was requested.

Mrs. Taylor presented the variance request as outlined in the statement of justification submitted with the application. She said the carport would provide a significant improvement to the property and would protect their cars from the elements. Ms. Taylor stated that the carport would increase their property values.

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

Mr. Pammel moved to approve VC 00-P-129 for the reasons noted in the Resolution.

Mr. Ribble pointed out the narrowness of the lot as indicated in the applicant's statement of justification.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT G. & CATHERINE M. TAYLOR, VC 00-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 5.2 ft. from side lot line. Located at 2405 Drexel St. on approx. 10,593 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 243. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicant presented testimony as outlined in the statement of justification, indicating compliance with the required standards for 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.

Page 610, November 28, 2000, (Tape 1), ROBERT G. & CATHERINE M. TAYLOR, VC 00-P-129, continued from Page 609

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the carport addition shown on the plat prepared by Alexandria Surveys, Inc., dated May 24, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 610, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. KAVOOS N. RAD, SP 00-D-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line. Located at 8536 Tebbs La. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 43.

Chairman DiGiulian noted that the notices were not in order. Mr. Pammel moved to defer SP 00-D-053 to December 12, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 610, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS M. NOBLE, VC 00-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line and 4.2 ft. from side lot line. Located at 13114 Nestlewood Ct. on approx. 10,072 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (11) 53.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Noble, 13114 Nestlewood Court, Oak Hill, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an enclosed screened porch, to be located 18 feet from the rear lot line and 4.2 feet from the side lot line. A minimum rear yard of 25 feet is required and a minimum side yard of 8 feet is required. Therefore, a variance of 7 feet was requested for the rear yard and a variance of 3.8 feet was requested for the side yard.

Mr. Noble presented the variance request as outlined in the statement of justification submitted with the application. He said many of the neighbors had screened porches.

Mr. Hart asked what was Parcel B. Mr. Noble responded that Parcel B was owned by the Franklin Farm Foundation.

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

Mr. Hart moved to approve VC 00-Y-133 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS M. NOBLE, VC 00-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line and 4.2 ft. from side lot line. Located at 13114 Nestlewood Ct. on approx. 10,072 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (11) 53. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The lot is strangely shaped; the builder put the house at a 45-degree angle to the street, which created the exceptional conditions for placement of a screened porch on the back.
4. The statement of justification and the photographs indicate that the impact on the surrounding properties would be 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.
- 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the screened porch shown on the plat prepared by Kenneth W. White, dated August 22, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
- 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. 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 December 6, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 612, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. GRACE COVENANT CHURCH INC., SP 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities and nursery school with an enrollment of less than 100 students daily. Located at in the 4300 block of Pleasant Valley Rd. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) pt. 12A.

Chairman DiGiulian noted that the applicant requested a deferral to February 6, 2001. Mr. Pammel moved to defer SP 00-Y-050 to February 6, 2001, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 612, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JERUSALEM KOREAN BAPTIST CHURCH, SP 00-S-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities. Located at 11615 Braddock Rd.

on approx. 4.06 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 7. (moved from 10/10/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Hunter, Agent, P.O. Box 2344, Dale City, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a church and related facilities. The applicant proposed to utilize the two existing buildings on site, a single family dwelling, which had already been converted for the church use, and contained the sanctuary and an accessory storage structure. The proposed church building contained 2,112 square feet and had 75 seats. The accessory storage structure contained 796 square feet would continue to be used for storage. The applicants also proposed to provide 21 gravel parking spaces at the west and south ends of the church structure. Mr. Bernal stated that a 24-foot wide travel lane was proposed as the ingress and egress to Braddock Road. The proposed F.A.R. would be 0.02. Staff recommended approval of SP 00-S-045 subject to the development conditions dated November 21, 2000.

Mr. Hunter, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the existing structure was converted from a single family dwelling to a church. Mr. Hunter said the property was purchased in the fall of 1999, and the reason it took so long to come before the Board was because the applicant had wrestled with the issue of an adequate septic facility on the property. He said when the applicant found out that they were in violation, they wrestled with the health department, the contractor, and the previous owner in an effort to update the existing septic facility. He said the church requested 75 seats, but the average attendance was 30 people on Wednesdays and Sundays. Mr. Hunter stated that the Southern Baptist Convention offered funding to help alleviate the septic issues but funds were only available until December 1, 2000. Consequently, Mr. Hunter requested a waiver of the 8-day waiting period. He stated that they had met with the neighbors and there were no objections. Mr. Hunter said there would be 84% of open space on the property.

Ms. Gibb asked whether the applicant would encounter problems with maintaining the 84% of open space once they relocate the septic field. Mr. Hunter replied that they anticipated expanding the existing septic field.

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

Mr. Ribble moved to approve SP 00-S-045 for the reasons noted in the Resolution.

Mr. Hart complimented the applicant for retaining 84% of undisturbed open space.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JERUSALEM KOREAN BAPTIST CHURCH, SP 00-S-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities. Located at 11615 Braddock Rd. on approx. 4.06 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 7. (moved from 10/10/00) Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2000; and

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

1. The applicant is the owner of the land.

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 Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 11615 Braddock Road (4.06 acres) and is not transferable to other land.
2. This Special Permit is granted only to permit a church and related facilities as indicated on the special permit plat prepared by Kenneth W. White of Alexandria Surveys, Inc., dated March 20, 2000, as revised through April 18, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the church shall be 75.
6. A maximum of 1 employee or a caretaker may reside on the site within the existing church structure.
7. Twenty-one (21) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.
8. Existing vegetation along the eastern, southern and western lot lines shall be preserved and maintained and shall satisfy the requirement of Transitional Screening 1. The northern lot line adjacent to Braddock Road shall be planted with evergreen trees a minimum of six (6) feet in height at the time of planting to meet the requirements of Transitional Screening 1. The type and location of the new plantings shall be as approved by the Urban Forestry Branch of DPWES.

The barrier requirements shall be waived.
9. A tree preservation plan shall be submitted to the Urban Forestry Branch for review and approval at the time of site plan review. This plan shall designate the limits of clearing and grading and all areas shown on the plat outside of the limits of clearing shall be preserved and labeled as "perpetually undisturbed open space". A minimum of 84% of the application property shall be preserved and maintained as perpetually undisturbed open space as approved by DPWES.
10. Only safety and security lighting shall be permitted on site. If any portion of the parking area is lighted for safety reasons, the lighting shall be the low, bollard-type lighting a maximum of four (4) feet in height. All lighting shall be of a design which focuses the light directly onto the subject property and shields shall be installed, if necessary, to prevent the light from projecting off-site.
11. Ingress and egress shall be as shown on the special permit plat with frontage improvements of curb and gutter replacing the existing gravel driveway entrance.
The existing gravel driveway shall be removed and scarified and shall be replanted with native grasses and/or seedlings as determined by the Urban Forester.

12. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

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

Ms. Gibb seconded the motion which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Ms. Gibb 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 November 28, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 615, November 28, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ASSOCIATED BUILDERS, INC., VC 00-D-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of five lots into 11 lots and an outlot with proposed Lot 41 having a lot width of 137.08 ft. and proposed Lot 42 having a lot width of 127.28 ft. Located at 1230 Spring Hill Rd. and 8312 Woodlea Mill Rd. on approx. 11.07 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 33; 20-3 ((21)) E; 29-1 ((1)) 62A; 29-1 ((15)) C and 36A (formerly known as 20-3 ((1)) 33; 20-3 ((21)) pt. D; 29-1 ((1)) 62A; 29-1 ((15)) C and 36). (MOVED FROM 10/31/00 AND 11/7/00)

Mr. Hart gave a disclosure indicating that he had worked with Bob Lawrence on an unrelated matter and that it would cause no conflict with his participation in the public hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bob Lawrence, Greensmith, Hazel, and Thomas, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of five (5) lots into eleven (11) lots and an outlot, with proposed Lots 41 and 42 having lot widths less than the minimum required by the Zoning Ordinance. Mr. Bernal stated that Lot 41 was proposed to have a lot width of 137.08 feet and Lot 42 was proposed to have a lot width of 127.28 feet. A minimum lot width of 150 feet is required; therefore, variances of 12.92 feet for Lot 41 and 22.72 feet for Lot 42 were requested. Both proposed lots 41 and 42 would be located off the Woodlea Mill Court cul-de-sac. Mr. Bernal stated that staff concluded that the application was not in conformance with the applicable Zoning Ordinance provisions and did not meet standards 2, 3, 4, 5, and 6.

Mr. Lawrence, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the staff report indicated that there were no environmental issues, no transportation issues, and the lot size was compatible with the lot sizes of the existing subdivisions in the immediate vicinity. Mr. Lawrence stated that for those reasons the request would not be detrimental to adjacent properties nor would they affect the character of the zoning district. Mr. Lawrence said the issue raised by staff was whether there was an extraordinary situation or condition regarding the intended use of the subject property that warranted relief. He said the extraordinary situation of the property was that the existing property was part of an approved preliminary plan which allowed for the lots of the widths shown on the plat. Mr. Lawrence said this was based upon policies that were in effect at the time. He said the policies provided for a certain methodology for measuring the width of a lot. Mr.

Lawrence stated that the Department of Environmental Management changed its policy with regard to the measuring lot widths, which caused the lots not to conform in terms of what was currently under the Ordinance. He said a street configuration was done based on the preliminary plat that was approved in the 1980s. Mr. Lawrence said the street configuration tied down how the property could be developed with respect to the property that was at issue. He said staff's position was that there never was such a measurement policy in the Department of Environmental Management. Mr. Lawrence said their opinion was based on discussions staff had with the current members of the Department of Public Works and Environmental Services. Mr. Lawrence introduced Phil Yates, from Dewberry and Davis, who was the Zoning Administrator of Fairfax County between 1978-1985, to support his position. He distributed an affidavit from Mr. Yates. Mr. Lawrence stated that after the street was recorded for the subject property, the standard was changed. He said he believed that staff was wrong when they stated that was never a policy in the Department of Environmental Management. Mr. Lawrence stated that there would be no impact on the neighbors and there were other lots in the subdivision with the same width as the subject lots. He said all the lots would be serviced by a cul-de-sac. Mr. Lawrence said the change in policy created the hardship which was not shared by the other properties.

Ms. Gibb asked how old could a preliminary plat be and still vest the right that Mr. Lawrence was claiming. Mr. Lawrence said the preliminary plats had various lives and then they were renewed over a course of time, but the subject plat had been renewed. Ms. Gibb asked how long did a preliminary plat last. Mr. Lawrence replied 5 years.

Ms. Gibb asked whether the size of the cul-de-sac could be changed. Mr. Lawson replied no, because the Virginia Department of Transportation's standards had to have street frontage.

Mr. Hart asked would Lots 20 and 21 also need a variance. Mr. Lawrence replied that those lots would comply.

Mr. Hammack asked if there were other lots already developed. Susan Langdon, Chief, Special Permit and Variance Branch, said the only lot that was developed was Lot 40.

Mr. Hart asked for clarification that there were 11 lots advertised but that there were only two that had a problem. Ms. Langdon replied that was correct. She said the lots were part of bigger parcels and the two proposed to be subdivided would not meet the requirements.

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

Ms. Gibb moved to approve VC 00-D-119 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ASSOCIATED BUILDERS, INC., VC 00-D-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of five lots into 11 lots and an outlot with proposed Lot 41 having a lot width of 137.08 ft. and proposed Lot 42 having a lot width of 127.28 ft. Located at 1230 Spring Hill Rd. and 8312 Woodlea Mill Rd. on approx. 11.07 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 33; 20-3 ((21)) E; 29-1 ((1)) 62A; 29-1 ((15)) C and 36A (formerly known as 20-3 ((1)) 33; 20-3 ((21)) pt. D; 29-1 ((1)) 62A; 29-1 ((15)) C and 36). (MOVED FROM 10/31/00 AND 11/7/00) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. Based on the testimony and statement of justification, there was reliance on an approved preliminary plan which allowed for the lot width that currently exists.
4. There were not many situations like the Woodlea Mill Subdivision in the County that have continued for such a long period of time, which make it an extraordinary condition 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.
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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of five lots into eleven (11) lots and an outlot with proposed Lot 41 having a lot width of 137.08 feet and proposed Lot 42 having a lot width of 127.28 feet, as shown on the plat prepared by J. Thomas Tanner, Professional Engineer, dated July 17, 2000, as revised through September 19, 2000. All development shall be in conformance with this plat as qualified by these development conditions.
2. At the time of subdivision review, the applicant shall submit to the Department of Public Works and Environmental Services (DPWES) a plat indicating the limits of clearing and grading and a tree preservation plan. Limits of clearing and grading shall be the minimum necessary to provide for the development of the site as determined by the Urban Forestry Branch.

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. 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 December 6, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 618, November 28, 2000, (Tape 1), Scheduled case of:

9:30 A.M. RALPH C. DUKE, A 1999-HM-026 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Zoning Ordinance provisions. Located at 9935-A Corsica St. on approx. 37,885 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 3. (Deferred from 9/21/99 and 11/9/99).

Chairman DiGiulian noted that the Board issued an Intent to Defer on November 7, 2000, to defer the subject appeal to March 27, 2001, at 9:30 a.m.

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Page 618, November 28, 2000, (Tape 1), After Agenda Item:

Approval of November 14, 2000 Resolutions.

Mr. Ribble moved to approve the Resolutions. Mr. Kelley 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 10:02 a.m.

Minutes by: Regina Thorn Corbett

Approved on: January 16, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 5, 2000. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; James Hart; Robert Kelley, James Pammel and John Ribble. Nancy Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 619, December 5, 2000, (Tape 1) Scheduled case of:

9:00 A.M. KELLY D. STARINCHAK, VC 00-V-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in front yard of a corner lot. Located at 2007 Sherwood Hall La. on approx. 14,649 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((18)) (2) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kelly Starinchak, 2007 Sherwood Hall Lane, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit an existing 6.1 foot high fence to remain in the front yard of a corner lot. The Zoning Ordinance allows a maximum fence height of 4 feet in the front yard; therefore, a variance of 2.1 feet was requested.

Ms. Starinchak presented the variance request as outlined in the statement of justification submitted with the application. She stated that she had met with the County prior to the construction of the fence and had misunderstood the whole process of acquiring the variance and had the fence constructed before the actual approval of the variance request. She said she also misunderstood that the maximum fence height in a front yard was 4 feet. Ms. Starinchak informed the Board that the topographical conditions of her backyard were such that the ground sloped in a downward fashion so anyone walking down the sidewalk or driving by in a car could see over a fence 4 feet in height or lower. She stated that she was concerned for the safety of her daughter and when they were alone in the backyard as several passersby had heckled them. She stated that the privacy fence was constructed in the best place possible for both sight distance and aesthetic purposes. She said that she had informed the neighbors closest to the fence prior to its construction and they had no objections. Ms. Starinchak submitted photographs of several other fences of the same height along Sherwood Hall Lane, one of which was also constructed in a front yard, to illustrate that the fence was in character with the neighborhood. She stated that she had planted several bushes along the fence with the understanding that in several years they would grow to cover the fence. She stated that Sherwood Hall Lane was a major cut through for traffic to Richmond Highway and that there was a high crime rate along that thoroughfare. She reiterated that the main reason for the fence was to provide safety for her family.

