

2011 BOARD OF ZONING APPEALS MEETING MINUTES

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, January 5, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. Chairman Ribble announced that the first order of business was the election of the Board's officers.

Mr. Byers placed a nomination for John Ribble as Chairman, Paul Hammack as Vice Chairman, and Nancy Gibb as Secretary. Mr. Hart seconded the motion.

Chairman Ribble called for a vote.

The motion carried by a vote of 7-0.

Chairman Ribble said he would entertain a motion for the nomination of the clerk.

Mr. Hammack moved that Kathleen Knoth be nominated to serve as Clerk. Mr. Byers seconded the motion.

Chairman Ribble called for a vote. The motion carried by a vote of 7-0.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Board matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002).

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

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The meeting recessed at 9:03 a.m. and reconvened at 9:25 a.m.

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Chairman Ribble called the meeting to order, and recognized Mr. Hammack.

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 Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 7-0.

Mr. Hammack moved to authorize the Chair to send the letter discussed in closed session. Ms. Gibb and Mr. Hart seconded the motion, which carried by a vote of 7-0.

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Chairman Ribble reviewed the procedures, and then called for the first scheduled case.

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~ ~ ~ January 5, 2011, Scheduled case of:

9:00 A.M. LENNA STORM, SP 2010-PR-061 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.6 ft. from side lot line. Located at 8537 Pepperdine Dr. on approx. 16,774 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (O) 40.

Chairman Ribble noted that SP 2010-PR-061 had been administratively withdrawn

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~ ~ ~ January 5, 2011, Scheduled case of:

9:00 A.M. HARRIS ARLINSKY, SP 2010-SP-062 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.6 ft. from rear lot line. Located at 13070 Autumn Willow Dr. on approx. 8,525 sq. ft. of land zoned PDH-2 and WS. Springfield District. Tax Map 55-3 ((10)) 75.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jason Hurt, the applicant's agent, 9511 Burwell Road, Nokesville, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2010-SP-062, subject to the proposed development conditions.

In response to Mr. Hart's question, Ms. Langdon clarified the development condition concerning the tree save area, plantings, the location and size of the area, and maintenance.

Mr. Hammack referenced the January 3, 2011 complaint letter from the applicant's neighbor, Merle D. McMaster, who was concerned about water runoff.

Ms. Langdon said Ms. Hedrick, Staff Coordinator, contacted staff of the Department of Public Works and Environmental Services (DPWES) about the McMaster's complaint. DPWES indicated there were no other complaints, and no downstream complaints. Ms. Hedrick instructed the McMasters on the process of making a complaint to DPWES to initiate its staff to make a site visit and inspect the water situation. Ms. Langdon said the size of the addition and the proposed clearing had not pushed it into the area where stormwater detention or anything else was needed. She said staff did not put in any follow-up conditions, that it would be looked at as any plan having an over lot grading plan.

Mr. Hurt presented the special permit request as outlined in the statement of justification. He said the applicant sought to decrease the yard requirement to put in an addition and increase their living space. The patio would only be increased roughly 230 feet, and the rear irrigation system would be capped, which should remove an area that had created water.

Discussion ensued regarding the tree save area and its maintenance.

Chairman Ribble called for speakers.

Jacqueline McMaster, 13072 Autumn Willow Drive, Fairfax, Virginia, came forward to speak, and was administered the oath. She said they lived next door for 12 years, and never had any issue with the applicant. Her concern was the increase in runoff if the trees were taken down. She did not oppose the addition, but would want the applicant to be responsible for any increased water runoff by taking the appropriate steps to mitigate the additional runoff.

As there were no other speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-SP-062 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARRIS ARLINSKY, SP 2010-SP-062 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.6 ft. from rear lot line. Located at 13070 Autumn Willow Dr. on approx. 8,525 sq. ft. of land zoned PDH-2 and WS. Springfield District. Tax Map 55-3 ((10)) 75. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 2011; and

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

1. The applicant is the owner of the property.
2. 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 the provisions for reduction of certain yard requirements as contained in Sect. 8-922.
3. The Board has determined that the applicant has met the six subsections set forth under that section of the Ordinance.
4. The Board 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (504 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated August 16, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,692 square feet existing + 8,538 square feet (150%) = 14,230 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

5. Prior to commencement of and during the entire construction process, the applicant shall designate a 10-foot area along the rear property line as a tree save area to protect the on-site and off-site trees and shall install tree protection fencing to protect the vegetation in these areas from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the area.
6. As approved by the Department of Public Works and Environmental Services, the applicant shall take appropriate measures to mitigate against any increases or change in the water runoff from Lot 75 to adjacent properties.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ January 5, 2011, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09) (Admin. moved from 3/3/10, 5/26/10, 7/14/10, 8/11/10, 9/15/10, and 11/3/10 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David Wei Lu, agent for the applicant, 12407 Kahns Road, Manassas, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. The applicant was requesting special permit approval to permit the construction of a place of worship with a child care center. The applicant sought approval of a modification of the transitional screening requirements along the northern lot line and a portion of the eastern and southern lot lines to allow existing vegetation to satisfy the intent of those requirements, and a waiver of the barrier requirement for the same. Staff did not object to the requests except that additional vegetation should be provided along the property lines adjacent to residential lots as determined by Urban Forest Management Division. Staff proposed a development condition to address that request. The proposed application did satisfy all applicable standards and was in harmony with the Comprehensive Plan and the applicable Zoning Ordinance provisions. For the reasons outlined in the staff report, staff recommended approval, but only subject to the revised proposed development conditions which were distributed that morning. The revisions reflected commitments that the applicant had made to address citizen concerns that were expressed subsequent to the completion of the staff report. Ms. Johnson said she was to understand that the applicant would request a deferral of the decision at the public hearing. She said when considering the potential request from the applicant that the decision be deferred, considering the additional amendments to the conditions for the special permit application may be warranted.

Discussion ensued regarding transportation issues, feasibility of coordinating church services, possibility and effectiveness of lane closures to direct traffic, and road improvements.

Beth Forbes, Stormwater Engineer, Department of Public Works and Environmental Services, addressed the Board's questions concerning stormwater issues, outfall, and proposed solutions.

Mr. Lu presented the special permit request as outlined in the statement of justification submitted with the application. In response to the issues raised by the Board, Mr. Lu said the applicant would try to coordinate its services with the two adjacent churches, would use Police Department personnel to regulate traffic for the left-turn lane during Sunday services, and would adjust its hours to relieve traffic congestion along that section of Lee Highway. Mr. Lu noted that the church would be making costly and extensive road improvements by constructing the left-turn lane.

Mr. Beard said it would behoove everyone to have a police person give a presentation or some sort of briefing to inform them of the criteria used when overlooking traffic generated from church services. Discussion then ensued concerning varied experiences involving police directing traffic for church services.

Mr. Byers said it was his experience that directing traffic was done by off-duty police officers to assure that Fairfax County tax payers did not support a particular faith. This kept it as a separation between church and state.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff would explore the matter of police personnel directing traffic. She said, in general, staff did not necessarily impose conditions mandating that applicants had police officers, nor did staff encourage it.

Mr. Beard said that so often it was a significant procedural aspect when it came to churches, that they would have police directing traffic, and then the Board assumes all was okay, because that would take care of the traffic problem. He said he thought it was time to nail the policy down, because it was becoming more and more a part of the application's process going forward.

Chairman Ribble called for speakers.

Julie Galuski, 6725 Cedar Spring Road, Centreville, Virginia, came forward. Her concern was for the safety of their children, because of the increased traffic at all times of the day. She noted that there was already a problem with parking, because non-residential users were using her neighborhood streets for parking. The addition of another business, the church, would compound the problem, because cars of non-residential uses were already blocking residents from parking in front of their own homes.

David Kerrigan, 6724 Cedar Spring Road, Centreville, Virginia, came forward. He said he believed it was an on-duty endeavor not off-duty for directing traffic, because the police personnel wore their uniforms and used their cruisers. He stated that he was strongly opposed to the application, and his specific concern was with the site's access and egress. He noted the site distance was terrible, church traffic would cause a major logjam for neighborhood residents, and parking remained an issue, because there already was limited residential parking. He suggested that those Board members who had not seen his neighborhood drive by and take a look before they make a decision. Mr. Kerrigan thought the Master Plan intended that his street be a super-peaceful, little oasis hidden at the edge of the County, and he would like it to stay that way.

Vineet Kumar, 6727 Cedar Spring Road Centreville, Virginia, came forward. His said his issues arose from the potential non-residential construction on a strictly residential conservation street. He was concerned about congestion and traffic, the hours of operation, how residential property values would decrease, and the increased density of development, as there already was three churches within one mile.

Royce Dederling, 6713 Cedar Spring Road, Centerville, Virginia, came forward. He said he resided there 15 years, and since the mega church was built, pulling in an out of Cedar Spring Road had really become difficult. He said if more churches were added, he believed the residents would basically be held hostage.

Mr. Hart made a disclosure that Mr. Dederling sometimes worked for him, although not at the current time. He indicated that he did not believe his ability to participate in the case would be affected.

Susan Needham (phonetic spelling), 6620 Cedar Spring Road, Centerville, Virginia, came forward. Addressing the matter of plantings, Ms. Needham said she would rather see a 6.0-foot block fence placed

along the limit of clearing on the property's south side. She wanted to go on record that there was a complaint with the stormwater drainage, because she just filed it. Ms. Needham was concerned about the sanitary easement, noting that there had been no community outreach. She said it would have been nice if the church had offered the neighbors the opportunity to connect laterals onto the sanitary sewer. Ms. Needham requested that the Board defer its decision, keeping the public hearing open to allow residents more time to gather their thoughts and have an opportunity to speak with everyone.

After Mr. Hart called her attention to the development condition that referenced the Urban Forester and supplemental plantings, Ms. Needham acknowledged that she saw the condition, but she still wanted a board fence along the limits of the clearing, especially along the parking lot area.

Phyllis Anderson, 6301 Barnesdale Path, Centerville, Virginia, came forward. She said she was a long-time resident, having lived in the area for 20 year. She said the church's lights, the clear view of the parking lot from her yard, traffic congestion, and the screening proposed were all of concern.

Tracy Dahbura, 6729 Cedar Spring Road, Centerville, Virginia, came forward to speak. Her concern was that the church was putting in a commercial property on a residential street. She said traffic was already very dangerous, because of cars speeding up and down Route 29 and parent who would wait in their cars on Route 29 for their children getting on or off the bus. Ms. Dahbura said there was not enough room to put in a left-turn lane, and she noted that New Life Church promised the neighbors that its entrance would be off Route 29, not on Cedar Spring Road.

Discussion ensued regarding cars stacking to turn onto Cedar Lane and recollections of similar cases with traffic access and egress.

Jay Johnson, representing Virginia Run Board of Trustees, came forward. His three concerns were the lighting, screening, and traffic. He suggested that the lighting be directed downwards onto the property, requested additional screening, and his traffic concerned were due to the many residential developments, commercial endeavors, schools, and churches using that strip of Lee Highway. Mr. Johnson suggested that the subject parcel be allowed to remain residential.

Mr. Hart noted that there were development conditions which addressed lighting and supplemental plantings.

Mr. Johnson noted that the Virginia Run Board would meet in January, and Mr. Lu was invited to address the Board of Trustees, with all local residents and neighboring developments being extended an invitation to attend as well.

Kyle Osterhout, 15409 Whitechapel Court, Centerville, Virginia, came forward. He said he was the Vice President of the Virginia Run Board of Trustees. His concerns related to transportation, the applicant's proposed closure of the existing median break, the safety of their children having to stand on the corner of Route 29 to catch the school bus, danger when having to make U-turns to access the pre-school, and the fact that residential neighborhoods already could not leave or enter when traffic cones were put out. Mr. Osterhout noted that Centerville Baptist Church was also undergoing an expansion, which would increase its capacity by three times.

Jan Ten (phonetic, no address given), a member of Harvest Chinese Christian Church, came forward. She thanked all those present and those who voiced their opinion. She said the childcare center was optional, but from the concerns she just heard, the church would take it out. She asked that all recall that there were many churches established in residential areas, and those areas were called Pastoral Districts. Ms. Ten noted that Harvest Chinese Church was much smaller than the other churches in the vicinity, and would have far less impact on its residential surroundings.

Mr. Beard clarified that any negative comments concerning a church in a residential area were not the Board's, as the Board had no objections, and there were many, many churches imbedded in residential areas.

Annuka Mahr (phonetic and address unintelligible) came forward. She was not against the construction of a religious facility, but in opposition to the construction of any commercial building on Cedar Spring Road, as it

was a violation of residential conservation zoning which every lot on Cedar Spring Road was subjected to. She believed the construction of a commercial property in her neighborhood will devalue their homes.

Chairman Ribble and Mr. Beard explained that churches were not considered a commercial use.

There were no further speakers, and Chairman Ribble informed Mr. Lu that he had up to five minutes for rebuttal.

Addressing the neighbors' concern about decreased property values, Mr. Lu noted that when the church brought in the sewer line and water main, it would improve property values. He said the church would dramatically improve the safety of the neighborhood by putting in a right-turn lane, and they would install a 10-foot wide sidewalk fronting Lee Highway. Mr. Lu submitted that the childcare center was an outreach program proposed for the benefit of the community, not for commercial gain. If the neighbors were strongly against it, it would be removed from the plan, which would eliminate the church traffic Monday through Friday. With regard to the lighting, Mr. Lu said they would work with Virginia Run to provide some kind of screening along Lee Highway.

Chairman Ribble said there were a lot of things the Board needed to find out before being ready to vote on the case. He asked Mr. Lu if he would agree to a deferral. Mr. Lu agreed.

In response to a question from Mr. Beard, Ms. Langdon concurred that when the case would again come before the Board, the application would reflect exactly what was proposed. She said removing the childcare center would affect the development conditions, and discussions between staff and the applicant would continue.

Chairman Ribble called for a motion.

Mr. Byers said there was a request from the Sully District Supervisor that all parties have the opportunity to go through and resolve the issues heard today. Concerning Sect. 8-006, he said he was particularly concerned about the first four standards. He wanted someone to determine for him how they were in compliance. He concurred with Mr. Beard's statement that it should be definitive from the standpoint of the church versus the childcare center. He requested that staff get the development conditions in place a week before the next hearing to afford the Board the opportunity to read it through. Mr. Byers then moved to continue the public hearing on SP 2009-SU-066 to March 16, 2011, at 9:00 a.m.

Ms. Gibb seconded the motion.

Chairman Ribble called for discussion.

Ms. Gibb said she was particularly interested in the same standards as Mr. Byers, adding that she was keeping in mind that it was an R-C District. She said there was a staff comment she found troubling. She understood it as, "We can't say 'no' to the last one in." She said at some point they are full, and perhaps they are now. Ms. Gibb did not agree with staff on that point.

Referring to a comment that Route 29 was already to overcapacity, Mr. Smith requested staff to provide further detail on what was meant. He said he thought it beneficial to learn more about the sight distance matter, and believed traffic safety issues were paramount. He quoted Sub. Sect. 8-006.4, which stipulated the use could not be hazardous or conflict with existing or anticipated traffic in the neighborhood.

Mr. Hart said he supported the deferral and agreed with the information requests. He said the Board needed to see the site plan information on the church across Cedar Spring Road and information about what was happening with transportation along that strip. He acknowledged that the case was difficult, as were other church applications which had similar dynamics and issues, and were more complicated in an R-C District. Mr. Hart commended the applicant on the constructive discussions over the past years, that they had come a significant way towards getting to an approvable situation by reducing the size of the application, and agreeing to certain conditions which would mitigate the use.

Chairman Ribble said he would support the deferral. He said he wanted to find out what the traffic discussion was when the Board of Supervisors approved a Korean Church by reducing it from 4,000 to 2,500 seats.

Chairman Ribble called for a vote. The motion carried by a vote of 7-0.

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The meeting recessed at 11:40 a.m. and reconvened at 11:54 a.m.

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Vice Chairman Hammack assumed the Chair. He called the meeting back into session.

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~ ~ ~ January 5, 2011, Scheduled case of:

9:00 A.M. BOARD OF TRUSTEES OF SHALOM PRESBYTERIAN CHURCH OF WASHINGTON, SPA 00-S-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 00-S-063 previously approved for a church to permit the addition of a child care center. Located at 10501 New Rd. on approx. 3.98 ac. of land zoned R-1. Springfield District. Tax Map 77-4 ((1)) 18. (Decision deferred from 11/17/10)

Chairman Hammack noted that the application was deferred for decision.

Shelby Johnson, Staff Coordinator, read her December 29, 2010, memorandum. Staff had recommended approval of the application as outlined in the staff report, and staff continued to support the application. Ms. Johnson said the crash data information for New Road would be presented by Fairfax County Department of Transportation staff.

In response to the request of Mr. Byers, Lou Ann Hutchins listed the number of accidents on New Road and the section of parkway close to its intersection.

In rebuttal, Bochang Seo, Reverend and agent for the church, 10501 New Road, Fairfax Station, Virginia, said they had a recent meeting with five gentlemen who represented the homeowners' association. The meeting was successful with all parties happy and agreeing upon all the issues that were initially raised. Mr. Seo said the church had tried to comply with all the regulations and the Code of Fairfax County. He said the church continued to have a good relationship with its neighbors.

Although the public hearing was closed, Chairman Hammack permitted a citizen to speak to the Board.

The clerk administered the oath.

Thomas J. McKee, 6177 Pohick Station Drive, Fairfax Station, Virginia, came forward. He said he was one of the five gentlemen representing the homeowners who recently met with Mr. Seo. He clarified that at the present time there was not a formal homeowner's association. Mr. McKee said the residents were concerned that several conditions from the church's previous request had not yet been met, and hoped the County would verify that they were met. He said the child care center was discussed, and the homeowners were not totally opposed, but were concerned about noise from a basketball court and children playing outside. He said they requested that the applicant reconsider the location to the northeast side of the building. Mr. McKee asked the Board to defer the decision to assure that all issues were resolved.

Discussion ensued regarding relocation of the basketball court, a chain link fence, a split-rail fence, and whether having the applicant restate his adherence to the initial development conditions was sufficient to assure compliance.

Mr. Byers explained trip generation from the day care center. He stated there was no issue with regard to transportation. He pointed out sight distances, a large median break, a protected left turn, and logical routes for residential and through traffic. He acknowledged that people did speed but not at 70 mph as some claimed, and that the police heavily patrolled the parkway. In his opinion, there was no issue with the child care center, and that an inordinate amount of time was being taken with transportation concerns. He pointed

out that it was a minimum number of children, a very small church, a minimal number of trips, and that the church was recessed, not even being level with the road. Mr. Byers said he thought Reverend Bo Chang Seo had been incredibly accommodating, and deferring the case again was a disservice. Mr. Byers thought this was an excellent opportunity to provide it excellent child care service. Due to the fact that he lived in the immediate vicinity to the church, he believed he was justified in his observations and determinations, and that there was no transportation issue.

Chairman Hammack summarized that the application was deferred for decision only; that he allowed Mr. McKee to speak because he was unable to be present at the earlier hearing; that some issues raised by Mr. McKee seemed to be enforcement issues which concerned the original application; that some issues probably would require an amendment; and that Reverend Seo and staff gave their closing comments. Chairman Hammack closed the hearing and asked the Board its pleasure.

Mr. Beard said he supported an approval because he saw that the issues could be dealt with through enforcement. He said he agreed especially after Mr. Byers' eloquent dissertation on the facility.

Mr. Hart moved to approve SPA 00-S-063 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BOARD OF TRUSTEES OF SHALOM PRESBYTERIAN CHURCH OF WASHINGTON, SPA 00-S-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 00-S-063 previously approved for a church to permit the addition of a child care center. Located at 10501 New Rd. on approx. 3.98 ac. of land zoned R-1. Springfield District. Tax Map 77-4 ((1)) 18. (Decision deferred from 11/17/10)

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 January 5, 2011; and

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

1. The applicant is the owner of the property.
2. The original staff report recommended approval. The decision was deferred for additional information, which staff responded to primarily on the transportation issues, and staff is continuing to recommend approval.
3. The rationale in the staff report is adopted.
4. There have been some other issues raised in correspondence, and to some extent the concerns expressed about the application have to do with either the implementation of existing development conditions or whether the existing church is in conformance with what the development conditions required. Most of that discussion has little or nothing to do with the request before the Board, which is to add a relatively small child care into an existing church facility.
5. While the development conditions are important, staff has addressed to some extent whether the conditions have been satisfied to this point.
6. It seems that to the extent there are other questions about whether the vegetation is appropriate or that sort of thing, that can be addressed by Zoning Enforcement no matter what the Board does today, and that can proceed independently, and it should not necessarily delay the Board making a decision finally on the case.

7. The Board has addressed in the new development conditions some tweaks or rewordings of things that will address, particularly with respect to the vegetation, what is required.
8. The Board is not getting rid of any of the existing requirements or diminishing in any way the Zoning Administrator's ability to enforce what is already in place. Separating that category of issue from the decision before the Board is appropriate.
9. Regarding the transportation issues, the overwhelming conclusion drawn from all of this is that the effect on transportation from a child care center of 50 students is minimal. The amount of traffic is negligible compared to the volume of traffic going by along the parkway.
10. There is a little traffic coming in and out of the neighborhood, but compared to everything else being done, it is not a significant problem, or at least the addition of the child care center does not change the existing mix enough to warrant a denial.
11. The intersection itself with the parkway, maybe that is appropriate, maybe it is not. It is unsure why there are not exits and things, but there certainly is plenty of sight distance, and if there is room for improvement, the striping on New Road has faded away to almost nothing and maybe that needs to be revisited by VDOT, but that does not effect the development conditions any.
12. Given the additional information received from staff and having seen in the correspondence the concerns raised, in the big picture, the child care center really is not making anything any worse.
13. The development conditions, in staff's view, adequately address the impacts of the transportation on the neighborhood.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, The Board of Trustees of the Shalom Presbyterian Church of Washington, and is not transferable without further action of this Board, and is for the location indicated on the application, 10505 New Road, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Professional Design Group, Inc., dated September 2009, as revised by Hamid Matin, Professional Engineer through June 1, 2010 and approved with this application as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) 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 100.
6. The total maximum daily enrollment of children in the child care center shall not exceed 49.

7. The maximum number of employees on site at any one time for the child care center shall be limited to 10.
8. The maximum hours of operation for the child care center shall be limited to 7:30 a.m. – 5:30 p.m., Monday through Friday.
9. Parking shall be provided as depicted on the special permit amendment plat. All parking shall be on site.
10. The outdoor play area shall be a maximum of 5,000 square feet and may be enclosed with a 4-foot high fence. The play area shall be located completely outside the Environmental Quality Corridor (EQC). The play area shall be located east and north of the proposed social hall in the general area shown on the plat. No additional vegetation that is shown on the plat shall be cleared for the installation of the play area.
11. Existing vegetation along the eastern, southern and western lot lines shall be preserved and maintained and shall satisfy Transitional Screening 1. Supplemental evergreen plantings shall be provided along the northern portion of the lot in order to soften the impact of the proposed use and screen the dwelling and proposed church structure. The number, size and species of plantings shall be determined by the Urban Forester. All vegetation shall be maintained in good condition and any dead or dying vegetation shall be replaced with like kind as determined by the Urban Forest Management Division (UFMD), DPWES.

The barrier requirements shall be waived along the northern and eastern lot lines. The existing wood fence shall be used to satisfy the barrier requirement along the western lot line. A split rail fence shall be constructed along the southwestern lot line.

12. The EQC as shown on the special permit plat shall remain as perpetually undisturbed open space. There shall be no clearing or grading of any vegetation within the EQC except for dead or dying trees and shrubs. There shall be no structures or fences located within the EQC.
13. The privately owned, operated and maintained underground stormwater management system shall serve the subject property as shown on the special permit plat. The underground system shall be subject to conditions imposed by DPWES in coordination with the applicant. Should this system need to be expanded or changed in any way, no additional vegetation shall be cleared for installation of this facility.
14. 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 be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
 - There shall be no up-lighting of any of the proposed building additions.
15. The “no left turn” sign installed at the entrance to the site shall prohibit left turns from the site onto New Road and shall remain and be maintained by the applicant. The right turn only channelization at the entrance to the site shall be constructed of concrete.
16. The dwelling shall only be occupied by the proprietor, owner and/or an employee and his/her family that is directly related to the church use.

17. All signs on the property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance.
18. The façade of the building shall remain brick veneer. The type and color of brick shall be compatible with the existing residential character of the neighborhood.

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 as outlined above. 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. Byers seconded the motion, which carried by a vote of 6-0. Chairman Ribble was not present for the vote.

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Mr. Hart asked staff to pass whatever was in the correspondence along to Enforcement for its review. He also requested that the faded striping on the asphalt be looked at as that would probably help with safety.

Mr. Byers brought Ms. Langdon's attention to the pedestrian crosswalk whose striping had severely faded and asked that staff look into that matter as well.

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As there was no other business to come before the Board, the meeting was adjourned at 12:37 p.m.

Minutes by: Paula A. McFarland

Approved on: November 15, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, January 12, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Thomas Smith and Nancy E. Gibb were absent from the meeting.

Chairman Ribble called the meeting to order at 9:04 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ January 12, 2011, Scheduled case of:

9:00 A.M. SHELTON D. LU, SP 2010-SU-063 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 12768 Flat Meadow La. on approx. 8,800 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) 280.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Sheldon D. Lu, 12768 Flat Meadow Lane, Oak Hill, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-SU-063, subject to the proposed development conditions.

Mr. Lu presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Lu stated that the architectural review board for his neighborhood had reviewed his application for a second-story addition and was in agreement with the proposal.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-SU-063 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHELTON D. LU, SP 2010-SU-063 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 12768 Flat Meadow La. on approx. 8,800 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) 280. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 2011; and

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

1. The applicant is the owner of the property.
2. The application meets all the submission requirements set forth in Section 8-922.
3. The staff recommended approval, and the Board adopted its rationale.
4. The Board received a favorable letter from the Franklin Farm Foundation dated December 20, 2010.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a second-story addition, as shown on the plat prepared by William E. Ramsey, P.C., dated August 12, 2010, as revised through October 14, 2010 as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,397 square feet existing + 3,595.5 square feet (150%) = 5,992.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions. The bricks on the front facade shall continue across the front of the addition.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Smith were absent from the meeting.

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~ ~ ~ January 12, 2011, Scheduled case of:

9:00 A.M. MICHAEL S. AND SHARON K. DEFFERDING, SP 2010-MA-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.6 ft. from rear lot line. Located at 6818 Alpine Dr. on approx. 42,596 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((5)) 74. (Admin. moved from 12/8/10 at appl. req.)

Chairman Ribble noted that SP 2010-MA-056 had been administratively moved to February 16, 2011, at 9:00 a.m., at the applicants' request.

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~ ~ ~ January 12, 2011, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MOUNT VERNON UNITED METHODIST CHURCH AND NEW CINGULAR WIRELESS PCS, LLC, D.B.A. AT&T MOBILITY, SPA 68-S-939

Chairman Ribble noted that the application acceptance of SPA 68-S-939 had been rescinded.

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~ ~ ~ January 12, 2011, Scheduled case of:

9:00 A.M. MANUEL S. ESPINA, TRUSTEE, A 2009-MV-025, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. on approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2. (Admin. moved from 9/15/09 and 1/13/10 at appl. req.) (Continued from 3/31/10, 8/4/10, and 11/3/10)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the Notice of Violation had almost been entirely cleared. She noted that only one trailer remained on the property, which the appellant said would be moved by next week. Ms. Stanfield recommended the appeal be continued to February 2, 2011.

Mr. Hart moved to continue A 2009-MV-025 to February 2, 2011, at 9:00 a.m. Mr. Byers seconded the motion.

Chairman Ribble called for speakers to address the continuation request. There was no response.

The motion carried by a vote of 5-0. Ms. Gibb and Mr. Smith were absent from the meeting.

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~ ~ ~ January 12, 2011, After Agenda Item:

Approval of February 6, 2007 Minutes


Mr. Hammack moved to approve the minutes. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Smith 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 9:17 a.m.

Minutes by: Suzanne Frazier

Approved on: October 29, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, February 2, 2011. The following Board Members were present: Chairman John F. Ribble III, V. Max Beard, Thomas W. Smith III, James R. Hart, Norman P. Byers, and Paul W. Hammack, Jr. Absent from the meeting was Nancy E. Gibb.

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

~ ~ ~ February 2, 2011, Scheduled case of:

9:00 A.M. MICHAEL A. SILVERSTEIN & ROBERTA L. GARTSIDE, SP 2010-DR-065 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of carport 5'-1" from side lot line. Located at 1708 Warner Ave. on approx. 10,758 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((10)) 40.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Joe A. Burton, the applicants' agent, J.A. Burton Architecture, Inc., 2181 Wolftrap Court, Vienna, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-DR-065, subject to the proposed development conditions.

Mr. Burton presented the special permit request as outlined in the statement of justification submitted with the application. He said the owners wished to upgrade their home with the addition of a covered front-porch, a 3.6 expansion of the second story, an expansion of an existing rear deck, and a trash enclosure and carport. With the exception of the carport, all the proposed upgrades would be within the required R-3 zoning yard setbacks. He noted that without a special permit, the permitted size of the carport would be only 8.7 feet wide, and it would require structural posts which would result in a carport approximately 8 feet wide. The typical average size of a single-car carport was 11 to 14 feet wide. The carport was especially important to the owners by, not only providing shelter for their automobile, but also providing a covered at-grade accessible entrance to their home for the elderly family members. The design, materials, scale, and character of the addition would relate well to the existing and upgraded homes in the neighborhood.

There was discussion regarding clarification of the plan's design and proposed structures.

Chairman Ribble called for speakers.

The applicant, Michael L. Silverstein, came forward to speak. He said they lived in the house since 1986, had raised two children there, and planned to stay for a significantly long time. He said it was advantageous to their elderly parents, friends, family members, and themselves to have the covered entranceway.

As there were no other speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2010-DR-065 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL A. SILVERSTEIN & ROBERTA L. GARTSIDE, SP 2010-DR-065 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of carport 5'-1" from side lot line. Located at 1708 Warner Ave. on approx. 10,758 sq. ft. of land zoned R-3. Dranesville

District. Tax Map 30-3 ((10)) 40. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 2011; 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 six required standards set forth under Sect. 8-922 of the Ordinance.
3. The reduction is minimal for the application presented.
4. Staff gave the Board a favorable staff report.
5. The reasoning set forth in the staff report is adopted.

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 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 and size of a carport as shown on the plat prepared by J.A. Burton Architecture, Inc., dated September 1, 2010, as revised and signed through October 27, 2010, as submitted with this application and is not transferable to other land.
2. The carport addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
3. A building permit for the carport shall be obtained prior to construction and final inspections shall be obtained and approved.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ February 2, 2011, Scheduled case of:

9:00 A.M. MRS. KIRSTEN BLALOCK GNIPP, SP 2010-MA-066 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.7 ft. from side lot line. Located at 3139 Creswell Dr. on approx. 10,888 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 140.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kirsten Blalock Gnipp, 3139 Creswell Drive, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-MA-066, subject to the proposed development conditions.

Ms. Gnipp presented the special permit request as outlined in the statement of justification submitted with the application. She said when they purchased their home in 2004, it included a one-car garage and one-car carport. The garage's concrete slab leaked because it was not on footers, and when their contractor was at the County to apply for the necessary permits to install approved footers, he was informed that the garage was 2.3 feet too close to the side lot line. The permit to fix their carport was approved, and the work completed 2009. Ms. Gnipp said they were now seeking a special permit to allow them to put back the walls and windows to the original structure. There would be no change to the existing footprint, and they had a letter of support from their neighbors, which was incorporated in the staff report.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2010-MA-066 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MRS. KIRSTEN BLALOCK GNIPP, SP 2010-MA-066 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.7 ft. from side lot line. Located at 3139 Creswell Dr. on approx. 10,888 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 140. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 2011; and

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

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all six of the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval.
4. Staff's rationale is adopted.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of a one-story garage addition (307 square feet), as shown on the plat prepared by Clayton C. Tock, Urban, Ltd., dated June 28, 2010 as revised and signed through September 10, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,858 square feet existing + 2,787 square feet (150%) = 4,645 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ February 2, 2011, Scheduled case of:

9:00 A.M. EDWARD & LISA BENNETT, SP 2010-DR-060 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.2 ft. from side lot line and reduction of certain yard requirements to permit construction of second story addition 11.6 ft. and roofed deck 10.1 ft. from one side lot line and second story addition 7.5 ft. from other side lot line. Located at 6201 Park Rd. on approx. 17,540 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 4A.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Edward Bennett, 6201 Park Road, McLean, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval, but only subject to the adoption of the proposed development conditions.

Mr. Beard commented that staff had essentially stated that it was with reservations they recommended approval.

Discussion ensued regarding clarifications and specifications of the drawings and Lot 3A.

Mr. Bennett presented the special permit request as outlined in the statement of justification submitted with the application. He explained the sun-shadow drawing and where and when there was a shadow cast on the properties. For 14 years they have resided in the house, the back yard was the focal point of the house, and

their design was essentially to have the house face the back yard. He said when they moved in, the house and yard were a mess, the house was too small, and a driveway, since removed, had essentially paved most of the yard causing problematic runoff. Mr. Bennett said they were attached to the land, and felt a certain responsibility for the property. He noted the lot's topography and foliage. He listed the many cultivating improvements they made over the years. He said they sought to make the property a place to play, entertain, provide habitat for wildlife, and to grow fruits and vegetables. Mr. Bennett said the two most important things he did was to purchase the property next door, and have the proposed project to improve the properties by fit, function and form.

Discussion ensued regarding the proposed development conditions, probable disturbed area, proposed stormwater management, impervious surfaces, and required documentations and permits.

Gregory A. Kearley, the applicants' architect and agent, 1353 U Street, NW, 2nd Floor, Washington, DC, came forward to speak. He noted how and where the calculations were taken, and that he was confident they were accurate.

Susan C. Langdon, Chief, Special Permit and Variance Branch, addressed Mr. Hammack's question concerning a couple of development conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-DR-060 for the reasons stated in the Resolution.

Mr. Beard commended Mr. Bennett on the preservation of the integrity of the area, along with his design effort regarding the shadow diagram.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD & LISA BENNETT, SP 2010-DR-060 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.2 ft. from side lot line and reduction of certain yard requirements to permit construction of second story addition 11.6 ft. and roofed deck 10.1 ft. from one side lot line and second story addition 7.5 ft. from other side lot line. Located at 6201 Park Rd. on approx. 17,540 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 4A. 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 February 2, 2011; and

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

1. The applicants are the owners of the land.
2. With respect to the Error in Building Location, it appears that the dimensional mistake is very slight compared to what was shown on the plat in 1964.
3. The house is only .3 feet off of where it should have been.
4. It has been there for almost 50 years.
5. The application meets the applicable standards.
6. They should not have to move the house.
7. Under Sect. 8-922 application, it is a closer call and it is a difficult case.
8. There are a lot of good things in this application.
9. The applicants have tried hard to be environmentally sensitive.
10. It is an interesting design in an eclectic neighborhood with a lot of weird topography with narrow lots and through lots.

11. Given the unique circumstances of the lot and the fact that they are basically building on the existing footprint, the tallest part of the structure is really central to the lot.
12. The Board is satisfied with the changes in topography.
13. With regard to the shadow diagram, the impact on the next door neighbor will not be so severe as to warrant a denial.
14. The Board adopts the rationale in the staff report to the extent that staff has concluded that the required standards have been met.
15. With respect to the magnitude of the project, Development Condition 8 is a little bit of a safety net.
16. Whether the two driveway access construction methodology works, if the disturbed area is going to exceed the 2,500 square-feet, other things will have to be done.
17. There are plenty of places on the lot where some low impact storm water facility can be put, if required.
18. With the language regarding tree preservation, environmentally they are protected.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant, Edward J. and Lisa W. Bennett, among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location 6201 Park Road and size, 2,080 square feet for the proposed additions, as shown on the plat prepared by Alexandria Surveys International, LLC and signed by Patrick A. Eckert, Land Surveyor, dated June 30, 2010, as revised through January 14, 2011, as submitted with this application and is not transferable to other land.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,453 square feet existing + 2,179.5 square feet (150%) = 3,632.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be generally consistent with the architectural drawings as depicted on Attachment 1 to these conditions.
5. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between the Department of Public Works and Environmental Services (DPWES), including the Urban Forester, 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 the Resource Protection Area (RPA), clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. The limits of the RPA and the limits of clearing shall be clearly marked for this meeting and during all phases of construction.
6. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the location of the proposed additions and the limits of clearing and grading within all property boundaries. Tree protection fencing in the form of 14-gauge welded wire fence mounted on steel posts shall be installed at the limits of clearing and grading to protect the critical root zones of on-site and off-site trees from any construction activity, including material storage and vehicular and construction equipment traffic. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur within the tree save areas. Any trees that are damaged or removed shall be replaced with a like kind in size and species as determined by the Urban Forest Management Division (UFMD), DPWES.
7. There shall be no clearing or grading of any vegetation within the RPA except for dead or dying trees and shrubs.
8. Prior to the issuance of a building permit, the applicant shall obtain approval of land disturbance calculations as determined by DPWES, Environmental and Site Review Division. If the applicant is required to provide Stormwater Management (SWM) and/or Best Management Practices (BMP) facilities and those facilities can not be provided in substantial conformance with the SP Plat, then a special permit amendment (SPA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ February 2, 2011, Scheduled case of:

9:00 A.M. RP MRP TYSONS, LLC, A 2010-PR-011 (Admin. moved from 11/3/10 at appl. req.)

Chairman Ribble noted that A 2010-PR-011 had been administratively moved to May 4, 2011 at 9:00 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said that appeal was one of the appeals related to density credit, and that the appellant was in negotiation with the Virginia Department of Transportation, with regard to getting more time.

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~ ~ ~ February 2, 2011, Scheduled case of:

9:00 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09, 10/27/09, 1/27/10, 5/26/10, and 11/3/10 at appl. req.)

Chairman Ribble noted that A 2010-PR-011 had been administratively moved to April 13, 2011 at 9:00 a.m. at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said the appellant had an approved site plan, which was one of the requirements of their Notice of Violation, and were in the process of doing improvements. Ms. Stanfield said when completed, they would obtain occupancy permits and withdraw their appeal.

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~ ~ ~ February 2, 2011, Scheduled case of:

9:00 A.M. MANUEL S. ESPINA, TRUSTEE, A 2009-MV-025, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. On approx. 1.68 ac. of land zoned C-8. Mount Vernon Tax Map 113-4 ((1)) 2. (Admin. moved from 9/15/09 and 1/13/10 at appl. req.) (Continued from 3/31/10, 8/4/10, 11/3/10, and 1/12/11)

Chairman Ribble noted that A 2010-PR-011 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said the last element of the appellant's Notice of Violation was the removal of a structure, which had been completed. She noted that they now were in complete compliance and had withdrawn their appeal.


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As there was no other business to come before the Board, the meeting was adjourned at 10:04 a.m.

Minutes by: Paula A. McFarland

Approved on: November 15, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, February 9, 2011. The following Board Members were present: Vice Chairman Paul W. Hammack, Jr.; V. Max Beard; Nancy E. Gibb; and James R. Hart. Chairman John F. Ribble III; Thomas Smith; and Norman P. Byers were absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:07 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Vice Chairman Hammack called for the first scheduled case.

~ ~ ~ February 9, 2011, Scheduled case of:

9:00 A.M. JOHN B. & RENEE L. MAGEE, SP 2010-DR-069 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.0 ft. from rear lot line. Located at 1454 Hawks Nest Ct. on approx. 8,883 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((14)) 205.

Vice Chairman Hammack called the applicants to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

John Magee, 1454 Hawks Nest Court, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-DR-069, subject to the proposed development conditions.

Mr. Magee presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to build a porch on the back of the house and noted that the surrounding neighbors supported his request.

Mr. Beard, Ms. Hedrick, and Susan Langdon, Chief, Special Permits and Variance Branch, discussed the use of lattice below a porch/deck. Mr. Magee stated that he would not be placing lattice beneath the new construction.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2010-DR-069 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN B. & RENEE L. MAGEE, SP 2010-DR-069 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.0 ft. from rear lot line. Located at 1454 Hawks Nest Ct. on approx. 8,883 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((14)) 205. 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 February 9, 2011; and

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

1. The applicants are the owners of the property.
2. The applicants presented evidence showing compliance with the required standards in Sect. 8-922.

3. The Board has a favorable staff recommendation and adopts the rationale in the staff report.
4. Although the porch would be going close to the rear line, the house backs up to school board property; therefore, nothing back there would be affected by the location of the porch.
5. There is a solid fence which conceals the porch for the most part.
6. There would be no significant negative impact on anyone.
7. The neighboring homes are sort of to the side and offset since the house is on a cul-de-sac, so the houses are not directly lined up.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (approximately 192 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated September 22, 2010, as revised through November 9, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,883 square feet existing + 5,824.5 square feet (150%) = 9,707.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Ribble, Mr. Byers, and Mr. Smith were absent from the meeting.

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~ ~ ~ February 9, 2011, Scheduled case of:

9:00 A.M. GBG, INC. DBA: GOLD'S GYM-CHANTILLY, SPA 87-S-088-04 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for a health club to permit change in permittee. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((5)) D2.

Vice Chairman Hammack noted that SPA 87-S-088-04 had been administratively moved to March 23, 2011, at 9:00 a.m., for notices.

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~ ~ ~ February 9, 2011, Scheduled case of:

9:00 A.M. JEROME HAUER, SP 2010-MV-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.0 ft. from front lot line and 13' -1" from side lot line. Located at 7850 Southdown Rd. on approx. 16,474 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((18)) B2.

Vice Chairman Hammack called the applicant to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Raymond Novitske, 201 North Fairfax Street, Alexandria, Virginia, the applicant's agent, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-MV-070, subject to the proposed development conditions.

Mr. Novitske presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Novitske stated that the topography did not lend itself to construction behind the house, so the proposal was to construct the addition on the west side.

Mr. Hart and Mr. Novitske discussed the trees to be preserved on the south side of the property, with Mr. Novitske affirming the applicant's intention to keep the 100-foot tree.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to approve SP 2010-MV-070 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEROME HAUER, SP 2010-MV-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.0 ft. from front lot line and 13' -1" from side lot line. Located at 7850 Southdown Rd. on approx. 16,474 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((18)) B2. 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 February 9, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant presented testimony that this application complies with the required Sect. 8-922.
3. The staff report is favorable.
4. The applicant has been thoughtful about the addition.
5. The addition cannot be placed in the backyard because of the steep topography.