Mr. Hart asked the applicant to state the ways that the application satisfied Standards #2 and #6. Ms. Starinchak spoke to Standard #2 by stating that due to the location of the home on the lot the majority of usable property was the side yard, which had front yard requirements. She spoke to Standard #6 by stating that the topography of the lot was such that her property was located at a lower elevation than the sidewalk so people could view the property with a 4-foot fence.

Mr. Kelley stated that he had visited the property the previous day and the property seemed level to him and the home was located quite a way from Route 1. Mr. Kelley asked the applicant to speak to the issue of landscaping that was included in the Statement of Justification. Ms. Starinchak replied that her neighbors had planted some expensive landscaping along the back property line, which prevented the construction of the fence in that area. She informed the Board that she installed the shrubbery along the fence, which faced Sherwood Hall Lane.

Mr. Ribble asked staff to comment on the 6-foot high fence on the adjacent property. Ms. Josiah stated that there was no history of any variances on that property.

Mr. Hart asked whether the fence on the adjacent property was located in the front yard. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it appeared to be a front yard, however, upon research there was no indication that a variance had ever been granted for that fence.

Chairman DiGiulian called for speakers.

Joe Starinchak, 2007 Sherwood Hall Lane, came forward to speak in support of the application. Mr. Starinchak informed the Board that there was a bus stop located directly across the street from their home and there were several stray dogs in the neighborhood. He stated that the main objective of the fence was to provide safety for his wife and child while in the yard and home alone. He stated that the landscaping that was already planted combined with future efforts would make the fence more appealing.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that upon a visit to the site he found that there was no indication of stray dogs in the area and there was very little pedestrian traffic on Sherwood Hall Lane. He said that the fence looked bad and there was no reason that the applicants could not cut the fence down to conform with the standards.

Mr. Hart moved to deny SP 00-V-138 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KELLY D. STARINCHAK, VC 00-V-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in front yard of a corner lot. Located at 2007 Sherwood Hall La. on approx. 14,649 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((18)) (2) 1. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2000; and

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

- 1. The applicant is the owner of the land.
- 2. The property was acquired in good faith.
- 3. The applicant has not met the requirements of Standards #2, #6, #7, #8 and #9.
- 4. The fence, based on the photographs and correspondence, does not satisfy the requirements for the granting of 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.
- 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 4-0-1. Mr. Pammel abstained from the motion. Mr. Hammack was not present for the vote and Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 2000.

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Page 621, December 5, 2000, (Tape 1) Scheduled case of:

9:00 A.M. CHERYL AND KHOSRO FARAHANI, SP 00-D-051 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit addition to remain 6.7 ft. from side lot line, such that side yards total 37.34 ft. Located at 1111 Morningwood La. on approx. 20,800 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 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. Grayson Hanes, Reed, Smith, Hazel & Thomas, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Mr. Hart disclosed that an attorney from Mr. Hanes' firm had retained him as an expert witness and that the matter had been concluded. He also had two current matters in the Circuit Court in Prince William County with attorneys from Mr. Hanes' firm on the other side. He stated that these two matters would not affect his ability to participate in the hearing.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were granted a variance on March 30, 1999, to allow the construction of a 12-foot high addition to extend within 8.6 feet of the side lot line. The applicants requested approval of a special permit for a reduction in minimum yard requirements based on an error in building location to permit a 12-foot high garage addition to remain 6.7 feet from a side lot line and a second story addition to remain 9.7 feet from a side lot line such that total side yards total 37.34 feet. The Zoning Ordinance requires a minimum 12-foot side yard and a minimum 40 foot total side yard is required; therefore, modifications of 5.3 feet, 2.3 feet, and 2.66 feet were requested for the existing addition.

Mr. Hanes presented the variance request as outlined in the statement of justification submitted with the application. He outlined the binder of information, which pertained to the case that had been submitted to the Board. He informed the Board that the applicants had purchased and lived in the home since 1988. He explained that they had recently moved out of the home until the issues surrounding the addition were solved and the construction could be completed. He informed the Board that the applicants had requested a side yard variance in 1996 and it was denied on a 3-3 vote. He went on to say that they requested a similar variance in 1999, which was approved for an 8-foot side yard.

Mr. Hanes said that 3 plats of the property had been prepared and all three of them had the same incorrect

side yard measurement. He explained that one of the incorrect plats was submitted with the 1999 variance request, which the Board approved. He informed the Board that Lori Greenlief, Jane Kelsey and Associates, was the agent for that variance request and prior to the approval of the variance she called the surveying company to reaffirm the validity of the plat and they stated that the plat was correct. He said the applicants submitted their plans for a building permit and the plans included a design for a second story addition, which, according to the incorrect plat, did not require a variance. He said construction was started in June of 2000, and the adjacent neighbor filed a complaint on July 20, 2000. He said that a zoning inspector visited the site and found no violations, as the side yard was not measured at that time because there were no markers illustrating the property lines. He said that the inspector told the applicants that he would return to the site when the walls had been constructed. He stated that the neighbor in opposition placed markers, which reflected the property lines, and upon the return of the zoning inspector the side yards were then measured and the error was discovered. Mr. Hanes explained that the applicants then met with the County and proceeded with the construction, as there was no Notice of Violation at that time. He explained that the applicants also had another plat of the property prepared which reflected the correct side yard measurement and applied for the special permit for error in building location. He said the Notice of Violation was issued in September.

Mr. Hanes stated that the error was done in good faith because the applicants relied upon the professionals who prepared the plats and the professionals were wrong. He said the structure was located 6.7 feet from the property line and should be 8.6 feet whereas there was an error of 1.9 feet.

Mr. Pammel stated for the record that Ms. Kelsey and Ms. Greenlief, representation for the applicants, did not contribute to any of the errors that had been made regarding the property.

Chairman DiGiulian called for speakers in support.

McKay Danes, 1119 Morningwood Lane, came forward to speak in support of the application. He stated that his home was adjacent to the one in question and that he understood both points of view between the applicants and the neighbors that were in opposition. He said that the proposed addition would improve the cosmetic look of the neighborhood and would increase the property values of the surrounding homes. He voiced his wish for a timely resolution to the problem so the applicants could finish the construction and move back into their home that they had been out of for so long.

John Brundage, 1112 Morningwood Lane, came forward to speak in support of the application. He stated that the applicants had acted in good faith, the mistake was simple and the addition was an improvement to the neighborhood.

Gary Wittinger, 1165 Kettle Pond Lane, came forward to speak in support of the application. He stated that he was the homeowners association president in 1999. He stated that he was in support of the application because it increased the surrounding property values and the character of the neighborhood.

Deanna Wittinger, 1165 Kettle Pond Lane, came forward to speak in support of the application. She stated that she was friends with the applicants and had children that were the same age. She stated that the proposed addition was very nice and it would improve the neighborhood.

Cheryl Farahani, 1111 Morningwood Lane, came forward to speak in support of the application. She made a brief statement and submitted a letter of support from Johnathan Butler, 1108 Morningwood Lane.

Chairman DiGiulian called for speakers in opposition.

Doug Bywater, representative for Tony and Betsy Meuner, 1109 Morningwood Lane. He stated that the Meuners were the neighbors that were most affected by the proposed addition. He said that the applicants' original 1996 variance request, which the Board denied, reflected their intent to construct a two-story addition 6.7 feet from the side lot line. He alleged that after that denial the applicants schemed to achieve the addition that they wanted by obtaining approval of a variance for an expansion of their garage into the setback, which the Board approved in 1999, and then to add a two-story addition, knowing that if they were caught, they could request a special permit for an error in building location. Mr. Bywater stated that the applicants never should have moved forward with construction after the Notice of Violation had been issued; therefore, the argument of the cost of removing the addition was moot. He informed the Board that the living room windows would be within 9 feet of the lot line and directly face the Meuner's bedroom. He submitted

that the 1999 variance was obtained by deception and should be vacated and the applicants should be restricted to the development conditions and plat that were approved in 1999.

There was discussion between the Board and Mr. Bywater regarding the authenticity of one plat that had handwritten measurements that did not appear to be original. The result of the discussion was that the plat in question was from 1996 and had been submitted to the County for a building permit for an addition at the rear of the house that met the yard requirements and, in that instance, additional handwritten measurements were acceptable.

Mr. Hart asked whether staff was aware of the applicants' intentions to construct the second-story addition and if there was any reason for the addition to be included in the variance request. Susan Langdon, Chief, Special Permit and Variance Branch, replied that staff was aware of the addition because the plat reflected a total height of 26 feet and it did not need to be included in the variance request.

Tony Meuner, 1109 Morningwood Lane, came forward to speak in opposition of the application. He stated that he had lived in the area for twenty years and was the immediate adjacent property owner. He said that there was never any doubt where the property lines were located and he had informed the applicants as to where they were. He said that there was only one room in his house that the addition did not face. He stated that a special permit was a privilege not a right, and the applicants had abused the system. He asked the Board to deny the application.

Mr. Pammel asked Mr. Meuner if he wanted the addition removed. Mr. Meuner stated that was he did. He stated that he wanted the 1999 variance to be repealed.

Mr. Hanes, in his rebuttal, stated that Mr. Meuner had never shown the applicants the property lines. He reiterated that the height of the addition was shown on the 1999 plat even though a variance was not needed and the two-story addition was constructed as matter of right. Mr. Hanes stated that the application met all of the standards for the granting of a special permit. He submitted that the applicants depended on the plats that were prepared by professionals and the error was made in good faith.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the second story structure was permitted by-right as long as it was within the set backs and it did according to the plat that was prepared. He stated that the Board, at the time of the 1999 variance approval, did not know about the applicants' plans for the second story structure. He said that he could not excuse the fact that the applicants moved forward with the construction after Mr. Meuner voiced his concern over the location of the structure and the side yard measurement. Mr. Pammel stated that the applicants relied on at least three surveys prepared by professional firms, which indicated a set back of 8.67 feet. He said that the evidence before the Board left him with no other choice but to assume that the applicants met the good faith provision.

Mr. Hanes asked for a waiver of the 8-day waiting period.

Mr. Pammel moved to approve SP 00-D-051 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHERYL AND KHOSRO FARAHANI, SP 00-D-051 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit addition to remain 6.7 ft. from side lot line, such that side yards total 37.34 ft. Located at 1111 Morningwood La. on approx. 20,800 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 11. (Def. from 10/31/00) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of an attached garage and a two-story addition shown on the plat prepared by Laura Lee Scott Surveys, Inc., dated August 25, 2000 submitted with this application and is not transferable to other land.

Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 2000. This date shall be deemed to be the final approval date of this special permit.

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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. Ana Jacobs, 2040 Kirby Road, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a two-story garage addition with a master bedroom expanded at the second story level to be located 5.67 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 6.3 feet was requested.

Ms. Jacobs presented the variance request as outlined in the statement of justification submitted with the application. She explained that there was a creek and a sanitary easement located on the north end of the property, which restricted any expansion of the home in that area. She stated that the addition was needed to provide additional living space for the family. She said that there was a 50-yard distance between her property and the adjacent property to the rear and that neighbor had no objections.

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

Mr. Ribble moved to approve VC 00-D-134 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI R. ABTAHI & ANA T. JACOBS, VC 00-D-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.67 ft. from side lot line. Located at 2040 Kirby Rd. on approx. 17,328 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((3)) 33. 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 December 5, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants met the standards required for the granting of a variance.
3. The applicants cited in the statement of justification that the house was not situated in a central location on the lot due to various easements.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a two-story addition as shown on the plat prepared by B.C. Eustice, dated, July 27, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
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. Kelley seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 626, December 5, 2000, (Tape 1 & 2) Scheduled case of:

- 9:00 A.M. STEPHEN C. BRILL & BARBARA L. HOPKE, VC 00-B-139 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 2.0 ft. from side lot line. Located at 8511 Parliament Dr. on approx. 16,124 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((4)) 301. (Concurrent with SP 00-B-057).
- 9:00 A.M. STEPHEN C. BRILL & BARBARA L. HOPKE, SP 00-B-057 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.0 ft. from side lot line. Located at 8511 Parliament Dr. on approx. 16,124 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((4)) 301. (Concurrent with VC 00-B-139).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara Hopke and Steve Brill, 8511 Parliament Drive, Springfield, Virginia, replied that it was.

Page 627, December 5, 2000, (Tape 1), STEPHEN C. BRILL & BARBARA L. HOPKE, VC 00-B-139, SP 00-B-057, continued from Page 626

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to the minimum yard requirements based on an error in building location to permit a shed to remain 1.0 foot from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 11 feet was requested. The applicants also requested a variance to construct a deck to be located 2.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 10 feet was requested.

Ms. Hopke presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the error was made in good faith and when they constructed the shed they located it where the others on the street were.

Ms. Hopke presented the variance request as outlined in the statement of justification submitted with the application. She stated that the narrowness of the lot, the topography, and the situation of the home restricted the construction of the deck anywhere else on the property. She explained that the property had a severe slope in the backyard and because of that the deck, in areas, was flush with the ground. She stated that they had full neighborhood support.

Mr. Hammack asked the height of the deck at the point closest to the side lot line. Ms. Hopke replied that the deck would be ground level at that point.

Mr. Pammel asked why they didn't construct the deck at the back of the home in a fashion that would not require a variance. Ms. Hopke replied that she had explored that option and the only access to the deck would be located immediately adjacent to the dining room table and the basement was a heavily used area of the home and the deck would eliminate all of the sunlight to that area.

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

Mr. Kelley moved to approve SP 00-B-057 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN C. BRILL & BARBARA L. HOPKE, SP 00-B-057 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.0 ft. from side lot line. Located at 8511 Parliament Dr. on approx. 16,124 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((4)) 301. (Concurrent with VC 00-B-139). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

- 1. This Special Permit is approved for the location of an accessory storage structure (shed) as shown on the plat prepared by WM. S. Sikes, Jr., dated September 5, 2000, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 2000. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel stated that he was opposed to the variance request because the applicants could construct a deck in a way that would not require a variance and that the request was out of convenience.

Mr. Kelley moved to approve VC 00-B-139 for the Reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN C. BRILL & BARBARA L. HOPKE, VC 00-B-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 2.0 ft. from side lot line. Located at 8511 Parliament Dr. on approx. 16,124 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((4)) 301. (Concurrent with SP 00-B-057). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5,

2000; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for the granting of a variance.
3. The applicants' statement of justification specifies the reasons for approval.
4. The deck is two feet off the property line and at ground level; therefore, there is sufficient space to maintain the landscaping without encroaching onto the adjacent 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 **APPROVED** with the following limitations:

1. This Variance is approved for the location of a deck as shown on the plat prepared by WM. S. Sikes, Jr., dated September 5, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 addition 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 5-1. Mr. Pammel voted against the motion and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 630, December 5, 2000, (Tape 1) Scheduled case of:

9:00 A.M. ANTIOCH BAPTIST CHURCH, SPA 90-S-057 Appl. under Sect(s). 3-C03 and 3-103 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church and related facilities to permit increase in land area and parking spaces. Located at 6531 Little Ox Rd. on approx. 13.60 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 87-1 ((1)) 2, 2A, 6. (Def. from 11/7/00 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. David Houston, Shaw Pittman, 1650 Tysons Boulevard, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit amendment for an increase in land area from 3.63 acres to the proposed 13.61 acres and for an increase in the number of parking spaces from 100 to 286 parking spaces on the adjacent property zoned R-1. The applicant proposed to add 186 additional gravel parking spaces on proposed lots 2 and 2A. The existing dwelling, accessory structure, and 3 sheds on lots 2 and 2A were proposed to remain and be utilized for offices, classrooms, and storage space. The proposed FAR of lots 2 and 2A is 0.011 and the proposed FAR for lot 6 is 0.052. Staff recommended approval subject to the development conditions.

Mr. Houston presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the church had prospered and grown since the approval of the original special permit and they were in need of more land area to provide additional parking. He said that the church would use the existing home on the property for administrative offices. He stated the 186 proposed parking spaces would be located on a gravel field. He stated that there would be no alterations to the church itself.

Mr. Pammel disclosed that the previous owners of the property were related to his supervisor; however, it would not have any affect on his vote.

Mr. Hart asked for a description of what the existing buildings would be used for. Mr. Houston stated that Sunday school classes would be held in the former single family residential structure on the property. Mr. Hart asked if there was a walk way between the single family home and the church property. Mr. Houston stated that there was.

Chairman DiGiulian called for speakers.

William Sydenstick, 10950 Woodfare Road, President of the Fairwood Acres Civic Association, stated that some of the properties in his subdivision bordered the northern part of the churches property. He stated that the association was not opposed to the parking lot or the use of the buildings however, they were disappointed that the special permit request was not made prior to the construction. He stated that the Association wanted the church to abide by the zoning laws.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 90-S-057 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTIOCH BAPTIST CHURCH, SPA 90-S-057 Appl. under Sect(s). 3-C03 and 3-103 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church and related facilities to permit increase in land area and parking spaces. Located at 6531 Little Ox Rd. on approx. 13.60 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 87-1 ((1)) 2, 2A, 6. (Def. from 11/7/00 for notices). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2000; and

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

1. The applicants are the owners of the land.

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 Sect(s). 3-C03 and 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 6531 Little Ox Road (13.6 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by J. Thomas Tanner, Jr., Professional Engineer, dated July 14, 2000, as revised through October 10, 2000 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be 400.
6. Two-hundred and eighty-six (286) parking spaces shall be provided. All parking shall be on site in the areas shown on the special permit plat.
7. Transitional Screening 2, consisting of 35 foot screening yard, shall be provided on all boundaries of Lot 6 where such screening does not conflict with the parking area, stormwater management facility, septic field and proposed well sites. In those areas where the 35 foot screening cannot be accommodated, Transitional Screening I shall be provided and supplemental planting installed to obtain the equivalent effectiveness of Transitional Screening 2 as determined by the Urban Forestry Branch. The size, type and location of the supplemental plantings shall be approved by the Urban

Forester to assure the equivalent of Transitional Screening 2.

Supplemental landscaping shall be planted along the northern and eastern lot lines of Lot 2A adjacent to the parking area as shown on the special permit plat and shall extend westward along the northern lot line to a point at the lot line between Lots 28 and 29 to the north.

All existing vegetation shall be preserved along the western and southern lot lines of Lots 2 and 2A to satisfy the transitional screening requirement. All dead or dying plant material in the Transitional Screening areas shall be replaced.

The existing fence shall satisfy the barrier requirement along all lot lines as shown on the special permit plat.

- 8. A tree preservation plan shall be established in coordination with and subject to the approval of the Urban Forester in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction of the site.
- 9. Interior and peripheral parking lot landscaping for the gravel parking lot area shall be provided in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be as determined by the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES) at the time of site plan review.
- 10. Limits of clearing and grading shall be the minimum necessary and shall be subject to review and approval by the Urban Forestry Branch. The entrance driveway on Lot 2A shall be located and designed so that loss of high quality vegetation is minimized.
- 11. All drainage of the site shall be directed into the stormwater dry pond on the northeast portion of the site. A drainage inlet or inlets may be placed at the front of the site to drain the entire parking lot into the stormwater management pond. Structural Best Management Practices shall be provided for stormwater management in accordance with the Public Facilities Manual standards for commercial development in the Water Supply Protection Overlay District and as approved by DPWES. This stormwater dry pond may be expanded if required to meet the BMP requirements, but shall not extend into the required transitional screening yard.

At the time of site plan review, the applicant shall provide the necessary verification to DPWES the SWM/ Dry Pond on Lot 6 can be rebuilt if necessary to accommodate water quality and quantity requirements for the additional parking on Lot 2A.

Should the farm pond on Lots 2 and 2A be utilized for stormwater requirements, no existing vegetation within the existing tree line to the north shall be cleared or disturbed. The limits of clearing and grading shall be kept minimal to the extent possible. Should any vegetation need to be removed during the conversion of the farm pond to a SWM facility, replacement planting will be required and shall be as determined necessary by the Urban Forester.

- 12. Right-of-way dedication shall be provided as necessary to accommodate the improved design of the intersection of Stoney and Ox Roads. 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, which ever occurs first. The amount of dedication shall be determined by VDOT and the DPWES.
- 13. Any proposed and existing lighting of the parking areas shall be in accordance with the following:
 - The combined height of the light standards and fixture shall not exceed 12 feet.
 - The lights shall be of a design which focuses the light directly onto the subject property and shall be full cut-off lights.
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.

14. The building height shall not exceed 36 feet.

These development conditions incorporate and supersede all previous 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 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 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. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 633, December 5, 2000, (Tape 1) Scheduled case of:

9:00 A.M. CHRISTOPHER & JOANNE MANIKAS, VC 00-Y-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line such that side yards total 18.10 ft. Located at 4933 Edge Rock Dr. on approx. 10,731 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 725.

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. Christopher Manikas, 4933 Edgerock Drive, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 5.2 feet from the side lot line such that side yards total 18.1 feet. The Zoning Ordinance requires a minimum side yard of 8.0 feet and a minimum total side yards of 24 feet; therefore, a variance of 2.8 feet was requested for the side yard and a variance of 5.9 feet was requested for the two side yards combined.

Mr. Manikas presented the variance request as outlined in the statement of justification submitted with the application. He stated that the variance request was to enclose an existing deck and make a screened porch. He stated that his neighbors were in support and the porch would be in character with the neighborhood.

Mr. Pammel asked if the steps to the existing deck extended to the side yard. Mr. Manikas stated that there were two sets of steps on the existing deck and they would be removed upon construction.

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

Mr. Pammel moved to approve VC 00-Y-135 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER & JOANNE MANIKAS, VC 00-Y-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.2 ft. from side lot line such that side yards total 18.10 ft. Located at 4933

Edge Rock Dr. on approx. 10,731 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 725. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants have presented testimony indicating compliance with the required standards for the granting of 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 **APPROVED** with the following limitations:

- 1. This variance is approved for the location of the addition shown on the plat prepared by Charles R. Johnson, dated May 20, 2000, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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. Hart seconded the motion which carried by a vote of 5-0-1. Chairman DiGiulian abstained from the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 635, December 5, 2000, (Tape 1) Scheduled case of:

9:30 A.M. VED P. GUPTA ET AL, ANCC, INC., A 2000-LE-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a vehicle light service establishment in the C-6 District without special exception approval in violation of Zoning Ordinance provisions. Located at 5716 Telegraph Rd. on approx. 2.77 ac. of land zoned C-6 and R-3. Lee District. Tax Map 83-1 ((1)) 11.

Chairman DiGiulian stated that there was a request to withdraw the appeal. William E. Shoup, Deputy Zoning Administrator stated that the violation had been resolved and the appellant had withdrawn the appeal.

Mr. Pammel moved to withdraw Appeal Application A 2000-LE-024. Mr. Hart seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 635, December 5, 2000, (Tape 1) Scheduled case of:

9:30 A.M. EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9100 Furnance Rd. on approx. 7.67 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 23.

William E. Shoup, Deputy Zoning Administrator, stated that the appellant would be requesting a deferral.

Roy Spence, representative for the appellants, requested a 90-day deferral to give the appellant time to clear off the property. He stated that the appellant had already begun the process by removing automobiles, tires, and other items from the property. He stated that there was a possibility that the appellant would be selling the property in the near future. Mr. Spence stressed that the property was not visible from any main road.

Mr. Shoup stated that staff objected to the deferral because the violation was much worse than staff thought it was when the Notice of Violation was issued in August of 2000. He explained that there were a number of items that were in a wooded area that were not visible to the inspector when the trees were in full foliage. Mr. Shoup stated that, although there had been some progress made by the appellant, there was a long way to go to clear the property. He asked that the Board hear the appeal and rule in staff's favor to get the violation resolved in a timely manor.

Mr. Pammel asked how long the condition on the property had existed. Mr. Hammack replied 1979. Mr. Pammel stated that three months would not have a great effect on the property and if the appellant was willing to try to resolve the issue then he was in support of a deferral.

Page 636, December 5, 2000, (Tape 1), EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026,
continued from Page 635

Mr. Hammack moved to defer A 2000-MV-026 until March 6, 2001 at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 636, December 5, 2000, (Tape 1) After Agenda Item:

Additional Time Request
Annie Parra
SP 00-Y-005

Mr. Pammel moved to approve the additional time request for SP 00-Y-005. Mr. Hart seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 636, December 5, 2000, (Tape 1) After Agenda Item:

Approval of August 8, 2000 Minutes

Mr. Pammel approved the minutes with one correction. Mr. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 636, December 5, 2000, (Tape 1) After Agenda Item:

Approval of November 28, 2000 Resolutions

Mr. Pammel approved the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Lori M. Mallam

Approved on: February 20, 2001



Regina Thorn Corbett, Clerk
Board of Zoning Appeals



John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 12, 2000. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 637 December 12, 2000, (Tape 1), Scheduled case of:

9:00 A.M. BARBARA J. & ROBERT M. GORDON, VC 00-D-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.7 ft. from side lot line and permit accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 1628 Macon St. on approx. 14,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((28)) (2) 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. Barbara Gordon, 1628 Macon Street, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure, to be used as a workshop, to be located 10.7 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 1.3 feet was requested. The applicant also requested a variance to permit an accessory structure, a garage and shed, to remain in the front yard of a lot containing 36,000 square feet or less.

Mr. Hammack asked what was the total length of the proposed structure. Ms. Stanfield replied approximately 41 feet.

Ms. Gordon presented the variance request as outlined in the statement of justification submitted with the application. She said they purchased the property with the understanding that the structure was in place 34 years ago and that they would like for it to remain. Ms. Gordon said there had not been any complaints about the structure. She stated that the dwelling did not have any attic or basement area for storage and that they would like to build a workshop to be able to store tools and basic necessities that would help maintain the maximum property level. Ms. Gordon addressed a neighbor's concerns, that were contained in a letter of opposition, by stating that there would be no noise pollution and the structure they were proposing to build, the workshop, would be no closer than the existing carport. She said they would not be making any more noise above what they do to maintain their home. Ms. Gordon stated that the neighbor was concerned that the structure might be a fire hazard and she replied that they would build the structure in accordance with the required codes.

Mr. Hammack asked if there was a reason they could not build the structure within the existing setbacks. Ms. Gordon said they thought it would enhance the aesthetics of the neighborhood by extending the wall.

Mr. Hammack asked how tall the structure would be. Susan Langdon, Chief, Special Permit and Variance Branch, replied 10 feet in height.

Mr. Hart noted that the letter in opposition indicated that the workshop would be used to house a large power saw. He asked how frequently the saw in was operation. Mr. Gordon replied that he had the saw for about a year and might have used it about a dozen times. He said the saw would be used for normal residential use. Mr. Gordon said the saw was a small table saw.

Mr. Hart asked if the materials used for the workshop would be comparable to the other shed. The Gordons replied that it would match exactly.

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

Mr. Pammel moved to approve VC 00-D-136 for the reasons noted in the Resolution.

Mr. Hammack said he could not support the motion in its entirety. He said he had no problem with the

carport, but he felt that it was a convenience to allow the workshop to be extended. Mr. Hammack said it was in an area where there could be noise generated and impact the neighborhood. He said it would allow a continuous wall 41 feet long to encroach in the setback.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BARBARA J. & ROBERT M. GORDON, VC 00-D-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.7 ft. from side lot line and permit accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 1628 Macon St. on approx. 14,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((28)) (2) 11. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 2000; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants presented testimony indicating compliance with the required standards for a variance.
- 3. The lot is unusually shaped.
- 4. The variance request is minimal.
- 5. The workshop activities will only be for normal home maintenance.

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 **APPROVED** with the following limitations:

1. This variance is approved for the location of two accessory structures, an existing carport/shed and a proposed workshop, shown on the plat prepared by Kenneth W. White, dated August 29, 2000, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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. Hart seconded the motion which carried by a vote of 5-1. Mr. Hammack voted against the motion. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 76-M-086-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 76-M-086 previously approved for a church and related facilities and private school of general education with an enrollment of 100 or more students daily to permit building addition, site modifications and change in development conditions. Located at 3901 Woodburn Rd. on approx. 13.68 ac. of land zoned R-1 and R-2. Mason District. Tax Map 59-3 ((1)) 11A.

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. Richard Little, 11706 Decade Court, Reston, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for the construction of a 12,354 square foot multipurpose building intended to serve existing uses on the site currently taking place within the church and school structures. She said the site had been the subject of special permits granted by the BZA since 1967. The applicant requested essentially the same conditions as previously approved which included the number of seats in the church, total maximum daily enrollment in the school, and hours of operation. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Mr. Little, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said there had been school and church uses on the property for over 30 years. Mr. Little said the applicant would like to provide a facility for uses that were already taking place on the site. He said the request was to move existing uses from inadequate facilities into a building that would house them appropriately. Mr. Little said there was no opposition from the neighbors. He said

the applicant was in agreement with the development conditions.

Mr. Hart asked if the applicant had seen the letter from the Pine Ridge Civic Association. Mr. Little replied that he had. Mr. Hart asked if the applicant agreed with additional vegetation between the structure and Woodburn Road. Mr. Little said they were in agreement with providing additional foundation plantings. He said regarding the transitional screening on the north side of the lot, they already had 10 more feet than required and on the west side of the site, it was about 50-100 feet and they would be willing to provide evergreen trees if there was some place to put them. Mr. Little presented photographs to the Board depicting screening.

Mr. Hart asked if the applicant was proposing any uses that would generate an increase in traffic. Mr. Little responded that the applicant was aware that they would need to obtain an amendment for any increase in activity levels.

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

Mr. Hammack moved to approve SPA 76-M-086-4 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 76-M-086-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 76-M-086 previously approved for a church and related facilities and private school of general education with an enrollment of 100 or more students daily to permit building addition, site modifications and change in development conditions. Located at 3901 Woodburn Rd. on approx. 13.68 ac. of land zoned R-1 and R-2. Mason District. Tax Map 59-3 ((1)) 11A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 2000; and

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

- 1. The applicant is the owner of the land.