6. An effort was being made to save trees, lessen the impact on the adjacent neighbor, and to reduce the impervious surface on the lot.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 2,190 square feet) of the addition, as shown on the plat prepared by Raymond A. Novitske, Architect, Novitske Architects, dated August 1, 2010 and revised through November 8, 2010, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,234 square feet existing + 6,351 square feet (150%) = 10,585 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the proposed garage location and the limits of clearing and grading at the southern and eastern property boundary. Tree protection fencing in the form of 14-gauge welded wire fence mounted on steel posts shall be installed at the limits of clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur within the tree save areas.
6. Prior to the issuance of a building permit, the applicant shall obtain approval of land disturbance calculations as determined by the Department of Public Works and Environmental Services (DPWES). If the applicant is required to provide Stormwater Management (SWM) and/or Best Management Practices (BMP) facilities and those facilities cannot be provided in substantial conformance with the Special Permit (SP) Plat, then a special permit amendment (SPA) shall be filed to provide applicable water quantity and quality control measures as determined by DPWES.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

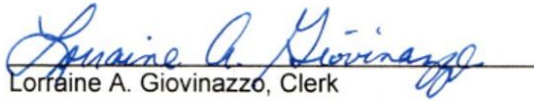
Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Ribble, Mr. Byers, and Mr. Smith were absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 9:30 a.m.

Minutes by: Suzanne Frazier

Approved on: November 19, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, February 16, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers. Absent from the meeting was Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. He noted that a former Board of Zoning Appeals member, Robert Kelley, recently passed away. Mr. Kelley retired to Florida, and had been ill for a time. Chairman Ribble said the Board's thoughts were with Mr. Kelley's family. Chairman Ribble then called for the first scheduled case.

~ ~ ~ February 16, 2011, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. JAMES EPISCOPAL CHURCH AND T-MOBILE NORTHEAST LLC, SPA 86-V-052-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 86-V-052 previously approved for church with child care center to permit the addition of a telecommunications facility. Located at 5614 Old Mill Rd. on approx. 4.88 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4B. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated and scheduled for 11/17/10) (Admin. moved from 11/17/10 and 1/26/11 at appl. req.)

Chairman Ribble noted that SPA 86-V-052-03 had been administratively moved to April 20, 2011, at 9:00 a.m., at the applicants' request.

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~ ~ ~ February 16, 2011, Scheduled case of:

9:00 A.M. FARAH YAZDIZADEH, MEHRDAD ADIBPOUR, SP 2010-SP-068 (accessory dwelling unit)

Chairman Ribble noted that SP 2010-SP-068 86-V-052-03 had been administratively moved to June 22, 2011, at 9:00 a.m., at the applicants' request.

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~ ~ ~ February 16, 2011, Scheduled case of:

9:00 A.M. HIGHLANDS SWIM AND TENNIS CLUB, INC., SPA 76-S-214 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend S 214-76 previously approved for a swim and tennis club to permit site modifications. Located at 1515 Bryan Branch Rd. on approx. 9.42 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 4A and 31-3 ((1)) 185A. (Continued from 12/8/10 and 12/15/10 at appl. req.) (Admin. moved from 1/26/11)

Chairman Ribble noted that the application had been continued, and as there were no questions or comments from Board members or staff, Chairman Ribble closed the public hearing.

In Mr. Byers' motion for approval, he noted that he would move to delete Development Condition 14 from the Revised Proposed Development Conditions, dated January 26, 2011. He said his rationale for the deletion was predicated, somewhat, on a letter/correspondence dated January 12, 2011, from the applicant's counsel. The letter referenced a Virginia Supreme Court and U.S. Supreme Court precedent which he thought was applicable to this special permit amendment application, in which there would be a requirement for a trail in conjunction with the subject application. The letter pointed out that it was contrary to the clearly established Virginia Supreme Court and U.S. Supreme Court precedent that any grant of property must be reasonably related to the nature of the land use application and must be proportionate to the nature of the request. Mr. Byers said to require the trail easement and trail construction was not reasonably related to the proposed snack bar relocation, and was clearly disproportionate to the minor nature of the request. Mr. Byers said that in his judgment, that was a very cogent and reasonable argument from the standpoint of the applicant.

Mr. Hart commented on the Adopted Comprehensive Plan's language pertaining to trail easements. He said he believed there was no nexus between the relocation of the snack bar and the segment proposed for the

trail. He would go along with the motion, because he did not think what the Board was doing precluded the trail, but ordinarily it would be appropriate to require the dedication for the space for the trail, even if the construction expenses were disproportionate. Mr. Hart said the Board did not have to require the applicant to construct it and, at least at the beginning, the Park Authority was going to do it.

Mr. Smith said he and his family were big users of the trail system and the County's non-profit pools. He said it seemed to him that this was a significant request of the applicant, and he thought the requested 5,800 square feet to take as an easement would render the property unusable. If something were on the Comprehensive Plan, a road or trail, and it was taken, there usually was compensation at fair market value. His research found the assessed value of Lot 4A's land itself was a little over \$700,000, and that the request was about 2 percent. Its value, he guessed, was between \$10,000 to \$15,000. Mr. Smith referenced a couple of similar Supreme Court cases. He supported the approval of the application, but without Development Condition 14 for the trail.

Chairman Ribble called for a vote.

Mr. Byers moved to approve SPA 76-S-214 for the reasons listed in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HIGHLANDS SWIM AND TENNIS CLUB, INC., SPA 76-S-214 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend S 214-76 previously approved for a swim and tennis club to permit site modifications. Located at 1515 Bryan Branch Rd. on approx. 9.42 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((1)) 4A and 31-3 ((1)) 185A. (Continued from 12/8/10 and 12/15/10 at appl. req.) (Admin. moved from 1/26/11) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 16, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 9.42 acres.
4. Staff recommends approval.
5. The Board adopts staff's rationale.

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 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, Highlands Swim and Tennis Club, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 1515 Bryan Branch Road (9.42 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses indicated on the special permit amendment plat prepared by Walter L. Phillips, Incorporated, dated June 2, 2010 as revised through November 11, 2010.

3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted uses.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of memberships shall be 500.
6. The hours of operation shall be from 8:00 a.m. to 9:00 p.m. for the upper tennis courts and 8:00 a.m. to 10:00 p.m. for the lower tennis courts, seven (7) days a week.
7. The hours of operation for the swimming pools shall be 10:00 a.m. to 9:00 p.m., seven (7) days a week, Memorial Day through Labor Day, with early bird swimmers permitted between 6:30 a.m. and 8:00 a.m. Monday through Friday.

After hour parties for the swimming pool shall be governed by the following:

- Limited to six (6) per season.
 - Limited to Friday, Saturday and pre-holiday evenings.
 - Shall end by midnight.
8. All parking shall be on-site. The layout of parking spaces and travel aisles shall generally be as shown on the SPA plat, except for changes as needed to meet the Fire Marshals requirements. The minimum number of spaces required shall be 94.
 9. Prior to the issuance of a Non-RUP for the proposed concession stand, at time of Site Plan, the applicant shall demonstrate to the satisfaction of the Fire Marshal's Office that emergency access can be provided to within 100 feet of the proposed relocated concession stand.
 10. Prior to the issuance of a Non-RUP for the proposed concession stand, the applicant shall execute all necessary Hold Harmless Agreements for all structures located within the 100-Year Floodplain and existing Sanitary Sewer easement.
 11. Transitional screening shall be modified along all lot lines in favor of existing vegetation. The barrier requirements along all lot lines are waived. All dead, dying or diseased plantings in the transitional screening yards shall be replaced with like kind to maintain the screening.
 12. The fence around the tennis courts shall be no higher than 14 feet and interlaced with the proper material to deaden sound on the Hardy Drive side, and all other provisions of the Ordinance be met. The fencing should be of chain link design, and the evergreen trees shall be maintained. In the future, if a subsequent owner of Lot 163 requests additional screening, the applicant shall plant additional evergreen trees to meet the intent of Transitional Screening 1.
 13. The lights shall be permitted on the two lower tennis courts only. Any new lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.

These conditions incorporate and supersede 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 (Non-RUP) 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ February 16, 2011, Scheduled case of:

9:00 A.M. ALAN DIAMOND, SP 2010-SP-064 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within the existing dwelling. Located at 7006 Vancouver Rd. on approx. 11,054 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-2 ((7)) 168. (Admin. moved from 1/26/11.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Alan Diamond, 7006 Vancouver Road, Springfield, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-SP-064, subject to the revised proposed development conditions, which were distributed to the Board that morning.

Concurring with Mr. Hart, Ms. Johnson said he was correct that the accessory dwelling's door was on the side of the house and not off of the garage. She said it was a complaint that had brought staff to the unit. While there, the kitchen was discovered.

Mr. Diamond presented the special permit request as outlined in the statement of justification submitted with the application. He said a licensed contractor was hired to construct the addition, and a permit was obtained. The same contractor later added the kitchen, but did so without a permit. Mr. Diamond said he was not aware, nor had his contractor informed him, that certain permits were necessary. He had a contract only for the accessory dwelling.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-SP-064 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALAN DIAMOND, SP 2010-SP-064 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within the existing dwelling. Located at 7006 Vancouver Rd. on approx. 11,054 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-2 ((7)) 168. (Admin. moved from 1/26/11)
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 February 16, 2011; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The Board adopts the rationale in the staff report.
4. The circumstances under which the kitchen was put in was troubling, kind of under the radar.
5. The applicant has explained that he was unaware that a permit was required for the kitchen.
6. The applicant had a contractor install it.
7. There does not seem to be any opposition to it.
8. From the photographs, there is not going to be a significant negative impact on anybody.
9. The development conditions make clear what the apartment can be used for.
10. The Board agrees with staff's conclusion.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval for the accessory dwelling unit is granted to the applicant only, Alan Diamond and/or Trang N. Diamond, and is not transferable without further action of this Board, and is for the location indicated on the application, 7006 Vancouver Road (11,054 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the house location survey plat, prepared by Gary L. Smith, Certified Land Surveyor, dated August 9, 2010, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. 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 which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled. Until the applicant/owner reaches age 55, the accessory dwelling unit shall only be occupied by a person 55 years of age or older.
6. All applicable permits and final inspections for the kitchen located within the accessory dwelling unit shall be obtained within 90 days of this special permit approval.
7. If required, all applicable permits and final inspections for any other structures such as the wood decks shall be obtained within 180 days of this special permit approval.
8. The accessory dwelling unit shall contain a maximum of 805 square feet, including a maximum of one bedroom, one bathroom and one kitchen, as shown in the floor plan included as Attachment 1 to these conditions.
9. 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.

10. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
11. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
12. Parking shall be provided as shown on the special permit plat.
13. All outdoor lighting on the property shall be in conformance with Section 14-900 of the Zoning Ordinance. Motion activated light fixtures are exempt (Section 14-905) provided that such lighting fixtures emit initial lighting levels of 6000 lumens or less, are extinguished within five (5) minutes upon cessation of motion and are aimed such that the lamp or light bulb portion of the lighting fixture is not visible at five (5) feet above the property boundary.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 180 days after the date of approval unless the use has been established as outlined above. 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 16, 2011, Scheduled cases of:

- 9:00 A.M. MICHAEL S. AND SHARON K. DEFFERDING, SP 2010-MA-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.6 ft. from rear lot line. Located at 6818 Alpine Dr. on approx. 42,596 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((5)) 74. (Concurrent with VC 2011-MA-001). (Admin. moved from 12/8/10 and 1/12/11 at appl. req.)
- 9:00 A.M. MICHAEL S. AND SHARON K. DEFFERDING, VC 2011-MA-001 Appl. under Sect(s). 10-103 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6818 Alpine Dr. on approx. 42,596 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((5)) 74. (Concurrent with SP 2010-MA-056).

Chairman Ribble noted that the two cases would be heard concurrently. He called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard L. Flather, the applicants' agent, 3732 Center Way, Fairfax, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and staff recommended approval of SP 2010-MA-056, subject to the revised proposed development conditions consistent with those dated February 16, 2011.

Ms. Johnson responded to questions from Ms. Gibb and Mr. Hart regarding the impervious surface, meeting the 30 percent minimum rear yard coverage with the patio's removal, requested calculations for the rear yard

coverage, clarification of several drawings in the staff report, and the shape and location of the pipestem driveway.

Mr. Flather presented the variance request as outlined in the statement of justification submitted with the application. He said the violation was due to the rear yard's impervious coverage, that the patio was installed by the previous owner, and the applicants had installed the pavers to eliminate a muddy back yard and pooling problem which was caused by water runoff from the back yard's steep slope. He added that next to the pavers ran a stormwater easement. Mr. Flather requested to eliminate the 377 square feet required to reduce the rear yard coverage to 30 percent. If the variance was denied, the square footage of a portion of the driveway or pavers would be reduced to 311 square feet, which was the required amount for the addition. He explained that a good portion of the rear yard's western side was taken up by the driveway and a VEPCO easement. Therefore, the green area to the left of the driveway could not be factored into the calculations. Mr. Flather said that the eastern side of the lot was actually the only space credited to green space, and the driveway need not go up to the shed, but only to the garage. He suggested several alternatives.

Ms. Gibb commented that only recently had the Board been able to grant variances, and very tough standards must be met, one of which was being denied reasonable use of a property considered as a whole. At Ms. Gibb's request, Mr. Flather indicated on the drawings the patio's shape, the yard's topography, the pavers, and the practical functions for the pavers.

Addressing a question from Mr. Beard about a 3.5 foot initial error, Ms. Johnson clarified that it was an administrative reduction that would have been granted when the final house location plat was sent. Because the plat was not sent, the applicants still must get an administrative reduction. She noted that the Board only acted on errors greater than 10 percent. She said those were statements of facts about the property, not an inquiry of the Board's, and not a part of the special permit application.

Mr. Hart commented that it was an acre lot, not large enough to place a house on it with the easements and other things on it. He gave his reasons for not understanding why the driveway was not considered the problem. He offered several alternatives for the driveway, which would meet the required coverage percentage.

Mr. Flather gave a brief history of the property. He said the driveway was laid before the applicants purchased it. He indicated areas on the drawings where possible reductions could be made, adding that it was not necessary for the driveway to run to the house, but only up to the garage.

Chairman Ribble asked Mr. Flather if it would help him to regroup and recalculate his mathematics, then indicate the changes on a new plat. Chairman Ribble said with reductions to the driveway, the variance may not be required, and could be withdrawn.

Mr. Flather then asked to withdraw the variance. He said he was sure that, removing a portion of the driveway's asphalt, they could come up with a reduction of 311 square feet. He asked that the 30 percent coverage be a condition of the special permit. Mr. Flather said his clients wanted to move forward with their addition and did not want to remove their patio.

Chairman Ribble informed Mr. Flather that he could now proceed with his presentation on the special permit.

Mr. Flather presented the special permit request as outlined in the statement of justification submitted with the application. He explained the procedure for conducting a wall check when a house was being built, and said for the subject house, built in 1994, he found no record. He submitted that the house was in violation when first built. He noted that staff found the application fulfilled all the requirements needed for the proposed addition, and the architectural drawings were amended the previous week as staff requested. The proposal was for expansions of the upstairs bedroom and the lower level existing kitchen, which would be built on grade with no basement.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2010-MA-056 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL S. AND SHARON K. DEFFERDING, SP 2010-MA-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.6 ft. from rear lot line. Located at 6818 Alpine Dr. on approx. 42,596 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((5)) 74. (Concurrent with VC 2011-MA-001). (Admin. moved from 12/8/10 and 1/12/11 at appl. req.) 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 February 16, 2011; 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 that they had met the required standards.
3. Staff has recommended approval of the application.
4. The Board adopts the staff's report.
5. The Board has determined that the applicants have met standards 1 through 6.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicants among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size, (approximately 844 square feet) for the proposed two-story addition, as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated June 4, 2010, as revised through November 15, 2010, as submitted with this application and is not transferable to other land.

Notwithstanding the uses shown on the special permit plat, the addition may be developed with the uses as depicted on the architectural drawings included as Attachment 1.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,574 square feet existing + 8,361 square feet (150%) = 13,935 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural drawings as depicted on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the location of the proposed addition and the vegetation located along the rear property line. Tree protection fencing in the form of 14-gauge welded wire fence mounted on steel posts shall be installed at the limits of clearing and grading to protect the critical root zones of on-site

and off-site trees from any construction activity, including material storage and vehicular and construction equipment traffic. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur within the tree save areas.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ February 16, 2011, Scheduled case of:

9:00 A.M. PILGRIM COMMUNITY CHURCH, INC., SPA 81-A-002-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for a church to permit site modifications (additional parking). Located at 4925 Twinbrook Rd. on approx. 5.15 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A.

Chairman Ribble noted that SPA 81-A-002-05 had been administratively moved to March 16, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ February 16, 2011, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, 7/28/10, and 12/15/10 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to July 27, 2011, at 9:00 a.m., at the appellants' request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said there were currently a Planning Commission and a Board of Supervisors hearings scheduled for the Special Exception, which would rectify part of the violation.

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~ ~ ~ February 16, 2011, Scheduled case of:

9:00 A.M. ROGER J. TEDD, A 2010-SP-014


Chairman Ribble noted that A 2010-SP-014 had been administratively withdrawn.

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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: Paula A. McFarland

Approved on: November 15, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, March 2, 2011. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

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

~ ~ ~ March 2, 2011, Scheduled case of:

9:00 A.M. GREENBRIAR CIVIC ASSOCIATION & NEW HOPE FELLOWSHIP CHURCH, SPA 78-P-192-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 78-P-192 previously approved for community center and church to permit increase in parking and site modifications. Located at 4615 Stringfellow Rd. on approx. 1.52 ac. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((1)) 11. (In association with SE 2010-SP-029)

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Emerson Kale, President of the Greenbriar Civic Association, reaffirmed the affidavit.

Bobby Katai, Staff Coordinator, made staff's presentation as contained in the staff report. He said the Planning Commission had recommended approval of the related special exception application, but had revised proposed Development Condition 8 changing the height and design of the parking lot lights so they would be consistent with the Park Authority lights in Greenbriar Park. Staff recommended approval of SPA 78-P-192-03, subject to the proposed development conditions.

Pat Rosend, Senior Park Planner, Fairfax County Park Authority, said the new parking area would be part of a joint parking lot improvement plan and noted the lights would be less than 20 feet high.

In response to Mr. Hammack's objection to the height of the proposed lights, Ms. Rosend reminded the Board that Greenbriar Park was a fully lit athletic facility, and the new lighting would be a minimal increase in the amount of light that was currently there.

In response to a question from Mr. Hart, Mr. Katai said the lights were timed to turn off 30 minutes after the last event of the evening. Ms. Rosend said parking lot lighting at all Fairfax County parks shuts off at 11:30 p.m. Susan Langdon, Chief, Special Permit and Variance Branch, said the community center could schedule events until 1:00 a.m., so the lights would have to be turned off by 1:30 a.m.

Mr. Hart asked if residents across the street from the community center would be able to see the lights at night. Ms. Langdon said a Park Authority engineer could better answer the question.

In response to a question from Mr. Hammack, Ms. Langdon stated that although the Planning Commission had recommended the lights be 20 feet in height, the Board could make their own recommendation to the Board of Supervisors.

Mr. Kale said he did not have a presentation to make, but wanted to note that just a dozen homes were across Stringfellow Road from the property, and only the backs of the homes faced the community center.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision until later in the meeting so that an answer on the lighting could be obtained from a Park Authority engineer. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ March 2, 2011, Scheduled case of:

9:00 A.M. ALI ABDI, SP 2010-SP-072 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 6318 Wendy Ann Ct. on approx. 21,058 sq. ft. of land zoned R-1 (Cluster). Springfield District. Tax Map 77-4 ((9)) 20.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Ali Abdi, 6318 Wendy Ann Court, Fairfax Station, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Abdi presented the special permit request as outlined in the statement of justification submitted with the application. He noted that his neighbors had submitted several letters of support to the Board.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byer moved to approve SP 2010-SP-072 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI ABDI, SP 2010-SP-072 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 6318 Wendy Ann Ct. on approx. 21,058 sq. ft. of land zoned R-1 (Cluster). Springfield District. Tax Map 77-4 ((9)) 20.

Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 2011; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-2 cluster.
3. The area of the lot is 21,058 square feet.
4. Three letters of support were submitted for this 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 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 the fence as shown on the plat prepared by Kendall Consulting, Inc., dated August 4, 2010, signed August 5, 2010, as submitted with this application and is not transferable to other land.

2. The applicant shall assume all responsibility for repair and/or replacement of any portions of the fence which must be removed to accommodate repairs and/or maintenance within any of the easements as shown on the special permit plat.
3. Within 90 days of approval of this special permit application, the applicant shall reduce all portions of the fence along Wendy Ann Court to a maximum of 6.0 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. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ March 2, 2011, Scheduled case of:

9:00 A.M. THOMAS L. JOHNSON, TRUSTEE AND VALERIE A. MILAZZO, TRUSTEE, SP 2010-PR-073 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2610 Oakton Glen Dr. on approx. 14,793 sq. ft. of land zoned R-2 (Cluster). Providence District. Tax Map 37-4 ((16)) 58A.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Valerie A. Milazzo, 2610 Oakton Glen Drive, Vienna, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-PR-073, subject to the proposed development conditions.

In response to a question from Mr. Hart, Ms. Hedrick said a second kitchen request in 2006 was denied. Rakesh Kapoor, from the Department of Code Compliance (DCC), stated that DCC had received a complaint in August of 2010 and, upon investigation, found a second kitchen on the second floor addition.

Valerie Milazzo presented the special permit request as outlined in the statement of justification submitted with the application. She said they had relied on the general contractor to apply for a second kitchen, but the permit process had not been completed. Ms. Milazzo said she was helping to raise their two grandchildren, and the second kitchen reduced stress and conflict within their home. She noted that the surrounding neighbors supported the application.

Mr. Hart and Ms. Milazzo discussed the chronology of the permit applications by the contractor and when work was completed. Ms. Milazzo noted that before the work could be completed, the contractor, HMS Services, went out of business. She said that after the Notice of Violation, they applied for a demolition permit, but it was put on hold so they could go through the special permit process.

In response to a question from Mr. Smith, Susan Langdon, Chief, Special Permit and Variance Branch, said that, if approved, the applicants would have to submit a letter to the Zoning Administrator every five years requesting renewal and reapproval of the special permit.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2010-PR-073 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 L. JOHNSON, TRUSTEE AND VALERIE A. MILAZZO, TRUSTEE, SP 2010-PR-073 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2610 Oakton Glen Dr. on approx. 14,793 sq. ft. of land zoned R-2 (Cluster). Providence District. Tax Map 37-4 ((16)) 58A. 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 2, 2011; and

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

1. The applicants are the owners of the property.
2. The Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. This was initially a difficult case when trying to see how the kitchen got built in the face of a denial; however, the homeowners did not do the work themselves, they had a licensed contractor.
4. Under the Board of Regulations, the contractor would be responsible for complying with permits and inspections.
5. For whatever reason, the contractor went out of business.
6. On the merits of the application itself, even if the paper trail is a little bit sketchy, it did not appear there was going to be a problem.
7. This is a small portion of an existing home.
8. It actually is not as much an apartment as some of others are; it does seem to be connected to other rooms in the house.
9. There is a development condition limiting the use of the accessory dwelling unit to the applicants' immediate family members and under the circumstances with a daughter and grandchildren, that makes it more of a family unit as opposed to different tenants coming and going.
10. The parking issue is resolved by Development Condition 12 requiring that all of the parking be onsite.
11. The house started out with seven cars and that would result in street parking.
12. The seven cars are probably what has been driving neighbor complaints, not so much whether the plumbing and wiring has been inspected for the new kitchen.
13. The public safety issue of the kitchen not being inspected is addressed with Development Conditions 8 and 9.
14. In summary, the apartment will not bother anyone; the parking is all going to be onsite; it is an approval for only five years; the staff can go in and check things out.
15. The Board has sufficiently mitigated any potential impact.
16. What is there will be inspected and approved so it is not going to burn down.
17. A failing contractor may cut corners and the County would want to have everything checked out.
18. It seems like everything gets caught up and resolved with the development conditions.
19. That is not to say that people should just go ahead and build things in the face of a denial and expect that they are just going to get permission later to do it.
20. Under these circumstances, the applicants have cleared the hurdles, even if it was a little complicated.
21. The Board received five letters of support for the application.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Thomas L. Johnson, Trustee and Valerie A. Milazzo, Trustee, and is not transferable without further action of this Board, and is for the location indicated on the application, 2910 Oakton Glen Drive, (14,793 square feet), and is not transferable to other land.
3. The occupants of the accessory dwelling unit shall be limited to the applicant's immediate family members.
4. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Advance Structural Concepts, Inc., dated May 27, 2008, and approved with this application, as qualified by these development conditions.
5. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
6. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
7. The accessory dwelling unit shall contain a maximum of 984 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
8. All applicable building permits and final inspections shall be obtained for kitchen in the accessory dwelling unit.
9. 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.
10. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
11. If the use of the accessory dwelling unit ceases for the applicant's immediate family members and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
12. All parking shall be provided on site as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ March 2, 2011, Continuation of Scheduled case of:

9:00 A.M. GREENBRIAR CIVIC ASSOCIATION & NEW HOPE FELLOWSHIP CHURCH, SPA 78-P-192-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 78-P-192 previously approved for community center and church to permit increase in parking and site modifications. Located at 4615 Stringfellow Rd. on approx. 1.52 ac. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((1)) 11. (In association with SE 2010-SP-029)

Answering a question from earlier in the public hearing, Pat Rosend, Senior Park Planner, Fairfax County Park Authority, stated that the proposed lights were 20 feet in height to match the existing ones, noting that it would also provide a bit more safety for the wooded area in back.

Paul R. Jeannin, Jr., 10012 Island Fog Court, Bristow, Virginia, the applicants' agent, said only two lights were required, but a third light had been added to the front of the community center. He noted, however, that the applicant was amenable to 14-foot high lights.

Mr. Hammack said the lights in the park may be appropriate at 20 feet, but felt the community center lights should be more residential in nature to minimize the impact on the neighborhood. Ms. Rosend said the park lighting was equal to a full moon, which was standard for the Park Authority.

In response to Mr. Hart's question, Susan Langdon, Chief, Special Permits and Variance Branch, said the Board could limit the lighting size and timing on the community center property.

Mr. Hammack moved to approve SPA 78-P-192-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREENBRIAR CIVIC ASSOCIATION & NEW HOPE FELLOWSHIP CHURCH, SPA 78-P-192-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 78-P-192 previously approved for community center and church to permit increase in parking and site modifications. Located at 4615 Stringfellow Rd. on approx. 1.52 ac. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((1)) 11. (In association with SE 2010-SP-029) 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 2, 2011; and

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

1. The applicants are the owners of the property.

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 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 (Greenbriar Civic Association and New Hope Fellowship Church) and is not transferable without further action of this Board, and is for the location indicated on the application, 4615 Stringfellow Road, 1.52 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 Community Association Engineering (a division of GJB Engineering, Inc.) dated February 25, 2011, 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 transitional screening requirement shall be modified to reflect the landscaping shown on the special exception plat and the following provisions:
 - A. The site plan shall depict landscaping that is in substantial conformance with the approved special exception plat.
 - B. Trees and shrubs planted along Stringfellow Road shall be an appropriate height so as to not conflict with the overhead utility lines and shall be salt-tolerant.
 - C. On the site plan, all proposed trees shall be at shown at least four feet from any restrictive barrier such as curbs.
 - D. The site plan shall depict and label existing utility easements and contain a note that reads, "Planting within utility easements shall be reviewed and approved by the easement holder(s). If the easement holder(s) does not grant permission to install the proposed plants, the applicant shall work with the Urban Forestry Management Division of the Public Works and Environmental Services Department to identify suitable alternative plants and/or alternative planting locations. The transitional screening requirement shall be considered satisfied if the latter situation needs to be utilized."
6. The barrier requirement along the western property boundary shall be waived.
7. Prior to the issuance of a Non-Residential Use Permit implementing this special permit, the Greenbriar Civic Association and the Fairfax County Park Authority shall execute a shared parking and access agreement. In accordance with applicable code requirements, the agreement shall be reviewed and accepted by the Board of Supervisors.
8. Any lighting of the parking area shall be in accordance with Part 9 of Article 14 and shall not exceed 14 feet in height, as measured from the base to the top of the light standards. The lights shall be shielded and directed downward to minimize the impact of ambient light.
9. All signage shall comply with the requirements of Article 12, Signs, of the Zoning Ordinance.
10. The maximum hours of operation of the community center shall be from 8:00 a.m. to 11:00 p.m. daily. The applicant shall be allowed 12 after-hour parties per year until 1:00 a.m. with prior approval of the Zoning Administrator. The number of after hour parties may be increased with the approval of the Zoning Administrator.
11. The maximum hours of operation of the church shall be from 9:30 a.m. to 12:30 p.m. and 6:00 p.m. to 9:30 p.m. on Sundays, and from 7:45 p.m. to 9:30 p.m. on Wednesdays.
12. The maximum number of seats for the church shall be 100.

These development conditions incorporate and supersede all previous development conditions imposed by the Board of Zoning Appeals.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ March 2, 2011, Scheduled case of:

9:00 A.M. CHRISTOPHER W. DEVINE, TRUSTEE, SP 2010-DR-075 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit deck to remain 3.4 ft. from a side lot line and to permit reduction of certain yard requirements to permit construction of addition 14.5 ft. from rear lot line. Located at 12101 Eddyspark Dr. on approx. 10,151 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((4)) 256.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Christopher W. Devine, 12101 Eddyspark Drive, Herndon, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2010-DR-075, subject to the proposed development conditions.

Mr. Devine presented the special permit request as outlined in the statement of justification submitted with the application. He asked for relief from Development Condition 5, stating that a temporary fence and its removal posed a greater threat to tree preservation than the construction of the screened porch itself.

In response to a question from Ms. Gibb, Susan Langdon, Chief, Special Permit and Variance Branch, said Development Condition 5 was a standard condition from Urban Forestry, and it was sometimes modified to say "silt fencing," which staff would not object to in this case. Mr. Devine stated his agreement with the proposed modification.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2010-DR-075 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER W. DEVINE, TRUSTEE, SP 2010-DR-075 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit deck to remain 3.4 ft. from a side lot line and to permit reduction of certain yard requirements to permit construction of addition 14.5 ft. from rear lot line. Located at 12101 Eddyspark Dr. on approx. 10,151 sq. ft. of

land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((4)) 256. 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 2, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant has met the required standards A through G under Sect(s). 8-914.
3. The error was done in good faith.
4. The applicant testified that the deck was built by a previous owner.
5. There was a building permit, but the deck was built in error by the previous owner's builder.
6. The staff report and photographs indicate that there will not be an impact on any neighbors since the property backs onto park land and floodplain.
7. The deck will not impede anyone's view.
8. The applicant has met standards 1 through 6 of Sect(s). 8-922.
9. A screened in porch is being built on a very small portion of the deck.
10. The porch should not have an impact on anyone because it backs up to the park land.
11. The use is harmonious with surrounding structures in the neighborhood.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location 12101 Eddyspark Drive and size, 216 square feet for the proposed addition and deck, as shown on the plat prepared by Curtis L. McAllister, Land Surveyor, Highlander Surveying Services, P.C., dated November 5, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,986 square feet existing + 4,479 square feet (150%) = 7,465 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be generally consistent with the architectural drawings as depicted on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, tree protective fencing shall be installed between the location of the proposed additions and the limits of clearing and grading within all property boundaries. Tree protection fencing in the form of silt fencing shall be installed at the limits of clearing and grading to protect the critical root zones of on-site and off-site trees from any construction activity, including material storage and vehicular and construction equipment traffic. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur within the tree save areas. Any trees that are damaged or removed shall be replaced with a like kind in size and species as determined by the Urban Forest Management Division (UFMD), DPWES.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ March 2, 2011, Scheduled case of:

9:00 A.M. SANJEEV KAPOOR, A 2010-HM-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a use not permitted (a truck rental establishment) to operate on property in the PRC District without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 11410 North Shore Dr. on approx. 37,096 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 7.

Chairman Ribble noted that A 2010-HM-015 had been administratively moved to September 14, 2011, at 9:00 a.m., at the appellant's request.

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~ ~ ~ March 2, 2011, Scheduled case of:

9:00 A.M. TAM DO, A 2010-MA-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 7105 Wilburdale Dr. on approx. 21,781 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((9)) 50.

Chairman Ribble noted that A 2010-MA-016 had been administratively moved to April 13, 2011, at 9:00 a.m., at the appellant's request.

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~ ~ ~ March 2, 2011, After Agenda Item:

Request for Additional Time
Armando Estrada Fernandez, SP 2010-PR-028


Mr. Byers moved to approve five months of additional time. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was June 28, 2011.


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As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

Minutes by: Suzanne Frazier

Approved on: December 3, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, March 16, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Norman P. Byers was absent from the meeting.

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

~ ~ ~ March 16, 2011, Scheduled case of:

9:00 A.M. COTTONTAIL SWIM AND RACQUET CLUB, INC., & T-MOBILE NORTHEAST, LLC, SPA 81-S-060-02

Chairman Ribble noted that SPA 81-S-060-02 had been administratively moved to May 11, 2011, at 9:00 a.m., at the applicants' request.

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~ ~ ~ March 16, 2011, Scheduled case of:

9:00 A.M. ORANGE HUNT SWIM CLUB, INC., & T-MOBILE NORTHEAST, LLC., SPA 72-S-098 (In association with SE 2010-SP-027)

Chairman Ribble noted that SPA 72-S-098 had been administratively moved to April 20, 2011, at 9:00 a.m., at the applicants' request.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said SPA 72-S-098 had subsequently been indefinitely deferred.

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~ ~ ~ March 16, 2011, Scheduled case of:

9:00 A.M. MICHAEL J. MCKEON, VC 2011-MV-002 Appl. under Sect(s). 10-104 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a through lot containing 36,000 sq. ft. or less. Located at 7824 West Boulevard Dr. on approx. 29,630 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((17)) 67.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Scot McBroom, Robert Bentley Adams & Associates, 405 South Washington Street, Alexandria, Virginia, the applicant's agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. McBroom presented the variance request as outlined in the statement of justification submitted with the application. The applicant requested a variance to allow an existing accessory structure, a pool house, to remain in its present location. Mr. McBroom explained that when the applicant applied for a building permit to make improvements to his 72-year-old house and 68-year-old garage, the County informed him that because the lot faced West Boulevard Drive and terminated in the rear on Ridgecrest Drive, it was a through lot, and no permit would be issued until the accessory structure was either removed or granted a variance. Mr. McBroom listed each required standard for a variance and explained how they were met.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2011-MV-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL J. MCKEON, VC 2011-MV-002 Appl. under Sect(s). 10-104 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a through lot containing 36,000 sq. ft. or less. Located at 7824 West Boulevard Dr. on approx. 29,630 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((17)) 67. 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 16, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 29,630 square feet.
4. The applicant has satisfied the nine required standards set forth in the Ordinance for a variance to be granted.
5. The Board adopts the reasons set forth in the very thorough argument of Mr. McBroom which touched on each individually.
6. This is a double front yard.
7. The front yard has been in existence for years.
8. The offending front yard is on a road that was developed later than the property.
9. The County issued a building permit allowing the pool to be constructed.
10. Maybe the County requires these accessory structures to be shown on those plats at this point, but they did not use to; there have been cases like this in the past where building permits had been issued but later only to find that the pump house violated some sort of setback or minor something.
11. The Board does not see that this structure changes the character of the neighborhood or is a detriment to the adjacent property.
12. The structure is only a little larger than the minimum square foot area under which it would not require a building permit.
13. It is noted that the Building Code has been changed to increase minimum square foot area to 200 square feet as of March 1, 2011.
14. The Code's recent change certainly indicates that the State has felt that the smaller buildings won't require quite as much overview.
15. The Board adopts the new hardship provision and it is noted that the new statute is more lenient and that standard is incorporated in the motion.

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

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

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 size and location of an accessory structure, "Frame Pool House", as shown on the plat prepared by Dominion Surveyors, Inc., dated September 10, 2010, sealed and signed by Robert B. Adams, December 23, 2010, as submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the 155.04 square foot accessory structure, "Frame Pool House", within 180 days of approval of this special permit.

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 including requirements for building permits.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ March 16, 2011, Scheduled case of:

9:00 A.M. DAVID CARPENTER, SP 2011-LE-002 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 storage structure to remain 4.8 ft. from side lot line and 5.1 ft. from rear lot line. Located at 5712 Broadmoor St. on approx. 12,442 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 91-4 ((4)) 631.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler P. Ahrens, 4871 Benecia Lane, Dumfries, Virginia, the applicant's' agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant replaced a dilapidated metal shed and placed the new shed on a

permanent foundation. Mr. Ahrens said the old and new sheds were roughly the same height, but the new shed was too tall under the current Zoning Ordinance. He said neighbors had no objection to the location of the shed, and he referred to a photograph, noting that a neighbor's shed was closer to the lot line than the subject shed.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-LE-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID CARPENTER, SP 2011-LE-002 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 storage structure to remain 4.8 ft. from side lot line and 5.1 ft. from rear lot line. Located at 5712 Broadmoor St. on approx. 12,442 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 91-4 ((4)) 631. 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 16, 2011; 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 showing compliance with the required standards.
3. Although there has been some replacement of siding or more than that, the shed seems to have been in roughly that location for a long time.
4. From the photographs, it is apparent that there are many similar sheds in the neighborhood in roughly similar configurations on the lots.
5. From the photographs, it appears that at least the next-door neighbor's shed is somewhat closer to the property line than the applicant's.
6. In the photographs, it appears that there may be other sheds that are basically in that same character.
7. It is not believed that allowing the shed to remain is going to have any significant negative impact on anybody.
8. It is not thought that the Board has received any opposition to this.
9. The Board has determined that the other mistake section standards have been satisfied.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of a detached accessory storage structure (frame shed), as shown on the plat prepared by Scartz Surveys dated October 5, 2010, submitted with this application and is not transferable to other land.
- 2. All applicable permits and final inspections shall be obtained for the garage enclosure and sunroom enclosure within 180 days of approval of this special permit.

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

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~ ~ ~ March 16, 2011, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09) (Admin. moved from 3/3/10, 5/26/10, 7/14/10, 8/11/10, 9/15/10, and 11/3/10 at appl. req.) (Continued from 1/5/11)

Chairman Ribble noted that the application's public hearing had been continued so staff could provide the information the Board requested at the previous hearing.

Mr. Beard requested the Board take a brief recess to allow time to review the documentation. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

The meeting recessed at 9:45 a.m. and reconvened at 9:56 a.m.

Shelby Johnson, Staff Coordinator, informed the Board that the representative from the Virginia Department of Transportation (VDOT) was not present due to a family emergency, but had prepared a memorandum of VDOT's determinations.

Discussion ensued regarding the March 15, 2011 memorandum from the VDOT engineer, Hiren Joshi, the substandard right-turn lane, the provision of a left-turn lane, closing a median, control of U-turn traffic, the possibility of police officers directing traffic during church activities, a stormwater detention pond, the 50 percent tree save area, required tree plantings of white pines, provision of a board-on-board fence versus chain-link, deletion of the requested Sunday daycare facility, the size of the church compared to the other churches within the vicinity, a requirement for road improvements, clarification of potential staggering of

services with the other churches in the area, use of the neighboring school's parking lot, and the refusal of the school board to consider a right-of-way through its property.

Chairman Ribble requested that the school board submit its position on access through its property in writing. He said he wanted to know their policy on inter-parcel connections.

Mr. Hammack said he supported a deferral to give the school board time to explain its rationale.

Mr. Beard said he would like a representative from VDOT to attend the meeting to address the Board's questions on transportation issues.

Ms. Gibb moved to defer decision on SP 2009-SU-066 to April 20, 2011, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

Chairman Ribble said the record would remain open for written comment.

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~ ~ ~ March 16, 2011, Scheduled case of:

9:00 A.M. PILGRIM COMMUNITY CHURCH, INC., SPA 81-A-002-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for a church to permit site modifications (additional parking). Located at 4925 Twinbrook Rd. on approx. 5.15 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A. (Admin. moved from 2/16/11 at appl. req.)

Chairman Ribble noted that SPA 81-A-002-05 had been administratively moved to May 11, 2011, at 9:00 a.m., at the applicant's request.

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Mr. Beard requested the Board go into Closed Session to discuss legal representation.

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal representation, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

The meeting recessed at 11:13 a.m. and reconvened at 11:49 a.m.


Mr. Hammack then 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 Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers 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 11:50 a.m.

Minutes by: Paula A. McFarland

Approved on: December 3, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, March 23, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ March 23, 2011, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MOUNT VERNON METHODIST CHURCH AND NEW CINGULAR WIRELESS PCS, LLC, D.B.A. AT&T MOBILITY, SPA 80-V-089 Appl. Under Sect(s). 3-403 of the Zoning Ordinance to amend SP 80-V-089 previously approved for a church with child care and telecommunications facility to permit additions to telecommunications facility. Located at 2006 Belle View Blvd. on approx. 4.46 ac. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 (91)) and 93-1 ((25)) (4) 14.

Chairman Ribble noted that SPA 80-V-089 had been administratively moved to April 20, 2011, at 9:00 a.m., at the applicants' request.

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~ ~ ~ March 23, 2011, Scheduled case of:

9:00 A.M. GBG, INC. DBA: GOLD'S GYM-CHANTILLY, SPA 87-S-088-04 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for a health club to permit change in permittee. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((5)) D2. (Admin. moved from 2/9/11 – Notices Not in Order)

Chairman Ribble called the case.

Debbie Hedrick, Staff Coordinator, said the applicant's agent was not yet present. She asked the Board to move this case to the end of the agenda.

It was so ordered by Chairman Ribble.

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~ ~ ~ March 23, 2011, Scheduled case of:

9:00 A.M. SNSA, INC., d/b/a FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-04 Appl. Under Sect(s). 4-03 of the Zoning Ordinance to amend SP 95-V-031 previously approved for a billiard hall, eating establishment and dance hall to permit increase in seats, size of dance hall and hours of operation. Located at 6220 Richmond Hwy. on approximately 2.84 ac. of land zoned C-8, CRD and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Admin. moved from 8/11/10, 9/22/10, 11/17/10, 12/15/10, and 1/26/11 at appl. req.)

Chairman Ribble called the applicant to the podium.

Mr. Hammack recused himself from this hearing.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Jane Kelsey, the applicant's agent, 4041 Autumn Court, Fairfax, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. She provided a history of the application, noting that on April 14, 2009, the applicant received approval from the BZA for SPA 95-V-031-03 to permit a

change in permittee, and to allow the addition of a dance hall as an accessory use to the existing eating establishment and billiard hall. Staff recommended denial of this application for the continuation of the dance hall use. However, because the previous approval granted a change in permittee, as well as the addition of a dance hall use, if the continuation of the dance hall was not approved, the application would still need approval-in-part to reflect the change in permittee approved under SPA 95-V-031-03, the continuation of the eating establishment, and billiard hall uses, if the BZA intended to allow those to continue.