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 Sect(s). 3-103 and 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 3901 Woodburn Road (13.68 acres), and is not transferable to other land.
- 2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Monaco & Manganello, Land Development Consultants, Inc. dated through September 6, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5. The maximum number of seats in the church shall be six hundred (600).
- 6. One hundred eighty (180) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.
- 7. The private school of general education shall be limited to a total maximum daily enrollment of 250 students.
- 8. The hours of operation for the school shall be limited to a maximum time period of between 8:15 a.m. and 3:30 p.m. with reasonable accommodation for drop-off and pick-up of students before and after school. Evening hours until 11:00 p.m. shall be permitted for related school activities.
- 9. The applicant shall encourage a carpool program with a goal of 40% of the students in the school participating in the program.
- 10. To preserve the existing vegetation on the site, the limits of clearing and grading shall be as shown on the special permit plat. The existing vegetation protected by the limits of clearing and grading shall be deemed to fulfill the requirements for transitional screening on the northern, western and eastern lot lines. The Urban Forestry Branch shall inspect the transitional screening area located between the parking lot and Woodburn Road and may require replacement plantings for any vegetation which is dead, dying or less than six (6) feet in height.

The Urban Forestry Branch shall also inspect the transitional screening area between the proposed structure and Woodburn Road and may require the installation of additional vegetation to meet the requirements of Transitional Screening I, if necessary.

- 11. The barrier requirement shall be waived along the northern, eastern and western lot lines.
- 12. Stormwater management Best Management Practices (BMPs) shall be provided for as determined by DPWES.
- 13. Foundation plantings shall be provided along the northern and eastern sides of the proposed structure to soften the appearance of the structure. The species, size and location of the vegetation shall be as determined by the Urban Forestry Branch.
- 14. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance. The number of parking spaces may be reduced to accommodate this landscaping provided the number of spaces remaining meet the minimum requirements for the approved uses 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 valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice,

Page 042, December 12, 2000, (Tape 1), MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE, SPA 76-M-086-4, continued from Page 041

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. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 042, December 12, 2000, (Tape 1), Scheduled case of:

9:00 A.M. KAVOOS N. RAD, SP 00-D-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line. Located at 8536 Tebbs La. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 43. (Moved from 11/28/00 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. Kavoos Rad, 8536 Tebbs Lane, McLean, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction in minimum yard requirements based on an error in building location to permit a detached garage to remain 2 feet from the rear lot line. A minimum 18-foot rear yard is required; therefore, a modification of 16 feet was requested.

Mr. Rad presented the request as outlined in the statement of justification submitted with the application. He said he wanted to obtain a permit to rebuild an existing garage. Mr. Rad said when he purchased the property 2 years ago, the garage was deteriorating and it made the neighborhood look bad. He said there were several letters supporting his request. Mr. Rad stated he wanted to build a better garage than what was presently there.

Ms. Gibb asked how far away was the neighbor's house from the garage. Mr. Rad stated that it was several hundred feet away. He said the garage was located in the center of the land.

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

Ms. Gibb moved to approve SP 00-D-053 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KAVOOS N. RAD, SP 00-D-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from rear lot line. Located at 8536 Tebbs La. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 43. (Moved from 11/28/00 for notices). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

Page 643 December 12, 2000, (Tape 1), KAVOOS N. RAD, SP 00-D-053, continued from Page 642

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 2000; and

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

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:

- 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory structure (garage) shown on the plat prepared by Alexandria Surveys, Inc., dated through April 19, 2000 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 643 December 12, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ST. MARKS EPISCOPAL CHURCH, SP 00-L-056 Appl. under Sect(s). 3-103 and 3-303 of

the Zoning Ordinance to permit a church and related facilities. Located at 6744 South Kings Hwy. on approx. 2.38 ac. of land zoned R-1 and R-3. Lee District. Tax Map 92-2 ((26)) 1; 92-2 ((1)) 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. John Weatherly, Rector, 6744 South Kings Highway, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a church and related facilities. The church use existed and was established in 1956 prior to the requirement of approval of a special permit. The existing structure contains offices, classrooms and a sanctuary with 240 seats. The existing parking contained 53 spaces with 11 additional parking spaces proposed. The applicant proposed to construct a 3,900 square foot fellowship hall addition to the north end of the existing structure. At completion, the total area would be 11,500 square feet that resulted in an FAR of 0.17 on the R-3 portion of the site. The church proposed no development on the R-1 parcel and proposed no changes to the seating capacity. The trailer would be removed at the completion of the addition. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of the application subject to the proposed development conditions contained in the staff report.

Mr. Weatherly asked about the playground being moved as recommended by staff. Mr. Bernal replied that the plat reflected that the playground would be moved.

Mr. Weatherly said the playground was located next to the nursery and they would prefer that it remain in the current location. He said they supported staff's recommendations.

Mr. Hammack asked why Development Condition #9 relating to the dedication of 45 feet from the centerline was a proposed development condition. Mr. Bernal replied that the applicant was adding the building and parking. Susan Langdon, Chief, Special Permit and Variance Branch, stated that when the applicant requested to change uses on the site, staff reviewed what would be required under the current Ordinance and the Comprehensive Plan, which revealed proposed widening of South Kings Highway. Consequently, staff responded to that by asking the applicant to provide right of way.

Angela Rodeheaver, Department of Transportation (DOT), stated that the right of way of 45 feet already existed for the lot which contained the church, and the right of way for the lot that the applicant was leaving undeveloped, was currently 35 feet and DOT was asking that the applicant dedicate an extra 10 feet to make a consistent 45 feet of right of way for both lots.

Mr. Hart asked if staff was agreeable to the playground in its current location near South Kings Highway. Ms. Langdon replied that staff did not ask the applicant to move the playground. She said they were just responding to what was reflected on the plat, which noted that the playground would be moved. Ms. Langdon stated that staff did not object to the playground remaining in its current location.

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

Mr. Kelley moved to approve SP 00-L-056 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. MARKS EPISCOPAL CHURCH, SP 00-L-056 Appl. under Sect(s). 3-103 and 3-303 of the Zoning Ordinance to permit a church and related facilities. Located at 6744 South Kings Hwy. on approx. 2.38 ac. of land zoned R-1 and R-3. Lee District. Tax Map 92-2 ((26)) 1; 92-2 ((1)) 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

Page ~~645~~ December 12, 2000, (Tape 1), ST. MARKS EPISCOPAL CHURCH, SP 00-L-056, continued from Page ~~644~~

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 2000; and

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

1. The applicant is the owner of the land.

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 Sect(s). 3-103 and 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 6744 South Kings Highway (2.37 acres), and is not transferable to other land.
- 2) This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Lawrence Cook Associates, P.C., dated July 17, 2000, as revised through November 6, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
- 5) The maximum number of seats within the main area of worship shall not exceed 240.
- 6) Sixty-four (64) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.
- 7) The barrier requirement shall be waived.
- 8) Foundation plantings shall be provided around the buildings to soften the appearance of the church from South Kings Highway and St. Mark's Court. Transitional Screening consisting of evergreen plantings shall be provided along the site frontage of St. Mark's Court. The applicant shall work with the Urban Forester to select the species and number of evergreen trees for the screening area as not to impede the flow of stormwater to yard inlets and still provide adequate screening. All proposed landscaping subject to the review and approval of the Urban Forestry Branch of DPWES.

Interior and peripheral parking lot landscaping for the parking area shall be provided in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be as determined by the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES) at the time of site plan review.

- 9) Any proposed lighting of the church shall be focused onto the subject property. Parking lot lighting fixtures on the site shall be limited in height to a maximum of twelve (12) feet. All lighting fixtures shall be full cut-off lights and shall be fully shielded in such a manner to prevent light from projecting

off-site.

- 10) The gravel driveway off of South Kings Highway shall be closed. The driveway shall be removed and the area scarified and replanted with grasses and/or vegetation as determined by the Urban Forestry Branch.
- 11) Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required to the satisfaction of DPWES. Subject to the approval by DPWES, final stormwater management design shall provide for bio-retention mechanisms and/or embankment facilities within the site, or other such innovative SWM measures. Locations of any bio-retention areas may be adjusted within the site to the satisfaction of DPWES. If the SWM/BMP structures are waived, the areas depicted on the special permit plat to be designated for installation of the bio-retention mechanisms shall be supplemented with full Transitional Screening I and shall be subject to the approval of DPWES.
- 12) The existing trailer shall be removed prior to the issuance of a Non-RUP for the fellowship hall.
- 13) All signs shall be in conformance with Article 12 of the Zoning Ordinance.
- 14) The existing playground may remain in its present location as depicted 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 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 646, December 12, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ZOROASTRIAN CENTER AND DARB-E-MEHR OF METROPOLITAN WASHINGTON D.C., SP 00-H-026 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit a place of worship, child care center and nursery school. Located at 2347 Hunter Mill Rd. on approx. 6.81 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26. (MOVED FROM 7/25/00, 8/1/00, and 9/12/00). (Deferred for decision only from 10/17/00)

Vice Chairman Ribble noted that the application was deferred for decision only, but the Board had accepted written testimony. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the previous week Chairman DiGiulian indicated to staff that the Board would receive additional testimony relating to the changes that had been made to the plat.

Mr. Hart stated that if the testimony could be confined to the new issues then he would not have a problem with speakers.

Vice Chairman Ribble stated that the Board would hear testimony only to the changes that occurred and

would only allow presentations of 10 minutes for each side.

Marie Travesky, agent, stated that the changes that had been made to the plat reflected the citing of two potential septic field locations. She said they were not saying that they would use both of them but it would depend upon the calculations and the Health Department's approval. Ms. Travesky said it appeared that only one of the locations would be needed. She said until the calculation went through the Health Department and the application and the site plan was formally filed, they would not know the answer. Ms. Travesky said the other change to the plat dealt with moving the access for the Church of the Good Shepherd to the east to allow more room for the joint access and to make a safer right and left turn in and out of the property. She said they moved the handicapped parking spaces to a slightly different location because of the expressed concern of the Board that adequate parking be provided on site given the size of the congregation. Ms. Travesky stated that they had over a 100% redundancy factor for the parking, plus they would be able to allow people to park on the current existing driveway. She said they would not be able to exit from there because the driveway was blocked by plantings. Ms. Travesky said the plat had been further modified to indicate that on the northern side there would be evergreen trees planted opposite the neighbor's barn. She said they also added a development condition that had been clarified that evergreen plantings could be located anywhere along the northern boundary at the recommendation of the Urban Forester. Ms. Travesky stated that they added screening to soften any affect for the neighbors living to the north.

Mr. Hart asked whether the left turn lane was adequate. Angela Rodeheaver, Department of Transportation, replied that the left turn lane would be adequate for the subject site.

Ms. Gibb asked if the Urban Forester would be reviewing the screening in the interest of the neighbors. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the idea was for visual screening. She said the Urban Forester would help determine which types of vegetation would be best.

Mr. Hart stated that there was a note on the plat that indicated that the existing entrance of the Good Shepherd Church was to be closed by others. He asked whether that was the responsibility of the Good Shepherd Church next door. Ms. Travesky replied that they anticipated that.

Mr. Hart stated that he had read the Good Shepherd Church's development conditions, which troubled him. He asked if staff was on board with having the access road for both sites be entirely on the property of the subject application. Ms. Rodeheaver replied yes.

Mr. Hart stated that he did not believe that the Good Shepherd Church was getting an easement to get out to Hunter Mill Road even though their entrance was being closed. Mr. Hart asked about the interparcel access and the setback from Hunter Mill Road. Ms. Rodeheaver stated that the applicant had moved the access back and it was in a much better location. She said there needed to be an easement from the interparcel through the driveway to give the other church the right to use the entrance.

Mr. Hart asked if there was not an easement, would Good Shepherd Church have access to a public street. Ms. Rodeheaver said their goal would be to have one entrance opposite Hunter Valley Road for both parcels.

Mr. Hart asked whose property the utility pole was located on. Ms. Travesky responded that it was in the Virginia Department of Transportation's (VDOT) right-of-way on the side of Good Shepherd Church.

Mr. Hart asked whether the utility pole would have to be moved. Ms. Travesky replied that she thought it would. Mr. Hart asked who would pay for moving the pole. Ms. Rodeheaver stated that it would depend on exactly where the pole was located.

Mr. Hart asked about a letter from Jodie Bennet referencing lighting. Ms. Travesky stated that the applicant had agreed with the conditions concerning lights. She said all the lights were controlled by an automatic shui-off.

Mr. Ribble asked whether the entrance of the two churches would be exacerbated. Ms. Rodeheaver replied that the church services would be held at different times. He asked whether the times had been set. Ms. Langdon stated that staff did not typically set specific hours, but that one church typically met on Sunday

mornings and the other church typically met Saturday evenings.

Ms. Gibb asked whether the Good Shepherd Church was aware that the entrance would be closed. Ms. Rodeheaver responded yes. Ms. Gibb asked whether the Good Shepherd Church would be obtaining any benefit from the closed entrance. Ms. Rodeheaver said she believed they would benefit by obtaining a left turn access into the site.

Mr. Ribble said he was concerned because it did not appear that there was a lot of distance between the entrance and the interparcel access.

Mr. Hart asked if there was anything besides Condition #12 in the Good Shepherd Church's conditions that obligated them to do anything other than grant public access easements. Ms. Rodeheaver stated not in the development conditions, but that she was not sure if there were any notes or restrictions on the site plan.

Ms. Travesky stated that they originally submitted their application with their access at the existing access point. She said it was pointed out by the County that there was a development condition that they had to adhere to even though it was on another application. Ms. Travesky said it was not their intention to move the entrance, because they would have liked it where it existed.

Mr. Hart said the interaction between the two cases was confusing as to who was supposed to do what.

Vice Chairman Ribble called for speakers.

Mr. Hart gave a disclosure that he had a case with an attorney present at the public hearing, but that would not affect his ability to participate in the public hearing.

The following speakers came forward to speak in opposition. Steve Horbath, 3920 University Drive, representing the neighbors; BJ Stone, East Hunter Valley Road; Adel Kebesh, 2333 Hunter Mill Road; Richard Taylor, 10300 East Hunter Valley Road; Jodie Bennett, 1459 Hunter View Farms; and Walter Schlie, President, Hunter Valley Association, 2190 Hunter Mill Road. They expressed concerns relating to the septic fields, transitional screening, absence of a geo-technical report; parking; the shared entrance; the use being too intense and noisy; too many unanswered questions; potential for a lot of growth; and traffic.

Ms. Travesky gave a rebuttal stating that the applicant agreed to an environmental study but not a geo-technical study to determine whether or not there was pollution on the site and that report proved to be negative. She said the applicant would have to work with the Health Department with regard to what sites would perk. Ms. Travesky said the applicant intended to hook up to public water. Ms. Travesky stated that this was not an intense use because the church was comprised of a small congregation and they did not expect that it would grow beyond 120 people at any time in the future.

Vice Chairman Ribble closed the public hearing.

Mr. Hart said the Board had received a great deal of material and there were some other things that they had not received. Mr. Hart said he thought the Board would be prepared to go forward with the public hearing but at this point he would prefer a deferral. Mr. Hart said some of his concerns were addressed in the development conditions about the parking being on site. He said his concern about the intensity was not so much the size of the building, but the combination of the childcare with the church. He said he was troubled by not understanding the left-turn lane situation. He said he did not know what was on the plat for the adjacent church. He said he would have like to have seen the sketches of the entrance. He said there could have been some modification of the extension of the transitional screening.

Mr. Pammel said he was not disposed to an approval of the subject application as it presently existed. He said there was federal law that was signed in September of 2000, that in effect said that local non-mainstream churches, religious organization could not be discriminated against by localities by the failure of localities to grant permits for their worship locations. Mr. Pammel said the conditions were that they must meet all reasonable conditions as set forth by the localities. He said he was concerned about the joint access. Mr. Pammel said he felt the Good Shepherd Church would be the one short-changed. He said there was a need for other options and under no circumstances would he support the day care center. Mr. Pammel said the day care center clearly exacerbated the conditions on Hunter Mill Road and any further

Page 649, December 12, 2000, (Tape 1), ZOROASTRIAN CENTER AND DARB-E-MEHR OF METROPOLITAN WASHINGTON D.C., SP 00-H-026, continued from Page 648

traffic was not acceptable. He said the religious educational activities would meet at the same time as the Good Shepherd Church services. Mr. Pammel said there was basic conflict and he could not support a deferral and would prefer to move on with a decision.

Mr. Hart moved to defer the subject application for decision only to January 16, 2001. Ms. Gibb seconded the motion.

Ms. Gibb said she was interested the subject application's relationship to the Good Shepherd Church. She said to force the two churches to negotiate would put them both in a bad position. Ms. Gibb said that she was also interested in seeing how the right and left turn lanes would look.

Mr. Hammack stated that he shared the same concerns as the other Board members. He said he supported the deferral because there were just not enough answers to make a decision.

Ms. Gibb noted that the Board had received a number of letters from members of the church that live in the area in support of the application.

Mr. Kelley said he was not satisfied with the parking situation. He said he believed some of the holidays would be regional meetings which would bring in a lot of outside traffic.

Vice Chairman Ribble said he would support a deferral.

The motion carried by a vote of 5-1. Mr. Pammel voted against the motion. Chairman DiGiulian was absent from the meeting.

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Page 649, December 12, 2000, (Tape 1), Scheduled case of:

9:30 A.M. APOLONIA GLORIA FUENTES-PASTOR, A 2000-PR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating the child care center use authorized under Special Permit SP 99-P-050 in violation of certain conditions set forth in the special permit approval and without first obtaining the required Non-Residential Use Permit. Located at 8615 Hilltop Rd. on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A.

Vice Chairman Ribble noted that an Intent to Defer had been granted on November 14, 2000 to defer the appeal to March 20, 2001. Mr. Kelley moved to defer the subject appeal to March 20, 2001. 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 649, December 12, 2000, (Tape 1), After Agenda Item:

Additional Time Request
SP 97-Y-014, Ajey Bargoti.

Mr. Kelley moved to approve the Additional Time Request. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was January 30, 2002.

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Page 649, December 12, 2000, (Tape 1), After Agenda Item:

Approval of June 13, 2000 Minutes.

Mr. Pammel moved to approve the June 13, 2000 Minutes. 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 650, December 12, 2000, (Tape 1), After Agenda Item:

Request for Reconsideration
Kelly Starinchak, VC 00-V-138.

There was no action taken on the request. Therefore, the Request for Reconsideration was denied.

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Page 650, December 12, 2000, (Tape 1), After Agenda Item:

Approval of December 5, 2000 Resolutions.

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Regina Thorn Corbett

Approved on: March 13, 2001

Regina Thorn Corbett
Regina Thorn Corbett, Clerk
Board of Zoning Appeals

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

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 19, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley, James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 651, December 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. MILL CREEK PARTNERS LLC, VC 00-M-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into four lots and two outlots with proposed Lots 1, 2 and 3 having a lot width of 6.0 ft. Located at 3806 Millcreek Dr. on approx. 6.13 ac. of land zoned R-2. Mason District. Tax Map 59-4 ((2)) (2) A (formerly known as 59-4 ((1)) 1); 59-4 ((2)) 79, 80. (Moved from 12/5/00).

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the affidavit was not in order and the case needed to be deferred. She also stated that the applicant had submitted revised plats, which had to be advertised. She suggested a deferral date of February 13, 2001.

Ken Sanders, agent for applicant, requested the earliest deferral date possible.

Ms. Gibb moved to defer VC 00-M-013 until February 13, 2001. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 651, December 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. OUR SMALL WORLD, INC., SPA 95-D-058 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 95-D-058 previously approved for child care center and nursery school to permit increase in enrollment, change in development conditions, site modifications and change in permittee. Located at 1700 Great Falls St. on approx. 1.44 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Tartar, 6045 Wilson Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to the previously approved special permit for a childcare center to allow an increase in enrollment from 50 to 99 children. In conjunction with the increased enrollment, the applicant proposed construction of 19 additional parking spaces, an increase of six to twelve employees, paving of the entrance/exit road and all parking areas, and a change in permittee. The existing play area located on the south side of the subject parcel would remain. The existing 120 square foot storage shed, located to the rear of the structure, was to be relocated to the southern portion of the new parking area and was to be replaced with a larger 240 square foot shed.

In addition to the existing vegetation, the applicant had agreed to provide ornamental trees and foundation plantings along the eastern, southern and northern perimeter of the principal building. The applicant also proposed to plant shade trees on the northern, western and southern areas of the parcel and to plant two large deciduous trees in the front yard, based on a recommendation from the McLean Citizen's Association.

Lastly, the applicant had committed to providing storm water management and water quality facilities and would address these issues in greater detail at the time of final engineering.

Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and therefore recommended approval of SPA 95-D-058 subject to the approval of the development conditions dated December 5, 2000 as revised through December 12, 2000.

Mr. Tarter, agent for the applicants, presented the special permit amendment request as outlined in the statement of justification submitted with the application. He informed the Board that the childcare center had been in operation for five years without any incident. He said that there was no need to increase the building size, as there was sufficient capacity. He stated that the dwelling had originally been constructed for a school use. He submitted letters of support from the surrounding neighbors. Chairman DiGiulian called for speakers.

Mary Ellen Brown, no address given for record, came forward to speak in support of the application. She stated that her child attended the day care facility. She said that the increase in enrollment would serve the community's growing need for child care.

Stanley Kousis, no address given for record, came forward to speak in support of the application. He stated that his two children had attended the day care facility for four years. He stated that the facility provided a great service and the community needed more quality day care facilities.

Mr. Hammack moved to approve SPA 95-D-058 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OUR SMALL WORLD, INC., SPA 95-D-058 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 95-D-058 previously approved for child care center and nursery school to permit increase in enrollment, change in development conditions, site modifications and change in permittee. Located at 1700 Great Falls St. on approx. 1.44 ac. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 14A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 19, 2000; and

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

1. The applicants are the owners of the land.

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 Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 1700 Great Falls Street, 1.44 acres, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William H. Gordon Associates, Inc. dated through November 28, 2000, 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of a Non-Residential Use Permit the maximum combined daily enrollment for the nursery school/child care center shall not exceed 99 (ninety-nine) children. A maximum of thirty (30) children shall utilize the outdoor play area at any one time.
6. Upon issuance of a Non-Residential Use Permit the maximum number of employees shall be limited to fourteen (14) on-site at any one time.
7. Hours of operation shall be limited to 7:00 a.m. until 6:30 p.m., Monday through Friday.
8. The transitional screening shall be modified as follows: Existing vegetation shall remain and be maintained along the eastern, southeastern and western lot lines.

Additional vegetation consisting of foundation plantings and ornamental trees, to soften the appearance of the structure, shall be provided along the eastern, southern and northern perimeter of the principle structure.

Shade trees shall be provided along the northern, western and southern portions of the site as generally depicted on the plat. Two (2) large deciduous shade trees (such as red oaks) shall be planted in the front yard. Species, size, location and number of plantings shall be determined by the Urban Forester.

9. The existing (7) foot high chain link fencing shall be maintained along the southern and western lot lines as currently provided and shall satisfy the Barrier requirement. The Barrier requirement shall be waived along the northern and a portion of the eastern lot lines.
10. There shall be a sign posted at each end of the travelway designating the "entrance" and the fact that it is one way, and the "exit".
11. The entrance and exit shall meet the Virginia Department of Transportation Standard for commercial properties as determined by the Department of Public Works and Environmental Services.
12. There shall be twenty-nine (29) parking spaces. Parking shall be on-site, as depicted on the Special Permit plat.
13. If a dumpster is provided, or any other trash containers, they shall not be located in the front yard and shall be screened from the street and adjacent properties with a fence and/or landscaping.
14. The applicant shall obtain a sign permit for the existing monument sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
15. The applicant shall provide thirty (30) feet of right-of-way from centerline along the site's frontage on Great Falls Street.

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

Page 654, December 19, 2000, (Tape 1), OUR SMALL WORLD, INC., SPA 95-D-058, continued from
Page 653

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 moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 19, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 654, December 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. VK ASSOCIATES I LIMITED PARTNERSHIP, SP 00-Y-052 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation uses. Located at 14564 Lee Rd. on approx. 7.50 ac. of land zoned I-5 and WS. Sully District. Tax Map 44-1 ((1)) 14; 34-3 ((1)) 23F1. (Def. from 11/14/00).

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board of the applicant's deferral request. She suggested a deferral date of February 27, 2001.

Mr. Hart moved to defer SP 00-Y-052 until February 27, 2001. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 654, December 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES FOR OHEV YISRAEL MESSIANIC JEWISH CONGREGATION, SP 00-S-058 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 7510 Ox Rd. on approx. 12.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit for a place of worship and related facilities. The applicants proposed the construction of a place of worship that contained approximately 9,400 square feet with 400 seats. Parking for 157 spaces would be constructed in the northern and western portion of the site. The proposed access to the site was via a driveway located along the northern portion of the site onto Henderson Road. The FAR at the completion was proposed at 0.02. Approximately 68% of the site would be maintained as undisturbed open space.

The proposed hours of operation were 10:00 a.m. to 2:00 p.m. on Saturdays and 10:00 a.m. to 12:00 noon on Sundays. Evening hours for meetings and activities were proposed for Tuesdays and Wednesdays from 7:30 p.m. to 9:00 p.m. Administrative hours were proposed to be from 8:30 a.m. to 4:00 p.m. Monday through Fridays. The applicants proposed to employ a total of six employees, three administrative assistants, and three members of the clergy.

The applicant requested approval of a special permit to construct a church and related facilities. Since all special permit uses must satisfy the eight General Standards specified in Sect. 8-006 of the Zoning Ordinance, staff believed the subject application was not in harmony with the Comprehensive Plan and not in conformance with the applicable Zoning Ordinance provisions in particular General standards 1, 2, 3, 4, and 5 and therefore recommended denial of SP 00-S-058.

Staff noted that they received a revised plat, on December 18, 2000, but had not had adequate time to

Page 655, December 19, 2000, (Tape 1), TRUSTEES FOR OHEV YISRAEL MESSIANIC JEWISH CONGREGATION, SP 00-S-058, continued from Page 654

review the proposed changes. Staff also noted that if Lot 17 was being consolidated into this application, it had not been properly advertised and therefore, should not be heard.

Lynne Strobel, agent for the applicants, presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the application did not include Lot 17, but just provided access to what was VDOT right of way. She informed the Board that the proposed improvements had an FAR of .02, which was one fifth of the permitted FAR for non-residential uses in the R-C District. She stated that the applicant, since the original submission, had made substantial revisions in response to issues raised by staff and adjacent property owners. She explained that the applicant had made a substantial reduction to the building to less than 10,000 square feet, reduced the number of seats from 800 to 400 and reduced the proposed number of parking spaces. She stated that the applicant had a soil study performed and the result was that there were adequate soils to provide septic fields. She said a 6-foot wooden fence with accompanying landscaping was proposed along the western property line in proximity to the proposed improvements. She said that 10 parking spaces had been removed in proximity to the adjacent residential neighborhood and were relocated in a way that headlights would not shine onto adjacent properties.

Ms. Strobel explained that the building was designed with the lowest elevation adjacent to the residential community. The elevation of the western face of the building was approximately 20 feet and the maximum permitted height for residential homes in the R-C district was 35 feet. She submitted to the Board a graphic, which illustrated the layout of the proposed building with the landscaping and an illustration of a single family home. She stated that the proposed elevation was less intrusive, and with church uses, there were transitional screening and barrier requirements which were not required with a single family home.

Ms. Strobel informed the Board that the applicant had imposed the addition of an access point directly to Route 123 with right in right out access only because there was no planned median break and it was too close to the median break on Henderson Road. She explained that there was still an access point to Henderson Road because it was deemed safer to route people out to a controlled intersection. She said that there was a traffic light planned at the intersection of Henderson Road and Route 123. She stated that Route 123 was also planned for improvements to begin in the next calendar year. She stated that the access would provide a safe point for ingress and egress to the site and it adequately addressed staff's concerns.

Ms. Strobel submitted modified Development Conditions to the Board which reflected the current revisions to the plat and the applicant's proposed changes.

Mr. Pammel stated that there were many suggested changes to the application, staff had not had adequate time to review all of the information and the public came prepared to address the original plan and not the submitted changes. He suggested a 2-month deferral to allow the applicants to work on the new information with the staff and the community. Ms. Strobel replied that there was no objection to a deferral; however, the applicant was under contractual constraints in which they would be forced to put up substantial additional funds that could not be returned based on the length of time that it took to reach a decision. She requested a deferral of no more than 30 days due to the contractual time constraints.

Mr. Pammel asked staff what dates were available for a 30-day deferral time frame. Susan Langdon, Chief, Special Permit and Variance Branch, replied that there were openings on January 30, 2000; however, a draft report would be due January 4, 2001, for that date and it would be a hardship for staff to work under those time constraints. She stated that a deferral of two-months would give staff adequate time to complete all of the administrative aspects of the application.

There was discussion between the Board and Ms. Strobel about the deferral request.

Chairman DiGiulian called for speakers to the question of the deferral.

Mike Giguire, 1750 Tysons Boulevard, McLean, Virginia, came forward on behalf of the Summerwind Citizens Association. He stated that the citizens were in support of a deferral but requested that the Board increase the deferral time to 3-months.

David Schnare, 6366 Pineview Court, Burke, Virginia, came forward to speak on behalf of the Occoquan

Watershed Association. He stated that the staff report did not address sanitation or Environmental Quality Corridor issues. He requested that the Board defer the application to allow staff to address those issues.

An unidentified male, came forward to speak to the issue deferral. He stated that the deferral would cost the applicants a considerable amount of money.

Joseph Hirl, President of the Summerwind Homes Association, came forward to speak to the issue of deferral. He stated that the application had changed a number of times and the citizens did not have a clear picture of what was being requested. He suggested a deferral of the longest time allowed to provide the citizens with additional time to get a clearer picture of what was being requested.

Mr. Hart asked that staff provide more information on the proposed improvements to Route 123, the conflict between what the applicant wanted verses what staff wanted with relation to the entrance on Henderson Road and the VDOT right of way on Lot 17.