Ms. Hedrick pointed out that representatives from the Department of Code Compliance, Mount Vernon District Police Department, and the Fire Marshall's Office were present to answer any Board questions.

In response to a question from Chairman Ribble, Ms. Hedrick said that only the eating establishment was allowed by right. She continued that they could also have one-eighth of the floor area designed for dancing.

Chairman Ribble asked about prior overcrowding violations on the site, and whether it could be closed down for that reason. Captain Carlton Burkhammer, Chief Fire Marshall for Fairfax County, stated that he could have closed the business down for the violation, but felt it was unrealistic in that it would cause the release of over 500, sometimes intoxicated, sometimes rowdy individuals into the Route 1 Corridor. He continued that the times they have been on site, they make sure there are no blocked exits, maintain crowd control, and reduce the occupancy. However, Captain Burkhammer said the applicant continuously failed to follow the Code.

Mr. Hart and Ms. Hedrick discussed the parking formula for an eating establishment and the parking tabulation on the plat, with Ms. Hedrick noting that the applicant showed parking on all three parcels, which were 22B, 22C and 22D. It was staff's view that parking was inadequate. She pointed out that patrons park in fire lanes and in the adjacent residential neighborhood.

Mr. Hart, Ms. Hedrick, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed what the size of the dance floor would be, by right, if all the billiard tables were removed, with Ms. Langdon pointing out that the $\frac{1}{8}$ floor area would be calculated after everything but the dining area was removed.

Ms. Kelsey introduced Douglas McKinley, who made the presentation for the applicant. He stated that the issue before the Board was to determine how big the dance floor would be, noting that the applicant was allowed to have dancing on site by right. Mr. McKinley said that all the violations mentioned previously were issued to a prior owner, and doubted their validity. He acknowledged that the parking lot was overcrowded, but said it was only periodic, and not a constant occurrence. Mr. McKinley felt the problems at Fast Eddie's were being misrepresented, and asked the Board to carefully review the police reports. He said most of the problems staff delineated had already been corrected, noting that security personnel at the establishment stopped people from coming in when the occupancy limit was reached. Mr. McKinley also addressed the previous requirement for a gate at Jamaica Drive, stating that closing and locking the gates would be a violation of the fire code.

In response to a question from Mr. Byers, Captain Burkhammer said the gate was not the issue, but the parking of over 60 vehicles around the entrance, which would prohibit emergency equipment from getting to the doors.

Mr. Byers, Mr. Hart, Captain Burkhammer, and Ms. Hedrick discussed calculating the occupancy load for the site. Ms. Hedrick noted that notwithstanding any development condition proposed for the site, the Fire Marshall's determination for maximum occupancy would rule.

In response to a question from Mr. Hart, Ms. Kelsey explained that there were two separate rates for tabulating the necessary parking. One was for an eating establishment, and one was for a shopping center. Her calculation showed 163 parking spaces. Ms. Langdon said staff has called into question the applicant's formula for required parking spaces.

Mr. Hart, Captain Burkhammer, Ms. Langdon, and Ms. Kelsey discussed the previous development condition for a gate on Jamaica Drive. Ms. Kelsey said it was her understanding that there had to be enough space to allow access to a fire truck, therefore, if one side of the gate was left open, a fire truck could gain access. However, she noted that patrons' cars could also gain entrance that way. Ms. Langdon said it was staff's intention that the gate be closed at 9:30 p.m. and only emergency vehicles have access via Jamaica Drive. She said staff was to work with the Fire Department regarding a possible "breakaway" gate for emergency

vehicles. Captain Burkhammer stated that if there was no imminent danger, a chained barrier to Jamaica Drive could be cut. Ms. Langdon pointed out that a gate had originally been proposed because of access concerns for the adjacent neighborhood.

Mr. Smith said that increasing the seating from 84 to 130, reducing the number of pool tables from 26 to 18, and expanding the size of the dance floor would appear to make room for additional patrons, thereby intensifying the use. He asked how the occupancy load, was currently being policed. Mr. McKinley responded that the total occupancy allowance was set by the Code and that they were not asking for any change in the current limit of 475 patrons. He said the applicant was trying to accommodate the clientele who wanted a larger dance floor area. Mr. McKinley stated that security personnel monitored the number of people admitted by using a clicker counter.

In response to a question from Mr. Beard, Mike Congleton, Department of Code Compliance, confirmed that if there were continuous violations, the County would send a letter to the owner to cease and desist. He also believed there was inadequate parking at the site.

Ms. Gibb and Mr. Congleton discussed the current Building Code violations, specifically blocked exits, wire switch boxes which were uncovered, and a portion of the basement wall which had been knocked out onto the adjacent property. Mr. Congleton noted that although the property owner says all violations have been corrected, there are more violations noted every time the inspectors go out to the property. For example, on the last inspection, security personnel had lost the attendance clicker and did not know how many patrons were on site.

In response to a question from Mr. Byers, Mr. Congleton said if parking was restricted to onsite, an NOV would be sent to the property owner if parking is found off site. He said that in this case, the use generates more demand than available.

Discussion continued with regard to parking between staff, the Fairfax County Police Department, and Ms. Kelsey, with Ms. Kelsey stated that when she visited the site the previous Friday evening from 10:00 to midnight the parking lot was not full. It was also discussed on whether all calls were directly attributable to Fast Eddie's, with it being noted that the violation list was broken down into three categories: on site arrests, calls to the police to come to the establishment, and anytime Fast Eddie's was mentioned in a police report.

Chairman Ribble asked Ms. Kelsey to comment on the present state of security on the property. She said that the applicant had hired six uniformed security guards, five of which were armed, to patrol the parking lot and assist in crowd control inside the establishment.

Ms. Kelsey introduced David Mescoff, 47474 Cold Spring Place, Sterling, Virginia, who is the landlord of Fast Eddie's. He stated that Fast Eddie's was a model tenant, and he supported their application. He noted that the fire lanes were painted the previous week and waiting for inspection.

In response to Mr. Hart's question, staff said the applicant could not change their business name if they desired to do so under the currently proposed development conditions. Development Condition 1 was discussed, with it being pointed out that since staff recommended that the dance hall not continue, the development condition only addressed the eating establishment.

Dancing on the premises was discussed, noting that a dance area was permitted by right, but would be smaller than the current size. The Las Vegas restaurant in the immediate proximity which allowed dancing and billiards, in addition to the eating establishment, had one-eighth the dance floor size, and only one billiard table.

Chairman Ribble called for speakers.

Adam Raza Mercer of Washington Drive in Woodbridge, Virginia, stated his support for the application. He said he went to Fast Eddie's five to six times a month, and never saw any fights. Mr. Mercer stated that the constant presence of police officers in and around the area was bothersome. It was more crowded on weekend nights, but not to the degree being represented at this hearing. He estimated around 300 people. Although the parking lot was full on Friday and Saturday nights, he was usually able to find a space out front.

Raul Menjivar, 7306 Belinger Court, Springfield, Virginia, spoke in support of the application. He said he was a regular customer, and had always been able to find parking in front of the restaurant. Mr. Menkiver found Fast Eddie's to be a great place to relax.

Iris Servelan, 2118 Arlington Terrace, Alexandria, Virginia, said she had been a customer of Fast Eddie's for the past two to three years, and could recall only one occasion when she could not find a parking spot. She had not witnessed any fights, but she had seen a police presence, and felt intimidated by them.

Steve Lee, 2151 Woodford Road, Vienna, Virginia, said he was appearing before the Board representing the owner of the shopping center directly behind Fast Eddie's. He felt that dancing was not a problem, but that drinking was. The shopping center owner had to spend a great deal of money to clean up the parking lot after Saturday night patrons left. He also distributed photographs of cars double parked in front of Fast Eddie's last Saturday night, six of which were towed.

May Pattison, 6117 Bangor Drive, Alexandria, Virginia, stated that her road was perpendicular to Jamaica Drive, behind Fast Eddie's. She said her quality of life had been affected by the night club, with intoxicated people leaving Fast Eddie's and parking in their neighborhood. Mr. Pattison commented that music from the club could be heard at her house.

Rosemary Livingood, 2159 Belview Avenue, Alexandria, Virginia, stated her opposition to the application. She said that patrons do not leave the area when Fast Eddie's closes. Instead they would party in the street and play their radios loudly. Ms. Livingood said she had been awoken at 1:00 in the morning by people dancing on her lawn. She also mentioned the amount of graffiti generated by the club, and said there has been urinating in public.

In rebuttal, Ms. Kelsey asked that Mr. McKinley be given the opportunity to address the police report. She said she would also like to meet with the Lee and Mt. Vernon District Supervisors to discuss some of the issues, so she requested a short deferral of just a few weeks.

Chairman Ribble closed the public hearing.

Mr. Byers moved to deny continuation of the dance hall use, and approve the change in permittee and continuance of the eating establishment and billiard hall. He said he supported the rationale of the staff. Mr. Byers suggested a number of changes to the proposed Development Conditions. He said the Board would review the conditions and agency reports from the next six months and, depending on the outcome, recommend consideration of a revocation hearing.

Mr. Hart seconded the motion for purposes of discussion. He asked if Mr. Byers would be willing to agree to a two-week deferral in an effort to get more information. He was still troubled by the parking situation and felt he could benefit from additional information.

Discussion ensued regarding the hours for the billiard tables, and dancing on the property by right with it being pointed out that the motion was for the dance hall use to be discontinued.

Mr. Beard commented that he would support a deferral to allow Ms. Kelsey to discuss with her client which way they wanted to proceed.

Mr. Smith stated his support for a deferral, noting that an outright denial of the dance hall use could make the situation on the premises worse.

Chairman Ribble called for the vote. The motion failed by a vote of 1-5.

Mr. Hart then moved to defer decision to April 6, 2011, with the record remaining open for written and electronic comments. He hoped that the Board would receive more development conditions addressing the neighborhood concerns, and wanted to see the parking calculations.

Ms. Gibb seconded the motion, which carried by a vote of 5-1. Mr. Byers was opposed. Mr. Hammack recused himself from the hearing.

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The Board recessed for ten minutes.

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9:00 A.M. GBG, INC. DBA: GOLD'S GYM-CHANTILLY, SPA 87-S-088-04 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for a health club to permit change in permittee. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((5)) D2. (Admin. moved from 2/9/11 – Notices Not in Order)

Ms. Hedrick noted that the applicant was not present.

Mr. Hammack moved to continue the public hearing to April 6, 2011, at 9:00 a.m. Ms. Gibb seconded the motion, which passed unanimously.

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~ ~ ~ March 23, 2011, Scheduled case of:

9:00 A.M. CARLOS C. CADENAS AND LEDA S. CADENAS, A 2010-MA-017 Appl. Under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a minimum of three families and at least one unrelated individual to reside in a single family dwelling on property in the R-4 District in violation of the Zoning Ordinance provisions. Located at 3007 Greenway Blvd. on approximately 10,966 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 85.

Chairman Ribble called the appellants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Roger Marcy, Staff Coordinator for the Zoning Administration Division, presented staff's position as set forth in the staff report. Mr. Marcy provided the background on the property, noting that it had been cited for numerous violations, including multiple occupancy, rooming house, and occupation use. He said that during the November 9, 2010 inspection, the house was found to be divided into three units, separated by keyed locks, and signs were observed over the doors of each separate unit identifying them as units A, B, and C. Mr. Marcy said it was apparent that multiple families lived in the house, clearly in violation of the Zoning Ordinance. He asked that the Board uphold the determination of the Zoning Administrator.

In response to questions from Mr. Beard, Mr. Marcy confirmed that a coin operated laundry was present on the property. Victoria Dzerga, Department of Code Compliance, verified that three kitchens were present.

Richard Nguyen, agent for the appellant, 6402 Arlington Boulevard, Falls Church, Virginia, said that the house was in the process of being reverted back to its original layout. He presented an affidavit from Mr. Cadenas attesting that he was the only person currently living in the house.

In response to a question from Mr. Hammack, Mr. Nguyen stated that the applicant had to leave the hearing at 10:30 a.m. that morning to keep his appointment at a local funeral home. His mother passed away the previous night, and he had to make arrangements for her funeral.

Mr. Hart and Mr. Marcy discussed the progress of the repairs being done on the property.

Chairman Ribble called for speakers.

Jerry Morstead, 1022 Waysford Road, Falls Church, Virginia, spoke in support of the Zoning Administrator's determination. He noted his concern for the wellbeing of children in the neighborhood, and noted that boarding houses usually have a detrimental effect on property values.

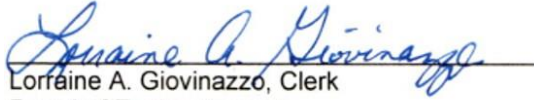
Mr. Hart moved to continue the public hearing to April 13, 2011, at 9:00 a.m. Ms. Gibb seconded the motion, which carried on a vote of 7-0.


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As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Suzanne L. Frazier

Approved on: December 9, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, April 6, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ April 6, 2011, Scheduled case of:

9:00 A.M. GERTRUDE M. JENKINS, SP 2011-PR-001 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.2 ft. from rear lot line and 6.1 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in a front yard. Located at 2920 Summerfield Rd. on approx. 10,023 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 73. (Concurrent with VC 2011-

9:00 A.M. GERTRUDE M. JENKINS, VC 2011-PR-003 Appl. under Sect(s). 10-104 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 2920 Summerfield Rd. on approx. 10,023 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 73. (Concurrent with SP 2011-PR-001).

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Gertrude M. Jenkins, 2920 Summerfield Road, Falls Church, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation.

Ms. Johnson concurred with Mr. Byers' assumption that the case was brought to staff's attention because of an anonymous complaint. Mr. Byers commented that it had been in existence for some period of time with no complaints, and was a bit nonplussed when he saw suddenly there was a complaint. He added that it was not like it was built yesterday.

Discussion ensued regarding the circa 1940s plats, the location of the original dwelling, specific measurements depicted on the 1993 plat, the pool's close location to Kincaid Avenue, the applicability of the 15-year taxation rule, and the Zoning Ordinance regulation prohibiting any accessory structure in a minimum required front yard.

Victoria Dzierzek, Property Maintenance Inspector, Department of Code Compliance, explained that one earned vested rights by having paid taxes for 15 years, had obtained a building permit, and had a final inspection. She said staff's records showed a permit was obtained, but there was no record of a final inspection.

Responding to Mr. Hart's question of whether the Board had ever approved a variance in a front yard, Susan C. Langdon, Chief, Special Permit and Variance Branch, said yes, they had.

Terry Looney, daughter of the applicant and residing at the same address, 2920 Summerfield Road, Falls Church, Virginia, presented the special permit and variance request as outlined in the statement of justification submitted with the application. She said she assumed a final inspection was done years ago for the pool and six-foot fence because she had called the County for one, and it was only after receiving the Notice of Violation in October 2009, did she realize none was conducted. In 1973 her father contracted the shed to be built, and, again, she assumed all was taken care of at that time. She requested the Board to permit the pool, fence, deck, and shed to remain noting they were there for many years with never a complaint until now. Ms. Looney said the vinyl fence provided privacy for themselves and their next door neighbor. They kept their yard clean and neat, strove to be good citizens, paid taxes for years on the structures, and having had them for all this time, now found themselves in this position.

In response to the question of Ms. Gibb about how much was spent on processing the applications, Ms. Looney said over \$2,500.00 for the special permit and the variance.

In response to Mr. Byers' question of was there written notification after a final inspection, Ms. Dzierzek said staff always leaves an inspection ticket posted on the site, but clarified that nothing was sent through U.S. Postal Service from the County. She said the inspection report stated basically whether one passed or failed.

In response to Mr. Hart's question regarding the development conditions, Ms. Looney said they reviewed them, agreed with them. Mr. Hart referenced an anonymous opposition letter in the record, and Ms. Looney acknowledged that she saw it.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2011-PR-003 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GERTRUDE M. JENKINS, VC 2011-PR-003 Appl. under Sect(s). 10-104 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 2920 Summerfield Rd. on approx. 10,023 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 73. (Concurrent with SP 2011-PR-001). 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 6, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,023 square feet.
4. According to the testimony, the pool was constructed in 1973 with a building permit.
5. The applicant has double front yards, which imposes a burden on the property that most homeowners don't have.
6. The encroachment into the required front yard is minimal.
7. The structure has been there since 1973 without complaint from anyone, so it is a little curious why it comes in at this time.
8. It has been taxed.
9. It would be permitted by right had a final inspection been done, which apparently no one can find the record of.
10. The Board is not completely satisfied with the explanation of the County that there is no record, so it must not have been done.
11. The Board hears things like this too often. Inspectors come out. They don't call the applicants. The applicants don't know when they are there, and oftentimes when they see violations, they don't know when they're there.
12. It puts an extreme burden on an applicant to rebut an inspection that has not been done after they'd paid for the building permit and gone through the process.
13. Under the new variance standards that apply, the applicant has satisfied the nine required standards set forth in variance applications.
14. The applicant meets Standard 2, the size of the lot.
15. The applicant meets Standard 3, the condition of the property.

16. The applicant meets Standard 4, that the strict application of the Ordinance would produce undue hardship in this case.
17. The application satisfies the other 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 as distinguished from a special privilege or convenience sought by the applicant.
 7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 accessory structure (above-ground pool and deck) to remain in the front yard as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated December 29, 2009, as revised through March 11, 2011, as 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 including requirements for building permits.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack then moved to approve SP 2011-PR-001 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GERTRUDE M. JENKINS, SP 2011-PR-001 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.2 ft. from rear lot line and 6.1 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in a front yard. Located at 2920 Summerfield Rd. on approx. 10,023 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 73. (Concurrent with VC 2011-PR-003). 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 6, 2011; 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 Sect. 8-006, Special Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimal Yard Requirements Based on Error in Building Location.
3. The applicant has satisfied the standards set forth in Sub. Sects. A through G of the Ordinance, which is incorporated herein.
4. In particular, the noncompliance was done in good faith or through no fault of the property owner through a contractor.
5. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
6. Double front yard setback requirements create an additional burden on an applicant.
7. The shed has been in existence for quite some time and apparently created no problems within the community.
8. The applicant has tried to comply with the Ordinance in making these improvements on the property.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 existing accessory storage structure (shed) and existing vinyl fence as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated December 29, 2009, as revised through March 11, 2011, submitted with this application and is not transferable to other land.
2. The finials shall be removed or reduced in height to be in conformance with Sect. 10-104 (3J) of the Fairfax County Zoning Ordinance.

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. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ April 6, 2011, Scheduled case of:

9:00 A.M. GBG, INC. DBA: GOLD'S GYM-CHANTILLY, SPA 87-S-088-04 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for a health club to permit change in permittee. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((5)) D2. (*Admin. moved from 2/9/11 – Notices Not in Order*) (*Continued from 3/23/11*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard Navarri, 3500 (street name unintelligible), Haymarket, Virginia, agent for the applicant, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 87-S-088-4 subject to the proposed development conditions.

Mr. Navarri presented the special permit amendment application request as outlined in the statement of justification submitted with the application. He said the subject property was purchased last summer, and they were requesting a change in the permittee. In response to Chairman Ribble's question concerning the staff report, Mr. Navarri said they read the staff report and agreed with the conditions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 87-S-088-04 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GBG, INC. DBA: GOLD'S GYM-CHANTILLY, SPA 87-S-088-04 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 previously approved for a health club to permit change in permittee. Located at 14290 Sullyfield Ci. on approx. 5.2 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3

((5)) D2. (Admin. moved from 2/9/11 – Notices Not in Order.) (Continued from 3/23/11.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 2011; and

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

1. The applicant is the lessee of the land.
2. The present zoning is I-5, WS and AN.
3. The area of the lot is 5.2 acres of land.
4. The staff recommends approval.
5. The rationale of staff is adopted.

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 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, GBG, Inc. DBA: Gold's Gym – Chantilly, only and is not transferable without further action of this Board, and is for the location indicated on the application, 14290 Sullyfield Circle, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Patton Harris Rust & Associates, PC, dated February 28, 2006, 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 amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning
5. The maximum number of employees on site at any one time shall be twenty (20).
6. There shall be a minimum of seventy-seven (77) parking spaces or the minimum parking spaces required by the Ordinance. If required by DPWES, a parking tabulation shall be submitted to and approved by the Director which shows that the required parking for all uses can be provided for Building 2 on Lot F1 as shown on the special permit plat or this special permit amendment shall be null and void. All parking for this use shall be on site.
7. The maximum number patrons shall be 150 patrons on-site at any one time.

These conditions incorporate and supersede 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, twelve (12) months after the date of approval unless the use has been established as outlined above. 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.

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~ ~ ~ April 6, 2011, Scheduled case of:

9:00 A.M. SNSA, INC., d/b/a FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-04 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 95-V-031 previously approved for a billiard hall, eating establishment and dance hall to permit increase in seats, size of dance hall and hours of operation. Located at 6220 Richmond Hwy. on approximately 2.84 ac. of land zoned C-8, CRD and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. *(Admin. moved from 8/11/10, 9/22/10, 11/17/10, 12/15/10, and 1/26/11 at appl. req.) (Decision deferred from 3/23/11.)*

Chairman Ribble called the case, noting the decision was deferred for additional data requested by the Board.

Deborah Hedrick, Staff Coordinator, referenced an April 1, 2011, memorandum with staff comments, and additional documentation from the Zoning Administrator, which was provided to the Board that morning.

Mr. Hammack said that since he recused himself from the original hearing, he would recuse himself from this hearing.

Susan C. Langdon, Chief, Special Permit and Variance Branch, explained the process of a Revocation Hearing.

Mr. Hart said there was nothing in Ms. McLane's memorandum received that morning which changed staff's recommendation, and Ms. Hedrick agreed.

Discussion ensued regarding clarification of several development conditions, the hours of operation, the existing Non-RUP, continuation of the billiard hall, and discontinuing the dance hall activities.

Ms. Hedrick said the dance hall continuation expired April 14, 2011, and the proposed development conditions got rid of the dance hall completely. She said the establishment could remain open but without the dancing.

Ms. Langdon explained the 1/8th area for a dance hall regulation, and discussion ensued regarding the applicant's situation, permitted choices, designated hours of operation and, restrictions required with an ABC Liquor License. She said staff suggested that something be approved just to make sure that, if continuing Condition 1, the establishment would still be able to operate.

Michael Congleton, Strategic Initiatives Manager, Department of Code Compliance, concurred with Mr. Hart regarding the ABC regulation, that it did dictate liquor sales to cut off prior to 2:00 a.m. He clarified that if the pending special permit were not renewed, then the use reverted to the prior special permit, which was for a billiard hall with an accessory eating establishment. The applicant could not get an accessory dance floor for an accessory eating establishment. Mr. Congleton said staff was recommending that permit come before the Board for revocation, and if revoked or if it were the applicant's choice, they could negate the special permit use and open up an eating establishment, then apply for an accessory dance floor.

In response to the request of Mr. Beard for clarification, Mr. Congleton explained the 1/8th square-footage regulation. He added that if the dance floor was not approved, it was appealable to the County Executive.

There being no further questions or comments, Chairman Ribble called for a motion.

Mr. Hart moved to approve-in-part SPA 95-V-031-04. He wanted to make it clear that today the Board was approving the eating establishment with the billiard hall. It was just approved, and if something else happened, an amendment or revocation, the case would not automatically come back before the Board.

Mr. Beard said he would reluctantly support the motion as he was sympathetic to businesses, to business owners, to what they put up with, and what they had to endure to be successful. He said he understood that businesses evolved over a period of time due to what worked and was profitable, and unfortunately peripheral items such as neighborhoods and parking, and did not necessarily evolve in a positive direction. He thought that was what they had there. Mr. Beard said he was troubled by the management's response to the scrutiny they were under by the County.

Mr. Byers said, just as a discussion item, he thought there needed to be, at least, the option to move to a revocation hearing after the six-month period, based on the inspections, and also based on what the Zoning Administrator had said. He read all the inspection reports, and referred to the March 27, 2011 report quoting "This inspection revealed a total disregard for zoning and fire safety in the manner in which the business was being conducted." He said the report noted that upon County Staff's arrival, one of the first actions taken by Fast Eddie's operating staff were persons leaving through the rear emergency exit, and then radioing to the staff inside the building to warn them to clear all the pathways for the fire safety regulations. That was a clear example of an attempt to circumvent the law. Mr. Byers continued to be deeply concerned about the safety of police officers, Code Enforcement officials, Fire Department staff, the establishment's patrons, and staff, because of the continued violations regarding occupancy capacity and blocked fire lanes. He said what they did not want to have, for example, was a fire, and have people not able to get out, a rescue personnel lose their life trying to save people, or a police officer shot. That was why they had a revocation hearing as an option.

Mr. Hart said he, like Mr. Beard, was sympathetic to the applicant and the difficulties for a small business in getting an approval, getting open, maintaining it, and keeping it going with all the regulations and costs there were. There was no guarantee that this establishment was ever going to be a dance hall for more than a two-year period, and he thought it was the Board's intention, very clearly at the time, to wait and see how it worked. In the applicant's planning, he thought there should have been some expectation that the Board might not expand or extend it.

Discussion ensued regarding a development condition 18, the inappropriateness of ordering the BZA to do something, the Board not being required to initiate a revocation hearing based on what someone else said, the necessity to have the facility be safe, the Fire Marshall having access to enter the facility, and the patrons' ability to get out if there was a problem.

In response to the question of Mr. Beard regarding revocation, Mr. Congleton said the Zoning Administrator made a formal request for the BZA to schedule a revocation hearing, but it was at the discretion of the BZA whether they wanted to schedule such a hearing. He said there was no time constraint for that.

Chairman Ribble called for a vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SNSA, INC., d/b/a FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-04 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 95-V-031 previously approved for a billiard hall, eating establishment and dance hall to permit increase in seats, size of dance hall and hours of operation. **(THE BZA APPROVED THE EATING ESTABLISHMENT AND BILLIARD HALL ONLY. THE BZA DENIED THE DANCE HALL.)** Located at 6220 Richmond Hwy. on approximately 2.84 ac. of land zoned C-8, CRD and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Admin. moved from 8/11/10, 9/22/10, 11/17/10, 12/15/10, and 1/26/11 at appl. req.) (Decision deferred from 3/23/11) 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 6, 2011; and

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

1. The applicant is the lessee of the land.
2. This has been a very difficult case.
3. The motion to approve the dance hall on an interim basis was made a couple of years ago, and it was unclear at that time how it would work out.
4. This is a very popular establishment in a shopping center with somewhat constrained access and parking.
5. The past two years have shown that there are consequences for approving multiple uses that are using the same space and the same limited parking area.
6. To some extent, the itemization of all the incidents at the property was somewhat exaggerated and somewhat unrelated to the dance floor itself.
7. It is apparent that there is not quite enough parking.
8. The premises seem to attract a bigger crowd than the facility can hold.
9. It has not worked very well to this point with the security or whatever limitations there have been, that there are too many people.
10. There have also been significant impacts on the adjacent residential neighborhood incident to the number of cars and number of people that are there at a late hour on a regular basis.
11. They have had noise and music playing and trash and people getting in their cars and generally disrupting the neighborhood because they are parking in the neighborhood because there is not enough parking at this location for this facility.
12. The parking tabulations were never really understood clearly, but it was apparent that even on the special permit plat for the most recent amendment, they were one space over the minimum, and the parking reduction was being calculated in a way different than staff wanted it.
13. It is a complicated formula, but it seemed that there was not quite enough parking for what they were proposing to do.
14. The parking also seemed to include the entire shopping center, and maybe that is correct, but parking was a concern.
15. The public hearing was held March 23, 2011, and it was appropriate to consider whether doing what staff was requesting, which basically was forcing the applicant into a by-right scenario whereby they would have a restaurant that did not have a special permit and go for the 1/8th dance floor with no development conditions, was worse than extending the dance floor in some way and keeping the development conditions.
16. It was not necessary to reach that issue. It sounds like the applicant is going to pursue that avenue after today. It sounds like also today, based on the memo from Ms. McLane, that whatever happened Saturday night/Sunday morning seems to be going to court with some kind of violation from the Fire Marshal and sounds like there will be a public hearing on a Revocation.
17. Those issues need not be reached today, whatever that is.
18. The applicant has other avenues to pursue a dance floor even if it is not part of the special permit.
19. It does not appear that an expansion of the dance floor would work because although it would allow more room for dancing inside the establishment, it would aggravate the parking situation and the impacts on the neighbors.
20. There were changes to staff's development conditions suggested by Mr. Byers at the March 23rd meeting, and staff has prepared two more sets of development conditions incorporating some of those suggestions.
21. The conclusion at this point is that the balancing between whether the special permit is worse than the by-right is not really the exercise the Board should be going through today.
22. The question for the Board is does the special permit meet the required standards in the Ordinance, and it does in-part.
23. What staff is proposing now with some modifications is the appropriate thing to do today.
24. Under Sect. 8-006, General Standard No. 3, "The proposed use shall be such that it will harmonious with and will not adversely affect the use or development of neighboring properties," et cetera. An expansion or continuation of the dance floor in this package, the dance hall use, does not satisfy Sub. Sect. 3 because of the impact on the neighborhood.

25. Sub. Sect. 4 about "pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood," the Board has heard plenty of testimony about the conflicts.
26. There is a problem with the confusing gate at Jamaica Drive and whether that is in or out and how is that going to work and does that work with the rest of the shopping center, can the fire department get in there in an emergency. That really is not working under Sub. Sect. 7, "adequate utility, drainage, parking, loading, and other necessary facilities to serve the proposed use shall be provided."
27. There is not quite enough parking for these late night weekend crowds in this particular shopping center.
28. The parking situation to the side and rear of the building is a problem based on the photographs, with people parking along the building or in the fire lanes.
29. Whether they are fire lanes or not, that parking situation to the side and rear of the building and in the vicinity of the Jamaica Drive entrance is not working.
30. There may be other standards which are not met, and the rationale in the staff report is generally adopted. Those three standards are called out for the conclusion as to why the dance floor and the dance hall use, either a continuation or expansion, is not working.
31. Some of this may be revisited later, but for the purposes of today, the dance hall cannot be expanded. It is not working the way it is now, even at the size that it is.
32. There could be some refinements to the use, and it is hoped that the applicant would continue the dialogue with staff and the Supervisors in Mount Vernon and Lee District that have begun.
33. Whether the dance hall at this location stays open or not, there is still going to be a lot of people late at night in that area that are going somewhere, and if they are not going to Fast Eddie's, they will be around, and we will be dealing with this in some other way.
34. It may also be possible to work out something better for the parking or this use or some other combination of uses that satisfies the conditions in a little better way.
35. It is appropriate to continue the billiard hall use. We have had the billiard hall use before. We have had billiard halls in coordination with a restaurant. We have had that in plenty of locations, and it does not seem to be creating the same type of crowds or late night activity. That was working at this site before, and the Board has not been shown anything necessarily that the billiard hall makes noise as opposed to the dance hall making noise. There can only be so many people playing at any one time. It has not been shown that there are hundreds of people at 2:00 in the morning trying to play billiards. That is not what is drawing the crowds.
36. To that extent, they have met the required standards, and it is perfectly okay to have an eating establishment/billiard hall in this location and that continue.

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 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, SNSA, 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 purposes, structures and/or uses indicated on the special permit plat prepared by R.C. Fields, Jr. and Associates, dated January 9, 2009, revised through February 12, 2010, 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 amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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. There shall be a maximum of 26 billiard tables and 84 seats in the facility, located at 6220 Richmond Highway.
6. The hours of operation of the billiard hall and eating establishment shall not exceed 10:00 a.m. to 2:00 a.m. daily.
7. A new Non-RUP shall be obtained for this special permit use. Prior to the issuance of the Non-RUP, a parking tabulation revision shall be prepared for the review and approval of DPWES and the Zoning Permit Review Branch, DPZ reflecting all current uses to verify that adequate parking exists to serve all uses on the application site. If it is determined that adequate on-site parking does not exist to accommodate all uses, the maximum number of seats for the eating establishment and/or number of pool tables shall be reduced to meet the parking requirements as determined necessary by DPWES and DPZ. All parking for these uses shall be on-site.
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 plat. 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. Signs shall be posted on the right and left sides of the gate to indicate "No Exit." In coordination with the Fire Marshal's Office, the applicant shall provide bollard style gates to prohibit parking at the rear of the building.
13. The applicant shall provide an appropriate number of security guard(s) to police the area from the hours of 10:00 p.m. until closing.
14. The applicant shall police the premises and at a minimum Jamaica Drive, for trash and debris on a daily basis.
15. The applicant shall comply with the applicable Alcoholic Beverage Control laws.
16. The applicant shall keep the kitchen doors closed at all times, except for ingress/egress, to minimize the impact of noise on the adjacent community.
17. Fire lanes shall be clearly delineated and be painted and signed.
18. A copy of site inspections conducted by staff, if any, shall be provided to the BZA for review as an information item.

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, three (3) months after the date of decision unless the use has been established by obtaining a new Non-Residential Use Permit (Non-RUP). 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 6-0-1. Mr. Hammack recused himself.

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~ ~ ~ April 6, 2011, Scheduled case of:

9:00 A.M. MANSION HOUSE CLUB, INC., SPA 77-V-247-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP-77-V-247 previously approved for a swim and tennis club to permit site modifications including increase in height of light poles. Located at 9321 Old Mount Vernon Rd. on approx. 5.04 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 9D.

Chairman Ribble noted that SPA 77-V-247-02 had been administratively moved to June 8, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ April 6, 2011, Scheduled case of:

9:00 A.M. CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-037) (Continued from 6/17/08) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, 9/15/10, 11/17/10, and 12/15/10)

9:00 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, 9/15/10, 11/17/10, and 12/15/10)

Chairman Ribble called the appellants to the podium.

Mr. Hart said he had recused himself from the previous hearings, and he recused himself from this hearing

Doug Hansen, Staff Coordinator, Zoning Administrator Division, introduced himself noting that Leslie Johnson, Senior Deputy Zoning Administrator, and Joseph Bakos, Chief Zoning Inspector, were also present to answer questions. The appeals were heard and deferred numerous times since their first public hearing on June 17, 2008. At the December 15, 2010, meeting the BZA took action to further defer decision until April 6, 2011, to allow a tenant and the other tenant/appellant, Danella Construction Company of Virginia, Inc., time to purchase the subject site or vacate the premises. However, an agreement could not be reached. Several inspections revealed that the two tenants, Fairfax Hydro Crane and Danella had removed most of their equipment, although some equipment, vehicles, and miscellaneous items remained. The few remaining on the Danella portion of the site would be removed in the next several days. Mr. Hansen said it had been two years and 10 months since the appeal was heard by the BZA. Staff now believed the appellants were finally making progress in bringing the property into compliance with the Zoning Ordinance. In light of the recent

circumstances, staff supported a one-week deferral to confirm that the Danella cleanup was complete, rendering the Danella appeal moot, as the Notice of Violation (NOV) would be satisfied.

Concerning the Cronan Family LLC appeal, Mr. Hansen said staff would support an approximate six-week deferral of decision until the BZA meeting scheduled for May 25, 2011, so all the remaining items could be moved off the property. He said that when the remaining items were removed from the property leaving an empty fenced lot, the NOV would be satisfied and the appeal of Cronan Family LLC would be rendered moot.

Chairman Ribble asked if there was anyone present who would like to speak to the deferral request.

J. Charles Curran, Esq., Kidwell, Kent & Curran, PC, Woodson Square, 9695 C Main Street, Fairfax, Virginia, Counsel for Cronan Family LLC, came forward to speak. He said they were agreeable to the recommendation for deferral.

Francis A. McDermott, Esquire, Hunton & Williams, LLP, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, Attorney for Danella Construction Company of Virginia, Inc., came forward to speak. He said there was no objection to the one-week deferral, although that morning he had approached someone to suggest today the appeal be dismissed as moot. However, he understood staff's position on conducting a final site inspection to assure everything was gone. For the record, Mr. McDermott said, on March 21st, Danella had its power cut off. There remained five trailers, called five-wide, set together, on site, and at that point in time much of the move out had not yet begun. He said since then Danella moved 80 pieces of its equipment back to their Pennsylvania headquarters. Danella requested Allied Trailers to remove its trailers by March 22nd, that the power would be turned off March 21st, and Allied Trailers were informed ahead of time. Mr. McDermott said Allied Trailers came out and in one day, separated the trailers, tore the floors out, and everything was to be removed last week, but was not. However, as of today, the last of the trailers were towed out. Danella no longer had a contract with Verizon as of January 31st, and it was fortunate the property purchase had not gone ahead. Danella hoped to remain in the area. They were still working onsite on the Tysons Corner metro project. They looked forward to picking up other contracts, but essentially had removed everything from Northern Virginia, and had reduced its number of employees from 97 to 7. Mr. McDermott clarified that the non-renewal of Verizon's contract was not due to the situation with the Cronan property, but with Verizon being in the process of consolidating its contracts. Mr. McDermott said the site would be completely cleared within a day or two, and he and his client each thanked the Board for its patience, consideration, and understanding over the long period of time.

Chairman Ribble said the case was closed, and then said he would entertain a motion.

Ms. Gibb moved to defer decision on Cronan Family, LLC, A 2008-SU-008 to May 25, 2011. Concerning Danella Construction Company of Virginia, Inc., A 2008-SU-037, Ms. Gibb moved to defer the decision to April 13, 2011.

Mr. Smith seconded the motions.

Chairman Ribble called for a vote.

The motion carried by a vote of 5-0. Mr. Hart recused himself. Mr. Hammack was absent from the meeting.

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~ ~ ~ April 6, 2011, Scheduled case of:

9:00 A.M. ROGER J. TEDD, A 2010-SP-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the storage of a prohibited commercial vehicle and dumpsters in association with a heavy equipment and specialized vehicle sale, rental and service establishment use on property in the R-C District in violation of Zoning Ordinance provisions. Located at 11717 Amkin Dr. on approx. 5.06 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-3 ((5)) 26.

Chairman Ribble called the appellant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Roger J. Tedd, 11717 Amkin Drive, Clifton, Virginia, came forward. Joshua Raynes (no address given) also came forward stating he would speak for Mr. Tedd.

Jill Cooper, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. The appeal, which was the result of a Notice of Violation (NOV), was of a determination that the appellant was allowing the storage of a prohibited commercial vehicle and roll-off dumpsters in association with a heavy equipment and specialized vehicle sale, and rental and service establishment use on property in an R-C District, which was in violation of Zoning Ordinance provisions. In response to a complaint alleging that there were several roll-off dumpsters on the property, a site inspection conducted August 20, 2010, and a subsequent inspection confirmed storage of roll-off dumpsters and an associate trailer. The inspection evidenced that the appellant was operating his dumpster rental business, Rightsize Roll-off Dumpster Rental, from his home. A Home Occupancy Permit was obtained for the business office component, but was later cancelled. A dumpster rental business, and the dump trailer, is prohibited in a residential district, and staff recommended the BZA uphold the determination of the Zoning Administrator as set forth in the NOV dated December 16, 2010.

Vice Chairman Hammack assumed the Chair.

Concurring with Mr. Smith's understanding of the December 16, 2010, NOV, Ms. Cooper clarified that it was a two-fold violation. It cited the trailer, and also operating the business from the property.

Discussion ensued regarding the trailer, Code requirements for commercial vehicles, operation of a business on property not zoned for the use, Code definition for trailers, dumpsters, commercial vehicles, and the difference between trucks versus trucks that have the capacity to dump materials.

In response to questions from Mr. Hart and Mr. Beard concerning trailers, equipment, and various vehicles that may be prohibited in an R District, Michael Congleton, Strategic Initiatives Manager, Department of Code Compliance, explained there were similar types of vehicles staff dealt with that were considered prohibited commercial vehicles. He identified differences among many of the vehicles and their specific uses.

In response to a question from Chairman Hammack, Mr. Congleton further explained the difference and similarity between a pickup truck with attached special equipment from that of a dump trailer. Mr. Congleton said staff's major concern with the application was that on occasion, Mr. Tedd ran his business from the property, and that was what the NOV was based upon.

Further discussion ensued concerning the Board's questions about types of equipment, certain uses of vehicles/equipment, and permitted use of construction vehicles on properties zoned in an R District. Mr. Congleton said staff made its determination on a case-by-case basis of what the unit was designed for, what it was intended to do, and what it did, whether or not it would be a prohibited use by Ordinance standards.

Mr. Raynes, agent for the appellant, verified that the Board received and reviewed the supplemental materials he submitted. The simple narrative of the story, he said, was several years ago Mr. Tedd bought the trailer for farming purposes on his horse farm. A year later his client started a business of renting dumpster cans from his Alexandria office, but mistakenly stored rental cans on his Clifton property, which was what precipitated the complaint. Mr. Raynes said the Clifton property was restored exactly as before the complaint, and Mr. Tedd just wanted to use his trailer for his farm. Mr. Raynes gave definitions for several commercial vehicles, trailers, trucks with flatbed attachments, vehicles with dump capabilities, and their various uses. He explained his client's attempts to cooperate with the homeowners' association to be permitted, if necessary, storage of the cans. He explained the confusion regarding the Clifton location posted on the website. Mr. Raynes stated that Mr. Tedd never ran the business from his home, the trailer was bought two years ago for farm use, he thought to earn a little supplemental income when he began to store rental cans on his Clifton property, and that he sought to keep the trailer on his property for continued agricultural uses.

Discussion ensued regarding the possibility of storing the dumpsters and trailer on another site, further explanation of staff's definition of what constituted a dump capacity unit, and various uses capable of Mr. Tedd's commercial equipment.

The meeting recessed at 11:30 a.m. and reconvened at 11:40 a.m.

Chairman Ribble resumed the Chair. He called the meeting to order, and asked if anyone would like to speak to the appeal.

Richard Korn, 11720 Amkin Drive, Clifton, Virginia, came forward. He requested that the Board protect the value of their homes, preserve the residential nature of the neighborhood, and uphold the Zoning Administrator's recommendation, including the restriction of the trailer specified in the staff report.

Judith Landolt Korn, 11720 Amkin Drive, Clifton, Virginia, came forward. She read a letter from the president of the Plantation Hills Homeowners Association who, on behalf of the homeowners, wrote the by-laws which stipulated all residents were required to be in compliance with Fairfax County's Zoning Ordinance.

Bill (last name unintelligible), 11718 Amkin Drive, Clifton, Virginia, came forward to speak. He said everyone moving into the area agreed to abide by the covenants, and he was concerned that allowing Mr. Tedd to continue his activity could establish precedence.

In rebuttal, Roger Tedd, 11717 Amkin Drive, Clifton, Virginia, said he appreciated his neighbors coming to the public hearing, that he was concerned about their issues, but he noted the HOA neither informed him nor cited him for any type of violation. He assured that he wanted to be a good neighbor, and again requested he be allowed to keep his trailer, because without it keeping up with the farm's maintenance would be difficult.

Ms. Cooper said staff heard from the appellant that the cans were gone and the dumpsters removed six months to a year ago. However, neighbors informed staff, and also a site inspection approximately four months ago evidenced, that the dumpsters were still there. She noted that one vehicle clearly was designed to transport the dumpster, and it was not typically used for farm or agricultural use. Ms. Cooper stated that dumpsters were not permitted in residential districts unless on a construction site, and must have all the applicable building permits. Ms. Cooper said it appeared that the business was operating from the subject site, and asked the BZA to uphold the Zoning Administrator's determination.

In response to a question of Ms. Gibb, Lincoln Bise, Department of Code Compliance, said he saw a dumpster and a trailer mounted onto a truck during his last inspection on December 13th.

Discussion ensued regarding the dumpster in of itself being a violation, the NOV citing a business operation from the Clifton site, whether there should be a business registration with the City of Alexandria, advertisements for equipment for rent with the Clifton address, a truck registered in Mr. Tedd's name, and a specific definition in the Zoning Ordinance for farm equipment and agriculture.

Chairman Ribble closed the public hearing.

Mr. Smith moved to uphold the determination of the Zoning Administrator. He said it was a difficult case, and that every detail was analyzed. It boiled down to the definitions in the Ordinance of Sections 2-302 and 10-102, regarding permitted uses in residential districts, permitted accessory uses, and definitions of commercial vehicles. He said there were exceptions to a commercial vehicle, and whether it was for personal use or rented, but he thought the bed of the pickup truck could be used for the agricultural uses, and the dump truck was not necessary. Mr. Smith quoted Ordinance language definitions regarding specific vehicles, solid waste collection, a tractor and/or trailer, dump truck, and construction equipment that were not permitted to be parked in a residential district. Pertaining to the cited vehicle, Mr. Smith said he thought it was not a solid waste collection vehicle or construction equipment, but it was a dump truck that most closely fit the definition in the Ordinance and upon which the Zoning Administrator relied. He explained how the hydraulic lift capability complicated the use definition, that that there were subtle differences, but the line had to be drawn somewhere. Some deference was given to the Zoning Administrator's opinion, who was empowered to interpret Ordinance rules, and did so on a daily basis. Mr. Smith said it seemed pretty clear to him that it was being used for commercial purposes. There was the website and the Clifton address, there was clear testimony that the trailer was used to take and pick up the dumpsters, and it all confirmed that it was being used for commercial purposes. Mr. Smith said he sympathized with all involved with the case, but he thought staff got it right.

Mr. Beard seconded the motion.

Chairman Ribble called for discussion.

Mr. Hart said he reached a somewhat different conclusion, and he would have upheld-in-part. He said he thought there was a violation, but not with the whole thing.

Discussion ensued concerning the Ordinance sections cited, interpretations of the vehicle definitions, the Notice of Violation letter's interpretation of the use, the two Zoning Ordinance provisions cited in the NOV letter upon which Mr. Smith based his motion, various vehicles and equipment that may be associated with or were considered as farm equipment, the implication that the truck was performing a commercial use, otherwise it would have had an agricultural license tag, the fact that the dumpster was reported on the property months previously, and that the opinions and judgments of the Zoning Administrator and staff were taken very seriously.

Chairman Ribble called for a vote.

The motion carried by a vote of 7-0.

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~ ~ ~ April 6, 2011, Scheduled case of:

9:00 A.M. ANTHONY ELLER AND BARBARA D. ELLER, A 2010-PR-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and a storage yard, have erected an accessory fence in the front yard that exceeds the 4-foot height restriction, and are occupying a structure that does not meet the minimum bulk regulations for the side yard setback requirement, all on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 1927 Byrd Rd. on approx. 10,934 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((10)) (4) 5B.

Chairman Ribble noted that A 2010-PR-018 was administratively withdrawn.

Jill Cooper, Staff Coordinator, said that the notice of violation was rescinded and reissued.

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~ ~ ~ April 6, 2011, After Agenda Item:

Request for Intent to Defer
Harvest Chinese Christian Church, SP 2009-SU-066

Chairman Ribble noted that this after agenda item was a request for an intent to defer the church's application from April 20th to May 4, 2011.

In response to Mr. Beard's question for the reason for the request, Susan C. Langdon, Chief, Special Permit and Variance Branch, said it related to an option the church was exploring with the School Board to be permitted inter-parcel access, and there was an upcoming meeting to request the May 4th date.

Mr. Byers moved to defer the public hearing for SP 2009-SU-066, Harvest Chinese Christian Church, to May 4, 2011. Ms. Gibb 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 12:25 p.m.

Minutes by: Paula A. McFarland

Approved on: December 6, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, April 13, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Thomas W. Smith III was absent from the meeting.

Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ April 13, 2011, Scheduled case of:

9:00 A.M. 9:00 A.M. JOAN F. ENDT, SP 2011-SP-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within the existing dwelling. Located at 7822 Belleflower Dr. on approx. 10,040 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-2 ((14)) (11) 12.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Joan F. Endt, 7822 Belleflower Drive, Springfield, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2011-SP-003 for the reasons as outlined in the staff report.

Ms. Endt presented the special permit request as outlined in the statement of justification submitted with the application. She said did not know she needed a permit to have an accessory unit, and noted that the unit had been in existence for approximately 17 years. Her children wanted her to have a caregiver live with her as she aged. She stated that if she was unable to keep the unit, it would cause her considerable hardship.

Mr. Hart pointed out that one of the violation letters had been issued because the bedroom did not have a doorway or window that was low enough to get out in an emergency. Ms. Endt confirmed that she switched the office/den with the bedroom since, there was a door in the office/den. She said there were stepping stones from the driveway to the back of the house.

Chairman Ribble called for speakers.

Thomas Hay, 7773 Jewelweed Court, Springfield, Virginia, spoke in opposition to the accessory dwelling unit. He said the neighborhood was comprised of single-family units, and that approval of this application would set a precedent for having rental units within the homes.

Denis Rushworth, 6827 Camus Place, Springfield, Virginia, said he was the next-door neighbor to the applicant. He objected to the conversion of any of the neighborhood homes to multiple-family dwellings. He was sympathetic to the applicant's need for a caregiver, but felt it would set a precedent for others to have renters in a single-family neighborhood.

Jay Kretsch, 6812 Bluecurl Circle, Springfield, Virginia, spoke in opposition to the application, and stated that the Daventree Community Association bylaws prohibited tenants in the single-family homes.

In response to a question from Mr. Hart, Charles Fitzhugh, Inspector, Department of Code Compliance, said that he was sent out to the property in May 2010, based on a complaint. He said there were no complaints prior to that. The nature of the complaint was that someone had seen a basement apartment with a kitchen advertised on Craigslist.

Mr. Beard and Ms. Hedrick discussed the Ordinance language regulating accessory dwelling units for persons over 55 years of age. Ms. Hedrick noted that the applicant could rent out the property within the confines of the special permit language. She also pointed out that there was adequate parking in the applicant's driveway.

Mr. Hart asked if it would be appropriate to add a condition stating that the office/den would not be used as a bedroom and that the applicant would have to comply with the requests outlined in Mr. Fitzhugh's letter. Ms. Hedrick responded that it would be.

Dick Genn, President of the Davenport Community Association, said the Board of Directors had asked him to register their opposition to the application. He said there were options for the older residents, like elder care assistance facilities. Mr. Genn felt that approval of the unit would threaten their way of living.

Mr. Byers pointed out that the applicant had rented out the basement for over 17 years, and asked if the Board of Directors had ever seen a letter of violation to her. Mr. Genn said they had not. Mr. Byers also noted that the Board did not enforce covenants. Mr. Hart added that it was for a judge to decide whether the covenants were valid and enforceable. He said the Board's only job was to determine whether this particular application met the requirements of the Zoning Ordinance.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the available on-site parking, with Ms. Langdon noting that the driveway could accommodate three cars.

David James Allen, 7861 Vervain Court, Springfield, Virginia, asked if inspections and permits were obtained when the basement was remodeled. He said that if the apartment was truly for elder care, the applicant should not be able to charge rent.

Mr. Beard asked whether it was the Board of Supervisors intent when the Ordinance was first adopted, to allow the elderly to rent out an accessory unit to help them stay in their homes. Ms. Langdon said that it was possibly one of their intents.

In rebuttal, Ms. Endt said she intended to remain living in her home, and did not intend to impact the neighborhood. As far as the unit being for profit, she said profit had never been her intention, but rather having someone to share expenses.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-SP-003 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOAN F. ENDT, SP 2011-SP-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within the existing dwelling. Located at 7822 Belleflower Dr. on approx. 10,040 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-2 ((14)) (11) 12. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 16, 2011; and

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

1. The applicant is the owner of the property.
2. The present zoning is PDH-3.
3. The area of the lot is 10,040 square feet.
4. The applicant has satisfied the requirements as set forth in the Ordinance.
5. Once a person gets a Notice of Violation, they are required to either bring the structure or area into compliance, or remove the offending kitchen.
6. Under the Ordinance, a person that has a kitchen like this is permitted to seek a special permit to allow it to remain.

7. The special permit has conditions attached which allow inspection.
8. The special permit is only good for a number of years; it has to be renewed periodically.
9. It does not change the zoning category. The neighborhood remains residential.
10. The Board does not enforce covenants. They are considered a private remedy.
11. The board of directors of the homeowners association may try to enforce the covenants. We do not have them before us. We do not know what is in them. We do not know if they give a remedy or not. There is a lot of confusion on that with other homeowners associations who bring them in from time to time.
12. With respect to the rental issue, the Ordinance does not prohibit renting rooms or, in this case, renting the accessory dwelling unit.
13. The Board will not try to add a condition that prohibits rental in this particular case.
14. The Board has a favorable staff report.
15. The County Board of Supervisors enacted the accessory dwelling unit years ago, and as Mr. Hart said, they adopt the policy. The Board of Zoning Appeals is not here to change their policy.
16. If you have a problem with the policy, it should be discussed with the County Board representative.
17. If it requires that the garage be cleaned out to put a third or fourth car in the garage when an inspection is done, the applicant has indicated willingness to comply, that the garage be cleaned out and an extra car be put in there.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Joan F. Endt, and is not transferable without further action of this Board, and is for the location indicated on the application, 7822 Belleflower Drive, (10,040 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Larry N. Scartz, dated May 20, 1983, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 550 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for the kitchen in the accessory dwelling unit.
8. 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.

9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site including the garage, if required, as shown on the special permit plat. There shall be no parking in the street or over the sidewalk.
12. The space identified on the special permit plat as the office/den shall not be used for sleeping quarters.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. 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. Byers seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

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~ ~ ~ April 13, 2011, Scheduled case of:

9:00 A.M. JOE SOUKSAVATH, VC 2011-SU-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit waiver of the minimum lot area. Located at 6736 Cedar Spring Rd. on approx. 5.01 ac. of land zoned R-C. Sully District. Tax Map 64-2 ((8)) 6.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Keith Martin, agent for the applicant, 8221 Old Courthouse Road, Vienna, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation.

Keith Martin presented the variance request as outlined in the statement of justification submitted with the application. He explained that due to an error by the surveyor, an outlot of land had not been included with the Cub Run Memorial Gardens cemetery. Although he could have gone to Court to have the mistake changed, the current homeowner wanted to cooperate and donate the land to Cub Run. Mr. Martin noted that the application had the approval of the Western Fairfax Citizens Association.

In response to a question from Mr. Hammack, Mr. Martin stated that the error had been discovered when the cemetery started doing some research, and noted there were headstones on the outlot property.

Chairman Ribble called for speakers.

Ernest Harmond, 14921 Compton Road, Centreville, Virginia, said he was president and trustee of the cemetery. He stated that it was a family cemetery, and included 200 graves, some of which were not marked. Mr. Harmond said the area in question contained one grave marker and other visible graves.

David Hendrickson, 6732 Cedar Spring Road, Centreville, Virginia, stated his opposition to the application. He felt revisions to the property boundaries might lead to reallocation of the land, which could lead to redevelopment of the property.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the current R-C zoning on the property. Ms. Langdon pointed out that the cemetery predated the creation of the R-C district in 1982, so there could be no expansion of the use. Mr. Hart asked if the land could be given back to the cemetery without a variance. Ms. Langdon said it could be done in court.

In rebuttal, Mr. Martin said that since the applicant was a cooperative homeowner, who wished to donate the land to the cemetery. He did not see the need to obtain the land in court.

In response to a question from Mr. Hammack, Mr. Martin said he was not aware of any graves on the property.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 2011-SU-004 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOE SOUKSAVATH, VC 2011-SU-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit waiver of the minimum lot area. Located at 6736 Cedar Spring Rd. on approx. 5.01 ac. of land zoned R-C. Sully District. Tax Map 64-2 ((8)) 6. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 2011; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-C.
3. The area of the lot is 5.0140 acres.
4. This is an extraordinary situation or condition of the subject property.
5. This is an extraordinary situation or condition of the use or development of the property immediately adjacent to the subject property.
6. This was not viewed as something that basically is a convenience to the property owner.
7. It essentially is a correction of an error made by a surveyor in 1967.
8. The Board received a letter dated April 10, 2011, by James C. Katchum, Chairman of the Land Use Committee for the Western Fairfax County Citizens Association, indicating their approval of this application. The vote was unanimous.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;

- F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
 4. That the strict application of this Ordinance would produce undue hardship.
 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
 7. That authorization of the variance will not be of substantial detriment to adjacent property.
 8. That the character of the zoning district will not be changed by the granting of the variance.
 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 minimum lot area of 4.2650 acres, as shown on the plat prepared by Larry J. Ratliff, Land Surveyor, Ross, France and Ratliff, Ltd., dated November 3, 2010, as revised through January 10, 2011, submitted with this application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions.
2. These conditions shall be recorded by the applicant among the land records of Fairfax County. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning (DPZ) and the Department of Public Works and Environmental Services (DPWES) within 90 days of the variance approval.
3. All prospective purchasers of the property shall be notified in writing prior to sale of the property that these conditions have been recorded in the land records of Fairfax County.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants 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 lot has been recorded in the land records. The Board of Zoning Appeals may grant additional time to record the lot 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. Smith was absent from the meeting.

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~ ~ ~ April 13, 2011, Scheduled case of:

9:00 A.M. BIZUWORK TAFESSE AND HIWOT FESSEHA D/B/A HAVEN LOUNGE, SP 2011-MA-006
 Appl. under Sect(s). 8-503 of the Zoning Ordinance to permit commercial recreational use

(hookah lounge). Located at 3825-D South George Mason Dr. on approx. 1,175 sq. ft. of land zoned C-6 and CRD. Mason District. Tax Map 62-3 ((13)) 44.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart made a disclosure that his law firm had two current cases where the adverse parties were represented by Ms. Burke's law firm, the agent for the applicant. This had no bearing on the case before the Board, but Mr. Hart's firm rented property from partners in Ms. Burke's firm, so he said he would recuse himself from the public hearing.

Amber K. Burke, agent for the applicant, 9302 Lee Highway, Fairfax, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2011-MA-006, subject to the Proposed Development Conditions.

In response to a question from Ms. Gibb, Ms. Cho stated that the Ordinance required different levels of ventilation to handle smoke generation. She said the proposed use would require a high level of ventilation. Ms. Gibb noted that the Board had received a letter from an upstairs tenant complaining about smoke generated from the previous tenant. Ms. Cho stated that the applicant would have to bring the establishment up to Code.

Ms. Gibb, Chairman Ribble, and Dave Grigg, Inspector, Department of Code Compliance (DCC), discussed the ventilation issues associated with smoking, with Mr. Grigg stating that DCC had not had any issues thus far with regard to smoke infiltration. Susan Langdon, Chief, Special Permits and Variances Branch, said one of the development conditions addressed ventilation adequacy.

In response to a question from Mr. Beard, Ms. Cho stated that this site was previously operating a hookah lounge, but was issued a Notice of Violation (NOV), and voluntarily shut down in 2009.

Responding to a comment made by Mr. Byers, Ms. Langdon stated that staff was cognizant of the secondhand smoke concerns and had asked other departments for their input regarding the development conditions.

Chip Moncure, Inspector with DCC, Chairman Ribble, and Mr. Beard discussed a current hookah lounge operating by right in the County, with Mr. Moncure noting that it had a separate ventilation system to address the secondhand smoke.

Amber Burke presented the special permit request as outlined in the statement of justification submitted with the application. She noted that the previous tenant had been there for ten years without a non-RUP, having had no permits or inspections, and operated 24 hours a day. After providing a brief history of the site development, Ms. Burke pointed out that the smoking regulations for restaurants changed in December 2009, and the applicant installed a new smoke ventilation system. She realized that the upstairs tenant had concerns about secondhand smoke, but reiterated that the applicant was very different from the previous tenant. Ms. Burke asked that the Board approve the application.

In response to a question from Ms. Gibbs, Ms. Burke said there was a market on one side of the applicant, and the other side was vacant.

Discussion ensued with regard to the proposed development conditions. Mr. Hammack stated his concern about conditions placed on this applicant, where elsewhere those same conditions are allowed by right. Ms. Langdon pointed out that the County wanted to restrict this use to a hookah lounge and not get into areas where there have been previous problems, such as alcohol use and amusement machines. Ms. Cho said these development conditions had been screened with numerous agencies and carefully thought out. Ms. Burke stated that the applicant was not opposed to the proposed development conditions. Mr. Hammack and Mr. Beard felt the conditions were too onerous and would limit the applicant's ability to make a profit.

In response to a question from Ms. Gibb, Ms. Cho said she had received a few telephone calls from neighbors regarding potential noise and service of alcohol, but nothing in writing.

Chairman Ribble called for speakers.

Adam Tafesse, son of the owners, stated his family was longtime residents of Fairfax County. His parents have always tried to follow the rules, and wanted to work with the County to bring the establishment into compliance.

Casey Kheil, 737 S. 25th Street, Arlington, Virginia, spoke in favor of the application. Said she used to go to the other lounge, but this one was much nicer and family owned.

Yonathan Kiflate, 15512 Exmoor Court, Woodbridge, Virginia, said he worked for the Department of Education in Washington, D.C. He stated that he met the family through being a customer there, and noted that it was an enjoyable respite away from D.C.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-MA-006 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BIZUWORK TAFESSE AND HIWOT FESSEHA D/B/A HAVEN LOUNGE, SP 2011-MA-006 Appl. under Sect(s). 8-503 of the Zoning Ordinance to permit commercial recreational use (hookah lounge). Located at 3825-D South George Mason Dr. on approx. 1,175 sq. ft. of land zoned C-6 and CRD. Mason District. Tax Map 62-3 ((13)) 44. 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 13, 2011; and

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

1. The applicants are the lessee of the property.
2. The Board has a favorable staff report.
3. Based on the testimony of the applicant's agent and the staff members present, the Board's concerns, mostly about the smoke on the adjacent tenants, have been addressed.

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 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, Bizuwork Tafesse and Hiwot Fesseha d/b/a Haven Lounge, and is not transferable without further action of this Board, and is for the location indicated on the application, 3825-D South George Mason Drive, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dewberry & Davis, dated April 1981, approved with this application, as qualified by these development conditions.

3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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 use shall be in general conformance with the floor plan, included as Attachment 1.
6. Maximum occupancy shall not exceed 60 persons, including employees, in the facility at any time.
7. The maximum hours of operation of the use shall be limited to 11:00 a.m. to 2:00 a.m. daily.
8. Employees shall be a minimum of eighteen (18) years of age.
9. Entry to the establishment shall be limited to customers who are eighteen (18) years of age and older. A door counter shall be present during the hours of operation to validate the age of patrons and to ensure compliance with the maximum occupancy permitted.
10. The number of required parking spaces shall be provided in conformance with the provisions of 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 of the BuildAmerica shopping center.
11. No alcohol shall be stored or served on site.
12. No food shall be prepared on site, except prepackaged snacks.
13. There shall be no amusement games or gambling on the premises.
14. There shall be no live entertainment or a dance area.
15. The use shall be open to inspection by all departments of the County of Fairfax during the hours of operation.
16. The applicant shall complete a Fire Safety Technical Inspection once a year. A copy of the inspection shall be filed with the Fairfax County Department of Planning and Zoning.
17. Notwithstanding the notes on Attachment 1, prior to approval of the non-RUP, a tenant layout plan which complies with the currently adopted Virginia Construction Code shall be submitted to and approved by Building Plan Review.
18. The Non-Residential Use Permit (non-RUP) shall include restrictions on the maximum occupancy permitted, number of permitted tables and the maximum hours of operation.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. 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. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Mr. Smith was absent from the meeting.

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The meeting recessed at 11:03 a.m. and reconvened at 11:13 a.m.

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~ ~ ~ April 13, 2011, Scheduled case of:

9:00 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09, 10/27/09, 1/27/10, 5/26/10, 11/3/10, and 2/2/11 at appl. req.)

Chairman Ribble noted that A 2009-PR-006 had been administratively moved to May 25, 2011, at 9:00 a.m., at the applicant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated her belief that the violations would be cured by the end of the week.

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~ ~ ~ April 13, 2011, Scheduled case of:

9:30 A.M. TAM DO, A 2010-MA-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 7105 Wilburdale Dr. on approx. 21,781 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((9)) 50. (Admin. moved from 3/2/11 at appl. req.)

Chairman Ribble called the appellant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Nguyen Do, son of the property owner, 11009 Hampton Road, Fairfax Station, Virginia came forward.

Jill Cooper, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. She said the hearing was a result of a Notice of Violation (NOV), and gave a brief history of the property, noting numerous violations over the years.

In response to a question from Mr. Beard, Mike Congleton, Department of Code Compliance, said there had been an administrative mix-up. He said the NOV should not have been issued, since the property was already under a court order. Mr. Congleton noted that after the public hearing, the NOV would be rescinded, and the public hearing rendered moot.

Mr. Hart and Mr. Congleton discussed who the lawsuit would be brought against, since the property was co-owned. Mr. Hart noted that one of the owners was not present.

Mr. Beard said he did not think the public hearing should be opened since the NOV was issued in error.

Mr. Hammack felt the Board had the right to defer the public hearing, so that the courts could take the appropriate action. However, Mr. Nguyen had the right to give testimony on the appeal.

Mr. Nguyen asked to speak to the deferral. He stated his frustration with the court system, and noted that the second kitchen had been removed.

In response to a question from Mr. Hart, Ms. Nguyen said an agreement had been reached with the County over 11 years ago.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff was requesting a one-week deferral.

Mr. Hart asked Mr. Nguyen if he would rather go forward with the public hearing today. Mr. Nguyen responded that he would do whatever was best.

Chairman Ribble called for speakers to the continuance. There was no response.

Mr. Beard said he did not believe Mr. Nguyen understood that he will not be before the Board next week, if the NOV was withdrawn. Mr. Nguyen said he understood that the County was taking him back to court.

Mr. Beard moved to continue public hearing until April 20, 2011. Ms. Gibb seconded the motion, which passed unanimously. Mr. Smith was absent from the meeting.

Mr. Nguyen stated that he will be out of town on April 20, 2011, and asked that it be continued until May 4, 2011.

Mr. Beard then moved to continue the public hearing until May 4, 2011, at 9:00 a.m. Ms. Gibb seconded the motion, which passed on a vote of 6-0. Mr. Smith was absent from the meeting.

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~ ~ ~ April 13, 2011, Scheduled case of:

9:00 A.M. CARLOS C. CADENAS AND LEDA S. CADENAS, A 2010-MA-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a minimum of three families and at least one unrelated individual to reside in a single family dwelling on property in the R-4 District in violation of the Zoning Ordinance provisions. Located at 3007 Greenway Blvd. on approximately 10,966 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 85. (Continued from 3/23/11)

Chairman Ribble noted that A 2010-MA-017 had withdrawn.

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~ ~ ~ April 13, 2011, Scheduled case of:

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, 9/15/10, 11/17/10, 12/15/10, and 4/6/11)

Mr. Hart had recused himself from this case previously, and said he was going to do so again.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she was distributing a letter to the Board from Frank McDermott, attorney for the appellant, withdrawing the appeal. Mr. McDermott felt the Notice of Violation was moot, since the violation had been removed.

In response to a question from Mr. Hammack, Ms. Stanfield said Mr. McDermott's letter would be made part of the record.

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~ ~ ~ April 13, 2011, After Agenda Item

After Agenda Item
Request for Reconsideration from Joshua Raynes
Regarding Roger J. Tedd, A 2010-SP-019.

For purposes of discussion, Mr. Hammack moved to reconsider the appeal of Roger J. Tedd, A 2010-SP-019.

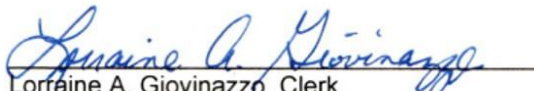
The motion died for lack of a second, therefore the reconsideration was denied.

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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: Suzanne L. Frazier

Approved on: October 9, 2016


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, April 20, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack Jr. Absent from the meeting was Thomas W. Smith III.

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

~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. T-MOBILE NORTHEAST LLC & COMMONWEALTH SWIM CLUB, INC., SPA 79-A-075-03 (amend SP to permit telecom facility) (*Indefinitely deferred from 2/10/10.*) (*Reactivated from indefinite deferral on 11/16/10.*)

Chairman Ribble noted that SPA 79-A-075-03 had been indefinitely deferred at the applicants' request.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. ORANGE HUNT SWIM CLUB, INC., & T-MOBILE NORTHEAST, LLC., SPA 72-S-098 (In association with SE 2010-SP-027) (amend SP for site modifications to permit telecom facility) (*Admin. moved from 3/16/11 at appl. req.*)

Chairman Ribble noted that SPA 72-S-098 had been indefinitely deferred at the applicants' request.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. JAMES EPISCOPAL CHURCH AND T-MOBILE NORTHEAST LLC, SPA 86-V-052-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 86-V-052 previously approved for church with child care center to permit the addition of a telecommunications facility. Located at 5614 Old Mill Rd. on approx. 4.88 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4B. (*Indefinitely deferred from 10/6/09 at appl. req.*) (*Reactivated and scheduled for 11/17/10.*) (*Admin. moved from 11/17/10, 1/26/11, and 2/16/11 at appl. req.*)

Chairman Ribble noted that SPA 86-V-052-03 had been administratively moved to June 22, 2011, at 9:00 a.m., at the applicants' request.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. SIDNEY HAROLD ALEXANDER, JR., SP 2011-LE-004 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 21.2 ft. from rear lot line. Located at 7129 Vantage Dr. on approx. 9,171 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-3 ((2)) 6092.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sidney H. Alexander, Jr., 5930 Peverill Drive, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2011-LE-004 for the addition, subject to the proposed development conditions.

In response to a question from Mr. Byers concerning corrective work orders, Melissa Smarr, an inspector with the Department of Public Works and Environmental Services, explained that it was the previous owners who were issued the work orders. She informed the Board of the house going into foreclosure, the Federal Deposit Insurance Corporation's subsequent seizure of the defaulted bank to which the ownership of the house had been transferred, and the current legal situation of the applicant.

Frank Miller, Investigator, Department of Code Compliance, responding to Mr. Hart's question, said the inspection he conducted with Mr. Alexander found definite Building Code issues involved in the framing, floor issues, a low ceiling and the need for a light. He said if the applicant were allowed to keep what was done, residential inspections would be required on the framing.

Discussion ensued concerning whether a special permit amendment application might be required depending on what minor or major changes the applicant sought.

Mr. Alexander presented the special permit request as outlined in the statement of justification submitted with the application. He said he was unaware that there was an issue with the house when he purchased it, and at that point in time he was trying to bring the building up to Code and complete his project.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-LE-004 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SIDNEY HAROLD ALEXANDER, JR., SP 2011-LE-004 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 21.2 ft. from rear lot line. Located at 7129 Vantage Dr. on approx. 9,171 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-3 ((2)) 6092. 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 20, 2011; 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 Sect. 8-914, Provisions for Approval of Reduction in Minimum Yard Requirements Based on an Error in Building Location.
3. The Board has determined that the applicant has satisfied the criteria set forth in Sub. Sects. A through G.
4. The applicant in particular has met Sub. Sect. B that the non-compliance was done in good faith or through no fault of the property owner.
5. This is an interesting background on a little window into our economy the past two years with the owner that did the work being foreclosed, and the property going through a bank, and then FDIC in the present property and not being notified of the zoning issues involved at the purchase date. In any event, the Ordinance has been satisfied in this application.
6. There is just a small triangle portion across the rear of this addition that actually is in violation of overwhelming Code issues within the setback line.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the two-story addition, as shown on the plat prepared by George M. O'Quinn, dated May 7, 2010, as submitted with this application and is not transferable to other land.
- 2. Appropriate building permits and final inspections for the addition shall be diligently pursued and obtained within six (6) months of final approval of this application.

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. Smith was absent from the meeting.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. RUSSELL R. PAUGH, SP 2011-BR-008 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 carport to remain 1.69 ft. and accessory storage structure to remain 0.45 ft. from side lot line. Located at 7305 Leesville Blvd. on approx. 10,630 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (8) 2.

Chairman Ribble noted that SP 2011-BR-008 had been administratively moved to May 25, 2011, at 9:00 a.m., at the applicant's request.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said it subsequently was moved to June 8th.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. TRUSTEES OF THE MOUNT VERNON METHODIST CHURCH AND NEW CINGULAR WIRELESS PCS, LLC, D.B.A. AT&T MOBILITY, SPA 80-V-089 Appl. Under Sect(s). 3-403 of the Zoning Ordinance to amend SP 80-V-089 previously approved for a church with child care and telecommunications facility to permit additions to telecommunications facility. Located at 2006 Belle View Blvd. on approx. 4.46 ac. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 (91)) and 93-1 ((25)) (4) 14. (Admin. moved from 3/23/11 at appl. req.)

Chairman Ribble called the applicants to the podium.

James R. Michal, the applicants' agent, 1120 20th Street, South Tower, Suite 300, Washington D.C., reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff did not believe that the application was in conformance with the Zoning Ordinance, specifically Sect 8-006, General Standard 3 provisions. While staff had no objection to the proposed use and believed that the application met the Comprehensive Plan Feature Shown Guidelines for telecommunications uses of the Public Facilities Section of the Policy Plan, the proposed location of the compound placed the compound along the steep embankments on the southern and western lot lines, and required a significant amount of land disturbance. In total, 5,580 feet of land disturbance, tree removal and a retaining wall were proposed to accommodate a compound measuring 324 square feet in area. Staff believed that this was an excessive amount of land disturbance when the applicant could locate the compound elsewhere on the site and utilize existing impervious surfaces on the property. For the reasons outlined in the staff report, staff recommended denial.

Discussion ensued concerning proposing development conditions explicit to addressing staff concerns, whether that was feasible, and would be helpful to the applicant.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said there was not much more the applicant could do then what was indicated in their development conditions. Staff continued to believe that the proposal resulted in too much clearance and tree disturbance.

Mr. Michal presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated he disagreed with staff's position that there would be a significant amount of disturbance. He gave a brief history of the site and an original proposal that was proved unfeasible. Mr. Michal said the beauty of this application was that virtually nothing would be visible, as the antennas would be in the steeple, and the ground equipment behind the existing T-Mobile compound. He maintained that there would be only a minimal amount of land disturbance and no significant tree loss. He explained the planned Best Management Practices, the access road, the impervious surfaces matter, the importance of emitting a strong signal, which mandated that the equipment could/should not be placed in certain areas, and he noted that the applicant was incurring an awful lot of expense to put in the facility. Mr. Michal said their proposal was the best option of getting the service in the area, without the degree of disturbance indicated by staff, while hiding the facility from the outside world. He noted the Planning Commission recently approved it as a Feature Shown, therefore, it had to comply with all applicable Zoning Ordinance standards and requirements. It was found to be a harmonious use.

As there were no speakers, Chairman Ribble closed the public hearing.

At that time, Mr. Hammack made a disclosure that he was looking at the list of companies, and said he may own stock in one or more of those companies. He recused himself from the vote.

Mr. Byers moved to approve SPA 80-V-089 for the reasons stated in the Resolution.

Mr. Beard seconded the motion commenting that he thought the applicant did an excellent job with the neighbors noting that there were no opposition letters or attendees at the public hearing in opposition. He

said if looking at the alternative, this was the better way to go, notwithstanding staff's concerns, to which he sympathetic.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE MOUNT VERNON METHODIST CHURCH AND NEW CINGULAR WIRELESS PCS, LLC, D.B.A. AT&T MOBILITY, SPA 80-V-089 Appl. Under Sect(s). 3-403 of the Zoning Ordinance to amend SP 80-V-089 previously approved for a church with child care and telecommunications facility to permit additions to telecommunications facility. Located at 2006 Belle View Blvd. on approx. 4.46 ac. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((1)) 70 and 93-1 ((25)) (4) 14. (*Admin. moved from 3/23/11 at appl. req.*) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 20, 2011; and

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

1. The applicant, Trustees of the Mount Vernon Methodist Church, is the owner of the land; New Cingular Wireless, PCS LLC, D.B.A. AT&T Mobility is the lessee of the land.
2. The zoning is R-4.
3. The area of the lot is 4.46 acres.
4. Initially when reading the staff report, the initial inclination would have been to deny this just from the standpoint of the impact on the environmental factors, but during the course of the testimony, the Board changed its mind.
5. It is understood that staff recommended denial; however, the basic concerns where whether optional places for this to actually be placed on the property itself; after reviewing Doug Peterson's email dated April 19, 2011, there are many mitigating factors with regard to this.
6. Another mitigating factor is the fact that there is a concern in communities and the Board is receiving that more and more from the standpoint of actually seeing this type of equipment, whether it is a monopole or whether it is equipment racks, or whatever, that is a consideration in this as well.
7. It is interesting for any for-profit company or corporation in the United States, the reasonable thing for a company to do if it could go anyplace else, would be to put it there because it is less expensive than where it is going to go in.
8. There has been an adequate explanation from the standpoint of using bores and decreasing the land disturbance as much as possible; that is a positive.
9. The Best Management Practices (BMP) issues are actually going to be adjudicated at site plan; that essentially is taken care of.
10. This is a reasonable request.

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 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 Mount Vernon Methodist Church and New Cingular Wireless PCS, LLC, d.b.a. AT&T Mobility, and is not transferable without further action of this Board, and is for the location indicated on the application 2006 Belle View Boulevard, and is not transferable to other land.

2. This special permit amendment is granted only for the purpose(s), structure(s), and/or use(s) as indicated on the Special Permit Amendment (SPA) Plat titled Special Permit Belle Haven Mount Vernon Methodist Church, prepared by BC Architects Engineers, dated June 24, 2010, as revised through February 24, 2011, signed by Christopher D. Morin, P.E. on February 25, 2011 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted uses.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Landscaping and screening may be required in accordance with Article 13 of the Zoning Ordinance as determined by the Urban Forest Management Division (UFMD), Department of Public Works and Environmental Services (DPWES).
6. The maximum number of seats in the sanctuary shall be 276.
7. The maximum number of students shall be 90; ages 4 months through 5 years.
8. The hours of operation for the child care center shall be 9:00 a.m. through 3:00 p.m., Monday through Friday.
9. Parking shall be provided as shown on the special permit amendment plat. All parking for the uses shall be on site.
10. The barrier requirement shall be waived along all property lines.
11. Transitional screening shall be modified along the northern, eastern and western lot lines to permit existing vegetation to meet screening requirements. Plant material shall be provided along the southern lot line as depicted on sheet L-1 of the special permit amendment plat. Additional vegetation shall be provided along the southern lot line as determined necessary by the Urban Forest Management Division to meet the requirements of the transitional screening ordinance.
12. Interior parking lot landscaping shall be provided and maintained as shown on the SPA Plat.
13. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as determined necessary by DPWES.
14. All antennas and related equipment cabinets or structures shall be removed within 120 days after such antennas or related equipment cabinets or structures are no longer in use.

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 as outlined above. 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. Beard seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack recused himself. Mr. Smith was absent from the meeting.

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~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from indefinitely deferred on 12/9/09) (Admin. moved from 3/3/10, 5/26/10, 7/14/10, 8/11/10, 9/15/10, and 11/3/10 at appl. req.) (Continued from 1/5/11) (Decision deferred from 3/16/11)

Chairman Ribble noted there was a decision deferral request to May 4, 2011.

Ms. Gibb moved to defer decision on SP 2009-SU-066 to May 4, 2011, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. MOHAMED DAOUNY AND WALIMA, INC., D/B/A WALIMA CAFE, SP 2011-MA-005 Appl. under Sect(s). 8-503 of the Zoning Ordinance to permit a commercial recreation facility (Hookah Lounge). Located at 3823D South George Mason Dr. on approx. 1,600 sq. ft. of land zoned C-6 and CRD. Mason District. Tax Map 62-3 ((13)) 51.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Zineb Khatib, agent and co-applicant, (address unintelligible), Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2011-MA-005, subject to the Revised Proposed Development Conditions distributed that morning which incorporated discussion from last week's public hearing for the same type of application within the same shopping center.

Ms. Khatib presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said they applied for the special permit after being advised they were not allowed to sell smoking materials in their facility. She said they hoped to operate a hookah lounge. In response to Mr. Hammack's question, she said they read and understood the revised proposed development conditions, and were in agreement.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-MA-005 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MOHAMED DAOUNY AND WALIMA, INC., D/B/A WALIMA CAFE, SP 2011-MA-005 Appl. under Sect(s). 8-503 of the Zoning Ordinance to permit a commercial recreation facility (Hookah Lounge). Located at 3823D

South George Mason Dr. on approx. 1,600 sq. ft. of land zoned C-6 and CRD. Mason District. Tax Map 62-3 ((13)) 51. 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 120, 2011; and

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

1. The applicant is the Lessee of the land.
2. There is a staff recommendation of approval.
3. The rationale in the staff report is adopted.
4. With the revision to the development conditions, the Board is being consistent with the case last week, and the new condition #17 would accommodate any concerns about smoke on adjacent uses, or it should, if the plans are being reviewed under the new Code.
5. Based on the record before the Board, there will not be a significant negative impact on anybody.
6. This is an area that is not really that visible from the street.
7. It is in the midst of many other small commercial uses like this and across from an industrial area.
8. The applicable criteria have been satisfied.

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 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, Mohamed Daouny and Walima, Inc. d/b/a Walima Café and is not transferable without further action of this Board, and is for the location indicated on the application, 3823-D South George Mason Drive, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Dewberry & Davis, dated April 1981, approved with this application.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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 use shall be in general conformance with the floor plan, included as Attachment 1.
6. Maximum occupancy shall not exceed 50 persons, including employees, in the facility at any time.
7. The maximum hours of operation of the use shall be limited to 11:00 a.m. to 2:00 a.m., daily.
8. Employees shall be a minimum of eighteen (18) years of age.
9. Entry to the establishment shall be limited to customers who are eighteen (18) years of age and older. A door counter shall be present during the hours of operation to validate the age of patrons and to ensure compliance with the maximum occupancy permitted.

10. The number of required parking spaces shall be provided in conformance with the provisions of Article 11 of the Zoning Ordinance, as determined by DPWES. All parking for the use shall be on site of the BuildAmerica shopping center.
11. No alcohol shall be stored or served on site.
12. No food shall be prepared on site, except prepackaged snacks.
13. There shall be no amusement games or gambling on the premises.
14. There shall be no live entertainment or a dance area.
15. The use shall be open to inspection by all departments of the County of Fairfax during the hours of operation.
16. The applicant shall complete a Fire Safety Technical Inspection once a year. A copy of the inspection shall be filed with the Fairfax County Department of Planning and Zoning.
17. Prior to approval of a new Non-RUP, a tenant layout plan which complies with the currently adopted Virginia Construction Code shall be submitted to and approved by Building Plan Review.
18. The Non-RUP shall include restrictions on the maximum occupancy permitted, number of permitted tables and the maximum hours of operation.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. 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. Smith was absent from the meeting.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. OCCOQUAN OVERLOOK LP, A 2011-MV-002 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination regarding the correct location of the boundary line separating the R-C and R-1 Districts on property located at Tax Map 106-3 ((1)) 4A. Located on approx. 63.51 ac. of land zoned R-C, R-1 and WS. Mt. Vernon District. Tax Map 106-3 ((1)) 4A.

Chairman Ribble noted that there was a deferral request by the appellant.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said staff was advised that the appellant would be out of town subsequent to the public hearing's advertisement. She requested the Board defer it to May 11, 2011.

There were no speakers present who wished to speak to the issue of deferral.

Mr. Byers moved to defer A 2011-MV-002 to May 11, 2011, at 9:00 a.m.

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

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. WRNS ASSOCIATES, A 2011-DR-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing two separate businesses to operate without site plan approval, valid Non-Residential Use Permits, valid Building Permits, or approved sign permit applications and that these businesses have established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd. on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (To be heard in conjunction with A 2011-DR-003)

Chairman Ribble noted that the application had been withdrawn.

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~ ~ ~ April 20, 2011, Scheduled case of:

9:00 A.M. CLS LAWN & LANDSCAPE, A 2011-DR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a contractor's offices and shops and a storage yard without site plan approval, a valid Non-Residential Use Permit, valid Building Permits, or approved sign permit applications and that this business has established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd. on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (To be heard in conjunction with A 2011-DR-001)

Chairman Ribble noted that the application had been administratively moved to June 8, 2011, at 9:00 a.m., at the appellant's request.


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As there was no other business to come before the Board, the meeting was adjourned at 9:55 a.m.

Minutes by: Paula A. McFarland

Approved on: December 6, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, May 4, 2011. The following Board Members were present: Chairman John F. Ribble III; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.; Absent from the meeting was V. Max Beard.

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

~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. SEAN AND KAREN REILLY, SP 2011-HM-009 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition such that side yards total 19.2 ft. Located at 1836 St. Boniface St. on approx. 11,604 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-3 ((10)) 67.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sean Reilly, 1836 St. Boniface Street, Vienna, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2011-HM-009, subject to the proposed development conditions.

Mr. Smith made a disclosure that he lived in this neighborhood, and indicated that he would recuse himself from the public hearing.

Mr. Reilly presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would provide more room for family gatherings. He assured the addition would be harmonious and compatible with the existing house and the neighborhood, and it would not adversely impact anybody. Mr. Reilly said all the neighbors supported the proposal. He noted that the application met Standard 6, and the lot's topography restricted where the addition could be located.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-HM-009 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SEAN AND KAREN REILLY, SP 2011-HM-009 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition such that side yards total 19.2 ft. Located at 1836 St. Boniface St. on approx. 11,604 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-3 ((10)) 67. 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 4, 2011; 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 additional standards for provisions for reduction of certain yard requirements as contained in Sect. 8-922 of the Ordinance.
3. The applicants had met the six required standards set forth in that Sub. Sect., in particular numbers 3, 4 and 6.
4. The Board has a favorable staff report.
5. There are certain letters filed that are also in support of the addition.
6. As presented by the applicant, the lot is actually substandard for the zoning category it is in.
7. The proposed addition is at the only location in the residence really which would accommodate what they wished to be done.
8. The reduction in yard requirements is minimal considering the request.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (218 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated November 23, 2010, as revised through March 16, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,707 square feet existing 5,560.5 square feet (150%) = 9,267.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers and Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Smith recused himself. Mr. Beard was absent from the meeting.