Mr. Hart moved to defer the public hearing for SP 00-S-058 until February 20, 2001, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 656, December 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. PARADISE LEARNING CENTER/DELIVERANCE PRAISE TEMPLE, SP 00-B-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 5102 Thackery Ct. on approx. 1.41 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 6A. (Moved from ind. Def.) (Def. from 11/14/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vanessa Weathers, 5102 Thackery Court, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to convert a single family dwelling into a child care center with a total maximum daily enrollment of fifty (50) children. The proposed hours of operation for the child care center were 6:30 a.m. to 6:00 p.m., Monday through Friday. A total of 16 parking spaces were proposed, twelve spaces were located along the front of the structure along the semi-circular pick-up and drop-off area while four additional parking spaces were located at the far eastern end of the property. A proposed play area was to be located in the rear yard, measuring approximately 14,000 square feet in size and partially surrounded by a six foot high solid wood fence along the northern, southern and western lot lines. A 3 foot high fence within the interior of the site completed the perimeter of the play area.

In the original staff report dated November 7, 2000, staff recommended approval of the special permit based, upon the fact that a child care center for up to 50 children had been established previously pursuant to approval of a special permit in 1980. In 1990, a special permit amendment was approved by the BZA, which allowed a childcare center with 35 children. This special permit amendment subsequently expired and no childcare center had existed on the site since the early 1990's.

Since the publication of the staff report, based on questions regarding the application, staff did additional research and determined that, subsequent to the approval by the BZA of the child care center in 1990, language was added to the Comprehensive Plan concerning the review of Special Exception and Special Permit applications in this planning sector. Locational Guidelines for a child care centers and nursery schools were also added to the Plan. Staff re-evaluated the application, taking into consideration the added Plan language adopted since the last time a special permit request was considered at this property.

Based on the new Plan Language and Locational Guidelines for Child Care Centers now included in the Policy Plan, Staff believed the application did not meet all the Special Permit Standards nor all the Locational Guidelines and recommended denial of SP 00-B-055.

On December 6, 2000, the Planning Commission administratively heard this application and unanimously

recommended that the BZA deny the application for because it did not meet the General Standards, particularly Standards 1, 2, 3, 4, and 5.

Mr. Hart asked for clarification as to whether or not the Comprehensive Plan had been amended during the period of time where the use had been discontinued and prior to the submission of the new application. Mr. Bernal replied that was correct; therefore, the application was not in harmony with the current Comprehensive Plan. Mr. Hart noted that had the use continued, the application would have been in harmony with the old language in the Comprehensive Plan. Mr. Hart asked if the new language required the orientation of this type of special permit to an arterial roadway. Mr. Bernal answered that was correct. Mr. Hart asked where the nearest arterial road was. Mr. Bernal replied that Twinbrook Road was the closest minor arterial road. Mr. Hart asked for an explanation of the Non-Residential Use Permit (Non-Rup) that had been issued in error. Mr. Bernal replied that a Non-Rup allowing 50 children had been issued in error on August 7, 1991.

Mr. Kelley asked what was the current use of the property. Mr. Bernal replied that it was a home child care facility with a total enrollment of seven children and use was allowed by-right.

Mr. Pammel asked about the designation of an existing ingress/egress that extended out of the site on the north side. Mr. Bernal explained that it lead to a residence on Lot 9. He said Lot 9 also had access to Boyett Court on the opposite side of the lot.

Ms. Weathers presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the site had originally been used as part of a school operation and the school was located at 5120 Twinbrook Road and 5100 Thackery Court. She noted that the building located on 5102 Thackery Court was to be used as an extension of the school and since that time the site was used as a daycare center. She said that the last use was approved and issued a Non-Rup in 1991, which expired in 1998. She informed the Board that the property was located 200 feet from Commonwealth Drive and the nearest arterial road was Guiney Road, which was an extension of Commonwealth Drive. She said that the property contained a total of 16 parking spaces and a turn around driveway. She stated that no changes to the structure had been proposed.

Ms. Weathers explained that she had a meeting with the neighbors on November 14, 2000, to address their issues and there was no progress made at the meeting. She said she was willing to make any changes that were needed to ensure approval.

Mr. Hart asked the applicant if she agreed with the termination date of the last special permit. Ms. Weathers replied that she did. Mr. Hart asked what was the current use of the property. Ms. Weathers answered that she had a license from the State for a family daycare with a total enrollment of 12 children; however, the current enrollment was 7 children. Mr. Hart asked Ms. Weathers if she agreed that the current application must meet the criteria of the new Comprehensive Plan language. She said that she agreed that it was appropriate; however, a permit had been issued in 1991 prior to the amendment of the Comprehensive Plan. Mr. Hart noted that was correct but, at that time, the use had not ceased. Ms. Weathers stated that the County should have caught the error at that time and a special permit should not have been approved.

Ms. Gibb asked staff if there was any way that the applicant could meet the standards of the Plan. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the intensity of the use, the number of children, and access through the neighborhood were issues that made the application not in harmony with the Comprehensive Plan. She stated that if the applicant was willing to make some changes to the application, with regard to the total enrollment number, traffic, and transitional screening issues, then staff would re-evaluate the application. Ms. Gibb asked whether or not staff had a certain enrollment number that was permissible. Ms. Langdon stated they did not.

Ms. Gibb stated that facility was very nice and it was disappointing to limit the enrollment to only 7 children.

Mr. Hammack noted that in 1991 there were similar arguments and that was when the Board compromised for a total enrollment of 50 children. Mr. Hammack suggested a deferral of the application to allow the applicant to meet with the neighbors again to come up with an acceptable total enrollment.

Mr. Ribble stated that the Board, in 1991, also placed a 2-year term on the enrollment number due to complaints from the neighbors regarding noise and screening issues.

Ms. Weathers stated that she was willing to reduce the enrollment to 35 children and she had mentioned this to the neighbors. She said that she was also willing to provide a shuttle service to the site to eliminate any traffic issues. She submitted, to the Board, seven (7) letters of support.

Chairman DiGiulian called for speakers.

Hank Harrison, 10324 Collingham Drive came forward to speak in opposition of the application. He stated that access to the use was not oriented to a main arterial, the use was too intense for the area, the traffic generated by the facility was too great for the residential community, and the use was not in harmony with the residential area. He mentioned that there were previous zoning violations for an excess of children in the facility. He submitted a history of the property to the Board.

Robert Meadows, 5105 Thackery Court, came forward to speak in opposition of the application. He stated that the acreage of the property had decreased immensely since the previous special permit approvals and the ingress and egress to the property was hazardous due the narrowness of the driveway and the many sharp turns.

Jim Krafsig, 5103 Thackery Court, came forward to speak in opposition of the application. He stated that the playground area was the same area that was used as a sewage collection lagoon for a great number of years and that posed a tremendous safety hazard for the children. He said that the property had severe water problems as it had severe slopes.

Florence Naeve, Supervisor Bulova's Office, came forward to speak in opposition of the application. She informed the Board of a meeting that the applicant had requested between herself, Suzanne Harsel, staff, and the neighbors. She explained that Ms. Weathers had suggested several changes to the application but expressed that she was not prepared to commit to any changes unless the neighbors would give their support. Ms. Naeve stated that none of the suggested changes mitigated the lack of meeting the standards or the issue of the arterial. She said that circulation on the site was problematic because the property behind the site, with approval by a recorded easement, gave them access to a public street through the site. She informed the Board that with 4 of the proposed parking spaces, people would have to backup or go forward into the spaces and essentially through that easement to enter and leave the site.

Mr. Hart asked staff for an illustration of the layout of the driveway as it related to the access to Lot 9. Ms. Langdon explained the layout.

Suzanne Harsel, Planning Commissioner from the Braddock District, came forward to speak in opposition of the application. She informed the Board that she had asked Ms. Weathers why the previous owners never established an enrollment of 35 children even though they had been approved for it. She said that Ms. Weathers answered that the applicant found that it was not economically feasible to only have 35 children on the site; therefore they withdrew. Ms. Harsel stated that during the meeting Ms. Weathers mentioned an enrollment of 40 children and that she would offer a shuttle bus within 5 miles of the site, which consisted of 60% of the children. She pointed out that 5 miles of the site was almost to the beltway and 60% of 50 would have been 20 children that would have still been transported to the site. Ms. Harsel noted that the applicant was a lessee and not the owner of the property and Ms. Weathers had not furnished anything in writing from the owners of the property.

Mr. Ribble stated that there had been many mentions of Zoning Violations and asked staff if they could elaborate on any complaints. Ms. Langdon stated that there had been complaints and violations but she was not aware of the specific nature of the complaints.

Maureen Cassidy, 4944 Gainsborough Drive, came forward to speak in opposition of the application. She stated that the entry to Thackery Court was at an extremely difficult angle, which extended over a blind hill and then expanded into a hairpin right turn. She explained that any back up of cars on Thackery Court would cause a dangerous site distance problem through the intersection. She stated that emergency vehicles would have a difficult time maneuvering through the facility's driveway and would not have room to move about the site freely. She stated that the facility did not meet current safety standards. Ms. Cassidy submitted a copy of her presentation.

Mr. Pammel asked if the basement had a separate exit. Ms. Cassidy stated that she did not have that

Page 659, December 19, 2000, (Tape 1), PARADISE LEARNING CENTER/DELIVERANCE PRAISE TEMPLE, SP 00-B-055, continued from Page 658

information. She stated that she did not know if the County had ever addressed any safety evacuation issues. She noted that the nearest fire hydrant was on Commonwealth Boulevard.

Erin Cope, (no address given for the record), illustrated the changes to the property prior to the current special permit request. She stated that the site had severe access problems. She explained that trucks could not access the site so they parked in front of neighbors' driveways and blocked traffic on Thackery Court. She noted her understanding that the applicant intended to convert the entire home into the daycare center and would not live on the premises. She recommended that the Board visit the site before making any decision.

Ms. Weathers, in her rebuttal, stated that she was willing to commit to the concessions that she offered. She informed the Board that the Department of Transportation had no objections to the application. She stated that the home had 21 rooms with 6 exit doors in the basement and there was a fire evacuation plan on file with the social services department. She stated that she had contacted Zoning Enforcement on December 12, 2000, for information regarding any complaints and she was informed that there were none. She stated that there was adequate room for two-way traffic entering and exiting the site. Ms. Weathers contended that delivery trucks had no problems entering the property. She informed the Board that the surrounding day care centers were full and one of them did not accept children over 4 years of age. She stated that the Notice of Violation from November 7, 2000, was incorrect as the Zoning Inspector included her own children in the enrollment count. She reiterated that she was currently in compliance with the Zoning Ordinance. Ms. Weathers stated that she proposed to eliminate the spaces that were closest to Lot 9. She noted that the owners of the property were aware of the application.

Mr. Pammel asked if anyone associated with the center lived on the site. Ms. Weathers replied that she did live on the site but thought it would help the application if she did not live there. She noted that in the previous special permit, with approval for 50 children, the applicants did live on site. She stated her intent to utilize the bottom portion of the home for the child care center with the upstairs being for offices and a teachers' lounge. Mr. Pammel asked if there was a separate entrance for the basement from the outside and for the top floor. Ms. Weathers replied that there were separate entrances for the top and bottom floors and the 6 exit doors were located on the bottom level.

Ms. Langdon informed the Board that, upon her discussions with the applicant as to the suggested changes to the application, the development conditions had been revised and copies had been placed out for public viewing.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that his motion was based on the history of the application. He stated that the original owners of the property had sold off a majority of acreage and due to this, he could not support a school of the proposed size on what was left. He stated that there were five lots on Thackery Court and four other lots that abut the property that were impacted by the activity on the site. He noted that the Planning Commission had recommended denial of the application for non-compliance with the criteria in the Comprehensive Plan. He stated, in closing, that access to the property was completely inadequate.

Mr. Pammel moved to deny SP 00-B-055 for the reasons stated in the Resolution.

Mr. Hammack said that he had concerns that the property had been used for a sewer and septic field and before he could move to approve the application he wanted to know more about that issue. He stated that even an enrollment of 35 was more than he could support. He stated that he supported the motion to deny.

Ms. Gibb stated that there was a total enrollment number of less than 50 students that she would be comfortable with. She stated that although the application impacted a number of lots, it was near a number of parks and DOT had given its approval for 50 students. She mentioned that the applicant had offered to shuttle a majority of the students. She stated that she was in favor of having the applicant come up with an acceptable number of students and approving the application.

Ms. Gibb made a substitute motion to defer SP 00-B-055 to allow the applicant to reevaluate the total enrollment and work with staff and the neighbors to find an acceptable number. Mr. Kelley seconded the motion. The motion failed by a vote of 2-5. Chairman DiGiulian, Mr. Hammack, Mr. Hart, Mr. Pammel, and

Mr. Ribble voted against the motion.

Mr. Hart seconded the original motion which carried by a vote of 5-2. Ms. Gibb and Mr. Kelley voted against the motion.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PARADISE LEARNING CENTER/DELIVERANCE PRAISE TEMPLE, SP 00-B-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 5102 Thackery Ct.on approx. 1.41 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 6A. (Moved from ind. Def.) (Def. from 11/14/00). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 19, 2000, and

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

1. The owners sold parts of the land for residential development and maintained a residue of 1½ acres.
2. A continuation of, even a minor school, could not happen based on the residue that was left from the original school.
3. The original owners had a school but they chose to sell the property for residential development.
4. The testimony by the neighbors indicated that the five lots on Thackery Court are directly and substantially impacted by activities on the site.
5. There have been operations on the site over the years without permits.
6. The Planning Commission stated that the application does not comply with the standards and the established criteria of the Comprehensive Plan.
7. The site does not have the access that the Comprehensive Plan states is needed, and the access is totally inadequate.

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 Sect(s). 3-103 of the Zoning Ordinance.

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

Mr. Hart seconded the motion which carried by a vote of 5-2. Ms. Gibb and Mr. Kelley voted against the motion. Mr. Kelley moved to waive the 12-month waiting period for re-filing an application. Mr. Hart seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 3, 2001.

Mr. Hart seconded the motion which carried by a vote of 5-2. Ms. Gibb and Mr. Kelley voted against the motion. Mr. Kelley moved to waive the 12-month waiting period for re-filing an application. Mr. Hart seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 3, 2001.

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Page 661, December 19, 2000, (Tape 1) Scheduled case of:

9:00 A.M. CHANG S. & CHUNG S. KIM, SPA 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 94-S-033 previously approved for a golf driving range to permit change in development conditions, site modifications and building additions. Located at 11501 Braddock Rd. on approx. 46.45 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (Reconsideration granted on 7/18/00). (Def. From 9/19/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. On July 18, 2000, the Board granted a reconsideration for SPA 94-S-033 the Four Seasons Golf Driving range to permit the construction of 27 additional parking spaces, the construction of a 2,400 sq. ft. accessory storage structure and to extend the hours of operation.

At the adjoining property owner's request, the Board deferred decision to allow staff to collect light meter readings at the property lines when the leaves had fallen from the trees. In the staff report dated March 7, staff recommended approval-in-part to permit the addition of the parking spaces and the accessory storage structure. However, staff, at that time did not support the extended hours of operation requested because lighting did not conform with the foot candle reading as illustrated on the Illumination Lighting Plan as approved in conjunction with SP 94-S-033.

Foot candle readings had been taken on several occasions by Zoning Enforcement. Since that time, the applicant had been working to address the lighting issues. A recent foot candle reading performed by the Zoning Enforcement Branch on December 12, 2000, showed that at the property line with the lights turned on, the readings ranged between 0.01 and 0.02 foot candles. With the driving range lights turned off, the ambient light reading was 0.02 in the open.