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~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. SARESH SHAH, SP 2010-MA-011 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6413 Columbia Pk. on approx. 18,475 sq. ft. of

land zoned R-2 and HC. Mason District. Tax Map 61-3 ((3)) 4. (Admin. moved from 4/21/10 and 6/9/10 at appl. req.) (Indefinitely deferred from 8/4/10 at appl. req.) (Reactivated from indefinitely deferred on 2/12/11)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Rajinder Shah, 6413 Columbia Pike, Annandale, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2010-MA-011, subject to the proposed development conditions.

Mr. Shah presented the special permit request as outlined in the statement of justification submitted with the application. He said the application was for a downstairs second kitchen for the purpose of housing a tenant. He said the tenant would effectively be a caretaker of the property, because he and his wife often travelled out of the country for long periods of time, and the insurance company would fully cover the property as long as the unit was occupied. There would be no structural alterations other than reducing the inside area which, he noted, complied to the 35 percent proposed square footage permitted for the maximum total gross floor area of the principal dwelling unit.

Discussion ensued regarding a Notice of Violation that was cited for a second dwelling unit constructed on the ground floor, which had included a kitchen and was built without the necessary permits. The violation was closed after Mr. Shah removed the second kitchen, and at that time he applied for this special permit.

In response to Chairman Ribble's question, Mr. Shah said he had read the development conditions.

In his closing comments, Mr. Shah noted that the driveway was long, and to date there were no objections from anybody.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2010-MA-011 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SARESH SHAH, SP 2010-MA-011 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6413 Columbia Pk. on approx. 18,475 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((3)) 4. (Admin. moved from 4/21/10 and 6/9/10 at appl. req.) (Indefinitely deferred from 8/4/10 at appl. req.) (Reactivated from indefinitely deferred on 2/12/11) 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 4, 2011; 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 that he has complied with the necessary standards.
3. Staff recommends approval of the accessory dwelling unit.
4. The applicant will abide by the development conditions.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen in the accessory unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Suresh Shah and/or Rajinder Shah, and is not transferable without further action of this Board, and is for the location indicated on the application, 6413 Columbia Pike (18,475 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Certified Real Estate Services, Ltd., dated August 11, 2003, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 570 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. 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.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning
10. Administrator in accordance with Section 8-012 of the Zoning Ordinance.
11. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
12. All parking shall be provided on site as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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 as outlined above. 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. BELVA & VOLNEY WARNER, SP 2011-DR-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 16.2 ft. from front lot line. Located at 6802 Weaver Ave. on approx. 11,753 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((17)) 74. (Admin. moved from 5/11/11 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Randy D. Strong, the applicants' agent, Strong LLC d/b/a DreamsBuilt, P.O. Box 3011, and home address, 141 Petunia Terrace, Leesburg, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval, subject to the proposed development conditions.

In response to Mr. Hammack's question, Mr. Strong clarified that the width of the driveway was 3 feet wider at the location Mr. Hammack indicated, to allow a walkway which went behind the garage to store trashcans out-of-view.

Discussion ensued regarding the driveway's width and length, clarification of the plat, and the size and location of the RPA area.

Addressing Board member comments, Mr. Strong explained that the sidewalk proposed along the driveway was necessary for wheelchair accessibility. He then proceeded with the justification for the special permit request as it was outlined in the statement of justification submitted with the application. He said the garage addition was clearly subordinate to the proposed scale, use, and intent of the principle structure; it would be in character and harmonious with the existing structure and surrounding structures with regard to location, height, bulk, and scale; and, it would not adversely impact adjacent properties regarding noise, light, air, safety, erosion, or stormwater runoff. The materials for the garage's exterior would match the house, all the trees would be saved, and there would be additional plantings of three bushes assuring that the existing vegetation was preserved. The garage's footprint represented the absolute minimum design that allowed the applicant to park her car and have wheelchair accessibility. He said the proposed area was the only location allowed under the requirements for a special permit.

There was more discussion regarding the driveway's length and width, compliance with special permit requirements, the concrete walls that already were in place, an adequate size to accommodate the applicant's vehicles and wheelchair, and, the proposed pedestrian circulation to and from vehicles and the garage entranceway.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to defer decision on SP 2011-DR-010 to May 18, 2011, at 9:00 a.m. Mr. Smith seconded the motion.

There was discussion concerning a request from Mr. Hart for staff to provide the Board information and measurements that would be the minimum necessary to accomplish wheelchair accessibility, and a justification for the driveway's length.

Chairman Ribble called for a vote. The motion carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit addition to remain 20.0 ft. from front lot line, accessory structure to remain 9.8 ft. from rear lot line and accessory storage structure to remain 0.0 ft. from rear lot line. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006). (*Admin. moved from 12/1/10 for ads*) (*Admin. moved from 1/26/11 at appl. req.*)

Chairman Ribble noted that SP 2010-LE-053 had been administratively moved to June 22, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5))10 (Concurrent with SP 2010 LE-053). (*Admin. moved from 12/1/10 for ads*) (*Admin. moved from 1/26/11 at appl. req.*)

Chairman Ribble noted that VC 2010-LE-066 had been administratively moved to June 22, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated from in definitely deferred on 12/9/09) (*Admin. moved from 3/3/10, 5/26/10, 7/14/10, 8/11/10, 9/15/10, and 11/3/10 at appl. req.*) (Continued from 1/5/11) (Decision deferred from 3/16/11 and 4/20/11)

Chairman Ribble noted that the case was deferred for decision only. He acknowledged receipt of the memorandums, commenting that they were lengthy.

Ms. Langdon concurred that staff had submitted a good deal of information. She said she thought staff had responded to the Board's earlier questions regarding access from the adjacent property.

There was discussion concerning the neighborhood developments access and egress from Cedar Spring Road, Route 29, and an adjacent church, staggering church services, consideration of specific development conditions that addressed times of services, the school board's position on inter-parcel access, the possible use of a perpetual easement, pertaining restrictions and standards of Virginia Department of Transportation (VDOT), the situation with VDOT not approving the service drive in the location where the easement with the school board's refusal to move the easement, clarification of whether a fence would be chain link or board-on-board, a tree save of specific white pines and, directing traffic by closing lanes, using cones, switching lanes, and police personnel directing traffic.

Mr. Hart noted that, from personal experience, the location was very tricky on Sundays, because of the number of churches.

Discussion ensued regarding VDOT's consideration and review of data on the potential traffic impact generated from a new application or whether the current congestion was included for its determination.

Shelby Johnson, Staff Coordinator, said staff considered land use impacts and the vehicular situation reviews of VDOT and the Fairfax County Department of Transportation (FCDOT). Discussion ensued concerning possible directions to steer traffic, utilization of police personnel for directing traffic, permissibility for and use of traffic cones, feasibility of looking at the big picture of the current traffic congestion, and the anticipated/expected increased impacts with more development.

Terry Yates, VDOT's Area Land Use Engineer for Fairfax County, explained that VDOT approved any entrance standards onto a VDOT or public right-of-way based upon the amount of traffic generated from that use. He noted that Cedar Spring Road had not warranted any improvements based upon the traffic that the church was generating, therefore, no improvements for Cedar Spring Road were recommended. Concerning Route 29, he believed that through the course of the review, it was deemed appropriate to widen the median at Cedar Spring Road and Route 29, provide a left-turn lane from Route 29 to Cedar Spring Road, and provide a right-turn lane from Route 29 to Cedar Spring Road to alleviate some of the traffic concerns expressed by the Board. In terms of VDOT recommendations for the approvals, Mr. Yates said he thought they went beyond the department, and perhaps were recommended by County staff, because VDOT could not recommend improvements that were not directly impacted by the entrance. He said the Sunday morning conditions cited by the Board were real and existed, however, VDOT had no ability to make a land use by-right address for those type improvements.

In response to questions of Board members, Mr. Yates said VDOT had no police powers on state highways, but he assumed the churches had to apply for a permit to direct the traffic. He confirmed that VDOT did not take the other existing traffic patterns into consideration when it reviewed the application.

Discussion ensued concerning VDOT's procedures when reviewing traffic and evaluating a site by utilizing a threshold of traffic generation and a traffic impact analysis (527).

Lou Ann Hutchins, FCDOT, explained that a 527 was based on the size of an application. She said the application did not generate enough trips to warrant a 527 analysis.

Discussion ensued concerning a by-right use versus a special permit use generating traffic, the extensive road improvements requested of the applicant, an adjacent church's traffic impact on the area, a proposed development condition, the different ratings assigned to roads that indicate traffic volume and congestion, and the possible future improvement of Cedar Spring Road.

Chairman Ribble called for a motion.

The Board acknowledged appreciation of staff for their presence and rigorous analysis, the number of things proffered by the applicant to reduce impacts, and the significant effort on the applicant's part to deal with the neighbors. It recognized that the applicant was a very small congregation, but was making significant improvements from a land use viewpoint, also acknowledging an issue of fairness, giving a suggestion that staff do a current and future comprehensive analysis of the area, and discussed the reasons why the school board refused to grant an easement to the applicant.

Mr. Hart moved to approve SP 2009-SU-066 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church with child care center. **(THE APPLICANT WITHDREW THE REQUEST FOR THE CHILD CARE CENTER.)** Located at 6612 Cedar Spring Rd. and 15201 Lee Hwy. on approx. 4.05 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((2)) 5 and 6. (*Indefinitely deferred from 10/6/09 at appl. req.*) (*Reactivated from in definitely deferred on 12/9/09.*) (*Admin. moved from 3/3/10, 5/26/10,*

7/14/10, 8/11/10, 9/15/10, and 11/3/10 at appl. req.) (Continued from 1/5/11.) (Decision deferred from 3/16/11 and 4/20/11.) 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 4, 2011; and

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

1. The applicant is the owner of the land.
2. This has been a very difficult application for everyone.
3. The Board appreciates the patience of the applicant in working through, as best we could, with the community and staff a number of issues that were presented.
4. As we run out of land in the County, the sites that are left are increasingly more difficult.
5. In the R-C District for non-residential special permit uses, we are required to give the application a rigorous review to make sure it meets certain criteria, and that rigorous review has taken place here.
6. To some extent, it is shown that this can be a very complicated analysis as to whether there is some sort of cumulative impact or threshold beyond which we are full up, and nothing more can go in.
7. The Board has seen the proposed development conditions change throughout this process and in general they have improved the application.
8. The building has been made substantially smaller since the beginning.
9. The development conditions address the appearance of the structure, and the type of exterior materials.
10. The coverage of the site has been addressed so that there will be 50 percent undisturbed open space.
11. The vegetation and parking issues have also been refined through this process.
12. Ultimately the Board has a staff report with a staff recommendation of approval, which is not always something that is achieved in the R-C District.
13. The Board has a lot of letters both for and against from nearby neighbors, residents around the application, from the Citizens Association, also from members of the church and the local community.
14. It is the Board's job to make a judgment call as to whether this application meets the applicable criteria.
15. The most difficult issue under Sect. 8-006, Number 4, "The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
16. Notwithstanding all the questions and discussion the Board had, staff had reached the conclusion, in order to make the favorable recommendation to the Board, that that standard had been satisfied.
17. The Board does not know what is going to happen on Lee Highway, but looking at the bigger picture, the approval of the KCPC, which has many, many thousand seats and cars, was the circumstance that changed the traffic in the neighborhood.
18. In the big picture, this particular facility isn't changing a whole lot, at least, to the volumes of traffic on Lee Highway.
19. The strip between the quarry and Cub Run, the parcels that are fronting on Lee Highway, in general, have been developing or redeveloping as non-residential uses, because that's really what the Ordinance is driving; there is no other place to put things except along an arterial.
20. We have approved several churches; several have been built; there's a couple others approved and not built; there's two schools; there's the swim club; and, perhaps other things that are going to happen.
21. This is a relatively small site with a relatively small number of cars in the middle of it.
22. The difficulty is there are also twenty some houses on Cedar Spring Road; they have no other way in and out except past this entrance.
23. The New Life facility may or may not be built; New Life is apparently pursuing other things as well.
24. From experience in the neighborhood, and particularly seeing the traffic on Sundays and hearing what people said about Cedar Spring Road, even though Condition 29 is unusual, something like 29 is probably needed or the residents of Cedar Spring are not really going to be able to get out.
25. If the people along Cedar Spring Road can get in and out, the Board tends to agree with staff that that condition is satisfied; it's principally a concern about the impact of this use, not on 29

- necessarily, but on the houses on Cedar Spring that are more or less blocked by a clump of church traffic trying to get out onto Lee Highway where they can't get out anyway because of whatever else is going on.
26. The Board is disappointed still at the way in which a situation like this is analyzed, to some extent, because there doesn't seem to be enough coordination of the permanent ad hoc cone setups to either side of this; it is unsure how they got approved or how this situation is going to factor into that.
 27. The applicant has agreed to Development Condition 29, and that is part of this package, that they understand that in order to get this, they're going to have to do it.
 28. To the extent that their parishioners aren't going to be able to turn left either without some help; they probably need something like this.
 29. If there isn't a police officer, it is not known what else is going to happen.
 30. The applicant is being required to do a great deal of transportation improvements even though the site is relatively small; it is because of the proximity to a four-lane divided arterial with a lot of traffic.
 31. There's going to be frontage improvements with the right turn. There's going to be the left turn lane from Lee Highway to turn left onto Cedar Spring, which isn't there now.
 32. The addition of the left turn on 29 to turn left on Cedar Spring will be an improvement of the existing conditions on Lee Highway because right now the cars that turn left onto Cedar Spring, one car can pull into the median break but the other cars have to stop in the through lane with the heavy traffic not going 55 or 60 necessarily, but they're going pretty fast, and they don't expect they are going to have to stop in the through lane.
 33. Creating a left turn lane for the Cedar Spring Road people to turn left will minimize the chances of people getting rear-ended as they're approaching the Pleasant Valley Road or going up to the Korean Church.
 34. As part of this package, that transportation improvement of creating the left turn helps not only the applicant but the neighborhood.
 35. Whoever is responsible for looking at intersections and turn lanes and all these timing of lights, or whatever can be done, this is a mixed up situation, and it is unsure that this is entirely the church's fault to be in the midst of it. Again, in terms of the proportions of it, this is a relatively small player in a big mix.
 36. It is suspected that there could be further improvements.
 37. What really made this application more difficult than it needed to be was the absence of inter-parcel access to the stop light, which is exactly where the access to this site should have been coordinated from the beginning.
 38. You get rid of service drives but you still want people to access the stop light, and one of the reasons you don't have or don't want a lot of new entrances onto a highway is because there will be other ways to get to a safe point to turn left or right.
 39. In this case, the service drive went away or never was built, but for whatever reason, the school is approved but, from one lot away, you can't get to the stop light.
 40. One of the major changes made in this application from the beginning was that the child care center was deleted, and much of the concern in the neighborhood had to do with the conflicts between the morning commuter traffic, particularly on Lee Highway, and people coming and going to the child care using Cedar Spring Road and that intersection.
 41. The applicant agreed to delete the child care component of this use, which had the effect of limiting largely the traffic situation to Sundays instead of everyday.
 42. While Child care is important, on some sites it's more difficult than others. The deletion of the child care center had the effect that reducing the intensity of the use, reducing the impact of the use on the surrounding community.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Harvest Chinese Christian Church and is not transferable without further action of this Board, and is for the location indicated on the application, 15201 Lee Highway and 6612 Cedar Spring Road, and is not transferable to other land.

2. This special permit (SP) is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Chi-Wen Kevin Liang, P.E., dated May 18, 2009, as revised through December 6, 2010 and signed December 9, 2010.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted uses.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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 seating capacity in the main area of worship shall be a maximum of 250 seats.
6. The design of the buildings shall be in substantial conformance with the architectural renderings included as Attachment 1 to these development conditions. In addition to the brick wainscot materials shown, all siding shall be made of Hardy Plank or similar type of materials on all sides of the building.
7. The building height shall not exceed 50 feet for the proposed structure shown on the SP Plat per the height definition in the Zoning Ordinance, except that steeples shall not exceed 60 feet in absolute height.
8. Irrespective of that shown on the plat, there shall be no child care center use outside of normal worship services.
9. An outdoor play area, a minimum of 2,520 square feet in size, shall be provided as noted on the SP Plat. No more than (25) children from the child care center shall occupy the outdoor recreation area at any one time. Notwithstanding what is shown on the plat, the play area and dumpster enclosure shall be fenced with a 6-foot high board on board fence or brick wall.
10. A minimum of 50% of the site shall be preserved as undisturbed open space as depicted on the SP Plat.
11. Parking shall be provided in the areas shown on the SP Plat and shall be a minimum of 101 spaces. All parking for the church shall be on site.
12. Tree Save Areas shall be preserved as depicted on the special permit plat.

Existing vegetation shall be used to meet the required transitional screening requirements along the southern and northern lot lines. In addition to the trees preserved in Tree Save Area 1 along the southern lot line, supplemental vegetation shall be planted generally between the south side of the church building and the Tree Save Area. If determined necessary by staff from the Urban Forest Management Division (UFMD), DPWES to further supplement existing vegetation, vegetation may be planted in the Tree Save Areas, but only the species and in the numbers and locations as determined by UFMD.

13. The barrier requirement shall be waived along all lot lines in favor of existing conditions and proposed vegetation.
14. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, 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, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction. The limits of clearing and grading shall be clearly marked for this

meeting and during all phases of construction. No construction equipment or supplies shall be located within any Tree Save Areas.

15. The applicant shall conform strictly to the limits of clearing and grading subject to allowances for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including the Urban Forest Management Division (UFMD), for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible as determined by DPWES. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SP Plat, they shall be located in the least disruptive manner necessary as determined by UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
16. The applicant shall submit a Tree Preservation Plan as part of the first and all subsequent Site Plan submissions or grading plan submissions, whichever occurs first. This plan shall designate the limits of clearing and grading as determined in the previous development condition and require that the areas outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space." There shall be no mowing of grass or structures located in the perpetually undisturbed open space. This plan shall be prepared by a professional with experience in the preparation of tree preservation, such as a certified arborist or landscape architect, and shall be subject to the review and approval of the UFMD, DPWES. The tree preservation plan shall be prepared in conformance with the requirements of the Public Facilities Manual (PFM) and shall be submitted for review by UFMD. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.
17. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four-foot high, fourteen gauge welded wire attached to six-foot steel posts driven eighteen-inches into the ground and placed no further than ten feet apart. Tree protection fencing shall be erected along the limits of clearing and grading wherever construction activities are proposed adjacent to areas to remain undisturbed. Super silt fence may be approved by UFMD to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved.

Three days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.

18. The applicant shall root prune and mulch, as needed to comply with the tree preservation requirements of these conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:
 - Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - Root pruning shall be conducted with the supervision of a certified arborist.
 - Immediately after the Phase II erosion and settlement (E&S) control activities are complete, mulch shall be applied at a depth of three (3) inches within designated areas without the use of motorized equipment.

- Mulch shall consist of wood chips, shredded hardwood and/or pine bark mulch. Hay or straw mulch shall not be used within tree preservation areas.
 - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
19. The applicant shall retain the services of a certified arborist or landscape architect to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation conditions, and UFMD, DPWES approvals. The applicant shall actively monitor the site to ensure that inappropriate activities such as the storage of construction materials, dumping of construction debris and traffic by construction equipment and personnel do not occur within the designated tree save areas. During any clearing of tree/vegetation/structure removal on the applicant property, a representative of the applicant shall be present to monitor the process and ensure that the activities are conducted in conformance with these conditions and as approved by UFMD, DPWES. The applicant shall restore understory plant materials, leaf litter and soil conditions to the satisfaction of UFMD, DPWES if these are found to be damaged, removed or altered in any manner not allowed in writing by UFMD, DPWES. The monitoring schedule shall include weekly inspections during demolition activities and once monthly inspections during construction activities. This schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFMD, DPWES.
 20. The applicant shall meet the requirements of the Tree Conservation Ordinance pursuant to County Code, Chapter 122.
 21. Prior to issuance of a Non-RUP, the applicant shall construct all road improvements to include, but not limited to, constructing a third eastbound thru-lane, an eastbound right-turn lane onto Cedar Spring Road from Lee Highway, an eastbound 5-foot wide on-road bike lane and a 10-foot wide paved trail along the site's Lee Highway frontage. Other road improvements include constructing a raised median between eastbound and westbound Route 29 traffic lanes, a westbound left-turn lane and corresponding taper and closure of the existing median break east of the proposed left-turn lane in consultation with the Fairfax County Department of Transportation (FCDOT), and as approved by the Virginia Department of Transportation (VDOT). The applicant shall provide all ancillary easements as determined by FCDOT and VDOT.
 22. Adequate outfall shall be demonstrated in accordance with the Public Facilities Manual (PFM), as determined by DPWES, at the time of site plan review.
 23. Stormwater Management (SWM) measures may be provided via a dry detention pond as shown on the SP Plat as determined by DPWES. The majority of Best Management Practices (BMPs) shall be met through a conservation easement placed over the Tree Save Areas (to be known as perpetually undisturbed open space) shown as Tree Save Area 1 and Tree Save Area 3. The remainder of required BMP will be met through natural or structural systems. If a modification of the PFM to permit the proposed stormwater management/best management practices as shown on the SP Plat is not granted by DPWES and SWM/BMP facilities in substantial conformance with the SP Plat cannot be provided, then a special permit amendment (SPA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES.
 24. All proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All lighting shall be full cut-off luminaries, shall be controlled by timers and shall be cut off when the site is not in use, except for security lighting. Lighting shall not be installed in landscape islands and all parking lot lighting shall be bollard-style with a maximum height from ground to top of luminary of 4 feet. No uplighting of landscaping, signage or architecture shall be provided.
 25. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance, and the lettering on the sign shall also be provided in English.
 26. The use of loudspeakers shall not be permitted outside the building.
 27. A minimum of forty-five (45) minutes shall be provided between the completion of one service and the commencement of the next service.

28. The applicant shall appoint a parking coordinator to ensure that the parking lot adequately provides for necessary parking and that the church parking does not take place into the surrounding neighborhood streets. If a problem is detected, then the church shall implement one or a combination of the following steps:
 - a. Car pooling;
 - b. Announcements by the church pastor requesting car pooling after a problem is detected or for special events or services for which a large turnout is expected;
 - c. Staggering of church services, or holding more than one Easter and Christmas service;
 - d. Arranging for parking at an appropriate alternate facility and providing transportation from such facility to the church;
 - e. Any other measure necessary to prevent parking from spilling into the residential neighborhood;
 - f. The applicant shall post the parking restrictions in their church bulletin each week to inform the congregation of these requirements.

29. 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 Lee Highway (Route 29) and Cedar Spring Road, if approved by the Fairfax County Police Department and VDOT.

30. Notwithstanding the white pines depicted on the plat, the approval of species for new plantings shall be made by the Urban Forestry Management Division, Department of Public Works and Environmental Services.

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. Smith seconded the motion, which carried by a vote of 5-1. Ms. Gibb voted against the motion. Mr. Beard was absent from the meeting.

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The meeting recessed at 11:35 a.m., and reconvened at 11:41 a.m.

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~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. RP MRP TYSONS, LLC, A 2010-PR-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located at 7950 Jones Branch Dr. on approx. 17.34 ac. of land zoned C-3. Providence District. Tax Map 29-2 (915)) C1. (*Admin. moved from 11/3/10 and 2/2/11 at appl. req.*)

Chairman Ribble noted that the application had been administratively moved to July 27, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ May 4, 2011, Scheduled case of:

9:00 A.M. TAM DO, A 2010-MA-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 7105 Wilburdale Dr. on approx. 21,781 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((9)) 50. (*Admin. moved from 3/2/11 at appl. req.*) (*Continued from 4/13/11.*)

Chairman Ribble noted that the case was administratively withdrawn.

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~ ~ ~ May 4, 2011, After Agenda Item:

Request for Additional Time
Salameh Brothers Construction Company, VC 01-V-187

Mr. Byers moved to approve six months of additional time. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was July 31, 2011.

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~ ~ ~ May 4, 2011, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Rosa E. Martinez

Chairman Ribble called the item and referred to the May 2, 2011, memorandum from Mavis E. Stanfield, Deputy Zoning Administrator for Appeals.

Mr. Hart asked staff why the matter was before the BZA if decisions were already handed down by two Circuit Court Judges.

Christopher A. Costa, Assistant County Attorney, representing the Zoning Administrator, said the case was determined in circuit court by Judge Jane Roush and Judge R. Terrence Ney. He submitted that the BZA had no jurisdiction to further consider the case, as it was over in circuit court.

Mr. Smith said he understood the matter was that of a Notice of Violation (NOV) in which last week the Zoning Administrator had filed a successful enforcement action. There now was an appeal that argued the NOV was procedurally deficient, because it had not included a Notice of the Right to Appeal. He asked for clarification.

Mr. Costa said the appellant's argument was that it was Sect. 2-502 under which the violation was cited. The Zoning Administrator's position was the violation was cited for a rooming house under Sect. 2-302. Staff's position was that the appeal application had not complied with the filing criteria of the Virginia Code and the Zoning Ordinance, because the appeal had not been filed within 30 days of the March 30, 2010, NOV.

Richard H. Nguyen, Esquire, 6402 Arlington Boulevard, Suite 371, Falls Church, Virginia, attorney for Rosa E. Martinez, presented the appellant's argument. He said based on the filing of the appeal, staff's assertion that he was untimely was not correct, because the 10-day appeal period had not commenced. Today he was asking that either the appeal be accepted, so that he could further flush out their NOV arguments, including the timeliness issue, or that the appeal not be accepted, because the time period to appeal had not begun.

Mr. Hart said the Board could not make a determination as to what the appeal period was or when it started, but procedurally only agree or not agree to hear the case.

Discussion ensued concerning the Zoning Ordinance and Virginia Code section designations for timely filing an appeal, 30 days versus 10 days, and the appellant's position on their belief that the appeal process had not yet begun.

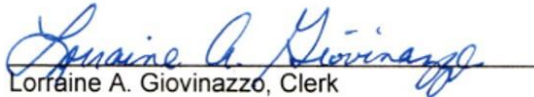
Mr. Smith moved to not accept the appeal. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 12:05 p.m.

Minutes by: Paula A. McFarland

Approved on: December 6, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, May 11, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ May 11, 2011, Scheduled case of:

9:00 A.M. BELVA & VOLNEY WARNER, SP 2011-DR-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 16.2 ft. from front lot line. Located at 6802 Weaver Ave. on approx. 11,753 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((17)) 74. (Admin. moved from 5/11/11 at appl. req.)

Chairman Ribble noted that SP 2011-DR-010 had been administratively moved to an earlier date of May 4, 2011, at 9:00 a.m., at the applicants' request.

Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that the Board had heard the application the previous week, and deferred its decision to May 18, 2011.

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~ ~ ~ May 11, 2011, Scheduled case of:

9:00 A.M. COTTONTAIL SWIM AND RACQUET CLUB, INC., & T-MOBILE NORTHEAST, LLC, SPA 81-S-060-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-S-060 previously approved for community swimming pool and tennis courts to permit telecommunications facility. Located at 7000 Cottontail Ct. on approx. 2.71 ac. of land zoned R-2. Springfield District. Tax Map 88-2 ((12)) H. (Associated with SE 2010-SP-026 and 2232-S10-19.) (Admin. moved from 3/16/11 at appl. req.)

Chairman Ribble noted that SPA 81-S-060-02 had been indefinitely deferred at the applicants' request.

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~ ~ ~ May 11, 2011, Scheduled case of:

9:00 A.M. ERIC BONETTI, SP 2011-LE-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 9.6 ft. from side lot line. Located at 7314 Bath St. on approx. 10,655 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (34) 23.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Eric Bonetti stated that he was the Executive Director of the Robert Pierre Johnson Housing Development Corporation, and reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Bonetti referred the Board to his statement of justification in the staff report and asked that the Board approve the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-LE-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

ERIC BONETTI, SP 2011-LE-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 9.6 ft. from side lot line. Located at 7314 Bath St. on approx. 10,655 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (34) 23. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 11, 2011; and

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

1. The applicant is the agent for the owner of the property.
2. The property was acquired after the error in building location occurred during construction.
3. There is no fault of the present property owner.
4. It is a minimum reduction.
5. It should not impair the purpose and intent of the Ordinance or be detrimental to the use and enjoyment of other property in the immediate vicinity.
6. To force compliance would cause an unreasonable hardship to the owner.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of the existing dwelling as shown on the plat prepared by Dominion Surveyors Inc. dated August 19, 2010 as revised through October 13, 2010, 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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ May 11, 2011, Scheduled case of:

9:00 A.M. FREDI G. GUERKE, SP 2011-MV-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 4.3 ft. from side lot line such that side yards total 13.7 ft. Located at 7918 Grimsley St. on approx. 9,176 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (25) 5.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler Ahrens, the applicant's agent, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Ahrens stated that when a violation was issued, there were two large sheds at the rear of the property, a covered area, and a fence about seven feet off the property line, into what was now County-owned land. A survey plat was made when he first became involved with the project, and he distributed a copy of the original plat to the Board members. To bring the property into conformance, the two sheds were demolished and the fence brought to within the property line. Mr. Ahrens stated that one neighbor of the applicant, who was concerned about the garage, had already been granted a special permit for a garage.

In response to a question from Mr. Hart, Mr. Ahrens stated that the structure consisted of a garage built by the applicant in 1994 with storage in the rear. He said the applicant was not native to this country and did not know zoning or building laws.

Mr. Hart and Chuck Cohenour, Zoning Inspection Branch, discussed how the matter was brought to the Board, with Mr. Cohenour stating that he responded to a complaint about the garage encroaching into the side yard. He noted that although the garage had been there for more than 15 years, there had not been a complaint until the one received in 2009.

Chairman Ribble called for speakers.

Mary Ann Mattern, 7920 Grimsley Street, Alexandria, Virginia, came forward to speak. She acknowledged that she has a shed on her property, but said it was on the back of the lot and affected no one. Ms. Mattern said the garage addition was only 4.3 feet from her property, and that she was entitled to the same amount of space between her house as her other neighbors houses.

In response to a question from Mr. Hart, Ms. Mattern said there were no windows on the side of her house that faced the garage addition.

Mr. Hammack noted that Ms. Mattern resided at her current address when the garage addition had been built more than 15 years ago and asked why she had not complained previously. Ms. Mattern replied that she was unaware of the zoning laws earlier.

In his rebuttal, Mr. Ahrens pointed out a letter of support from a neighboring property owner which had been submitted to the Board. He also noted that Ms. Mattern, whose house was to the left of the subject property, and the property owner on the right side both had constructed side garages.

Mr. Cohenour informed the Board that a civil injunction had been filed against the applicant, and the case had been set for a default judgment, but when the applicant appeared in court, an agreed order had been issued directing the applicant to apply for and diligently pursue a special permit for the building in error location.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-MV-013. He stated the following findings of fact:

1. 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.
2. The Board has determined that the applicant has complied with A through G of the mistake in building location application.

Ms. Gibb seconded the motion.

Mr. Hammack said he was inclined to grant the application, but would like to see a copy of the court order before doing so. Mr. Cohenour said he did not have a copy with him, but would get one from the County Attorney's Office.

Chairman Ribble said the Board would make its decision later in the meeting once a copy of the court order had been retrieved from the County Attorney's Office.

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~ ~ ~ May 11, 2011, Scheduled case of:

9:00 A.M. PILGRIM COMMUNITY CHURCH, INC., SPA 81-A-002-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for a church to permit site modifications (additional parking). Located at 4925 Twinbrook Rd. on approx. 5.15 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A. (Admin. moved from 2/16/11 and 3/16/11 at appl. req.)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Barnes Lawson, the applicant's agent, 6045 Wilson Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 81-A-002-05, subject to the revised proposed development conditions.

In response to questions from Ms. Gibb, Ms. Johnson stated that the church was built according to the development conditions approved by the Board, although some modifications had been approved at site plan review. Ms. Johnson said code violations had been identified, but were corrected, which was confirmed by Lincoln Bise, Department of Code Compliance.

Ms. Gibb, Mr. Hart, and Ms. Johnson discussed parking at the church, including buses being parked on the east side of the buildings, which encroached into a conservation easement. The applicant proposed an alternate location for a conservation easement to replace the encroached upon area.

Discussion ensued between Mr. Hart, Ms. Johnson, and Susan Langdon, Chief, Special Permit and Variance Branch, delineating the trees to be removed and those to remain, drainage issues, and the parking lot run-off going to a retention pond.

Mr. Hart, Mr. Byers, Mr. Bise, and Ms. Johnson discussed noise generated from the church and the hours of operation.

Mr. Byers referenced Condition 14 regarding the appearance of the buildings, and he said neither the church nor fellowship hall complied with the development condition. In response to a question from Mr. Hart, Ms. Langdon stated that the building materials required in Conditions 12 and 14 had to be reviewed and approved for the applicant to obtain the permit.

Ms. Gibb and Ms. Langdon discussed the use of the fellowship hall.

Chairman Ribble, Mr. Hammack, Ms. Langdon, and Ms. Johnson discussed the use of off-site overflow parking. Ms. Langdon said she would defer to the applicant's agent regarding any overflow parking agreement.

Mr. Lawson presented the special permit request as outlined in the statement of justification submitted with the application. He said the church had been using the Twinbrook Shopping Center for overflow parking under an informal agreement because churches usually had more attendance than covered by the minimum number of spaces required by the Ordinance. Regarding the noise complaints generated by the air conditioning, he said the church would turn off the air conditioning as the church activities ended. Mr. Lawson addressed the applicant's proposed 5:30 a.m. starting time by noting that many members of the Korean community had retail shops and wanted to attend a sunrise service, which ended at 6:30 a.m. Regarding the concerns about building materials, Mr. Lawson suggested that the Board make review of the architectural plans a requirement, like the Planning Commission did.

Mr. Lawson stated that after he took over the case, he received a call from Supervisor Cook's office suggesting that a meeting be set up with the surrounding neighbors to address concerns. At that meeting, he found out about the noise issues with the air conditioning and the music generated from the fellowship hall. Mr. Lawson discussed subsequent meetings with Supervisor Cook and the neighbors. He noted that Supervisor Cook suggested that the neighbors would be better served with new, more protective conditions than the current ones.

Mr. Lawson noted that the applicant now had a liaison designated to work with the neighborhood and address their concerns in a timely manner. He asked the members of the congregation who were present in the audience stand and be recognized; numerous people stood.

In response to a question from Ms. Gibb, Mr. Lawson stated that after one of the meetings with the adjacent neighborhood and Supervisor Cook, the activities in the fellowship hall had been cut back to abate noise.

Ms. Gibb commented on the building materials which were to have been used in the construction of fellowship hall, stating that they did not appear to be compatible with surrounding residences.

Mr. Hammack said it appeared that the County had dropped the ball regarding enforcement of the prior development conditions relating to building materials and noise. Ms. Langdon referenced a memo dated January 12, 2007, from Darryl Varney in the Plan Review Branch to Audrey Clark in DPWES referencing Conditions 12, 13, and 14, which related to architectural building features, asking that they take appropriate action. She also referred to Appendix 5 in the staff report, which contained a report from an acoustical engineer stating that noise levels from the church would meet or exceed the County requirements.

In response to a question from Ms. Gibb, Mr. Bise said the noise test performed in 2008 had been conducted only on the air conditioning units.

Mr. Hart referenced Photograph 10 in the staff report, stating that the applicant was to have incorporated a masonry façade to provide additional soundproofing. He questioned whether the material used was faux brick. Ms. Langdon said there was masonry around the air conditioning units, but she did not remember the composition of the fellowship hall facade.

Mr. Hammack and Ms. Langdon discussed the issuance of a non-RUP two and a half years after the Board had adopted the special permit resolution. Ms. Langdon said additional time had been granted to implement the special permit, and the non-RUP had not been issued until December 17, 2008.

Chairman Ribble called for speakers.

Jaemo Park, 9759 High Water Court, Burke, Virginia, came forward to speak in support of the request for additional parking, and noted that noise had been reduced. Mr. Park said he was the English pastor of the Korean church.

Grace Kim, 9451 Lee Highway, Fairfax, Virginia, came forward to speak in support, noting that noise and light issues were addressed. In response to a question from Ms. Gibb, Ms. Kim said the youth band practiced twice a week, with a Friday night performance. She noted that the youth service ended at 8:30 p.m. Mr. Hart suggested revising Condition 22 to limit the youth band practices to Sunday and Wednesday, and must conclude by 9:00 p.m.

In response to Ms. Gibb's question regarding who should be contacted regarding drums on Friday nights, Ms. Langdon said the Department of Code Compliance. Mr. Hart suggested a noise reading be taken on a night the youth band was practicing.

Andrew Yi, 8715 Wild Prairie Rose Way, Lorton, Virginia, came forward to speak. He said he was the newly appointed liaison for the church and would address noise issues.

Jina Kim, 8304 Fox Haven Drive, McLean, Virginia, came forward to speak. She spoke in favor of the application, noting that she was on the board of directors for the church.

The meeting recessed at 11:05 a.m. and reconvened at 11:14 a.m.

John Farrell, 11545 Underoak Court, Reston, Virginia, came forward to speak in support, stating that noise issues should be administered equitably.

Daniel Graser, 5061 Queens Wood Drive, Burke, Virginia, came forward to speak in opposition, citing noncompliance with the church's existing development conditions. He said he was opposed to any additional parking being approved.

In response to a question from Mr. Beard, Mr. Graser said that although solutions to some of the problems could be obtained by approval of the application, he did not have any confidence that there would not be additional violations in the future.

Mr. Hart and Mr. Graser discussed the noise emanating from the church. Mr. Graser said that since the community meeting, it had been nonexistent, but before then, it had been constant.

Mr. Hart asked Mr. Graser if he felt any development conditions were currently being violated. Mr. Graser listed the use of faux brick on the fellowship hall, parking along the driveway, and the early hours of operation.

Diana Khoury, 9501 Harrowhill Lane, Burke, Virginia, came forward to speak in opposition. She said she was a member and president of the Queensgate Association. She stated that the fellowship hall looked like a warehouse, and she was opposed to the application, citing the early hours of operation and noise issues.

Agnes Burkhard, 5092 Queens Wood Drive, Burke, Virginia, came forward to speak in opposition, noting the neighborhood's ongoing issues with noise, on-site parking, and the church hours.

In his rebuttal, Mr. Lawson said the church was trying to resolve the off-site parking issue by requesting more parking spaces on church property. He said he could not speak to whether the church had not responded to problems in the past, but only propose new development conditions to address the issues at hand. Mr. Lawson said the noise issues had been addressed as attested by the previous speakers. He said he would agree to a new Development Condition 27 which would secure the parking lot when nonoperational.

In response to a question by Mr. Byers, Mark Crain, 9114 Industry Drive, Manassas, Virginia, engineer for the project, said the walls surrounding the property were only four feet because that was the normal height necessary to stop most automobile headlights. Mr. Byers asked if the applicant would consider bringing the wall height up to six feet. Mr. Lawson said he would.

Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on SPA 81-A-002-05 until July 13, 2011, at 9:00 a.m., and asked that the following issues be addressed by staff:

1. Early morning hours: since the Board did not normally limit church activities, except for outside activities, he wanted to find wording for conditioning early morning indoor events;
2. Noise issue: he wanted a second look at the previous noise study that cited a different decibel limit than in the Ordinance; an investigation of the problems with noise enforcement; a development condition to mitigate the noise to the neighbors on the south; and the reason for the 50-decibel limit.
3. Building materials: he wanted to know how faux brick ended up on a façade that called for masonry in the development conditions.
4. Youth band practice: he wanted to know if the County had a piece of equipment that could measure the decibel level when the youth band was practicing at night.

Mr. Beard seconded the motion.

Mr. Hammack asked that staff revise Development Condition 22 to differentiate between choir practice and youth band practice.

Chairman Ribble called for the vote. The motion carried by a vote of 6-0. Mr. Smith was not present for the vote.

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~ ~ ~ May 11, 2011, Scheduled case of:

9:00 A.M. FREDI G. GUERKE, SP 2011-MV-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 4.3 ft. from side lot line such that side yards total 13.7 ft. Located at 7918 Grimsley St. on approx. 9,176 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (25) 5.

Chairman Ribble stated that the Board had received a copy of the court order.

Mr. Hammack said the order stated that the special permit was to have been obtained by April 1, 2011, and, therefore, the applicant was in violation of the court order. He said the Board could not amend a court order, and he asked that the Board defer decision until the County Attorney could file a modification of the court order.

Mr. Beard, Mr. Hart, Mr. Byers, Ms. Gibb, Ms. Hedrick, Staff Coordinator, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the timing of the applicant's submission, with Mr. Hart noting that the Zoning Administrator was the plaintiff in the case and the Board needed an agreed order signed by the involved parties submitted to the judge to approve a date change for the deadline.

Mr. Byers withdrew his motion, which had been tabled earlier in the meeting, and said he was prepared to make a motion to defer decision to a date when an agreement could be reached among the parties regarding the issues articulated by the court order. Mr. Hammack suggested a 60-day deferral. Ms. Langdon suggested July 13, 2011.

Mr. Byers moved to defer decision on SP 2011-MV-013 to July 13, 2011, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

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~ ~ ~ May 11, 2011, Scheduled case of:

9:00 A.M. OCCOQUAN OVERLOOK LP, A 2011-MV-002 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination regarding the correct location of the boundary line separating the R-C and R-1 Districts on property located at Tax Map 106-3 ((1)) 4A. Located on approx. 63.51 ac. of land zoned R-C, R-1 and WS. Mt. Vernon District. Tax Map 106-3 ((1)) 4A.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Jack Reale, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. He gave a brief history of the appeal, noting that the Fairfax Water Authority had requested a determination by the Zoning Administrator of the correct location of a zoning boundary between land zoned R-C and R-1 because they believed that the boundary as shown on the appellant's proposed subdivision plan for the subject property was incorrect. Since the location was not clear on the maps included with the original rezoning in 1982, Mr. Reale said the Zoning Administrator enlisted the services of the County Surveyor, Vicky McEntire, to make the determination.

Vice Chairman Hammack assumed the Chair.

Mr. Reale said Ms. McEntire applied industry standard practices and methodologies to construct an R-C/R-1 boundary that was best fitted to the boundary depicted on the Board of Supervisors' approved map. He said certain challenges were inherent in the process as the approved maps were drawn at a scale of one inch equaling 500 feet and the boundary lines were applied with a bold pen that scaled to approximately 20 feet in width. Mr. Reale noted that R-C, R-1, and Water Supply Protection Overlay District (WSPOD) boundaries were depicted using two separate and parallel lines. The County Surveyor constructed an intermediate line that split the difference between the two separate lines with the best achievable degree of accuracy. Mr. Reale noted that, to date, the appellant had not provided any evidence that supported its assertions, or that contradicted or invalidated the County Surveyor's boundary description, which provided the basis for the Zoning Administrator's determination. He asked that the Board uphold the determination.

Chairman Ribble resumed the Chair.

In response to a question from Mr. Hart, Ms. McEntire said that Parcel 4A was not in the same configuration as it had been in 1982. A discussion between Mr. Hart, Ms. McEntire, and Mr. Reale ensued regarding the area in 1982, with Ms. McEntire noting that the boundary line in question had been a drainage divide. Mr. Reale noted that when the property was rezoned in 1982, the metes and bounds were not part of the description, only language describing the boundaries. Mr. Hart asked if there was a record of drainage boundaries prior to 1982 maintained by the County. Mr. Reale responded that there was not, that this was a unique situation. Ms. McEntire displayed the County's map of the area, noting that the map generated by Urban Engineering for the appellant showed the boundary line slightly askew. Mr. Gibb and Ms. McEntire discussed the property description used in 1982, with Ms. Gibb asking why the County felt the drainage boundary line was accurate. Ms. McEntire said that Geographic Information System (GIS) calculations were used, which are the most reliable. Mr. Hart and Ms. McEntire reviewed the topography on the map from 1982 and the current map. Ms. McEntire pointed out the County property lines, noting that Urban Engineering's rendition was slightly rotated from the County's boundary line.

Tim Riser, the appellant's agent, presented the arguments forming the basis for the appeal. He stated that the request for a zoning determination had been created by the Fairfax County Water Authority (FCWA) in an effort to condemn the property and acquire it for the County. Mr. Riser gave a brief history of Parcel 4A, stating that he presented a development plan for it in 2003 and thought that the plan would extend until 2008. When it expired prematurely, Mr. Riser said the appellant resubmitted the development plan in 2008, which was when the FCWA decided the property was of interest to them. As a result, he said the County took the property and then asked for a determination from the Zoning Administrator. Mr. Riser noted that it took the Zoning Administrator six months to determine the location of the boundary line. Mr. Riser stated that although the Zoning Administrator made a determination in December, it was not given to affected

landowners. He further noted that the line was never challenged when he submitted the previous development plan.

Dave McIlhane from Urban Engineering displayed three different exhibits which showed the property lines as approved in 1982, 1985, 1998, and 2001 through 2010, noting there were multiple locations over the years. He said the exhibit from 1982 showed two distinct lines when the Board of Supervisors made their recommendation. Mr. McIlhane said the staff report from the rezoning in 1982 made no mention that the lines were supposed to be the same, as the County now contended.

Mr. Hart and Mr. McIlhane discussed recordation of any of the plats submitted by the appellant. Mr. McIlhane said a preliminary plat for Section 1 had ultimately been recorded.

In response to a question from Mr. Beard, Mr. Reale said no other parcels were affected by the determination of the Zoning Administrator.

Mr. Reale explained the concept of selective displacement when maps are drawn, noting that parallel lines could be offset. He stated that no one could really speak to the intent of the Board of Supervisors when they granted the original rezoning in 1982.

Scott Wynn, Assistant County Attorney, stated that nothing in the Board of Supervisors' resolution or accompanying map indicated that they intended to create the two abutting zoning districts in a way that they were not coextensive. He said the zoning lines were as close as they could possibly be. If they were closer, they would be indistinguishable.

Mr. Reale said there had been numerous prior errors, but the fact remained that once the determination had been requested, the boundary line had been determined. He said one must go back to the original map, not the decisions that were made in between, and ask which location was the most accurate.

In response to a question from Mr. Hammack, Mr. Wynn said the Board of Supervisors was not legally estopped by mistakes made by their agents. He stated that it was regrettable, but did not bind the Board for future determinations.

Mr. Hammack said he wanted to know what the Board of Supervisors had specifically advertised for the 1982 proposed rezoning. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said a map with two lines had been advertised and adopted. Mr. Reale added that the staff report showed them to be coexistent.

Ms. Gibb and Ms. McEntire discussed how the map lines change from year to year due to technology shifts which change the map base.

Chairman Ribble called for speakers.

John Farrell, representing Malcom One, came forward to speak. He spoke in opposition to the Zoning Administrator's position. He noted that the County boundary line in question began on his client's property. Mr. Farrell said the County was attempting to change the zoning on his client's property without him being notified, stating that the boundary cannot be changed this long after the fact. He said the ambiguity in the case was created by the County; therefore, the Board of Zoning Appeals should rule in favor of the landowner.

Arthur Schmalz, from the law firm of Hunton and Williams, came forward to speak. He said he was representing the FCWA, and stated that the recorded plat for Section 1 referred to a completely different parcel of land and did not show the zoning boundary line. He noted that Parcel 4A did not have an approved plat. Mr. Schmalz referred to the staff report from 1982, which showed the Conservation District depicted as hash marks and the WSPOD depicted with little dots. He noted that there was clearly no gap in the boundaries. Mr. Schmalz said it was the County's contention that the zoning boundary was one coexistent line. He contended that Urban Engineering had previously acquiesced to the County's zoning boundary line.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

In his rebuttal, Mr. McIlhaney said there were clearly two lines on the 1982 map. The inside line had been identified as the zoning line, and the WSPOD line was the other line. He said it was not clearly written anywhere that they should be assumed to be the same. Regarding Mr. Schmalz' testimony, Mr. McIlhaney said that although Parcel 4A was not in the land recorded in Section 1, it abutted all of Section 1 and showed the zoning line abutting it.

Mr. Beard asked Mr. McIlhaney if Urban Engineering had ever acquiesced to the County's position. Mr. McIlhaney replied that at one time, Urban Engineering had submitted a plat with the County's version of the boundary line.

Mr. Wynn stated that if there was no clear evidence either way, the Board of Zoning Appeals should give deference to the Zoning Administrator.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said she thought the intent was to have one line on the 1982 map and that the Zoning Administrator had located it properly. She said what she found most compelling was the Water Authority's attorney's allusion to the staff report from 1982 and the exhibits showing the Conservation District being hash marked and the WSPOD with little dots, with clearly no gap in the boundaries. Mr. Hart seconded the motion.

Mr. Hammack said he would like to have more testimony about what was advertised. He said the principles were all very clear, but trying to determine where the line was located was not. Mr. Hammack said he was not satisfied with the explanation of the County, stating that there ought to be more background or history on it that would show where that boundary was delineated and what was advertised. He said he had sympathy for the argument of the appellant because there were a lot of things that had not been explained. Mr. Hammack said he did not understand what the arrows were on the dotted line that did not extend through to the solid line. He said there was clearly a space between them. Mr. Hammack said it would be very easy for a draftsman to say the line was contiguous here, that it was not two separate lines, and the Board had heard explanations as to why it was done that way, but it could just as easily have been done another way. He said there had never been any real testimony explaining whether what was shown on the advertised line was closer to the broken line or closer to the solid line. It was just that the County decided that it should be reconfigured and somehow placed in the middle and that it changed slightly because of new technology changes that occurred over the years between old metes and bounds and the way surveys were done years ago. At the same time, the Board of Zoning Appeals was being told that nothing could change from what the Board of Supervisors enacted, but that the County in and of itself seemed to be saying they can make a determination that maybe it had changed because of the technology involved. Mr. Hammack said he felt the County wanted to have both sides of the argument to some extent, and he was not sure if he would support the motion or not.

Mr. Beard stated that it was a very close call, but he would support the motion.

Mr. Hart said it had not been shown that the Zoning Administrator was plainly wrong. He stated that there were five things he wanted more information about: 1) Did the record plat for Section 1 really show the zoning line one way or the other? He said he felt that if a portion of the zoning line was shown on the record plat and the County signed off on that, then he would be more persuaded by the 60-day rule argument. 2) Is there case law about selective depiction on a map with two lines, or is there a legal principle that the BZA or a court should follow when there are two lines on a map? Mr. Hart said he did not believe this was the first time this had come up where something was at a very tiny scale and they put things next to each other on a map and then later there was an issue. 3) What did the Board of Supervisors advertise 30 years ago? He said he expected that the advertising would lend clarity on whether there was to be a difference between the R-C and WSPOD districts. 4) Was this parcel part of the subsequent court cases, was there a final order in the Court cases, and did it say anything about the boundary? 5) Were there any other cases in the last 30 years where there had been either a dispute or a request for interpretation by the Zoning Administration and it ended up going to court? He said he wanted to know if a judge had looked at this question previously.

Mr. Hart made a substitute motion to defer decision on A 2011-MV-002 to June 8, 2011, at 9:00 a.m., with the record to remain open to allow for either side to respond to his questions.

Mr. Hammack seconded the motion. He asked if it was possible to find the recorded original plat that showed the original delineation, and if the original advertisement could be found.

The motion carried by a vote of 3-2. Chairman Ribble and Mr. Beard voted against the motion. Mr. Smith and Mr. Byers were not present for the vote.

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~ ~ ~ May 11, 2011, After Agenda Item:

Request for Intent to Defer for Buddhist Tzu Chi Foundation and
Buddhist Tzu Chi Education Foundation, SP 2011-HM-007


Ms. Gibb moved to approve the request for an intent to defer SP 2011-HM-007 to June 8, 2011, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Byers 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 2:40 p.m.

Minutes by: Suzanne Frazier

Approved on: July 9, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, May 18, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; James R. Hart; and Norman P. Byers. Thomas Smith; Nancy E. Gibb; and Paul W. Hammack, Jr., were absent from the meeting.

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

~ ~ ~ May 18, 2011, Scheduled case of:

9:00 A.M. WILLIAM A. WALKER, SP 2011-SP-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 22.95 ft. and deck 12.76 ft. from rear lot line. Located at 7203 Sontag Way on approx. 12,524 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-4 ((6)) 11.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William A. Walker, 7203 Sontag Way, Springfield, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SP-016, subject to the proposed development conditions.

Ms. Johnson noted that the chart shown on Page 1 of the staff report, which demonstrated the bulk regulations, had been revised to clarify the Zoning Ordinance requirement and distributed to the Board at the hearing. She said the applicant's request and staff's recommendation remained the same.

Mr. Walker presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would allow his family to enjoy the outdoors, would be located attached to the home, and in the most logical place. Mr. Walker said the plans were drawn up before he knew there was a problem with setbacks. He explained why the alternatives for size and placement were undesirable, and he requested the Board's permission to build the addition the way the design made the most sense.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approved SP 2011 SP-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

WILLIAM A. WALKER, SP 2011-SP-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 22.95 ft. and deck 12.76 ft. from rear lot line. Located at 7203 Sontag Way on approx. 12,524 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-4 ((6)) 11. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2011; and

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

1. The applicant is the owner of the land.

2. The Board has determined the application meets all the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval.
4. Staff's rationale is supported.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 304 square feet) of the screen porch addition and deck, as shown on the plat prepared by Bruce C. Landes, Land Surveyor, Landmark-fleet Surveyors, P.C., dated September 9, 2010 and signed February 16, 2011, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,484 square feet existing + 3,726 square feet (150%) = 6,210 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.

Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb, Mr. Hammack, and Mr. Smith were absent from the meeting.

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~ ~ ~ May 18, 2011, Scheduled case of:

9:00 A.M. MICHAEL BYRNE, SP 2011-SP-015 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.6 ft. from side lot line. Located at 12408 Ramrod Ct. on approx. 44,540 sq. ft. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((4)) 17.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Michael Byrne, 12408 Ramrod, Court, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SP-015, subject to the proposed development conditions.

Discussion ensued between Mr. Hart and Ms. Hedrick concerning the garage's proposed location as shown on the plat and whether the reason it could not be shifted to the right was because of the septic field. Ms. Hedrick agreed that staff found the septic field took up a major portion of the rear yard. She said the applicant would have to demonstrate there was enough space between the wall of the garage and the septic field when applying for permits.

Ms. Hedrick and Mr. Byrne responded to questions from Mr. Beard concerning the proximity of the proposed garage to the adjacent property.

Mr. Byrne presented the special permit request as outlined in the statement of justification submitted with the application. He said the reason the location with the azaleas was undesirable was they were at least eight feet tall and had been there since 1970. He explained the need for the garage, noting protection for his vehicle, storage of tools, and a small workshop.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-SP-015 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL BYRNE, SP 2011-SP-015 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.6 ft. from side lot line. Located at 12408 Ramrod Ct. on approx. 44,540 sq. ft. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((4)) 17. 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 18, 2011, and

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

1. The applicant is the owner of the land.
2. The Board has a staff recommendation of approval.
3. The rationale in the staff report is adopted.
4. In the location it is proposed, the garage is not going to have significant negative impacts on anybody.
5. It is further away from the lot line than the existing garage is. It is a little tight through there. If the garage is at 10.6 feet, it is unsure what would happen with the Health Department at the counter, but that is an issue the Board is not necessarily reaching now. As long as it is far enough away from the septic field, it works.
6. The vegetation is fairly mature in that corner of the lot.
7. Based on the photographs and the testimony, the house on Lot 16 would be located forward of where the garage is going.

8. This is perhaps less of an impact than the existing garage is in its location slightly closer to the lot line.
9. The Board has determined that the standards in Sect. 8-922 motion have been met.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 and size of an accessory structure (detached garage) as shown on the plat prepared by VM Architecture, P.L.L.C., dated February 9, 2010, as sealed on February 23, 2011, submitted with this application and is not transferable to other land.
2. The accessory structure shall be generally consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
3. A building permit for the accessory structure (garage) shall be obtained prior to construction 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 4-0. Ms. Gibb, Mr. Hammack, and Mr. Smith were absent from the meeting.

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~ ~ ~ May 18, 2011, Scheduled case of:

9:00 A.M. JEFFREY HOYT, SP 2011-SU-017 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit one accessory structure to remain 0.0 ft. and second accessory structure 1.8 ft. from rear lot line and existing dwelling 16.0 ft. from front lot line and to permit construction of second story addition 16.0 ft. from front lot line and 20.8 ft. from rear lot line. Located at 12809 Gatepost Ct. on approx. 10,648 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 17.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jeffrey Hoyt, 12809 Gatepost Court, Herndon, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SU-017 for the second-story addition, subject to the proposed development conditions.

Mr. Hoyt presented the special permit request as outlined in the statement of justification submitted with the application. He said the purpose of the addition was to allow more room for his two sons, guests, and office space. Mr. Hoyt said it would also allow a living area for his elderly parents if they moved in. He noted that because of the orientation of the house on the property, the minimum yard encroachment decreased rapidly along the building's wall.

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

Mr. Beard moved to approve SP 2011-SU-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

JEFFREY HOYT, SP 2011-SU-017 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit one accessory structure to remain 0.0 ft. and second accessory structure 1.8 ft. from rear lot line and existing dwelling 16.0 ft. from front lot line and to permit construction of second story addition 16.0 ft. from front lot line and 20.8 ft. from rear lot line. Located at 12809 Gatepost Ct. on approx. 10,648 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 17. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2011; and

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

1. The applicant is the owner of the land.
2. Staff has recommended approval of this application.
3. DPWES has expressed a lack of concern about the location on the lot of the tree house and the play equipment since they can be moved by hand.
4. All the other general standards have been met.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location of the accessory structures (tree house and play equipment) and location and size of the existing dwelling and second-story addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated December 13, 2010, as revised through February 24, 2011, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,360 square feet existing + 3,540 square feet (150%) = 5,900 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 4-0. Ms. Gibb, Mr. Hammack, and Mr. Smith were absent from the meeting.

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~ ~ ~ May 18, 2011, Scheduled case of:

9:00 A.M. BELVA & VOLNEY WARNER, SP 2011-DR-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 16.2 ft. from front lot line. Located at 6802 Weaver Ave. on approx. 11,753 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((17)) 74. (Admin. moved from 5/11/11 at appl. req.) (Decision deferred from 5/4/11.)

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Randy D. Strong, the applicants' agent, Strong LLC dba DreamsBuilt, P.O. Box 3011, Leesburg, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, said the application's public hearing was held on May 4, 2011, and the decision was deferred to allow the applicants to provide additional information related to the construction of the garage and the use of the driveway.

Chairman Ribble noted that all the issues were responded to and resolved.

Mr. Byers moved to approve SP 2011-DR-010 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BELVA & VOLNEY WARNER, SP 2011-DR-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 16.2 ft. from front lot line. Located at 6802 Weaver Ave. on approx. 11,753 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((17)) 74. (Admin. moved from 5/11/11 at appl. req.) (Decision deferred from 5/4/11) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2011; and

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

1. The applicants are the owners of the land.
2. The Board has determined the application meets all the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval.
4. The rationale of staff is adopted.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (382 square feet), as shown on the plat prepared by George M. O'Quinn, dated August 10, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [2,800 square feet existing + 4,200 square feet

(150%) = 7,000 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Notwithstanding what is shown on the plat, the shed shall be removed outside the easement within six (6) months of final approval of this application.
6. The applicant shall complete a Resource Protection Area (RPA) Exception application for review and approval by the Department of Public Works and Environmental Services (DPWES), prior to approval of a building permit.

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.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.

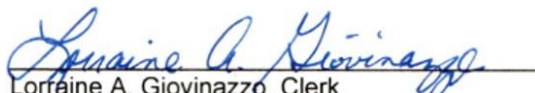
Mr. Beard seconded the motion, which carried by a vote of 4-0. Ms. Gibb, Mr. Hammack, and Mr. Smith were absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 9:40 a.m.

Minutes by: Paula A. McFarland

Approved on: July 9, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, May 25, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; and Paul W. Hammack, Jr. Mr. Hart and Mr. Byers were absent from the meeting.

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

~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation uses in conjunction with a place of worship by right. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A.

Chairman Ribble noted that SP 2011-SU-011 had been administratively moved to June 29, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. ANDREW. E. HART, SP 2011-SP-022 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 9116 Steven Irving Ct. on approx. 13,628 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 500.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Andrew E. Hart, 9116 Steven Irving Court, Springfield, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SP-022 subject to the proposed development conditions.

Mr. Hart presented the special permit request as outlined in the statement of justification submitted with the application. He said the property currently had an existing carport, and he wanted to enclose it for garage use. Mr. Hart said he had the support of the affected neighbor.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-SP-022 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDREW. E. HART, SP 2011-SP-022 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 7.5 ft. from side lot line such that side yards total 18.9 feet. Located at 9116 Steven Irving Ct. on approx. 13,628 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 500. 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 25, 2011; and

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

1. The applicant is the owner of the property.
2. Staff recommended approval.
3. The applicant is simply enclosing an existing carport and adding two feet to the side.
4. The impact seems to be minimal.
5. The applicant has a letter of support from the neighbor whose property is closest to the garage and to the existing concrete driveway that is going to remain.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (420 square feet), as shown on the plat prepared by SDE, Inc., dated February 9, 2011, signed February 11, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [2,054 square feet existing + 3,081 square feet (150%) = 5,135 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Smith seconded the motion, which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Mr. Hart and Mr. Byers were absent from the meeting.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. WALDO D. & DIANE R. FREEMAN AS TTEES OF THE FREEMAN FAMILY TRUST, SP 2011-MA-021 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.0 ft. from side lot line. Located at 6201 Lakeview Dr. on approx. 16,944 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 61.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Waldo Freeman, 6201 Lakeview Drive, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-MA-021 subject to the proposed development conditions.

Mr. Freeman presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had spoken with both of his neighbors, and neither had any problem with the proposed addition. Mr. Freeman said there would be no change in the existing carport footprint.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2011-MA-021 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WALDO D. & DIANE R. FREEMAN AS TTEES OF THE FREEMAN FAMILY TRUST, SP 2011-MA-021 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.0 ft. from side lot line. Located at 6201 Lakeview Dr. on approx. 16,944 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 61. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2011; and

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

1. The applicants are the owners of the property.
2. The staff has recommended approval, and the Board agrees and adopts the recommendations and analysis of staff, and the comments in the application submitted by the applicants.
3. The application meets all the submission requirements in Section 8-922.
4. The application would be consistent and harmonious with the surrounding off- site uses in the Comprehensive Plan.
5. There will be a pretty minor impact in this case, enclosing an existing one-car carport into a garage.
6. The building was originally permitted in 1961.
7. It will not have any impact on surrounding property owners as noted by the applicants, with the support of the neighbors.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story garage addition (252 square feet), as shown on the plat prepared by Larry N. Scartz, dated June 22, 1985, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,909 square feet existing + 2,863.5 square feet (150%) = 4,772.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the south side of the driveway and within six feet of the proposed garage addition as tree save areas to protect existing on-site and off-site vegetation and shall install tree protection fencing such as 14-gauge welded wire or orange plastic fence to protect the vegetation in these areas from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Mr. Hart and Mr. Byers were absent from the meeting.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. CHARLOTTE J. HARTELL-GARCIA, SP 2011-BR-020 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.4 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 10.4 ft. from side lot line. Located at 5213 Light St. on approx. 12,400 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((4)) (56) 7.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Arthur Neal, Neal Construction Group, the applicant's agent, 7405 Alban Station Court, Springfield, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. She pointed out an error in the advertised measurement of the side lot line, but after discussion with the engineer and publication of the staff report, it was determined that the 0.4 feet referenced on the plat was actually the width of the timber located along the side lot line. Ms. Hedrick said the engineer confirmed that the distance to the at-grade patio was 0.7 feet, which was less of an error and, therefore, met the legal advertising requirement. Staff recommended approval of SP 2011-BR-020 for the garage addition subject to the development conditions in the staff report.

In response to a question from Mr. Beard, Ms. Hedrick confirmed that the issue of the open deck came up when the contractor came in for a building permit.

Mr. Neal presented the special permit request as outlined in the statement of justification submitted with the application. He complimented the thoroughness of the staff report, which noted similar projects in the neighborhood. He said the addition would be harmonious with the existing house facade.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2011-BR-020 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLOTTE J. HARTELL-GARCIA, SP 2011-BR-020 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.7 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 10.4 ft. from side lot line. Located at 5213 Light St. on approx. 12,400 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((4)) (56) 7. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2011; and

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

1. The owner of the property is the applicant.
2. The Board adopts the staff recommendation, which is approval.
3. There was initial concern when something is seen this close to the property line, but it is an open deck.
4. The applicant meets all the submission requirements as set forth in Section 8-922, particularly 1 through 6.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
- 2. This special permit is approved for the location of a deck (concrete/brick patio) and the location and size of a one-story addition (192 square feet), as shown on the plat prepared by Scartz Surveys dated September 1, 2010, as signed and sealed through February 7, 2011, as submitted with this application and is not transferable to other land.
- 3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,592 square feet existing + 2,388 square feet (150%) = 3,980 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
- 4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Mr. Hart and Mr. Byers were absent from the meeting.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. JOANNE M.MORGAN, SP 2011-SP-018 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.9 ft. from the rear lot line and 1.3 ft. from the side lot line and fence greater than 4.0 ft. in height to remain in a front yard. Located at 4201 Plaza La. on approx. 10,495 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-1 ((3)) (59) 1.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Joanne M. Morgan, 4201 Plaza Lane, Fairfax, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report.

In response to a question from Ms. Gibb, Ms. Johnson said the case came to the Board via a complaint to the Department of Code Compliance. Chip Moncure, Department of Code Compliance, said Inspector Nancy Stallings had received the complaint on September 7, 2010. She made a site visit and determined that the fence height was in violation of the Ordinance.

In response to a question from Ms. Gibb, Ms. Johnson stated that the fence did not create sight distance problems. Ms. Johnson confirmed for Mr. Smith that if the shed did not exceed 8.5 feet, it could remain there by right.

Ms. Morgan presented the special permit request as outlined in the statement of justification submitted with the application. She said when she solicited different fence companies for quotes, no one mentioned there were any ordinances that prohibited construction of a six-foot privacy fence. Ms. Morgan said she spoke with her neighbor to the rear of the property before the fence was constructed, and he did not indicate any problem with it. She noted that there was 10 feet between the curb and the fence so as not to block the sight distance. Ms. Morgan said her backyard was quite small, and she needed the fence to keep her two dogs in the yard. Ms. Morgan said the shed was already there when she bought the house.

Chairman Ribble called for speakers.

The following speakers came forward to speak in opposition: Joyce Davey, 13233 Pleasantview Lane, Fairfax, Virginia; and Alex Cullison, 13232 Pleasantview Lane, Fairfax, Virginia. Their main points dealt with sight distance issues and concern the fence would affect property values. Mr. Cullison acknowledged that there were other six-foot fences in the neighborhood.

In response to a question from Mr. Beard, Mr. Moncure said there were several fences in the area that appeared to be in violation, but notices of violation were complaint driven. However, if a fence appeared to present a danger, it would be acted upon.

In her rebuttal, Ms. Morgan said Ms. Davey could go to the end of her driveway and still see in both directions. She said her fence was in keeping with the others in the neighborhood.

In response to a question from Ms. Gibb, Ms. Morgan said the fence cost \$4,000.

Ms. Gibb and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the sight distance requirements in the Zoning Ordinance, with Ms. Langdon explaining the formula for computing the distance.

In response to a question from Mr. Smith, Ms. Morgan said that her great dane could put his paws on top of a four-foot fence, which was why she had it constructed to a height of six feet.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-SP-018 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOANNE M. MORGAN, SP 2011-SP-018 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.9 ft. from the rear lot line and 1.3 ft. from the side lot line and fence greater than 4.0 ft. in height to remain in a front yard. Located at 4201 Plaza La. on approx. 10,495 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-1 ((3)) (59) 1. 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 25, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant testified that the shed was there when the applicant bought the property.
3. There is no testimony or evidence that the shed can be seen from the street.
4. There is no impact on the neighbors.
5. It is almost legal; it is about six inches too high.
6. Regarding the fence, this is a close case.
7. Under Section 8-923, the Board is to determine that the proposed fence is warranted based on factors to include, but not limited to, the location of the principal structure, the presence of multiple front yards, and concerns relating to safety and noise.
8. What the Board normally looks at is a matter of aesthetics and whether the fence violates sight distance issues.
9. In this case, staff reported that they have looked and, under the Ordinance, there is no violation of sight distance.
10. There is testimony from a neighbor who says that she has difficulty seeing out of her driveway, so that is the competing interest here.
11. The applicant has a great dane that is going to be able to get out of a four foot tall fence.
12. The testimony and photographs show that there are other fences, if not exactly like this, that are certainly six feet or taller in the neighborhood, and having several front yards is a consideration in the Zoning Ordinance.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 fence and accessory storage structure (shed) as shown on the plat prepared by B.W. Smith and Associates, Inc. dated July 26, 2010, as revised through April 28, 2011 and signed July 26, 2010 by Timothy J. Farrell, Land Surveyor, as 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. Beard seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained. Mr. Hart and Mr. Byers were absent from the meeting.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. DIANE MANDELL HORWITZ, SP 2011-PR-019 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.9 ft. and deck 12.9 ft. from rear lot line. Located at 2995 Steven Martin Dr. on approx. 5,637 sq. ft. of land zoned R-5. Providence District. Tax Map 48-3 ((37)) 32.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Alexander Horwitz, the applicant's agent, 2995 Steven Martin Drive, Fairfax, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-PR-019 subject to the proposed development conditions.

Mr. Horwitz presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed screen porch would replace the current deck and allow them more enjoyment of their backyard. Mr. Horwitz said the proposed open area below the deck would be for storage of lawn equipment.

In response to a question from Mr. Smith, Mr. Horwitz said he had contacted all of his abutting neighbors and had signed letters of consent from all of them.

Chairman Ribble called for speakers.

James Tucker, 9141 Schoolcraft Lane, Burke, Virginia, came forward to speak. He said he was the architect on the project, and he reaffirmed the statement made by the applicant.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2011-PR-019 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DIANE MANDELL HORWITZ, SP 2011-PR-019 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.9 ft. and deck 12.9 ft. from rear lot line. Located at 2995 Steven Martin Dr. on approx. 5,637 sq. ft. of land zoned R-5. Providence District. Tax Map 48-3 ((37)) 32. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 25, 2011; and

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

1. The owner of the property is the applicant.
2. The staff recommends approval, and the Board incorporates their rationale and recommendation.
3. As was referenced in testimony, there will be very little impact.
4. There has been a lot of support from neighboring property owners.
5. The applicant has clearly done their homework in making sure that the surrounding community is informed and, thus, ultimately was supportive.
6. As was the testimony, this will be in character with the existing on-site development in terms of location, height, bulk, scale with reference to the shingles and siding, et cetera.
7. This is certainly consistent with the existing development.
8. This will not be harmful to the community.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 200 square feet) of the screen porch addition and deck, as shown on the plat prepared Urban, LTD., dated February, 2011

and signed March 1, 2011 by Chad E. Jernigan, Land Surveyor, submitted with this application and is not transferable to other land.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,872 square feet existing + 1,808 square feet (150%) = 3,680 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack and Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hart and Mr. Byers were absent from the meeting.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. RUSSELL R. PAUGH, SP 2011-BR-008 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 carport to remain 1.69 ft. and accessory storage structure to remain 0.45 ft. from side lot line. Located at 7305 Leesville Blvd. on approx. 10,630 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (8) 2. (Admin. moved from 4/20/11 at appl. req.)

Chairman Ribble noted that SP 2011-BR-008 had been administratively moved to June 8, 2011, at the applicant's request.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. CAPITAL ONE BANK, A 2011-DR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the design and color specifications of three existing façade signs are not in substantial conformance with the development conditions of Special Exception SE 2008-DR-003. Located at 1441 Dolley Madison Blvd. on approx. 29,122 sq. ft. of land zoned C-2, H-C, CRD and SC. Dranesville District. Tax Map 30-2 ((5)) 6A. (Concurrent with A 2011-DR-009).

9:00 A.M. CAPITAL ONE BANK, A 2011-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the design and color specifications of three existing façade signs are not in substantial conformance with the development conditions of Special Exception SE 2008-DR-003 in violation of Zoning Ordinance provisions. Located at 1441 Dolley Madison Blvd. on approx. 29,122 sq. ft. of land zoned C-2, H-C, CRD and SC. Dranesville District. Tax Map 30-2 ((5)) 6A. (Concurrent with A 2011-DR-006).

Chairman Ribble noted that A 2011-DR-006 and A 2011-DR-009 had been administratively moved to June 22, 2011, at 9:00 a.m., for ads.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09, 10/27/09, 1/27/10, 5/26/10, 11/3/10, 2/2/11, and 4/13/11 at appl. req.)

Chairman Ribble noted that A 2009-PR-006 had been administratively moved to June 29, 2011, at 9:00 a.m., at the appellant's request.

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~ ~ ~ May 25, 2011, Scheduled case of:

9:00 A.M. CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-037) (Continued from 6/17/08) (Decision deferred from 12/16/08, 4/21/09, 6/23/09, 8/4/09, 2/24/10, 8/11/10, 9/15/10, 11/17/10, 12/15/10, and 4/6/11)

Chairman Ribble called the appellant to the podium.

Cynthia Wood, no address given, said she was representing her mother, Mary Cronan, owner of Cronan Family, LLC. Ms. Wood stated that her mother had tried to comply with the Notice of Violation, and spent over \$150,000 to bring the property into compliance. She said that Zoning Administration did not work with the appellant to resolve the issues, thereby extending the time and money that the effort was taking. Ms. Wood also stated her displeasure with the requirements placed upon the appellant by Zoning Administration, treating them as if they were a developer instead of a family business. Ms. Wood said that instead of dismissing the appeal, she wanted staff to withdraw their prosecution.

Chuck Cohenour, Zoning Inspector, said the property was now in compliance with the Zoning Ordinance, and his case had been closed.

Ms. Gibb and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, discussed the dismissal of the appeal, with Ms. Stanfield noting that a Notice of Violation was only withdrawn if something was wrong with the notice, which was not the case with the subject appeal.

Mr. Hammack moved to remove A 2008-SU-008 from the Board's docket. Mr. Smith seconded the motion.

A discussion ensued between Mr. Smith, Mr. Hammack, Mr. Beard, and Ms. Stanfield regarding the ramifications of taking the appeal off the docket versus a dismissal of the appeal. Ms. Stanfield said that some sort of action needed to be taken on the appeal since the property had a history of violations after a Notice of Violation was cleared.

Mr. Hammack withdrew his previous motion and moved that, since the zoning violations had been resolved, the case be dismissed.

Mr. Beard seconded the motion, which passed by a vote of 5-0. Mr. Hart and Mr. Byers were absent from the meeting.

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~ ~ ~ May 25, 2011, After Agenda Item:

Request for Additional Time
Maroun S. Bechara and Barbara M. Bechara, VC 2003-HM-185

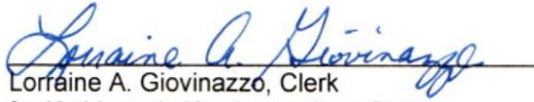
Mr. Hammack moved to approve six months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hart and Mr. Byers were absent from the meeting. The new expiration date was November 25, 2011.

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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: Suzanne Frazier

Approved on: July 23, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, June 8, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. JEAN-CHARLES JAFFRAY, SP 2011-DR-025 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 open deck to remain 24.7 ft. and stairs to remain 25.7 ft. from front lot line. Located at 5910 Woodley Rd. on approx. 20,041 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 309F.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jean-Charles Jaffray, 5910 Woodley Road, McLean, Virginia, reaffirmed the affidavit.

Matthew Mertz, Staff Coordinator, made staff's presentation as contained in the staff report.

In response to a question from Mr. Byers, Mr. Mertz stated that a Notice of Violation had been issued in June of 2009 for land disturbing activity on the property. The setback violations were found by the Department of Public Works and Environmental Services when the grading plan was reviewed.

Mr. Hart, Mr. Mertz, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the plat previously approved by the Zoning Administrator and the location of the concrete patio and an addition, with Ms. Langdon noting that although the property was inspected, the inspector would just be looking at the building code requirements and would not usually know where the property line was located.

Mr. Hammack asked why the steps were not considered part of the violation. Ms. Langdon responded that the Ordinance allows certain walkways and driveways which do not have to meet minimum setback requirements, and the steps in this case were considered a sidewalk.

Mr. Jaffray presented the special permit request as outlined in the statement of justification submitted with the application. He said that when the contractor he hired to do the patio work went to the County for a building permit, he was asked to provide the County with a rough grading plan, which he did. Mr. Jaffray said he did not hear back from the County until six months later when he received a Notice of Violation for land disturbance activities. He said the letter also requested a detailed grading plan. Mr. Jaffray said he did not think it was right for him to be issued a Notice of Violation after getting an approved building permit from the County. He submitted a letter of support from his neighbor.

Mr. Hart and Mr. Jaffray discussed the construction work for the patio and steps, with Mr. Jaffray noting that it was all part of the same project with the addition on the front of the house. In response to a question from Mr. Hart, Mr. Jaffray said he had hired a contractor who was licensed to do work in Maryland, and he would check to see if he was also licensed in Virginia.

Chairman Ribble called for speakers.

Maria Gerkin, 1621 Brookside Road, McLean, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-DR-025 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEAN-CHARLES JAFFRAY, SP 2011-DR-025 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 open deck to remain 24.7 ft. and stairs to remain 25.7 ft. from front lot line. Located at 5910 Woodley Rd. on approx. 20,041 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 309F. 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 8, 2011; and

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

1. The applicant is the owner of the property.
2. Even though there was a little bit of inconsistent testimony about the measurements on the plat, the applicant satisfies the requirements under Section 8-914.
3. The applicant hired architects and builders and relied on them to design and construct the project.
4. It seems also that the County has come in somewhat after the fact.
5. After the applicant obtained a building permit and later a final inspection, the County came in and found some errors that he could be cited for.
6. The Board hopes, assuming this permit is granted, this allows the court case to be resolved.
7. Maybe the County will take a look at the grading permit that he has filed.
8. The Board determined that the applicant has satisfied the requirements set forth in Sections A through F under Section 8-914.
9. The applicant has particularly satisfied the requirement of Section B, that the non-compliance was done in good faith or through no fault of the property owner, for reasons that have already been specified.
10. The reduction will not impair the purpose and intent of the Ordinance or be detrimental to the use and enjoyment of other property in the immediate vicinity.
11. There is, from the photographs, a fairly steep topographical change from the entrance to the house, the stairs, down to the street.
12. The stairs could have been reconfigured so there would be no requirement had they known at an early enough time, and this would not be required, but the Board did not see that the way the stairs are constructed is detrimental to anyone in the neighborhood or the enjoyment of the property in the immediate vicinity.
13. The Board does not think it creates an unsafe condition with respect to both other property and public streets.
14. To force compliance at this point would cause an unreasonable hardship on the applicant.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 open deck and open stairs as shown on the plat prepared by Suburban Development Engineering Incorporated, dated March 14, 2011, as submitted with this application and is not transferable to other land.
2. A building permit and final inspection for the retaining wall adjacent to the open deck and for the stairs (if applicable) shall be obtained within six (6) months of final approval of this application.

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. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. STEVEN BARNES & JANE QUIRK, SP 2011-MV-026 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.9 ft. from rear lot line. Located at 8305 Marble Dale Ct. on approx. 11,692 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((27)) 29.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Troy Caswell, the applicants' agent, 14910 Persistence Drive, Woodbridge, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-MV-026, subject to the proposed development conditions.

Mr. Caswell presented the special permit request as outlined in the statement of justification submitted with the application. He said the location of the proposed screened porch was advantageous, noting that Mr. Barnes was disabled, and the structure would also increase property values of the subject property and adjacent homes. He referenced three letters from neighbors who supported the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-MV-026 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN BARNES & JANE QUIRK, SP 2011-MV-026 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.9 ft. from rear lot line. Located at 8305 Marble Dale Ct. on approx. 11,692 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((27)) 29. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 2011; and

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

1. The applicants are the owners of the property.
2. The Board determined that the application meets all the submission requirements set forth in Section 8-922.
3. As noted in the applicants' testimony, staff recommends approval, and the Board supports its rationale.
4. The Board referenced staff's comments on General Standard 3, which essentially says the deck has existed since 1990 and the request was merely to enclose a small portion of the deck into a screened porch. Additionally, there are two existing mature trees which will screen the addition from the properties located along the rear lot line; therefore, staff believed the standard has been met.
5. The Board also referenced staff's comments on General Standard 9, stating that the request was modest in size and scale and the placement of the house on the irregular shaped lot prohibits alternate locations for such a structure.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (approximately 224 square feet), as shown on the plat prepared by Alexandria Surveys International, LLC, dated January 28, 2011 as sealed through March 17, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,000 square feet existing + 6,000 square feet (150%) = 10,000 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. MANSION HOUSE CLUB, INC., SPA 77-V-247-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP-77-V-247 previously approved for a swim and tennis club to permit site modifications including increase in height of light poles. Located at 9321 Old Mount Vernon Rd. on approx. 5.04 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 9D. (Admin. moved from 4/6/11 at appl. req.)

Chairman Ribble noted that SPA 77-V-247-02 had been administratively moved to September 14, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. MICHAEL A. SMITH, SP 2011-MV-023 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of a two-story addition 16.8 ft. from the rear lot line. Located at 8318 Woodacre St. on approx. 10,517 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((14)) 1.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Michael A. Smith, 8318 Woodacre Street, Alexandria, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-MV-023, subject to the proposed development conditions.

Mr. Smith presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed bedroom and bathroom and sunroom below them would replace the existing screened porch. Mr. Smith said he was not aware of any opposition to the application.

In response to a question from Mr. Hart, Mr. Smith said he was in agreement with the proposed development conditions, but would prefer not to remove the play set. Ms. Johnson stated that the play set could be relocated as long as it was brought into compliance with the Zoning Ordinance.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-MV-023 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL A. SMITH, SP 2011-MV-023 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of a two-story addition 16.8 ft. from the rear lot line. Located at 8318 Woodacre St. on approx. 10,517 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((14)) 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 June 8, 2011; and

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

1. The applicant is the owner of the land.
2. There is a favorable staff recommendation, and the Board adopts the rationale in the staff report.
3. This is a very shallow lot, only 99 feet deep.
4. The front of the house is over 40 feet from the street.
5. There is not a lot of area to work with.
6. This is the logical area to put an addition, if there is going to be one.
7. The impact would be minimal.
8. The addition is basically on top of an existing screened porch, so the applicant would not be cutting down any trees or anything.
9. It appears to be well screened from the neighbors with the existing mature vegetation.
10. The trees are very tall in the neighborhood.
11. The Board did not think there would be any significant negative impact on anyone.
12. The criteria in Section 8-922 all have been satisfied.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 450 square feet) of the two-story addition (including a deck on the second floor), as shown on the plat prepared by Alexandria Surveys, International, LLC., dated February 23, 2011 and signed by Patrick A. Eckert on March 10, 2011, submitted with this application and is not transferable to other land. Notwithstanding the notation on the plat, at the applicant's option, the play set may also be relocated on the lot to a location which would be in compliance with the Zoning Ordinance.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,600 square feet existing + 3,900 square feet (150%) = 6,500 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of

any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. RUSSELL R. PAUGH, SP 2011-BR-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit addition to remain 5.9 ft. from side lot line and accessory storage structure to remain 0.45 ft. from side lot line and 5.76 ft. from rear lot line. Located at 7305 Leesville Blvd. on approx. 10,630 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (8) 2. (Admin. moved from 4/20/11 and 5/25/11 at appl. req.)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Russell R. Paugh, 7305 Leesville Boulevard, Springfield, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Johnson pointed out that although the carport shown on the plat was not in conformance with the Zoning Ordinance, it was not part of the application. She said that if the application was approved, one of the proposed development conditions required the applicant to bring it into compliance.

In response to a question from Ms. Gibb, Ms. Johnson said the applicant had been issued a building permit for the shed.

Mr. Hart and Ms. Johnson discussed the electrical panel on the side of the shed. Mr. Hart asked that wording be added to the development conditions which set a time limit for obtaining the required permits.

Mr. Paugh presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had followed proper County procedures, including all inspections, but two years later he was told it was wrong. Since then, Mr. Paugh had worked with the County to correct the problems, and spent considerable time and money in order to bring the garage and storage addition into compliance. He spoke of his frustration in working with the County regarding structures which were there when he bought the house in 1999.

Mr. Byers asked if the shed close to the property line could be moved to another location in the backyard to bring it into compliance. Mr. Paugh said the zoning inspector recommended lowering it to 8.0 feet or moving it.

In response to a question from Ms. Gibb, Mr. Paugh said the shed was on the property when he purchased the house in 1999, and he had only put new siding on it.

Chairman Ribble called for speakers.

Craig Faunce, 7307 Leesville Boulevard, Springfield, Virginia, came forward to speak. He said the carport abutted his property, and he had no objection to it. Regarding the suggestion of relocating the shed, he said there was no other viable placement given the tree growth in the backyard.

Norma Hecht, on behalf of the North Springfield Citizens Association, came forward to speak in opposition to the application. She said that although a building permit was issued in 2009 for a structure to be located 7.0 feet from the eastern property line, the carport was built less than 2.0 feet from the lot line. Mr. Hart pointed out to Ms. Hecht that the carport was not part of the application, and the applicant had indicated his willingness to bring the shed into compliance. Ms. Hecht stated that since the permit issued in 2009 was totally ignored, she was concerned that it would happen again.