A second reading was taken December 18, 2000, in which readings were taken at the property line. With the driving range lights on at the property line the readings were 0.01 to 0.02 and with the lights off the readings were 0.01 to 0.02 which conformed to Revised Development Condition # 8, which required the range lights to not exceed the ambient light reading.

Lynne Strobel, agent for the applicant, submitted 2 revised proposed development conditions to address this issue. Staff reviewed the additional proposed development conditions and had incorporated the 2 conditions into the revised proposed development conditions dated December 19, 2000. Lynne Strobel, presented the special permit amendment request as outlined in the statement of justification submitted with the application. She informed the Board that she had spoken with Steve Edwards of Supervisor Connolly's Office and he informed her that he was satisfied with the issue of the lighting. She stated that, in an effort to provide additional benefit to the community, the applicant had proposed an additional development condition to increase the height of the berm, which was located at the end of the driving range and provide Evergreen trees on top of it to provide some additional protection to the neighbors with regard to the lights.

Mr. Hart asked if the proposed improvement of the berm provided any relief for Ms. Potter, whose property was located to the side of the driving range. Ms. Strobel illustrated the layout of the berm and stated that it curved slightly but she was not certain that it would provide any relief to Ms. Potter. She stated that the greatest benefit would be to the homes located directly to the rear of the driving range. Ms. Strobel noted that the applicant had worked very hard to address the concerns of the neighbors and made many changes at considerable expense.

Chairman DiGiulian called for speakers.

John Hilten, 5100 Meath Court, came forward to speak in opposition of the application. He illustrated for the Board the location of his property in proximity to the driving range. He noted that the improvements to the berm would not provide any relief to Ms. Potter. He stated that the improvement of the berm would only deflect the lights from the driving range on the lower portion of his property but provided no relief to his home. He noted that the homes existed for a long period of time prior to the construction of the driving range. He stated that Development Condition #8 from the original special permit application required zero light at the property line. He stated that the original illumination plan was based on the fact that ambient light existed; therefore, the driving range should not contribute beyond ambient light. He requested that the Board impose the provisions of Development Condition #8 as they were in the original application, which required compliance with the

illumination plan. Mr. Hilten also stated that he could not put his house up for sale during the six months out of the year that the foliage is off the trees due to the illumination. He reiterated that the lights weren't a problem during the summer months. He contended that the illumination should not determine the operating hours however, they should be based on whatever the County normally used as criteria for operating hours. He stated that he was not in agreement with the County foot-candle measurements because they were taken with the meter pointed upward and directed toward the lights.

Bruce Harris, no address given for record, came forward to speak in opposition. He requested that the Board take into consideration that the lights had been a factor for at least 6 years. He noted that at least one of the neighbors had attended each of the public hearings since the original request. He stated that the lights were not shielded towards the ground. He stated that the illumination problem would affect the re-sale of the homes in the neighborhood. He stated that the improvements to the berm would not be tall enough to have any impact on the homes but he encouraged the applicant to continue with the improvements and take a wait and see approach. He requested full accountability for the agreements made by the applicant in the past.

Mr. Hammack asked staff for clarification that the previous illumination plan had been discussed and was eliminated from the development conditions because all of the aspects of it had been met. Susan Langdon, Chief, Special Permit and Variance Branch, explained that there had been discussion about the plan and it was determined that within the site the readings met the requirements of the plan; however, the foot-candle reading on the plan beyond the property line was .00 and she explained that the intention was not to represent that there would be no light beyond the property line. She said it was staff's determination that there was ambient light that was above the light readings at the property line and beyond; therefore, there could not be a reading of .00 because the ambient light was beyond that without the lights at the driving range turned on.

Mr. Pammel asked staff to define ambient light. Ms. Langdon replied that it was natural light from the stars and the moon and reflection from other lights.

Mr. Hammack asked if the lights were shielded on the range. Ms. Strobel replied that they were. She reiterated that the applicant had tried very hard to address the issues. She mentioned that the improvements to the berm were an additional effort to provide mitigation measures. She stated that the lighting issues imposed by Fairfax County had been satisfied.

Ms. Gibb asked staff how the foot-candle readings were performed. Mr. Bernal stated that, as he was a former inspector, he was properly trained by lighting experts as to how the tests should be performed. Ms. Gibb asked him to respond to the allegations that the light measurements were taken incorrectly. Mr. Bernal replied that it would make a difference as to how the meter was held and it was supposed to be held to the chest and rotated to get a correct calculation from the closest light to the furthest point and from that an average was calculated. Ms. Gibb asked if the reduction of light could be seen by the naked eye since the reduction in the wattage of bulbs. Mr. Bernal stated that it could not.

Mr. Hart asked, since the Development Conditions stated that all of the lights had shields, would it be considered a violation if the lights didn't have shields or if there were glare and nuisance lights affecting the adjacent properties after the approval. Ms. Langdon replied that it was the intention of the condition and it would be up to Zoning Enforcement to investigate that. She stated that it was not an easy thing to measure.

Ms. Strobel reiterated that shields had been placed on the lights and she agreed that it was difficult to measure a standard for glare and nuisance lighting.

Ms. Gibb asked the applicant, if money was no object, whether or not there was any solution to the illumination of the lights. Ms. Strobel replied that there was not.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that the use had already been heavily conditioned and it had a long procedural history. He stated that staff had recommended approval of the application and he relied on that recommendation. He said that the lighting level had substantially improved even with the leaves off the trees and even, despite some differences of opinion, the modifications in the conditions. He noted that Supervisor McConnell was in approval of the changes.

Mr. Hart moved to approve SPA 94-S-033 for the reasons in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHANG S. & CHUNG S. KIM, SPA 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 94-S-033 previously approved for a golf driving range to permit change in development conditions, site modifications and building additions. Located at 11501 Braddock Rd. on approx. 46.45 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (Reconsideration granted on 7/18/00). (Def. From 9/19/00) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 19, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a special permit.
3. The use was previously heavily conditioned.
4. Staff recommended approval of the application and the Board relied in large measure with regard to technical issues, on the recommendation of the professional staff.
5. The Board had a series of site visits and light measurements and the conclusion was that the lighting level had substantially improved even with the leaves off the trees.
6. Supervisor McConnell's office is in support of the revised conditions.
7. There was very heavy mitigation of the light by the dates and hours and great specificity given to the number of light fixtures, bulbs and wattage.
8. The development conditions were much more specific than most uses that came before the Board.
9. The impact was sufficiently mitigated with the implementation of the 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 Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, (46.45 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Joseph W. McClellan, Professional Engineer, dated November 4, 1999, through December 16, 1999 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, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

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5. There shall be a maximum of 60 tees for the driving range (20 covered and 40 uncovered).
 6. A maximum of eighty-six (86) parking spaces shall be provided. All parking for the use shall be on site, as shown on the special permit plat. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.
 7. There shall be no more than 15 employees on site at any one time.
 8. Illumination of the driving range shall consist of a maximum of six (6) lighted poles, each no greater than thirty (30) feet in height above ground level. The driving range lights shall be extinguished by 8:00 p.m. each night from January 1st until February 28th/29th, by 9:00 p.m. each night from November 1st until December 31 and during the month of March, and by 10:00 p.m. each night during the months of April through October. All other lighting on site shall also be extinguished by 10:30 p.m. each night during the months of April through October and by 9:30 p.m. during all other months. Each of the six, (6) light poles will have a maximum of three (3) fixtures. Each of the fixtures shall have a maximum of one bulb. A minimum of two (2) of the three (3) light fixtures on each pole for the lighting of the driving range shall be limited to bulbs that are a maximum of four hundred (400) watts. The third bulb shall not exceed 1000 watts.

Parking lot lights shall be no more than twelve (12) feet in height and shall be directed onto the parking lot. All lights shall be equipped with shields to assure that glare and nuisance light do not impact adjoining properties. Accessory uses such as the practice holes and putting green, and the entrance driveway shall not be lighted.

Lighting at the property lines of the driving range shall not exceed in foot candles, the ambient light levels when the driving range lights are turned off. Light meter readings of both ambient and driving range lights shall be recorded by the Zoning Enforcement Branch, DPZ, using the same light meter for both readings.

9. The hours of operation for the golf driving range and accessory uses shall be limited to 7:00 a.m. to 8:00 p.m., seven (7) days a week, from January 1 until February 28th/29th; 7:00 a.m. until 9:00 p.m. seven (7) days a week from November 1st until December 31st and during the month of March except that the clubhouse and maintenance building may be used until 9:30 p.m. The hours of operation for the golf driving range and accessory uses shall be limited to 7:00 a.m. to 10:00 p.m., seven (7) days a week, during the months of April through October, except that the clubhouse and maintenance building may be used to 10:30 p.m. There shall be no operation of loudspeakers, machinery, mowing equipment or mechanical ball gathering prior to 8:00 a.m. on weekdays and 9:00 a.m. on weekends or after 9:00 p.m.
10. The existing vegetation between the driving range and the western, southern, and eastern lot lines shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 3. Two rows of evergreen trees shall be maintained along the northeastern lot line adjacent to Braddock Road. Interior and peripheral parking lot landscaping shall be provided. The barrier requirement shall be waived along all lot lines. The drainfield may extend into the transitional screening yard provided a minimum of ten (10) feet remains between the drainfield and lot line and is maintained with evergreen trees a minimum of six (6) feet in height at time of planting.
11. The applicant shall increase the height of the existing earthen berm located at the end of the golf driving range and plant evergreen trees on the top of the berm. The actual increase in berm height, and size, number and type of the trees, shall be determined by the applicant in coordination with the Urban Forester and the Department of Public Works and Environmental Services (DPWES) to ensure no adverse impacts to the required stormwater management or conflicts with the approved special permit plat. The objective of the proposed improvements is to further screen the adjacent residents from the lighting associated with the driving range.
12. Stormwater management Best Management Practices (BMPs) in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual shall be provided as approved by the Director, Department of Public Works and Environmental Services (DPWES). The undisturbed open space shall be preserved in a conservation easement to meet BMP requirements.

13. The limits of the EQC shall be as shown on the special permit plat. There shall be no clearing or grading within the portion of the EQC. In addition, all areas shown on the plat and designated as "tree save area" shall be preserved. If necessary and no other alternative exists, clearing may be allowed as determined by the Urban Forestry Branch, DPWES, to permit the location of utilities such as sanitary sewer or water lines within tree save areas. If utilities are allowed within tree save areas, replacement plantings shall be provided. The size, variety and number of replacement plantings shall be determined by the Urban Forestry Branch. There shall be no other removal of any trees or vegetation from within the EQC or tree save areas, except that dead, diseased or dying trees may be removed as approved by the Urban Forester, (DPWES).
14. The applicant shall prepare a written Integrated Pest Management (IPM) Plan for the application of fertilizers, herbicides and pesticides which shall be submitted to, and approved by the Director, DPWES prior to site plan approval and shall be implemented as approved. The IPM Plan shall be developed using principals consistent with the guidelines established by the Virginia Cooperative Extension Service Pest Management Guide (PMG) and shall be designed to 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. The IPM Plan shall include an on-going monitoring and reporting method that will document the progress of the plan. The monitoring and reporting method for the IPM shall be used to document the intent and success of the IPM program and shall be made available if required by the Director, DPZ.
15. In order to prevent groundwater contamination, all surfaces used for chemicals; machines; vehicle storage, cleaning and maintenance; and maintenance associated with the chemical, maintenance and storage buildings shown on the plat shall be designed to drain into a pipe which connects to a subsurface drainage catchment system or a BMP with an impervious geotextile or clay liner designed to remove contaminants and pollutants and shall be approved by the Director, DPWES and shall be implemented as approved. A written maintenance plan for the system shall be developed by the applicant and shall be approved by the Director, DPWES and shall be implemented as approved.

In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substance stored on the premises. The written emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax county Health Department.
16. If DPWES determines that a potential health risk exists due to fibrous asbestos minerals in rocks at this location, the applicant will: (1) ensure that all construction personnel are alerted to this potential health risk and (2) commit to appropriate construction techniques, as determined by DPWES, to minimize this risk. Such techniques may include, but are not necessarily limited to, dust suppression measures during all blasting and drilling activities, covered transport of removed materials, and appropriate disposal of removed materials.
17. The area located along Braddock Road, between the transitional screening area and the clubhouse, shall be cleared of debris; no equipment shall be stored in this area.
18. The areas where the shed and the additional parking spaces are to be constructed shall be cleared and graded to the minimum extent possible as determined by DPWES, and no vegetation within the conservation easement shall be removed.
19. Letters of acknowledgement and approval from Colonial Gas and VEPCO shall be obtained by the applicant and submitted to DPWES at the time of site plan submission, for the encroachment of the additional parking spaces into the easements. If letters of approval are not obtained, then the additional parking spaces approved with this special permit shall not be permitted.
20. The site shall be served by public water and private septic system. The septic field, as shown on the plat, shall be approved by the Fairfax County Health Department. If a private water irrigation system is used to irrigate the driving range and practice area, it shall be designed to include utilization of the wet ponds and its design shall be submitted to DPWES for approval; otherwise, public water shall be utilized for the irrigation system.

21. Ancillary easements deemed necessary for the road improvement purposes by DPWES or VDOT, shall be provided for the future Shirley Gate Road extension along the full frontage of the property upon demand by the Director, DPWES, or VDOT and noted as Number 11 on the plat.
22. Interim right/left turn and deceleration lanes shall be provided at the sites temporary entrance on Braddock Road as approved by the Director, DPWES and VDOT. If the site develops subsequent to VDOT's widening of Braddock Road, the applicant shall contribute, at the time of site plan approval, the cost of the construction of right/left turn and deceleration lanes, and such costs shall be as determined by the Director, DPWES. Any temporary driveway shall be designed and constructed in accordance with the Public Facilities Manual as approved by the Director, DPWES, and shall be re-vegetated at the time of construction of the permanent entrance and driveway as approved by the Director, DPWES.
23. The applicant shall provide the permanent entrance to the site to meet the minimum VDOT median break separation. This entrance shall be relocated and provided by the applicant at such time as Shirley Gate Road extension is constructed.
24. An escrow account shall be established for the future right turn lane from Shirley Gate Road, in an amount as determined by the Director, DPWES.
25. Any signs erected in conjunction with this use shall meet the provisions of Article 12 of the Zoning Ordinance.
26. Driveways and parking areas shall be paved with a dustless surface.
27. The barrier requirements shall be waived along the northeastern and northwestern lot lines adjacent to the future Shirley Gate Road and Braddock Road.