In response to a question from Mr. Hart, Chip Moncure with the Department of Code Compliance stated that a complaint had been generated through the Department of Public Works and Environmental Services regarding the size and location of the shed.

In his rebuttal, Mr. Paugh reiterated that he had followed County procedures and had an approved plat for a 12-by-26-foot carport; however, he was willing to take three feet off. Mr. Hart pointed out that more than three feet would have to be taken off the eave. Mr. Paugh said he would do whatever was needed.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-BR-008 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RUSSELL R. PAUGH, SP 2011-BR-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit addition to remain 5.9 ft. from side lot line and accessory storage structure to remain 0.45 ft. from side lot line and 5.76 ft. from rear lot line. **(THE BZA DID NOT APPROVE THE ACCESSORY STORAGE STRUCTURE.)** Located at 7305 Leesville Blvd. on approx. 10,630 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (8) 2. (Admin. moved from 4/20/11 and 5/25/11 at appl. req.) 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 8, 2011; and

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

1. The applicant is the owner of the property.
2. With regard to the garage/shed on the right-hand part of the house, the applicant met the required standards, A through G.
3. The impact on the neighborhood is minimal.
4. The Board had testimony by the neighbor next door that it has no impact on him and he is in favor of the garage.
5. The encroachment into the side yard does not extend the entire length of the garage; it is just one corner.
6. With respect to the storage shed, the applicant has indicated that he is willing, and has been willing all along, to reduce the size of the shed to bring it into compliance.

7. That being the case, the applicant would not be meeting Standard F, which is to force compliance would cause unreasonable hardship upon the owner; apparently it will not cause unreasonable hardship.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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-IN-PART** with the following limitations:

1. This special permit is approved for the location of the garage/storage addition, as shown on the plat prepared by Aultec, Inc., dated May 2010, as revised through November 24, 2010 and signed January 6, 2011 by James A. Afful, Professional Land Surveyor, as submitted with this application and is not transferable to other land.
2. Within six months of approval of this special permit, all structures on the property shall be brought into conformance with the Zoning Ordinance. The applicant shall obtain an electrical inspection and all applicable permits for the shed.

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 6-1. Mr. Byers voted against the motion.

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. JOHN J. HESS, SP 2011-SP-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.0 ft.

from rear lot line. Located at 6628 Shalestone Ct. on approx. 9,796 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-4 ((2)) 435.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John J. Hess, 6628 Shalestone Court, Clifton, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SP-024, subject to the proposed development conditions.

Mr. Hess presented the special permit request as outlined in the statement of justification submitted with the application. He stated that when he bought the house 14 months ago, the deck and rear yard were not finished, noting that the application was needed to complete them. Mr. Hess said he had the support of his immediate neighbors.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2011-SP-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

JOHN J. HESS, SP 2011-SP-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.0 ft. from rear lot line. Located at 6628 Shalestone Ct. on approx. 9,796 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-4 ((2)) 435. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 2011; and

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

1. The applicant is the owner of the property.
2. The Board determined that the application meets all the submission requirements for Section 8-922 and the general requirements for Section 8-006.
3. In this case, you have an enclosed wood deck that will be replaced by a wooden porch.
4. The Board supports the conclusions in the staff report, which recommends approval.
5. As noted by the applicant, there is support from neighboring property owners.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of an enclosed porch addition (380 square feet), as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated August 3, 2010, revised March 7, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [3,364 square feet existing + 5,046 square feet (150%) = 8,410 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. All play equipment shall be subject to the use limitations of Sect. 10-103 of the Zoning Ordinance.
6. Prior to commencement of and during the entire construction process, the applicant shall designate the area within 10 feet along the rear property boundary as a tree save area to protect the on-site and off-site trees. The applicant shall install tree protection fencing along this area to protect the vegetation from construction activities. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment and materials do not occur within the 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.

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 construction has commenced and been diligently pursued. 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.

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. BUDDHIST TZU CHI FOUNDATION & BUDDHIST TZU CHI EDUCATION FOUNDATION
D/B/A TZU CHI GREAT LOVE PRESCHOOL AND KINDERGARTEN, SP 2011-HM-007
Appl. under Sect(s). 6-303 of the Zoning Ordinance for an existing place of worship to permit
the addition of a nursery school and child care center. Located at 1516 Moorings Dr. on
approx. 2.18 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((23)) 1. (Deferred
from 5/18/11)

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jane Kelsey, the applicants' agent, 4041 Autumn Court, Fairfax, Virginia, reaffirmed the affidavit.

Mr. Hammack made a disclosure and indicated that he would recuse himself from the public hearing. Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-HM-007, subject to the proposed development conditions.

In response to a question from Mr. Smith regarding whether staff had a recommendation concerning the proposed development condition from the condominium association, Ms. Cho said staff had recommended a development condition regarding traffic control in the spirit of the Lakeview Condominium Association's recommendation.

Mr. Beard asked if the County was aware of any problems or complaints with the previous lessee, Good Shepherd Lutheran Church. Ms. Cho said she did not find any in the street file.

Mr. Hart and Ms. Cho discussed the traffic issues in the area. Ms. Cho stated that the distinction between the two conditions proposed by the applicant and the neighbors was the applicant proposed to encourage parents not to use the driveway, whereas the neighbors wanted to require the parents not to use the driveway. She said staff recommended use of traffic control devices, such as, cones, barricades, or any physical barriers used to safely direct traffic. In response to a question from Mr. Hart, Ms. Cho said that staff did not have a problem with Ms. Kelsey's proposed wording for Development Condition 14 regarding traffic control.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said she appreciated the input provided by the surrounding neighbors and the condominium association, noting that staff had addressed their concerns in the proposed development conditions. Ms. Kelsey introduced Clara Cheng, Educational Director for the Foundation.

Ms. Cheng, 1516 Warren Drive, Reston, Virginia, explained the purpose and mission of the school. She noted that the school would welcome attendance from children of all religious backgrounds.

In a letter dated June 7, 2011, Ms. Kelsey proposed two development conditions to be used in place of two development conditions proposed by staff. Mr. Hart asked Ms. Kelsey to clarify which of staff's conditions she was suggesting should be replaced. Ms. Kelsey indicated that her Condition 1 regarding trash trucks could be added to the end of staff's Condition 18, and her Condition 2 regarding traffic control would replace staff's Condition 14.

Chairman Ribble called for speakers.

The following speaker came forward to speak in support of the application: Grace Lyons, 1530 Moorings Drive, Reston, Virginia; and George Thoms, 1528 Moorings Drive, Reston, Virginia.

Pat Via, 8133 Leesburg Pike, Vienna, Virginia, came forward to speak. He said he was the attorney for the Lakeview Condominium Unit Owners Association. He stated the Association was not opposed to the application, but was seeking to ensure that traffic associated with the school's proposed expansion of its hours would not adversely impact their quality of life.

Ms. Gibb, Mr. Beard, Mr. Byers and Mr. Via discussed the current timeliness of activities on the Association property, specifically trash pickup and landscaping work. Mr. Via conceded that the Association may not be adhering to the restrictions being proposed for the school.

In her rebuttal, Ms. Kelsey showed pictures of the current traffic abatement methods, including directional signs on the property. She said the current traffic signs would be left in place.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2011-HM-007 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BUDDHIST TZU CHI FOUNDATION & BUDDHIST TZU CHI EDUCATION FOUNDATION D/B/A TZU CHI GREAT LOVE PRESCHOOL AND KINDERGARTEN, SP 2011-HM-007 Appl. under Sect(s). 6-303 of the Zoning Ordinance for an existing place of worship to permit the addition of a nursery school and child care center. Located at 1516 Moorings Dr. on approx. 2.18 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((23)) 1. (Deferred from 5/18/11) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 2011; and

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

1. The present zoning is PRC.
2. The size of the lot is 2.1804 acres.
3. Staff has recommended approval of the application.
4. The Department of Transportation has said they have no issue with this application.
5. There were no objections, notwithstanding the concern of some issues from the citizens association, which the Board understands they, per se, do not object, but have offered various input.
6. There was very strong support from the neighbors in the proximity.
7. This was a nursery/child care situation in its former existence, under Good Shepherd, and there were apparently no problems.
8. Staff has indicated that the street files show no such problems.

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 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, Buddhist Tzu Chi Foundation and Buddhist Tzu Chi Education Foundation d/b/a Tzu Chi Great Love Preschool and Kindergarten, and is not transferable without further action of this Board, and is for the location indicated on the application, 1516 Moorings Drive, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Kurt N. Pronske, P.E., dated September 3, 1985, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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 seating capacity in the main area of worship shall not exceed 344.

6. The total maximum daily enrollment of children in the child care center/nursery school shall not exceed 86.
7. The maximum number of employees on site at any one time for the child care center/nursery school shall be limited to 12.
8. The maximum hours of operation for the child care center/nursery school shall be limited to 6:30 a.m. – 6:30 p.m., Monday through Friday. Enrolled students shall not arrive prior to 7:00 a.m., and arrivals prior to 8:00 a.m. shall be limited to ten percent of the enrollment. Pick-ups shall be scheduled between 3:30 p.m. and 6:30 p.m.
9. The ages of the children shall be limited between two years nine months to five years eleven months.
10. Parking shall be provided as depicted on the special permit plat and shall consist of a minimum of 88 parking spaces. All parking shall be on site.
11. A minimum of two (2) play sessions shall be held each day for the use of the play area. Play sessions shall not be scheduled before 9:30 a.m.
12. The applicant shall provide contact information to the Lakeview Condominium Association within 15 days from the date the director of the child care center/nursery school or any future director is hired. The contact information for the applicant shall also be provided.
13. The arrival and departure times of the enrolled children shall be arranged to accommodate a staggered schedule set by the applicant at the time the child is registered.
14. The applicant shall encourage the parents of enrolled nursery school children and delivery vehicles delivering products to the nursery school not to use the driveway beyond the entrance to the Temple's parking lot by taking the following actions:
 - Place directional signs at the entrance to direct nursery school traffic to the Temple property's driveway instead of the easement driveway.
 - Place portable barricades at the access point, furthest from Moorings Drive, of the Temple parking lot with a directional sign directing nursery school traffic that is exiting the property to use the Temple's driveway.
 - At registration of the children, provide the parents with a map showing how they should access and exit the Temple property and where they should park.
15. All lighting shall be in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance and shall be operational.
16. The barrier requirement shall be waived along all lot lines.
17. The transitional screening requirement shall be modified to permit the preservation and maintenance of the existing vegetation on site.
18. Any trash dumpsters or containers shall be fully screened with an architecturally solid wall and gate(s). Recycling of waste materials shall be encouraged. No trash trucks shall arrive on the property prior to 7:00 a.m.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. 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. Hammack recused himself from the hearing.

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. CLS LAWN & LANDSCAPE, A 2011-DR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a contractor's offices and shops and a storage yard without site plan approval, a valid Non-Residential Use Permit, valid Building Permits, or approved sign permit applications and that this business has established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd. on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 4/20/11 at appl. req.)

Chairman Ribble noted that A 2011-DR-003 had been administratively moved to September 14, 2011, at 9:00 a.m., at the appellant's request.

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Vice Chairman Hammack assumed the Chair.

The meeting recessed at 11:42 a.m. and reconvened at 11:47 a.m.

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~ ~ ~ June 8, 2011, Scheduled case of:

9:00 A.M. OCCOQUAN OVERLOOK LP, A 2011-MV-002 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination regarding the correct location of the boundary line separating the R-C and R-1 Districts on property located at Tax Map 106-3 ((1)) 4A. Located on approx. 63.51 ac. of land zoned R-C, R-1 and WS. Mt. Vernon District. Tax Map 106-3 ((1)) 4A. (Deferred from 4/20/11 at appl. req.) (Decision deferred from 5/11/11)

Jack Reale, Senior Assistant to the Zoning Administrator, provided rebuttal to a letter received by the Board from McGuire Woods, attorneys representing Occoquan Overlook LP, regarding a second subdivision having standing in the matter. He reiterated that although there had been submissions, there had been no final approval for Section 2 of Occoquan Overlook. Mr. Reale referenced the status update memo from staff which noted why the two lines shown on the map approved by the Board of Supervisors indicated a single line, representing both the WSPOD and R-C/R-1 District boundary. He said there was no evidence in all of the record that had been reviewed that would indicate there was an intention by the Board to create two separate lines where they were, in fact, paralleling one another. With the absence of any indication that there was intent for there to be two lines, Mr. Reale asked the Board to uphold the determination of the Zoning Administrator.

Ms. Gibb and Mr. Reale discussed the two letters that had been received from Mr. Dooley, the owner of Lot 30, who stated that he had just recently learned that a portion of his property would be impacted by the rezoning. Mr. Reale said only a small portion of his land would become zoned R-C instead of R-1. Responding to a question from Ms. Gibb, Mr. Reale stated that Mr. Dooley had received notice of the public hearing, not only by certified letter, but also from the posting on the site.

Ms. Gibb, Mr. Hart, and Mr. Reale discussed the record plat for Occoquan Overlook, with Mr. Reale noting that since Lot 30 was the only lot that had an adjustment to the property line, staff had only provided those pages of the record plat relevant to that lot to the Board. Mr. Hart added that Lot 30 could only be developed as a single-family home, and whether zoned R-C and R-1, both had the same setback requirements.

In response to a question from Mr. Hart, Mr. Reale said that the record plat provided to the Board was the version available from the Department of Public Works and Environmental Services (DPWES). Mr. Hart

stated his concern that the Board did not have a final copy that showed approval by the County and recordation by the Court.

Mr. Hart asked what happened to the plans for Section 2 of Occoquan Overlook. Mr. Reale responded that the most recent plan submissions were in 2008-2009 and that they were rejected.

Mr. Smith asked that staff respond to David Gill's assertion in his letter to the Board regarding the estoppel requirements under Sect. 15.2-11(c), specifically whether reliance could be made on an expired subdivision plan. Mr. Reale deferred to Arthur Schmaltz, attorney for the Fairfax County Water Authority. Mr. Schmaltz referenced Sect. 15.2-2260(f), which said that an approved preliminary subdivision plan is valid for five years, but that the five years is granted only if a final plat is submitted within one year after the preliminary plan. He explained that since the owner did not submit a final plat within one year, the preliminary plan became moot.

Mr. Smith, Ms. Gibb, and Mr. Schmaltz discussed the timeliness for the approval of Section 1, with Mr. Schmaltz pointing out that there was no follow through with Section 2.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He said he wanted to address the question of Lot 30. He said he felt some of the arguments that were being made with respect to Lot 4A would work much better on Lot 30, but the determination that was being appealed was not about Lot 30. It was about the 63 acres. Mr. Hart said he did not think that Lot 30 would be affected by today's proceedings. He said Lot 30 may have an excellent 60-day rule argument or some other issue, but it did not appear that there had been any determination about Lot 30.

Mr. Hart said he did not believe that the determination of the Zoning Administrator was shown to be plainly wrong. He said this was a very complicated situation, and it was certainly possible that engineers or surveyors could reach multiple conclusions or there might be multiple interpretations regarding what happened. He said he did not believe it was the function of the Board to substitute their judgment for that of the Zoning Administrator. Mr. Hart said the Zoning Administrator had an ample basis to come to the conclusion that she did. There was abundant evidence in the record, particularly relying on the County surveyor and the engineering techniques that she used in 2011 to reach the conclusion of where the line was. Mr. Hart said that in the additional information that had been submitted, there was nothing in the record that would suggest there was any discrepancy between the geographic extent of the Water Supply Overlay District and the R-C District. Mr. Hart said he was not present at the time of the rezoning in 1982, but he was present in 1983, and he did work on one of the downzoning cases. He stated it was true that there were areas around this building and around Centreville, around Route 28, which were included in the WSPOD, but were not downzoned to R-C. But at the edges of it, towards Loudoun County or down around the Town of Clifton over to Route 123, all of that was in both. It was downzoned to R-C, and it was part of the WSPOD. If the articulated intent was supposed to be this watershed, there would be no reason for a different line between R-C and WSPOD. Mr. Hart said that although the drawings for 40,000 acres were reduced to an 8 ½ x 11 drawing or excerpts which showed two lines, he did not feel it necessarily showed two areas if that was the only way it could be drawn at that scale. Mr. Hart said he felt it was the applicant's burden to persuade the Board that the Zoning Administrator was plainly wrong, and he did not think that they met that burden.

Mr. Hart also addressed the statutory argument that was made. He said he did not think that with respect to the 63 acres, there could have been good faith reliance on a determination. He disagreed to some extent with some of what Mr. Schmaltz was arguing. He said the Board on rare occasion had cases involving subdivision approval or subdivision ordinance questions peripherally, but he felt the statute referred to not only determinations made by the Zoning Administrator or a subordinate, but also determinations by other officers. Mr. Hart said it was possible that DPWES made determinations affecting zoning or the Zoning Ordinance. He said he felt approval of a record plat that would show a lot or an area to be zoned a certain way would be within that category. He said it might not be by the Zoning Administrator, although he thought on many drawings there was an approval by zoning. Mr. Hart said he had asked at the last hearing if staff could obtain the record plat, but what the Board appeared to have now was an excerpt of an unsigned draft. The Board still did not have the record plat to show exactly what that would have been. He said he felt that might have been the appellant's burden to give the Board that exact drawing and show how that drawing affected this.

Mr. Hart said another point that was apparent from the confusion was that even if the edge of Lot 30 was a different line than the County surveyor would place today, it would be limited to only Lot 30. No one had shown the Board how that line would affect an extension across the rest of the 63 acres. The Board had only been given an exhibit showing half a dozen different lines in different years and different calculations of where the drainage divide was located. He said he felt there had been no nexus shown to the Board that the approval of Section 1 tied into any of the other several lines over the years. It had been explained to the Board, however, that in the opinion of the Zoning Administrator, the R-C and WSPOD were co-extensive, that using the best available techniques now with the GIS, the line was exactly as they had drawn it.

With respect to the approvals, Mr. Hart said the record was a little thin because the Board did not have the right drawing, but that the approval of Section 1 dealt with Section 1 only. The preliminary approval for Section 2 had expired. A final plan would have to have been submitted within a year, but that did not happen. Mr. Hart stated that nothing had been shown to the Board that there was a determination made about where the zoning boundary was located on the 63 acres that could have been relied on. There might have been something for a segment on Lot 30, but that was different. If there was something in the preliminary approval, it went away. Mr. Hart said he did not feel that an expired preliminary approval fell within the category of a decision or determination that somebody had relied upon.

Mr. Hart said the Board was not reaching any conclusions about Lot 30, about whether a subdivision approval only could be appealed to the Board. The Board was just upholding the determination that was made about the location of the dividing line on the 63 acres.

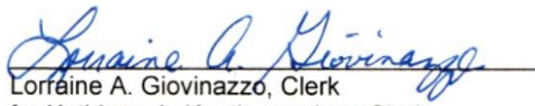
Mr. Smith seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Byers were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:46 p.m.

Minutes by: Suzanne Frazier

Approved on: August 6, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, June 22, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Absent from the meeting was Nancy E. Gibb.

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

~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. FARAH YAZDIZADEH, MEHRDAD ADIBPOUR, SP 2010-SP-068 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 5826 Parakeet Dr. on approx. 9,456 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-2 ((11)) 87. (*Admin. moved from 2/16/11 at appl. req.*)

Chairman Ribble called the case noting that the notices were not in order.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the notices had not been done, and there was no contact with the applicant for several months. She added that the applicants were to go out of the country; that their son was acting as their agent, and he requested a six-month deferral. Deborah Hedrick, Staff Coordinator, had worked with the agent since February, there remained multiple violations, and staff recommended dismissing the case.

Charles Fitzhugh, Investigator, Code Compliance, said it appeared that tenants continued to reside in the basement of the accessory dwelling in violation of the Ordinance.

Mr. Hart moved to dismiss SP 2010-SP-068. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. LARRY & MARY ANN SNYDER, SP 2011-PR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 21.8 ft. from front lot line. Located at 3021 Graham Rd. on approx. 7,707 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((5)) (4) 20. (*Admin. moved from 7/13/11 at appl. req.*)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Larry L. Snyder, 3021 Graham Road, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

There was discussion regarding documentation of the original approved location of the screened porch.

Mr. Snyder presented the special permit request as outlined in the statement of justification submitted with the application.

Chairman Ribble called for speakers.

Robert D. Peterson, Jr., owner of All American Custom Homes, Inc. 3309 Prosperity Avenue, Fairfax, Virginia, came forward. He said a completed retaining wall was approved, and it provided an egress from the back yard to the front yard with a series of steps. Mr. Peterson said the carport to be converted into a garage was for security purposes, and the Snyder's had added new siding recently of which the new construction

material would match. He briefly explained the design and layout of the proposal. Mr. Peterson said it was a good plan, and it should be approved.

Mr. Hart stated that the carport was to remain an open carport, it would not be a garage, and they were only considering the porch matter. Ms. Hedrick stated that the applicant withdrew the portion of their request to enclose the carport.

There being no further speakers, Chairman Ribble noted that letters of support were received that morning. He then closed the public hearing.

Mr. Hammack moved to approve SP 2011-PR-031 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LARRY & MARY ANN SNYDER, SP 2011-PR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 21.8 ft. from front lot line. Located at 3021 Graham Rd. on approx. 7,707 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((5)) (4) 20. (*Admin. moved from 7/13/11 at appl. req.*) 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 22, 2011; and

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

1. The applicants are the owners of the land.
2. It is clear that the screened porch has been there for years, and that in and of itself is similar to an enclosed room, although it is not considered a structure.
3. Maybe it is a structure, but it is not considered the same as when you have the new framing and the addition, the upgrading required to enclose it, as proposed by the applicants.
4. The Board does not see the enclosure really impacts the neighborhood any more than the screened porch itself.
5. The Board has determined that the applicant has satisfied the requirements set forth in Sub. Sect. A through G, and certainly under B, that the non-compliance was done years ago by a builder.
6. This special permit really brings it into compliance.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of a one-story addition (screened porch enclosure), as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated May 21, 2010 as revised through March 7, 2011, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the addition within 6 months of approval of this special permit.

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

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~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit addition to remain 20.0 feet from front lot line and accessory storage structures to remain 0.0 feet from rear lot line and 1.2 feet from the side lot line. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006). (*Admin. moved from 12/1/10 and 5/4/11 for ads*) (*Admin. moved from 1/26/11 at appl. req.*)

ASHLEY NICOLE M. LE VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage and accessory structures greater than 200 square feet in size. Located at 8116 Martha St. on approx. 7259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5))10 (Concurrent with SP 2010 LE-053). (*Admin. moved from 12/1/10 and 5/4/11 for ads*) (*Admin. moved from 1/26/11 at appl. req.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Ashley Nicole M. Le, 8116 Martha Street, Alexandria, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report.

It is noted that the County asked an interpreter to assist with the language barrier that may exist between the applicant, the Board, and staff.

Chairman Ribble asked whether some of requested structures were on another person's property. Ms. Johnson noted that the property in question was owned by an apartment complex west of the site.

Mr. Hart asked whether there had been a complaint filed about the property. Wayne Bass, Investigator, Department of Code Compliance, said there was an anonymous complaint about whether the applicant had a building permit.

Mr. Hart asked whether the sheds were a violation for the adjacent property owner as well. Ms. Langdon explained that the applicant admitted the sheds belonged to her, and staff's position was they should be moved back onto her property, because they were incidental to her residential use.

Discussion ensued concerning the garage's location and use on the current site, resolution of the shed matter by either removing them completely or shifting them onto the applicant's lot, the notification of the apartment complex as an adjacent property owner, and an issue of whether there was a fire code implication concerning spacing between the different structures.

At Mr. Byer's request, Ms. Johnson said staff would certainly try to contact the apartment complex regarding the encroachment issue of their neighbor's sheds and hot tub. In response to Mr. Hammack's question regarding who was specifically notified, Ms. Johnson said names are taken from Tax Administration records, which list only the property owner.

There being no further questions, Chairman Ribble called upon the applicant for her justification.

Ms. Binh Flaherty, interpreter for the applicant, came forward. Chairman Ribble informed her that there was a justification for Ms. Ashley Nicole M. Le's proposal, and if she wished to add to it, she could.

Ms. Flaherty explained that the garage and shed were already there when Ms. Le bought the house, and Ms. Le was not advised by her real estate agent that the structure of the house violated the Zoning Code.

In response to Mr. Hart's question of what transpired at Ms. Le's closing, Ms. Flaherty said Ms. Le's language barrier interfered with her understanding of what transpired with the acquisition of the property.

Interpreting for Ms. Le, Ms. Flaherty said the submitted plat was drawn up after the Notice of Violation was issued.

Ms. Johnson explained the timeframe of the County's actions and that of the applicant's, noting the successive violations.

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

Mr. Byers said he would recommend a deferral, because it concerned him that at the time of closing, there was an indication of a language barrier, and there should have been a title search and a title rendered based on the plat. He felt it was prudent to contact the apartment complex's owner, as they too were in violation. Mr. Byers said he would strongly recommend that the applicant retain legal counsel because he thought Ms. Le needed an attorney to help her through the process.

In response to the Board's concern about re-notification, Ms. Langdon said the notices were correct, and there would be no problem sending them out again.

Mr. Byers moved to defer decision on SP 2011-LE-053 to September 28, 2011, at 9:00 a.m. Mr. Hammack seconded the motion.

Discussion ensued regarding the length of time the structures were on the property. Ms. Johnson noted the structures had no vested rights, as demonstrated by tax records.

Mr. Beard requested clarification of the complaint that brought the matter to the County's attention.

Wayne Bass, Zoning Investigator, Code Compliance, said the current complaint was issued September 2010. He said there were previous Notices of Violations cited by previous inspectors.

Discussion ensued regarding the fact that there was a building permit for the addition in the front which was filed subsequent to Ms. Le purchasing the property, adequate notification of the adjacent property owners, discrepancies in the submitted plat, and the only building permit appearing to be approved was for the garage and the dwelling itself.

Chairman Ribble called for a vote.

The motion to defer decision until September 28, 2011 carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. WARA WARA INC. T/A WARA WARA KARAOKE & PUB RESTAURANT, SP 2011-MA-028
Appl. under Sect(s). 8-503 of the Zoning Ordinance to permit a commercial indoor
recreational use (karaoke). Located at 4231-R Markham St. on approx. 3.13 ac. of land
zoned C-6, CRD, HC and SC. Mason District. Tax Map 71-1 ((20)) 3.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Katie Kyoung Hee Woo, the applicant's agent, 13 Summit Ridge Court, Germantown, Maryland, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-MA-028, subject to the proposed development conditions. Additional conditions regarding the Non-Residential Use permit (Non-RUP) restrictions and building transmission were included after the staff report's publication, and were distributed to the Board that morning.

Ms. Woo said the applicant obtained a Non-RUP permit for an eating establishment by-right only. Until the violation, the applicant did not know that she should have obtained a special permit. After the applicant received the violation notice, due to budget matters and issues with previous agents, the special permit was not processed within the required time. She then received a Fairfax County court judgment whereby she shut down her establishment. Ms. Wood said the subject site's space now complied with Code regulations, the applicant would work with County staff, and would obey the County's Code regulations.

At the request of Mr. Smith, Ms. Woo described how the karaoke business was operated. She explained that the establishment had sound protection, the sound could not be heard from the outside, and no sound was transferred to the other rooms. Ms. Woo said there had never been any complaint about noise, and a point of contact could be contacted if one had a complaint.

Ms. Woo responded to questions of Mr. Hart's concerning the new development conditions, the floor plan, and the limitations of and where the seats were located. It was noted that maximum occupancy would be limited on their Non-RUP.

Ms. Cho said staff restricted the number of seats for the karaoke use, and at the time of their Non-RUP, the Fire Marshall's Agency office would determine its own maximum occupancy. She further explained the Non-RUP's limitations of persons and occupancy of the pub.

Ms. Woo said on weekends, where typically there were more patrons, they had a counting system to ensure compliance to maximum occupancy.

Susan C. Langdon, Chief, Special Permit and Variance Branch, told the Board that the Pub had two floors, which explained the number of patrons. The second floor was for karaoke use, and the first floor was the bar and restaurant.

W. B. Moncure, Investigator, Department of Code Compliance, explained there was no response to the August Notice of Violation; therefore, the County took the issue to litigation, because of the continued violations. Mr. Moncure said there was some confusion due to the applicant's previous agent who failed to bring the matter forward. He added that since Ms. Woo had been the applicant's representative, steps had been taken to come before the Board for special permit approval.

Chairman Ribble called for speakers.

Younghui Jerome, 10045 Baltimore National Pike, Ellicott City, Maryland, came forward to speak. Her main points were that it was a wonderful place for family and friends to get together, have dinner, and relax. She said it was a place for all ages to have a good time.

Michael Ko, 4149 Elizabeth Lane, Annandale, Virginia, came forward to speak. He said it was a convenient place to meet, eat, and relax. He asked that the Board approve the application.

Brian Jerome, 10005 Frederick Road, Ellicott City, Maryland, came forward to speak. He said the club provided a wonderful place to go, meet for family reunions, and have get-togethers for Asians to continue their culture.

Mike Park, 14605 Rainy Springs Lane, Centerville, Virginia, came forward to speak. He said going to the pub really helped alleviate his stress, and he strongly supported the establishment.

There being no further speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-MA-028 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WARA WARA INC. T/A WARA WARA KARAOKE & PUB RESTAURANT, SP 2011-MA-028 Appl. under Sect(s). 8-503 of the Zoning Ordinance to permit a commercial indoor recreational use (karaoke). Located at 4231-R Markham St. on approx. 3.13 ac. of land zoned C-6, CRD, HC and SC. Mason District. Tax Map 71-1 ((20)) 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 June 22, 2011; and

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

1. The Board has a favorable staff recommendation.
2. The rationale in the staff report is adopted.
3. With the imposition of the development conditions, any impacts would be sufficiently mitigated.
4. This is a commercial space in a shopping center.
5. The Board does not think the singing is going to bother anyone in this particular location.
6. This is an appropriate location for this type of use.

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 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, Wara Wara Inc. T/A Wara Wara Karaoke & Pub Restaurant, and is not transferable without further action of this Board, and is for the location indicated on the application, 4231-R Markham Street, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by George Ira Worsley, Jr. & Associates, dated February 1, 2011, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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 commercial recreation use (karaoke) shall be limited to 7,170 square feet, as delineated on the floor plan prepared by George Ira Worsley, Jr. & Associates, dated February 1, 2011, included as Attachment 1. The maximum number of seats for the karaoke use shall be 56 seats.
6. The maximum hours of operation of the karaoke use shall be limited to 11:00 a.m. to 2:00 a.m. daily.
7. The number of required parking spaces shall be provided in conformance with the provisions of Article 11 of the Zoning Ordinance, as determined by the Department of Public Works and Environmental Services (DPWES).
8. The use shall be open to inspection by all departments of the County of Fairfax during the hours of operation.
9. No further additions or expansion to the karaoke rooms shall be permitted without approval of an amendment to the special permit.
10. Assembling on the fire escape outside of emergency use shall be prohibited.
11. All signage shall be in conformance with Article 12 of the Zoning Ordinance.
12. The applicant shall police the premises and surrounding parking area for trash and debris on a regular basis.
13. The Non-Residential Use Permit (non-RUP) shall include restrictions on the maximum hours of operation for the karaoke use and maximum occupancy for the uses.
14. If required, a tenant layout plan shall be submitted to Building Plan Review for review and approval in accordance with the currently adopted Virginia Construction Code.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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 as outlined above. 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. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. JAMES EPISCOPAL CHURCH AND T-MOBILE NORTHEAST LLC, SPA 86-V-052-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 86-V-052 previously approved for church with child care center to permit the addition of a telecommunications facility. Located at 5614 Old Mill Rd. on approx. 4.88 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4B. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated and scheduled for 11/17/10) (Admin. moved from 11/17/10, 1/26/11, 2/16/11, and 4/20/11 at appl. req.)

Chairman Ribble noted that the application had been administratively moved to October 5, 2011 at the applicant's request.

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~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. SHAROKH TAYEBI, A 2011-DR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-E District in violation of Zoning Ordinance provisions. Located at 900 Utterback Store Rd. on approx. 1 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 27.

Chairman Ribble called the appellant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sharokh Tayebi, 900 Utterback Store Road, Great Falls, Virginia, reaffirmed the affidavit.

Roger Marcy, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. Staff recommended that the BZA uphold the determination of the Zoning Administrator as set forth in the Notice of Violation, dated February 9, 2011.

Discussion ensued concerning the appeal of only one Notice of Violation, the current residents of the subject property, and the criteria that made the arrangement a violation rather than a compliant housekeeping unit.

Georgette McKee, the applicant's agent, 900A Utterback Store Road, Great Falls, Virginia, came forward and presented the arguments forming the basis for the appeal. Ms. McKee identified herself as one of the residents of the subject property. She discussed the applicant's stance that there was a violation, but it was pre-existing from when he purchased the property. She explained the degree to which the two families residing in the home shared housekeeping duties, the history of the septic system and additions on the property as documented through plats, and reasons the present living situation may be allowed to remain by the Zoning Ordinance. Ms. McKee requested additional time and direction from staff in order to come into compliance, as the second family residing in the home intended to vacate the premises, and the applicant would then occupy the property in their place.

There was discussion concerning the viability of the applicant's plan to move onto the property as a solution to the existing violation, the applicant's request for a deferral, and the lack of evident diligence on the applicant's part to come into compliance.

Mr. Smith moved to defer decision on A 2011-DR-007 to October 5, 2011, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Smith noted that if there was no proper application filed before the next hearing date, then the Board should move forward at that time.

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~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. CAPITAL ONE BANK, A 2011-DR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the design and color specifications of three existing façade signs are not in substantial conformance with the development conditions of Special Exception SE 2008-DR-003. Located at 6890 Elm St. on approx. 29,122 sq. ft. of land zoned C-2, H-C, CRD and SC. Dranesville District. Tax Map 30-2 ((5)) 6A. (Concurrent with A 2011-DR-009). (*Admin. moved from 5/25/11 for ads*).

CAPITAL ONE BANK, A 2011-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the design and color specifications of three existing façade signs are not in substantial conformance with the development conditions of Special Exception SE 2008-DR-003, in violation of Zoning Ordinance provisions. Located at 6890 Elm St. on approx. 29,122 sq. ft. of land zoned C-2, H-C, CRD and SC. Dranesville District. Tax Map 30-2 ((5)) 6A. (Concurrent with A 2011-DR-006). (*Admin. moved from 5/25/11 for ads*).

Chairman Ribble called the appellant to the podium. He noted A 2011-DR-009 had been withdrawn.

Mr. Hart made a disclosure that his law firm was currently engaged in a case where the attorneys for the adverse party were from appellants' agents' law firm, but indicated he did not believe his ability to participate in the case would be affected.

Mr. Beard made a disclosure that he had an account with the appellant organization, but indicated he did not believe his ability to participate in the case would be affected.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, noted that new color-copied staff reports were distributed that morning.

Jack Reale, Staff Coordinator, presented staff's position as set forth in the staff report.

In response to the Board, Mr. Reale made additional comments regarding the color of the signage.

Joe Bakos, Zoning Inspections Branch, explained how inspectors make decisions by consulting the Zoning Ordinance.

There was discussion regarding details of what was permitted and prohibited for the appellant's signage, the issued sign permits, potential remedies for the standing issue of the subject appeal, and staff's interpretation that the approved development conditions should be followed.

Bob Flynn, the appellant's agent, presented the arguments forming the basis for the appeal. He addressed the existing development conditions, and detailed the importance placed by staff on the locational restrictions for signs, but lack of concern with the coloring of those signs. Mr. Flynn explained the acquisition of Chevy Chase Bank by the appellant, and the subsequent desire and actions taken to redesign the new locations, which resulted in the present violations. He also provided visuals of the intended elevations and signage of the property. Mr. Flynn stated the Zoning Administrator had given previous discretionary approval for the white colored sign, but then made an opposing interpretation regarding the signage on the property, so his stance was there was a non-discretionary error made.

There was discussion regarding the consistency of the development conditions for the other branches acquired from Chevy Chase Bank by the appellant, discolored paper copies of the trademark logo, the source of the Zoning Administrator's authority to approve minor modifications such as color, and the design of the subject sign not being an issue.

Staff commented on the Zoning Administrator's authority, and explained the clear and direct language used in the development conditions did not require an interpretation.

Discussion ensued regarding the reason the Board of Supervisors included limitations on the color of the signs in the original development conditions.

As there were no speakers, Chairman Ribble asked for any additional comments from staff or the appellant. Mr. Flynn had nothing to add.

Mr. Reale commented on the importance of regulating the signage, and standing by the specific restrictions put in place by the Board of Supervisors.

Chairman Ribble closed the public hearing.

Mr. Beard moved to overturn the determination of the Zoning Administrator. He felt the color of the sign was a minor issue, which the appellant may not have fully been aware of prior to being notified of the violation. Mr. Beard stated the appellant had proceeded in good faith, and the color of the signs seemed a nebulous matter. He did agree the Zoning Administrator had some latitude in such matters as the subject appeal.

Mr. Smith seconded the motion, which failed by a vote of 2-4. Chairman Ribble, Mr. Hart, Mr. Byers, and Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

Mr. Hart commented on the 60-day rule, and stated his understanding there was a non-discretionary issue. He expressed his view that the explicit color detail needed to be abided by, since it was legally included in the official development conditions, and it was not within the Zoning Administrator's purview.

Mr. Smith explained his position that the color of the lights was a minor modification, which the Zoning Ordinance did give the Zoning Administrator the authority to adapt.

Mr. Byers commented on the language of the development conditions, the additional mistakes made by the appellant, and the need to enforce development conditions as published.

Mr. Byers moved to uphold the determination of the Zoning Administrator. Mr. Hammack seconded the motion, which carried by a vote of 4-2. Mr. Beard and Mr. Smith voted against the motion. Ms. Gibb was absent from the meeting.

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The meeting recessed at 11:57 a.m. and reconvened at 12:08 a.m.

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~ ~ ~ June 22, 2011, Scheduled case of:

9:00 A.M. SNSA, INC. D/B/A FAST EDDIE'S BILLIARD CAFÉ, A 2011-MV-010 Appl. under sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the expiration of Non-Residential Use Permit (Non-RUP) #91170193 does not allow the continuation of any use or occupancy of the property until a new valid Non-RUP is issued. Located at 6220 Richmond Hy. on approx. 2.84 ac. of land zoned C-8, H-C and CRD. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D.

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hammack indicated that he would recuse himself from the public hearing.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. She stated the appeal was moot as the appellant received a new Non-Residential Use Permit (Non-RUP).

Discussion ensued regarding the intention of the original development conditions, discontinuation of operations on the subject property during the brief interim between the expiration of the original Non-RUP and the issuance of the new one, the Zoning Administrator no longer requesting a revocation, and alternative ways the appellant could have dealt with the impending Non-RUP expiration.

Douglas McKinley, the appellant's agent, no address given, presented the arguments forming the basis for the appeal. He explained the events which transpired upon the expiration of the original Non-RUP, the impact of not having a parking tabulation prior to the Non-RUP expiration, the suspended enforcement which should have resulted from the filing of an Appeal application, the negative impact of closing down for safety purposes on the appellant's reputation, and the potential of the revocation of the appellant's liquor license as a result of actions taken by Fairfax County.

Discussion ensued regarding the attendees at the on-site meeting regarding the ceasing of operations, the lack of a typical procedure for the subject situation, the reason for shutting down the establishment rather than just ceasing the dance hall use, the revocation of the fire permit by the Fire Marshall's Office qualifying the property as unsafe, and involvement of the Alcoholic Beverage Control (ABC) Board.

Mr. McKinley commented again on the wrongful enforcement by the County following the submittal of an appeal application.

There was discussion regarding the stand-alone impact of the fire permit revocation, the reasons for pulling the fire permit, and what relief the appellant could receive from the Board in this matter.

Chairman Ribble closed the public hearing.

Mr. Hart moved to overturn the determination of the Zoning Administrator. He explained the appellant was suffering residual issues with the ABC Board, the subject determination was appealable, the intention of the previous special permit approvals development conditions were not meant to cease all uses on the property, and the appropriateness of the closing of a property deemed unsafe. Mr. Hart focused on the narrow issue of the April 13th letter. He believed the continuation of the existing use, with the contingency that the dance hall use go away, were expressly contemplated in 2009, expressly referenced in the 2009 development conditions, and nothing in the 2011 approval operated to shorten the time frame or cancel out the other uses.

Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Hammack recused himself from the hearing. Mr. Smith was not present for the vote. Ms. Gibb was absent from the meeting.

Mr. Byers commented on the Board's intent of the prior approval, and the need to evaluate the situation before overturning the Zoning Administrator.

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~ ~ ~ June 22, 2011, Status Update:


Chairman Ribble noted there was a status update for SNSA Inc. d/b/a Fast Eddie's Billiard Café, SPA 95-V-031-04. Staff noted they did not wish to pursue this matter further.

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As there was no other business to come before the Board, the meeting was adjourned at 1:15 p.m.

Minutes by: Paula A. McFarland/Emily J. Armstrong

Approved on: January 24, 2018


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, June 29, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. RUBEN JORDAN ROSALES, SP 2011-PR-029 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 2.2 ft. from side lot line. Located at 7208 Quincy Ave. on approx. 7,384 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 168.

Chairman Ribble called the applicant to the podium.

Brenda Cho, Staff Coordinator, stated that the applicant's agent was not yet present.

Chairman Ribble stated that the case would be taken up later in the morning.

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~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation uses in conjunction with a place of worship by right. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A. (Admin. moved from 5/25/11 at appl. req.)

Chairman Ribble noted that SP 2011-SU-011 had been administratively moved to August 10, 2011, at the applicant's request.

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~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. 9:00 A.M. CHRISTINA L. GREATHOUSE, TRUSTEE, SP 2011-SU-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 22.7 ft. from rear lot line. Located at 13413 Peachwood Ct. on approx. 10,590 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 35-1 ((5)) 15.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Christina L. Greathouse, Trustee, 13413 Peachwood Court, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow construction of a two-story, 60-square-foot addition, to be located 22.7 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a modification of 2.3 feet, or 9 percent, was requested. Ms. Hedrick said the subject application was in harmony with the Comprehensive Plan and in conformance with applicable Zoning Ordinance provisions. Staff recommended approval of SP 2011-SU-027 subject to the proposed development conditions.