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 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. Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb 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 December 19 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 666, December 19, 2000, (Tape 1) Scheduled case of:

9:30 A.M. CHARLES W. AND DEBORAH M. BESLEY, A 2000-SP-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that Parcels 9 and 9A did not meet minimum lot area requirements of the R-C District when created, were not legally subdivided and are not buildable under Zoning Ordinance provisions. Located at 11600 and 11601 Henderson Rd. on approx. 3.71 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-2 ((1)) 9 & 9A. (def. From 10/17/00)

Daryl Varney, Zoning Administration, made staff's presentation as stated in the staff report. This was an appeal of the Zoning Administrator's determination that parcels 9 and 9A, located at 11601 and 11600

Henderson Road respectively, did not meet the minimum lot area requirement of the R-C District when they were created, were not legally subdivided and were not developable under Zoning Ordinance provisions. The subject parcels were created as a single tract crossed by Henderson Road in 1895. Since that time the property was repeatedly conveyed by every owner as a single tract dissected by Henderson Road until 1994. Because the single tract had been created prior to the existence of the Zoning and Subdivision Ordinances, it could have been developed until 1994 as a single lot with one single family detached dwelling pursuant to Sect. 2-405 of the Zoning Ordinance. In December of 1994 the property was conveyed by a Deed and Boundary Survey, which purported to divide the parent tract into two separate parcels for the first time. Parcel 9, located on the south side of Henderson Road, is 1.0237 acres in area or 20% of the 5 acre minimum required lot area. Parcel 9A, located on the north side of Henderson Road is 2.6815 acres in area or 53% of the minimum required area. The Boundary Survey was not characterized as a subdivision plat and no subdivision plat was submitted to or approved by the appropriate County officials as required by the Subdivision Ordinance. The R-C District zoning regulations were in effect at that time and because neither parcel met the 5-acre minimum lot area requirement of the R-C District each was rendered undevelopable. As discussed in the staff report, pursuant to the Virginia Supreme Court decision in Leak vs. Casati, if Henderson Road had ever divided the parent track during an eminent domain proceeding then the property could be considered subdivided without having to be subject to approval under the Subdivision Ordinance, however, that would not have relieved the obligation to comply with the Zoning Ordinance. Regardless, Henderson Road has existed since at least 1840 and with the passage of the Byrd Road Act in 1932, the State Highway Commission was given a prescriptive easement over the Road. However, neither the Virginia Department of Transportation nor its predecessors ever acquired the right of way of Henderson Road through an eminent domain proceeding and therefore, the property was never legally subdivided in this manner. It should be noted that building permits had been issued and a single family dwelling unit had been constructed on Parcel 9A. Because Parcel 9A did not satisfy Zoning Ordinance requirements and was not created in accordance with the Subdivision Ordinance, these building permits were issued in error and any such permit was presumed to be legally void ab initio. There are no rights to proceed in a manner contrary to the Zoning Ordinance or conferred by the issuance of a building permit in error. If the parcels were to be recombined under common ownership this issue would be resolved. The appellants argued in their statement of December 11, 2000, that the mere existence of Henderson Road served to legally divide the property. Prior to the 1929 adoption of the first Subdivision Ordinance, the property could only have been legally subdivided if Mets and Bounds descriptions separating the two parcels had been recorded and that was never done until 1994. After the existence of the Subdivision Ordinance, a subdivision plat would have had to be submitted to and approved by County officials and that was never done. The appellants further argued that because 60 days had lapsed since the issuance of the building permits for Lot 9A, the Zoning Administrator is precluded by Sect. 15.2-2311 of the Code of Virginia, from determining that the parcels were unbuildable. However, the 60-day limitation period does not apply to nondiscretionary errors such as this one. The County had no discretion to issue building permits for parcel 9A as it did not meet the minimum lot area for the R-C District. Parcels 9 and 9A did not meet the minimum lot area requirement of the R-C District when created in 1994. They had never been legally subdivided either by an approved subdivision plat or an eminent domain proceeding being related to Henderson Road and neither parcel was developable as an individual lot under Zoning Ordinance provisions. The parcels could be recombined into the original parent tract and the resulting lot would be developable pursuant to Sect. 2-405 of the Zoning Ordinance.

There was discussion between the Board and William E. Shoup, Deputy Zoning Administrator as to whether or not the house, which has been occupied for a number of years, was illegally built and could be issued no more permits. The result was that the house was built illegally and no permits could be issued for the lot unless it was recombined with Lot 9

Ms. Gibb asked what could have been built on the property in 1895. Mr. Varney replied that at that time there was no Zoning Ordinance; therefore, the owners could have built anything they wanted to.

Ms. Gibb asked who maintained Henderson Road. Mr. Varney replied that VDOT maintained the road and it was a part of the State's secondary system.

Mr. Hammack asked if there was a definition of non-discretionary errors in Sect. 15.2-2311 of the Zoning Ordinance. He also asked for clarification as to whether that code section was enacted to provide relief for people when they had been issued a building permit in error. Mr. Shoup replied that the section did not provide protection when County staff made an error. John Foster, Deputy County Attorney, stated that there was no definition of non-discretionary error in the code. He went on to state the case law which pertained to

the 1980 Supreme Court Decision of the Town of Blacksburg which mandated that if a building permit was issued in error in direct contravention of the language of the Zoning Ordinance it was "void at the outset". He stated that in light of that decision and the clear standard and principle that the Board of Supervisors may amend the Zoning Ordinance and not the Zoning Administrator, it was his interpretation that the section applied to situations where the Zoning Administrator had some discretion to exercise under the Zoning Ordinance, and in this instance that was not the case.

Mr. Hammack stated that the statute was enacted 15 years later than the Town of Blacksburg case and he was inclined to believe that the code was instituted to take care of situations where someone on the staff was unintentionally negligent. He asked if there was anything in the legislative history that explained how the statute was to apply. Mr. Foster stated that staff had not found any information. He suggested that the Board read the Town of Blacksburg case along with the current language of the Zoning Ordinance which focused on the non-discretionary language and look at them as a whole and not separately.

Mr. Hart asked if there were any other cases where parcels had a similar situation. Mr. Varney replied that he was unaware of any. Mr. Hart asked if the owners of 9A were given notice of the appeal. Mr. Varney replied that they were given notice and they chose not to appeal. Mr. Hart asked if it was staff's opinion that the issuance of a building permit was not a written order, requirement, decision or determination. Mr. Shoup replied that it was a decision or a determination.

Tim Sampson, agent for the appellant, stated that neither lot met the minimum lot area requirement of 5 acres. He stated that the discretionary question was whether or not the lots needed to meet the minimum lot acreage requirement. He stated the lots were deemed buildable and building permits had been issued and then that determination was changed. He submitted photographs of the property, which illustrated the layout of the lots.

Mr. Sampson submitted that Henderson Road subdivided the property and it had done so prior to the Zoning Ordinance. He submitted that the application of the current regulations to the property was erroneous. He explained that the Zoning Administrator did not consider the road to have subdivided the property, but rather a legal description in 1994, which first referred to the property as two lots by Mets and Bounds rather than as an aggregate with a road running through it. He submitted that until 1999 the property, however it was described, rather as an aggregate with two roads running through it or as two pieces with abutters rights into the road, was always transferred to a single party and there was no reason for it to be described separately or individually.

Mr. Sampson stated that the 1994 deed did not purport to subdivide it but purported just to describe it a different way than it had previously been described. He said that there had never been a Mets and Bounds description of it and the Zoning Administrator relied on the fact that the simple title to Henderson Road had never been conveyed to the public. That fact was used as a basis to the proposition that the property had not been subdivided by the road. He submitted that the distinction of who owned the fee in the road was not relevant because many of the roads in the County existed in easements rather than in fee. Prior to a legislative change in 1946, even roads platted with a recorded subdivision, effectuated a transfer of an easement interest in the roads, not a fee interest; therefore, under the Zoning Administrator's position, the conclusion was compelled erroneously, that a subdivision recorded prior to 1946 was not a subdivision because it didn't transfer fee in the streets. He stated that the relevant question was not who owned the fee but how the streets divided the property. He said that any previous cases did not stand for the proposition that a street only subdivided a piece of property if it was acquired by an eminent domain proceeding. He stated that a subdivision ordinance could not take away an equity court's jurisdiction to enter decree in a partition suit. He stated that even if the appellants had been wrong in their understanding of the buildable status of the lots, they weren't alone in that determination for quite a long time. He said that they had obtained three building permits for the construction of the home on lot 9A, constructed the home and sold the home to a third party. He explained that the Zoning Administrator issued the determination that the lots weren't buildable a year after the home had been built and sold. He stated that the determination was then rescinded three weeks later for further study and then it was reissued several months later with a non-buildable determination. He submitted that, even if the most recent determination was correct, that was exactly the purpose that the legislature enacted Sect. 15.2-2311C to provide that a written determination by the Zoning Administrator could not be modified or reversed after 60-days of its issuance if the person aggrieved materially changed position in good faith or reliance on that determination. He stated that the material and good faith and reliance was evident and the case law cited by the Zoning Administrator and the

County Attorney for the proposition that the building permits were void was determined prior to the enactment of the applicable legislation. He spoke to the exclusion of nondiscretionary acts from the code section of the Ordinance by emphasizing that he agreed with Mr. Foster that there was no definition of nondiscretionary in the statute and there was no legislative history to provide either. He stated that the exclusion was to clerical or other nondiscretionary acts. He stated that the County's position with regard to the issue of nondiscretionary error was a position that stated that the Zoning Administrator had no discretion to issue a building permit in error, therefore the 60-day rule could never apply. He said that the County's position as related to that issue violated the basic tenant which was not to interpret a statute so as to render it meaningless. He reiterated that Henderson Road subdivided the property long before any regulations effected it; therefore the lots should be deemed buildable. He submitted that the remedy suggested by the County continued the unfair result that would require an unconstitutional taking of one person's property to make another person's lot whole or buildable.

Mr. Hart stated that even if the Board agreed that the 60-day issue saved the home on lot 9A how would the buildable rights for lot 9 be instituted. Mr. Sampson stated by extension. He explained that if the determination was made to lot 9A the determination for lot 9 should be premised on the same facts. He said that both lots were similarly situated with how they were created and the issuance of the building permit for lot 9A carried with it the buildable status of lot 9.

Mr. Hart stated that the appellants needed to show reliance and the reliance argument better fit the facts of 9A that they were expending money to build a house but it didn't seem that anything had been done with respect to 9. He asked if there was any reliance with respect to lot 9. Mr. Sampson stated that only as it related to the activity on lot 9A.

Mr. Hart asked when lots 9 and 9A were first separately designated on the tax map. Mr. Varney replied that they weren't designated as separate lots until the year 2000.

Mr. Hart asked for the date when the parent tract was subdivided into the two pieces. Mr. Sampson explained that the road existed prior to the creation of the parent tract around it and there was a larger tract through which the road came and in 1895 the road subdivided what became the parent tract. Mr. Hart asked, other than the presence of the easement for the road, if there were any other facts indicating that the two pieces were distinct. Mr. Sampson replied that the existence of a two-lane state maintained, highly traveled road going through the middle of the property divided it.

Mr. Hart asked if there were any other examples that a Bird Act road bisecting a piece operated as subdivision. Mr. Sampson stated that there was not.

Ms. Gibb asked what was the difference between a Bird Act road and a VDOT owned road. Mr. Sampson said it mattered who owned the feet to the road. Ms. Gibb asked what happened if it there were two separate owners on either side. Mr. Sampson stated that title would split the road down the center line and go to abutters.

Chairman DiGiulian called for speakers.

David Schnare, came forward to speak on behalf of the Environmental Quality Advisory Counsel for the Springfield District and the Occoquan Watershed Coalition. He stated that the appellant had full knowledge of the location of the road and recognized the opportunity to bypass the zoning which controlled the public water supply. He requested that the Board rule in favor of the Zoning Administrator.

David Dankworth, 11600 Henderson Road came forward to speak. He stated that he owned the home on Lot 9A. He stated that he was unaware of any problems with the property at the time of purchase and everything seemed in order. He stated that he relied on the appellants to process the appeal and had hopes that the issues would be resolved. He stated that the lot and the buildings on it should be honored as valid and would like to have the right to continue to add to the property and modify it in accordance with the regulations as if it were a buildable lot. He agreed that Henderson Road should be the divider of the property. He stated that he wouldn't have any use to add Lot 9 to his property and it would result in an added tax cost to him and he wouldn't have purchased the property had lot 9 been included. He informed the Board that most of the adjoining properties weren't five acre lots.

Leslie Scalzott, 8010 Wolf Run Schoals Road, came forward to speak. He stated that the facts of the case

were well documented in the staff report. He said that his property was directly adjacent to Lot 9. He noted that the properties had been zoned R-C to protect the watershed and the community. He stated that any construction on Lot 9 would exacerbate the problem of runoff both above and below the ground and increase erosion. He requested that the Board support the decision of the Zoning Administrator.

Attila Pupus, 11611 Henderson Road, came forward to speak. He stated that the community was concerned about the water shed. He requested that the Board deem the lot unbuildable.

Chairman DiGiulian closed the public hearing.

Mr. Varney reiterated that staff did not concur that the existence of Henderson Road subdivided the lot. He stated there was no provision in the Zoning Ordinance or Subdivision Ordinance for that type of subdivision. He stated that it was staff's opinion that there would have had to be prior to the existence of the Subdivision Ordinance, some type of metes and bounds description that separated the two lots and after the existence of a subdivision ordinance an approved plat would have had to be recorded showing the parcel as two separate lots.

Mr. Shoup pointed out that there never was a building permit issued on Lot 9 and no material changes had been made for lot 9.

Mr. Sampson, in rebuttal, spoke to the issue of reliance for lot 9 by stating that the issuance of a building permit for lot 9A gave an understanding that lot 9 was also buildable. He said that because of that understanding lot 9 was not included in the sale of lot 9A. He stated that the surrounding parcels were similar in size.

Ms. Gibb stated that there had been cases in which describing a property, as something else didn't change it unless it had been consolidated. Mr. Shoup stated that in the past cases there had been recorded plats and in this instance there had been nothing recorded. Ms. Gibb stated that had the State owned the fee, as of 1895, there were two lots. Mr. Foster explained that if Henderson Road had been created through a condemnation action with a court proceeding that created Henderson that would remove the need to comply with the subdivision ordinance and that did not happen in this instance.

Mr. Hammack stated that he supported the Zoning Administrator. He said that the lots were not created either under the subdivision ordinance or by proper legal mechanism, which may have been applicable to create ordinances in other ways.

Mr. Hart stated that the 60-day limit did not apply in this case and he believed that the house on Lot 9A should remain.

Mr. Hammack moved to uphold the Zoning Administrator. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 670, December 19, 2000, (Tape 1) After Agenda Item:

Approval of September 5, 2000, September 19, 2000, September 26, 2000 and October 17, 2000 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 670, December 19, 2000, (Tape 1) After Agenda Item:

Additional Time Request
Pedro and Carmen Toscano
VC 95-H-040

Page 671, December 19, 2000, (Tape 1), After Agenda Item, continued from Page

Mr. Pammel moved to approve the Additional Time Request. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 671, December 19, 2000, (Tape 1) After Agenda Item:

Additional Time Request
Shepherd Gate Church
SPA 97-Y-012

Mr. Ribble moved to approve the Additional Time Request. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 671, December 19, 2000, (Tape 1) After Agenda Item:

Additional Time Request
Audrey V. Doiley & Adonna McNeil
SP 95-V-055

Mr. Ribble moved to approve the Additional Time Request. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 671, December 19, 2000, (Tape 1) After Agenda Item:

Request for Reconsideration
Barbara and Robert Gordon
VC 00-D-136

Mr. Kelley moved to deny the Request for Reconsideration. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 671, December 19, 2000, (Tape 1) After Agenda Item:

Approval of December 12, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble 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 1:08 p.m.

Minutes by: Lori M. Mallam

Approved on: May 8, 2001

Regina Thorn Corbett
Regina Thorn Corbett, Clerk
Board of Zoning Appeals

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