Ms. Greathouse presented the special permit request as outlined in the statement of justification submitted with the application. She said she wanted to construct a kitchen addition which would accommodate a small

breakfast nook. Ms. Greathouse said she had talked with her adjacent neighbors about the project, both of whom sent e-mails in support of the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-SU-027 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTINA L. GREATHOUSE, TRUSTEE, SP 2011-SU-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 22.7 ft. from rear lot line. Located at 13413 Peachwood Ct. on approx. 10,590 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 35-1 ((5)) 15. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 2011; and

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

1. The applicant is the owner of the property.
2. This is a very modest addition.
3. The Board has a favorable staff report.
4. The rationale set forth in the staff report is adopted.
5. The Board has three letters in support of the application.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a two-story addition (approximately 60 square feet), as shown on the plat prepared by Jeff Warner Land Surveying, Inc., dated September 22, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,300 square feet existing + 6,450 square feet (150%) = 10,750 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. N. ELIZABETH KELLEHER & P. ROSS TAYLOR, VC 2011-DR-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of one addition 16.1 ft. from one front lot line and 11.5 ft. from other front lot line and another addition 10.9 ft. from front lot line. Located at 2304 Highland Ave. on approx. 10,007 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((18)) 11.

Chairman Ribble noted that VC 2011-DR-006 had been administratively moved to July 27, 2011, at the applicants' request.

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~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. MARIA L. MICHAELS, SP 2011-SU-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit an accessory structure to remain 9.7 ft. and accessory storage structure to remain 0.4 ft. from side lot line. Located at 11224 Sorrel Ridge La. on approx. 2.34 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((3)) 18.

Chairman Ribble noted that SP 2011-SU-030 had been administratively moved to July 13, 2011, at the applicant's request.

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~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. NORTHROP GRUMMAN SYSTEMS CORP., SP 2011-PR-036 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard. Located at 2980 Fairview Park Dr. on approx. 6.44 ac. of land zoned PDC. Providence District. Tax Map 49-4 ((13)) 13.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

A.J. Paz, Northrup Grumman Systems Corporation, agent for the applicant, 1840 Century Park East, Los Angeles, California, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant proposed to construct a six-foot high security fence along the site's frontages on

Route 50 and Fairview Drive. Ms. Langdon noted that a maximum fence height of 4.0 feet is permitted in the front yard; therefore, a modification of 2.0 feet was requested. Ms. Langdon said staff had verified that the sight distance angle was well outside the property lines and the fence would not impinge on sight distance at the corners of Fairview Drive and Route 50.

Mr. Paz presented the special permit request as outlined in the statement of justification submitted with the application. He said he was the corporate director of real estate for the applicant, who was in the process of relocating from Los Angeles to Fairfax County. Mr. Paz said the fence was for security purposes.

In response to a question from Mr. Hart, Mr. Paz said -the fence would be constructed of black galvanized metal, and he agreed to an additional development condition stating that the location and materials would be consistent with the details on Sheet 4 of the development plan.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-PR-036 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORTHROP GRUMMAN SYSTEMS CORP., SP 2011-PR-036 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard. Located at 2980 Fairview Park Dr. on approx. 6.44 ac. of land zoned PDC. Providence District. Tax Map 49-4 ((13)) 13. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 29, 2011; and

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

1. The applicant is the owner of the property.
2. The zoning is PDC.
3. The area of the lot is 6.44 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 general location and maximum height of the fence shown on the plat prepared by VIK A Inc., dated February 14, 2011, revised through April 24, 2011, as submitted with this application and is not transferable to other land. The location of the fence may be field adjusted to preserve existing vegetation and follow existing topography within the subject property.
2. The fence design and materials will be consistent with the details on page 4 of the special permit plat.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09, 10/27/09, 1/27/10, 5/26/10, 11/3/10, 2/2/11, 4/13/11, and 5/25/11 at appl. req.)

Chairman Ribble noted that A 2009-PR-006 had been administratively moved to August 3, 2011, at the appellant's request.

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~ ~ ~ June 29, 2011, Scheduled case of:

9:00 A.M. RUBEN JORDAN ROSALES, SP 2011-PR-029 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 2.2 ft. from side lot line. Located at 7208 Quincy Ave. on approx. 7,384 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 168.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Erick Garcia, the applicant's agent, 8474 Ararat Court, Annandale, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction of minimum yard requirements based on an error in building location. The reduction would permit an existing addition, which measured approximately 100 square feet, at the side of the house to remain with a stoop 2.2 feet from the side lot line. The R-4 Zoning District requires a minimum side yard of 10 feet; therefore, a modification of 7.8 feet or 78 percent was requested.

Mr. Garcia presented the special permit request as outlined in the statement of justification submitted with the application. He said that when the applicant purchased the property, there was a storage area next to the house, which the applicant converted to a small kitchen for his family. Mr. Garcia said the applicant was unaware of any County regulations at the time.

Mr. Hart and Mr. Garcia discussed the nature of the construction, with Mr. Garcia stating that the applicant and his brother converted the storage area to a kitchen. Mr. Garcia said that although there was electric and plumbing in the kitchen, the applicant did not know permits were required.

In response to a question from Mr. Hart, Ms. Cho said the County had received an anonymous complaint about the property.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-PR-029 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RUBEN JORDAN ROSALES, SP 2011-PR-029 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 2.2 ft. from side lot line. Located at 7208 Quincy Ave. on approx. 7,384 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 168. 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 29, 2011; and

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

1. The applicant is the owner of the property.
2. This is a difficult case because of the closeness of the addition.
3. The Board does not have a whole lot of information about the nature of the complaint, but the public hearing was today, and if there was going to be opposition to this, the Board would have heard something before now, whether through letters or testimony.
4. It is a very close call.
5. Based on the record before the Board, the applicant did not have knowledge of the applicable requirements.
6. The addition is roughly in the same location as an addition that was there already.
7. It is somewhat unclear from the record whether the previous addition also was approved or exactly what happened with that, but it seems to have been there for a long time.
8. Although the eave of the addition is 2.2 and the wall is 3-point-something, it is really only one corner of the addition that comes as close to the lot line as that (sic).
9. Based on the photographs, it cannot be said this will have a significantly greater negative impact on neighbor than what was existing.
10. If there was going to be more to this about the impacts on the neighbors, today would have the time for that to surface.
11. It is not a great case because of the proximity, but this is a relatively small lot, 7,000-something square feet.
12. For whatever reason, the orientation of the house on the lot was skewed to begin with in 1946.
13. There is no apparently explanation for that either, but once the walls are turned so that they are not square to the lot line, any time there is an addition, a corner of it is going to be sticking out one way or another.
14. The applicant has taken the right steps at this point to get this resolved.
15. Under the development conditions, there will have to be inspections of the work that is there, and the applicant will have to appropriately and timely pursue that within six months.
16. The Board has dealt with any public health and safety issue as well.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the single-story addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated November 17, 2010, signed December 7, 2010, as submitted with this application and is not transferable to other land.
2. Appropriate building permits and final inspections for the addition shall be diligently pursued and obtained within six months of final approval of this application.

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.

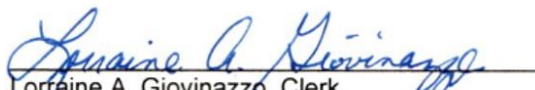
Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Byers voted against the motion.

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As there was no other business to come before the Board, the meeting was adjourned at 9:29 a.m.

Minutes by: Suzanne Frazier

Approved on: June 11, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, July 13, 2011. The following Board Members were present: Vice Chairman Paul W. Hammack, Jr.; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Chairman John F. Ribble III was absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Vice Chairman Hammack called for the first scheduled case.

~ ~ ~ July 13, 2011, Scheduled case of:

9:00 A.M. DONNA A. GRANAHAN, TRUSTEE, VC 2011-MV-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 7.5 ft. from both side lot lines. Located at 8520 Highland Ln. on approx. 5,600 sq. ft. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 101-3 ((7)) 43.

Vice Chairman Hammack called the applicant to the podium.

Donna A. Granahan, 8737 Lukens Lane, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation.

In response to a request from Mr. Beard for clarification, Ms. Cho explained that the plat showed a setback of 8.0 feet, which was the setback to the structure, but to the eave it was 7.5 feet.

Ms. Granahan presented the variance request as outlined in the statement of justification submitted with the application. She said she believed her application satisfied the nine required standards for a variance. The subject property was acquired by her father in 1991 in good faith, with the intent of building a future house. She said the lot was extremely narrow, 40 feet in width, and the lot area of 5,600 square feet was exceptionally small. With the current R-2 District side yard setback requirements, only 10 feet was left for the width of a house. Ms. Granahan said that since the property had been acquired, real estate taxes had been paid on the lot Fairfax County had deemed as an average buildable lot. The strict application of the Zoning Ordinance would produce an undue hardship on the owner, and would allow only a 10-foot wide structure, which would be unreasonably restrictive and would deprive the owner of reasonable use of the land. The proposed house would be in keeping with others in the neighborhood, and would result in an increased property value with aesthetic improvements to what was currently a weedy vacant lot.

Discussions ensued among the Board members, staff, and the applicant regarding proposed grading, concern that the dwelling may tower over its neighbors, the size and scale of the proposal, the requirement for an engineering review, restrictions on height, compatibility of architecture with surrounding residences, absence of an architectural rendering, consideration of development conditions concerning the building materials, and the many varied designs of homes in the Engleside community.

Vice Chairman Hammack called for speakers.

Virginia Wells, 8522 Highland Lane, Alexandria, Virginia, came forward to speak. She said she was not necessarily opposed, but was concerned about what she referred to as a huge monster house and its effect on her adjacent property, especially with blocking sunlight. Ms. Wells said a two-story structure was not in character with the neighborhood.

It was pointed out by Vice Chairman Hammack that the applicant could build a two-story home by-right. Ms. Wells replied that she was aware of the by-right, but was more concerned about neighborhood conformity and character.

Karen Pohorylo, 8523 Highland Lane, Alexandria, Virginia, came forward to speak. She was concerned about the setback, size and height of the proposed building. Ms. Pohorylo stated her lot size was 8,600 square feet with a two-story house. Her concern with the construction was the 7.5 feet from the side line.

Discussion ensued regarding setbacks; width, height and depth of the footprint; that since there was no architectural rendering, the applicant really did not know what was proposed or how it would look; whether a by-right, two-story house would block its neighbors' sunlight; and incorrect setbacks listed on the plat.

There being no further speakers, Ms. Granahan returned to the podium for rebuttal. She referred to several photographs which evidenced other two-story homes in the neighborhood. She maintained that her proposal was not inconsistent, and was basically the same setbacks and same sized lot as the others in the neighborhood.

Vice Chairman Hammack closed the public hearing.

Mr. Byers moved to approve VC 2011-MV-005 for the reasons stated in the Resolution.

Discussion ensued regarding proposing more specific development conditions by listing types and kinds of building materials, the fact that the Board did sympathize with all concerned parties; the possibility of building the unit at-grade; whether retaining an engineer for a grading plan would be required; how the proposed building height could have an effect the neighbors; individual rights of a homeowner; the Board's scope and purview with making development conditions on an applicant; and standards for variance approvals.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONNA A. GRANAHAN, TRUSTEE, VC 2011-MV-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 7.5 ft. from both side lot lines. Located at 8520 Highland Ln. on approx. 5,600 sq. ft. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 101-3 ((7)) 43. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 2011, and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2, HC.
3. The area of the lot is 5,600 square feet.
4. From the standpoint of the required standards for a variance, this application satisfies that there is exceptional narrowness, exceptional size, and exceptional topographical conditions, at the time of the effective date of the Ordinance.
5. The condition, or situation of the property, or the intended use of the property is not of so general or recurring in nature to make reasonably practical the formulation of a general regulation.
6. The strict application of this Ordinance would produce undue hardship, and the undue hardship is not generally shared by other properties in the same district or the same vicinity.
7. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the use of the subject property.
8. The granting of this variance will alleviate a hardship as distinguished from a special privilege or a convenience.
9. It will not be of substantial detriment to adjacent properties.
10. The zoning district will not be changed by the granting of the variance.
11. The variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.
12. This variance is not inconsistent with three other variances that have been approved by this Board.
13. The points that have been brought up with the Board members are valid. The house, by-right, could be 10 feet wide, but it still could be two stories tall, and the applicant could certainly do it by right.
14. The issues that were raised are not necessarily alleviated by not granting 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 as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 maximum size and location within the building envelope of a single-family detached dwelling, "Proposed House", as shown on the plat prepared by Scartz Surveys, dated December 6, 2007, revised and signed by Larry N. Scartz, April 14, 2011, as submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.
3. If engineering limits allow, the home will be built at a grade consistent with all other homes in the Engleside subdivision.
4. The construction materials and architectural renderings will be compatible with the adjoining properties.

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 including requirements for building permits.

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. Smith seconded the motion, which carried by a vote of 4-1-1. Vice Chairman Hammack voted against the motion. Mr. Hart abstained. Chairman Ribble was absent from the meeting.

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~ ~ ~ July 13, 2011, Scheduled case of:

9:00 A.M. ELIZABETH R. MADIGAN, SP 2011-DR-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of deck 6.3 ft. from side lot line. Located at 1020 Duchess Dr. on approx. 25,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-4 ((13)) 4.

Vice Chairman Hammack called the applicant to the podium.

Elizabeth Madigan, 1020 Duchess Drive, McLean, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval, subject to the proposed development conditions.

In response to a question from Vice Chairman Hammack concerning the deck's size, Ms. Cho said the proposed deck's length would remain essentially the same, but the width would be slightly expanded at the longest end to 12.5 feet versus the existing 8 feet.

Ms. Madigan presented the special permit request as outlined in the statement of justification submitted with the application. She said the current deck needed replacing, because it was very long and narrow with the width making the space fairly unusable. She noted that the area to the rear was common area, and her lot's back yard was narrower than many. In response to the question of Mr. Hart, Ms. Madigan said she did agree with the development conditions.

Mr. Hart noted a retaining-type wall depicted on the plat. He said it would not affect the Board's proceedings that day. Ms. Madigan said it was already there when they purchased their house. He informed the applicant that lattice was not allowed around the underside of the deck, and Ms. Madigan said it was not in their plans.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2011-DR-032, for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIZABETH R. MADIGAN, SP 2011-DR-032 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of deck 6.3 ft. from side lot line. Located at 1020 Duchess Dr. on approx. 25,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-4 ((13)) 4. 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 13, 2011, and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. This is not going to have any significant negative impact on anybody.
5. From the photographs, it is apparent that there is a deck there pretty much in the same location already.
6. This is adjoining a homeowners' common area parcel, which is largely wooded.
7. Shifting the deck a couple of feet is not really going to bother anybody.
8. With the imposition of the development conditions, any potential impacts have been mitigated.

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 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 and size of the deck (568 square feet), as shown on the plat prepared by Alexandria Surveys International, LLC , dated January 25, 2011, signed February 4, 2011, as submitted with this application and is not transferable to other land.
2. The deck shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Smith seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ July 13, 2011, Scheduled case of:

9:00 A.M. FREDI G. GUERKE, SP 2011-MV-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 4.3 ft. from side lot line such that side yards total 13.7 ft. Located at 7918 Grimsley St. on approx. 9,176 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (25) 5. (*Decision deferred from 5/11/11*)

Vice Chairman Hammack called the application, and noted the Board had not received a signed court order from the Circuit Court.

Schuyler Ahrens, 4871 Benecia Lane, Dumfries, Virginia, agent for the applicant, came forward.

In response to Vice Chairman Hammack whether staff had any recommendation, Ms. Hedrick said the County Attorney's office recommended a two-week deferral in order to get the return from the Circuit Court Judge.

Mr. Ahrens said that was agreeable.

Vice Chairman Hammack called for a motion.

Ms. Gibb moved to defer decision on SP 2011-MV-013 to July 27, 2011, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ July 13, 2011, Scheduled case of:

9:00 A.M. ARNOLD L. & JULIA F. PUNARO, SP 2011-DR-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.0 ft. from rear lot line. Located at 6918 Bonheim Ct. on approx. 15,712 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((52)) 6.

Vice Chairman Hammack called the applicant to the podium.

Schuyler Ahrens, 4871 Benecia Lane, Dumfries, Virginia, the applicant's agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2011-DR-033, subject to the Proposed Development Conditions.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He said it was a straightforward case. The applicants requested a screened-in porch to be built on top of an existing deck to afford some protection from baseballs, which frequently flew into their yard from the neighboring high school's ball field.

Mr. Hart made a disclosure that his law firm currently had a case where the adverse parties were represented by the previous agent for the applicant, but indicated he did not believe his ability to participate in the case would be affected. He commented on several other applications where the use of recreational fencing or netting was used to retain golf balls or baseballs from adjoining properties. Discussion ensued between Mr. Hart and Mr. Ahrens concerning these such safety nets, with Mr. Hart suggesting Mr. Ahrens should discuss such a retention measure with the school board due to the applicant's baseball problem. Mr. Ahrens said his client was aware of the option, and perhaps they might consider it at a later date.

There being no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Smith moved to approve SP 2011-DR-033 for the reasons stated in the Resoluiton.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ARNOLD L. & JULIA F. PUNARO, SP 2011-DR-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.0 ft. from rear lot line. Located at 6918 Bonheim Ct. on approx. 15,712 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((52)) 6. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 2011, and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,712 square feet.

4. Staff has recommended approval.
5. The rationale and analysis provided by staff in the staff report is adopted.
6. This is not going to have any negative impact, and certainly not on the property owner, the high school, behind the subject property.
7. This will certainly also alleviate a concern right now with a safety issue.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (approximately 419 square feet), as shown on the plat prepared by Charles P. Johnson & Associates, Inc., dated June 5, 2009 as sealed through April 13, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (6,684 square feet existing + 10,026 square feet (150%) = 16,710 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ July 13, 2011, Scheduled case of:

9:00 A.M. LARRY & MARY ANN SNYDER, SP 2011-PR-031 (Error in building location)

Vice Chairman Hammack noted that SP 2011-PR-031 had been administratively moved to June 22, 2011, at 9:00 a.m., at the applicant's request.

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The meeting recessed at 10:11 a.m. and reconvened at 10:17 a.m.

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9:00 A.M. MARIA L. MICHAELS, SP 2011-SU-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit an accessory structure to remain 9.7 ft. and accessory storage structure to remain 0.4 ft. from side lot line. Located at 11224 Sorrel Ridge La. on approx. 2.34 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((3)) 18. (Admin. moved from 6/29/11 at appl. req.)

Vice Chairman Hammack called the applicant to the podium.

Maria L. Michaels, 11224 Sorrel Ridge Lane, Oakton, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation.

The applicant's attorney, George F. Trowbridge, Jr., 11325 Random Hills Road, Suite 360, Fairfax, Virginia, addressed questions from Mr. Hart concerning an easement through the rear of the property.

In response to a question of Mr. Beard about a current law suit, Mr. Trowbridge explained the civil suit's particulars concerning the placement of a fence, the maintenance and subsequent take down of several damaged Leland Cypress trees that screened his client's shed and gazebo, and their neighbors' complaint with the setback and visibility of the two structures from their property. He said he filed a suit under Adverse Possession, and noted it was Ms. Michaels who planted and maintained the cypress trees for 15 years, even though the trees were planted on the neighboring property.

Discussion ensued over a possible boundary line adjustment, time-frame of implementation, location and size of property acquired, and implications for the setback matter of the shed and gazebo.

Susan C. Langdon, Chief, Special Permit and Variance Branch, explained that the adjustment would have to pick up at least 20 feet to make the shed legal, and over 10 feet for the gazebo to be in conformance with required setbacks. Ms. Langdon noted that until and/or if that adjustment happened, the applicant remained in violation.

Discussion ensued regarding the foliage around the shed and gazebo, a wooden frame attached to the shed for a tomato garden, the shed having electricity but no plumbing, whether there were building and inspection permits for the two structures, the pre-existing dilapidated 30-year old wooden shed rebuilt into a brick structure slightly changing its footprint and height, possible scenarios concerning adverse possession, and ownership of a sliver of property between the gazebo and Sorrel Ridge Lane.

Vice Chairman Hammack called for speakers.

Michele Bocharnikov, 11228 Sorrel Ridge Lane, Oakton, Virginia, came forward to speak. She was the next-door neighbor on whose property the shed and gazebo encroached, and she was concerned with regard to the lawsuit, which was unrelated to the current hearing. Her issues were the removal of the cypress trees, which led to their properties no longer being well screened; the closeness and visibility of the shed and gazebo, the applicant's apparent disregard for the community's covenants; and her contention that the applicant was well aware of the property line, because she paid for and gave her a copy of a survey.

Ms. Bocharnikov responded to questions from Ms. Gibb, Mr. Byers, and Vice Chairman Hammack concerning screening with different plantings/foliage, the fact that there never had been a complaint against Ms. Michaels, implementation of development conditions addressing the matter of screening and planting, and considering a recommendation from the Fairfax County Arborist.

Discussion ensued regarding development conditions to address several issues, and whether the Board should defer the decision.

Vice Chairman Hammack closed the public hearing.

Mr. Beard moved to defer decision on SP 2011-SU-030 to November 16, 2011, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ July 13, 2011, Scheduled case of:

9:00 A.M. PILGRIM COMMUNITY CHURCH, INC., SPA 81-A-002-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for a church to permit site modifications (additional parking). Located at 4925 Twinbrook Rd. on approx. 5.15 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A. (*Admin. moved from 2/16/11 and 3/16/11 at appl. req.*) (*Decision deferred from 5/11/11*)

Vice Chairman Hammack called the applicant to the podium.

Barnes Lawson, Jr., William Barnes Lawson, Jr., Lawson, Tarter & Charvet, Inc., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, said the Board had deferred the decision, and he reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, said at the May 11, 2011 public hearing, the Board deferred decision on the application. Information was sent to the Board attempting to address concerns regarding development conditions pursuant to the previous SPA, and the conditions proposed with this application. She referenced the revised proposed development conditions, which were distributed that morning, and noted that the revisions were at the request of the applicant. Ms. Johnson said staff continued to recommend approval for the application as outlined in the staff report. Staff from Department of Code Compliance, Building Plan Review and Inspections Division of Department of Public Works and Environmental Services, and the Zoning Inspections Branch of the Department of Planning and Zoning, were present to answer questions.

Ms. Johnson responded to a question from Mr. Smith regarding the purpose of the 4-foot high stone wall. She said it would block headlights, and was not for noise retention. She concurred with Mr. Smith's remark that there were very few changes with the development conditions.

Ms. Gibb assumed the Chair.

In response to the question of Mr. Hart of whether there was a condition requiring brick masonry, Mr. Lawson explained that the church was willing to do that, but a noise study was conducted which questioned whether a masonry wall would worsen the noise.

Discussion ensued concerning the façade of the church; specific language to stipulate a veneer; the purpose for the veneer being that of aesthetics rather than noise mitigation; the church's commendable willingness to address any and all concerns of its residential neighbors; and the subject of fairness if an additional development condition was imposed which could prove extremely costly.

Vice Chairman Hammack resumed the Chair.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Byers moved to approve SPA 81-A-002-05 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Discussion ensued recognizing the church's willingness and thoughtfulness with working with its residential neighbors to prevent negative impacts; a matter of whether the building material should be specified; questions concerning brick/block, masonry, veneers, and the aesthetic appearance of the church.

Mr. Hart suggested a development condition 28, as an amendment to the motion, that the applicant would replace the existing surface with a brick veneer on the south side of the building.

There was more discussion regarding the matter of fairness and expense to the applicant if masonry or brick material were imposed through a development condition; the fact that, since its establishment, the church had complied with all Code requirements; staff's request to be specific with the type of building material if

imposed; the establishment of the Fellowship Hall years earlier; and the church's subsequent expansion with the residential neighborhood that had been growing up around the church's property.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PILGRIM COMMUNITY CHURCH, INC., SPA 81-A-002-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for a church to permit site modifications (additional parking). Located at 4925 Twinbrook Rd. on approx. 5.15 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A. (Admin. moved from 2/16/11 and 3/16/11 at appl. req.) (Decision deferred from 5/11/11) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 2011, and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.16 (sic) acres.
4. Staff's recommendation of approval is supported.
5. The rationale of staff is supported.
6. It is noted that it has been the Board's thinking that it would like to have on-site parking for churches.
7. There is a safety issue with regard to the road.
8. The applicant is commended on this, based on what was read and the additional information. The applicant has done a very good job from the standpoint of actually making solid recommendations from the standpoint of mitigating any concerns that the community might have.
9. The applicant has done a good job from the standpoint of the application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Pilgrim Community Church, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 4925 Twinbrook Road (5.16 acres) and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment (SPA) plat prepared by Harold A. Logan Associates P.C., dated July 7, 2010, as revised through March 14, 2011, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) 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. There shall be a maximum of 352 seats in the sanctuary of the church.
6. Parking shall be provided as depicted on the SPA Plat. All parking for this use shall be on site. The proposed 48-inch high block/stone wall shown on the plat shall be constructed of decorative solid block/stone material (not cinderblock).
7. Notwithstanding what is shown on the plat, interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance, as determined in consultation with the Urban Forest Management Division (UFMD) staff.
8. Peripheral parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance and shall be supplemented as shown on the SPA Plat. All landscape trees shall be a minimum of six feet in height, at time of planting, and planted per the Fairfax County Public Facilities Manual in consultation with the Urban Forest Management Division.
9. Transitional screening and barriers shall be provided and maintained in conformance with Article 13 of the Zoning Ordinance. Existing vegetation may be used to partially satisfy this requirement, however, notwithstanding what is shown on the plat, supplementation shall be provided along the northwestern and southwestern lot lines to the satisfaction of Urban Forest Management Division (UFMD), DPWES to provide TS 1.
 - a. Any transitional screening trees that have died shall be replaced to satisfy the transitional screening requirements.
 - b. All evergreen trees shall be a minimum of six feet in height, at time of planting, and planted per the Fairfax County Public Facilities Manual.
10. The proposed play area shall be screened by a 4-foot high board-on-board fence as depicted on the SPA Plat. Evergreen trees, a minimum of six feet in height at time of planting, shall be planted around the play area to provide screening from the adjacent residential properties. Number, species and location shall be determined in consultation with the Urban Forester.
11. Internal floor layout shall continue to locate classrooms along the northern and southern ends of the building to provide a separation between the fellowship area and the adjacent properties. Double layers of drywall shall be maintained to provide additional thickness to interior walls.
12. Irrespective of that shown on the plat, a five-foot wide sidewalk connecting the existing buildings to the proposed parking lot shall be constructed prior to Site Plan approval.
13. Proposed lighting within the new parking lot area shall be bollard-style lighting fixtures at a maximum height of four feet, measured from the ground to the highest point of the fixture. Any light poles existing on the site shall be a maximum height of 12.0 feet and shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
14. The limits of clearing and grading shall be no greater than as shown on the special permit amendment Plat, labeled Limits of Clearing and Grading, and shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to the DPWES, including the Urban Forestry Division, for review and approval. Irrespective of the limits shown on the special permit plat, the extent of clearing and grading shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
15. The applicant shall submit a Tree Preservation Plan as part of the first and all subsequent Site Plan submissions or grading plan submissions, whichever occurs first. This plan shall designate the limits of clearing and grading as determined in the previous development condition and require that the areas outside of the limits of clearing and grading be preserved and labeled as "tree save". This plan

shall be prepared by a professional with experience in the preparation of tree preservation, such as a certified arborist or landscape architect, and shall be subject to the review and approval of the UFMD, DPWES. The tree preservation plan shall be prepared in conformance with the requirements of the Public Facilities Manual (PFM) and shall be submitted for review by UFMD. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

16. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four- (4) foot high, fourteen (14) gauge welded wire attached to six - (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Tree protection fencing shall be erected along the limits of clearing and grading wherever construction activities are proposed adjacent to areas to remain undisturbed. Super silt fence may be approved by UFMD to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved.
17. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.
18. A Stormwater Management (SWM) facility, for detention and water quality control, shall be provided as shown on the SPA Plat that include the use of innovative BMPs, including infiltration trenches, rain gardens, or other environmentally sensitive measures, in accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. Innovative BMP facilities shall be subject to a private maintenance agreement acceptable to DPWES. If a modification of the PFM to permit the proposed stormwater management/best management practices as shown on the SPA Plat is not granted by DPWES and SWM/BMP facilities in substantial conformance with the SPA Plat cannot be provided, then a special permit amendment (SPA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES.
19. Adequate outfall for the entire extent of review of the downstream drainage system shall be demonstrated in accordance with the Public Facilities Manual (PFM), as determined by DPWES, at the time of Site Plan review.
20. Any sign on site is permitted only with an approved sign permit in accordance with the provisions of Article 12 of the Zoning Ordinance. No new signs on site shall be lit.
21. A community liaison shall be appointed and made available by the applicant to receive neighborhood complaints regarding the use of the church site. The name and contact information of the liaison shall be posted on the main entrance doors of the two church buildings.
22. Music practices shall be limited to Sunday and Wednesday only and shall conclude by 9:00 p.m.
23. All activities on site shall cease by 10:00 p.m. daily and all interior and exterior lighting shall be turned off by 10:30 p.m. with the use of automatic timers, except overnight security lights in accordance with Zoning Ordinance requirements. Activities for special occasions shall cease by 11:00 p.m. and lighting turned off by 11:30 p.m. Special occasions shall be limited to ten evenings per year, including New Year's Eve service. The New Year's Eve service shall conclude by 1:00 a.m. and lights turned off by 1:30 a.m.
24. Air conditioning units shall be turned off by 10:30 p.m., except for on special occasions that coincide with the lighting development condition, limited to three times per year.

25. Sound proofing materials shall be installed around the HVAC System to reduce the noise of the air conditioning equipment. The existing block wall at the southern end of the air conditioning equipment shall be extended to a height not to exceed 15 feet for the purpose of screening the unit from sight. If no trees have been planted, landscape planting at a minimum of six feet in height, at time of planting, shall be planted on the southern side of the wall to screen it from view. Plant material and species shall be approved by the Urban Forest Management Division.
26. Automatic door closures shall be installed on all exterior doors. Signs instructing parishioners and guest to keep the doors closed while music is playing shall be posted on the inside and outside of all exterior doors.
27. Notwithstanding what is shown on the plat, a bollard-style gate shall be installed at the site's entrance from Twinbrook Road in consultation with and as approved by the Fire Marshal. The purpose of the gate is to prohibit after hours loitering on the site. A Rapid Entry Box shall be provided at the gate that contains the keys to unlock the gate for emergency personnel and the gate must open the full width of the drive aisle. The gate shall be closed and locked no later than 10:45 p.m. and remain locked until 5:45 a.m. daily, except those hours may be extended for special occasions that coincide with the lighting development condition that are limited to three times per year.
28. The applicant shall replace the existing exterior surface on the south side of the building with brick veneer.

These conditions incorporate and supersede 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.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ July 13, 2011, Scheduled case of:

9:00 A.M. RUFUS LITTLEJOHN, A 2011-LE-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 8017 Kidd St. on approx. 11,050 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((5)) (14) 2.

Vice Chairman Hammack noted that A 2011-LE-008 had been administratively withdrawn.

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~ ~ ~ July 13, 2011, After Agenda Item:

Resolution and Final Orders
Mark J. Stadskev and Susan M. K. Stadskev
VCA 2002-DR-139 Application

Vice Chairman Hammack referred to the after agenda item, February 9, 2011 memorandum from Susan C. Langdon, Chief, Special Permit and Variance Branch, which requested the Board dismiss the above-noted variance application as moot.

Mr. Hart moved to dismiss VCA 2002-DR-139 as moot based upon the following:

- 1) This was an application to amend a variance governing development of property located at 2310 Westmoreland Street, Falls Church, Virginia, 22046, and identified on the Fairfax County Tax Map as Tax Map No. 40-4 ((1)) parcel 44A (subject property), owned by Mark J. Stadskev and Susan M. K. Stadskev.
- 2) The application was filed by Mr. and Mrs. Stadskev to clarify conditions on the development of the subject property as originally approved by the Board in VC 2002-DR-139.
- 3) The Board's decision in VCA 2002-DR-139 was appealed to the Circuit Court of Fairfax County and consolidated with appeals by Mr. and Mrs. Stadskev of decisions of the Board in Appeals A 2008-DR-009 and A 2008-DR-026 in Cases 2009-15289 and 2009-15290.
- 4) Final Orders were entered in the appeals on December 29, 2010, with the Court remanding the appeal in 2009-15290 for further action, if appropriated, by the Board on VCA 2002-DR-129.
- 5) The Final Orders entered in the consolidated appeals appeared to approve the modifications sought by Mr. and Mrs. Stadskev in VCA 2002-DR-139. Accordingly, it appeared that there was no matter left unresolved for action by the Board on this application.


Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Byers was not present for the vote. Chairman 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 12:20 p.m.

Minutes by: Paula A. McFarland and John W. Cooper

Approved on: October 19, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, July 20, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Norman P. Byers was absent from the meeting.

Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ July 20, 2011, Scheduled case of:

9:00 A.M. DANIEL SHEEHAN, SP 2011-MV-034 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 roofed deck to remain 3.3 ft. from side lot line. Located at 7016 Stanford Dr. on approx. 4,446 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((20)) (1) 19A.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Daniel Sheehan, 7016 Stanford Drive, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an addition, a roofed deck depicted as an "open porch" on the plat, to remain 3.3 feet to its eave from the northern side lot line. A minimum side yard of 8.0 feet is required; therefore, a modification of 4.7 feet, or 59 percent, was requested.

In response to a question from Mr. Beard, Ms. Hedrick said a Notice of Violation (NOV) had been issued on the property. Jeff Parka, Zoning Inspector for the Department of Code Compliance, said the NOV was issued for building without a permit.

Mr. Sheehan presented the special permit request as outlined in the statement of justification submitted with the application. He said the deck had been built two and a half years earlier by a contractor a neighbor had used. When asked, the contractor said that permits were not necessary for his project. Mr. Sheehan said to take down the deck would be a hardship.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-MV-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

DANIEL SHEEHAN, SP 2011-MV-034 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 roofed deck to remain 3.3 ft. from side lot line. Located at 7016 Stanford Dr. on approx. 4,446 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((20)) (1) 19A. 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 20, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant has satisfied Subsections A through F outlined in that provision, and in particular, under Subsection B, that the non-compliance was done in good faith or through no fault of the property owner, because he was misinformed by the builder that did the work.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of a roofed deck addition (open porch), as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 21, 2011 as sealed through April 8, 2011, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the roofed deck addition within six months of approval of this special permit.

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. Beard seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ July 20, 2011, Scheduled case of:

9:00 A.M. NELSON AND NOEMY RAMIREZ, SP 2011-LE-035 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 16.1 ft. from side lot line

and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6001 Clames Dr. on approx. 25,804 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((16)) 5.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Robert L. Calhoun, the applicants' agent, 510 King Street, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of two separate special permits. The first request would allow an accessory storage structure, a shed, which measured approximately 198 square feet in size and 10 feet in height, to remain 16.1 feet to its eave from the southern side lot line. The second special permit request would allow existing fences greater than 4.0 feet in height to remain in the front yards of a corner lot. The combination frame wood fence and wrought iron fence with brick pillars was located in the front yards facing both Clames Drive and Higham Drive, and the fences and pillars ranged in height from 4.1 feet to 8.3 feet. The applicants indicated in their statement of justification, and included as Note 15 on the special permit plat, that the fence heights would be reduced to a maximum of 6.0 feet. Sect. 10-104.3(J) of the Zoning Ordinance permits decorative features, up to nine inches in height, in addition to the fence height, if they meet certain Ordinance regulations. As shown on the exhibit included with the special permit plat located at the front of the staff report, the actual wood and wrought iron fences ranged in height from 4.3 feet to 6.0 feet, whereas the brick pillars including decorative light fixtures ranged in height from 5.8 feet to 6.2 feet. Additionally, the two gates with four gate posts are not regulated as to their heights; therefore, they are permitted as requested. The Zoning Ordinance currently permits fences 4.0 feet in height by right; however, through a special permit, an applicant can request a fence in the front yard up to 6.0 feet in height. The Zoning Ordinance permits fences up to 7.0 feet in height in the side and rear yards.

Mr. Hart and Ms. Hedrick discussed the location of the sight distance easement on the plat. Mr. Hart asked if the development conditions would ultimately allow the fence pillars to remain at 6.0 feet. In response, Ms. Hedrick noted that the Zoning Ordinance allows for decorative features up to nine inches above the pillar height.

Mr. Calhoun presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicants would bring the fence height into compliance with the Ordinance. Mr. Calhoun stated that the application was due to a Notice of Violation and had previously been to court, noting that it was pending a judge's final approval. He asked that if the Board approved the special permit, it not be issued until the Zoning Administrator had received a copy of the final order.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve the application with adoption of the development conditions contained in the staff report. Mr. Hammack seconded the motion.

Ms. Gibb, Mr. Hart and Mr. Calhoun discussed the sight distance easement on the lot, with Ms. Gibb stating that it was not a formal easement and that the engineer could have used the term "easement" loosely. Mr. Hart said he felt the Board did not have the authority to modify an easement, but he would agree to a deferral to further look into this matter.

Ms. Hedrick commented that the plat said the easement shall be a point within 30 feet, which would mean the applicants were one foot outside the easement.

Chip Moncure, Zoning Inspector for the Department of Code Compliance, said he thought the architect was indicating that the pillars were outside of the easement.

To allow time to resolve the issue, Mr. Hart moved to defer decision on SP 2011-LE-035 to July 27, 2011, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ July 20, 2011, Scheduled case of:

9:00 A.M. JOACHIM M. FANALE, TRUSTEE, SP 2011-SP-037

Chairman Ribble noted that SP 2011-SP-037 had been administratively moved to July 27, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ July 20, 2011, Scheduled case of:

9:00 A.M. JACQUELINE STAPLETON AND JORGE J. VIVANCO, SP 2011-MA-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 accessory structure to remain 4.0 ft. from side lot line and 1.7 ft. from rear lot line. Located at 3431 Aston St. on approx. 23,398 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((11)) 1.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John Manganello, the applicants' agent, 10805 Main Street, Fairfax, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a 12-foot tall accessory structure to remain 4.0 feet from a side lot line and 1.7 feet from the rear lot line. Ms. Cho noted that a Notice of Violation (NOV) had been issued on March 2, 2010, for the accessory structure. Contrary to the depiction of the structure as a "frame shed" on the plat, the structure was used for a workshop and storage. A Complaint for Judgment was subsequently filed by the County, and an Agreed Order was completed to allow the special permit process to continue without further court action. The property owner would have to comply with the NOV if the Board of Zoning Appeals denied the application.

In response to a question from Mr. Hart, Ms. Cho said there had been a complaint received, followed by the issuance of a Notice of Violation.

Mr. Manganello presented the special permit request as outlined in the statement of justification submitted with the application. He said the shed, which was used for storage and as a woodshop, was built in good faith in 2007 on an existing foundation, and a six-foot board-on-board fence surrounded the perimeter. Mr. Manganello said that the two adjacent properties had submitted letters in support of the application. He pointed out that the complainant's home was over 200 feet away from the shed and contained a large area of dense woods between the two homes.

Jacqueline Stapleton, the applicant, said she did not know a permit was necessary for the shed. She stated that the shed had been enlarged so that her husband could do woodworking outside of the house.

In response to a question from Ms. Gibb, Ms. Stapleton said that tarpaper was on the back of the shed, but siding could be installed. She said the shed had electricity running to it, but it had not been inspected.

Mr. Hart, Mr. Hammack, Mr. Gibb, and Ms. Stapleton discussed the location and height of the old shed.

Chairman Ribble called for speakers.

Paul Miller, 3429 Aston Street, Annandale, Virginia, came forward to speak. He said he was the applicants' neighbor to the west, and had submitted a letter of support. He noted that there was a massive forest behind them which buffered the shed from the neighborhood. Besides the shed being attractive, Mr. Miller said the applicant had contributed to the community for many, many years.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-MA-038 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JACQUELINE STAPLETON AND JORGE J. VIVANCO, SP 2011-MA-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 accessory structure to remain 4.0 ft. from side lot line and 1.7 ft. from rear lot line. Located at 3431 Aston St. on approx. 23,398 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((11)) 1. 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 20, 2011; and

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

1. The applicants are the owners of the land.
2. This is a fairly close case.
3. The shed was built without permit.
4. It was not just replacing an old shed, because the old shed was gone, but there was a footprint, and it was enlarged.
5. The non-compliance was done in good faith.
6. The applicants believed that they did not need a building permit.
7. The applicants built the shed and did not realize that they needed a permit.
8. The applicants meet the other required standards for a special permit, just barely.
9. The Board had testimony from a neighbor that the applicants' shed is not detrimental to the use and enjoyment of the property in the immediate vicinity.
10. The Board received a letter from the neighbor, but the shed is behind a six-foot tall wooden fence.
11. There are large mature trees right behind it.
12. The impact is not so detrimental that the Board cannot grant it.
13. To force compliance with the minimum yard requirements would cause unreasonable financial hardship on the owners.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the accessory structure, as shown on the plat prepared by Land Development Consultants, Inc., dated May 11, 2010, signed April 25, 2011, as submitted with this application and is not transferable to other land.
2. Appropriate permits and final inspections shall be diligently pursued and obtained within six months of final approval of this application.
3. Within six months, siding shall be added or constructed to the rear of the accessory structure that is similar or consistent in color and materials to the siding which is currently on the three sides of the shed that have been completed.

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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was absent from the meeting.

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~ ~ ~ July 20, 2011, Scheduled case of:

9:00 A.M. LAWRENCE F. KAMBA, SP 2011-SU-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit addition to remain 5.9 ft. from side lot line. Located at 13412 Melville La. on approx. 11,152 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 45-3 ((3)) 448.

Chairman Ribble noted that SP 2011-SU-044 had been administratively moved to July 27, 2011, at 9:00 a.m., for ads.

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~ ~ ~ July 20, 2011, Scheduled case of:

9:00 A.M. ANTHONY ELLER AND BARBARA D. ELLER, A 2011-PR-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and a storage yard and have erected an accessory fence in the front yard that exceeds the 4-foot height and use restriction, all on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 1927 Byrd Rd. on approx. 10,934 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((10)) (4) 5B.

Chairman Ribble noted that A 2011-PR-011 had been administratively moved to July 27, 2011, at 9:00 a.m., at the appellants' request.

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~ ~ ~ July 20, 2011, Scheduled case of:

9:00 A.M. JOLANDA N. JANCZEWSKI, A 2011-SP-013

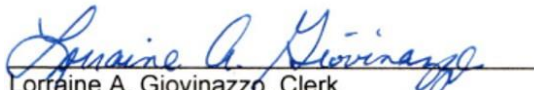
Chairman Ribble noted that A 2011-PR-011 had been administratively moved to September 14, 2011, at 9:00 a.m.


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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: Suzanne Frazier

Approved on: June 11, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, July 27, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. SHIRA & MARK ENSTROM, SP 2011-HM-049 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from side lot line. Located at 1928 Baton Dr. on approx. 15,262 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((11)) 71.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jonathan Hodge, the applicants' agent, 2070 Bingham Court, Reston Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit to allow a reduction of certain yard requirements to permit construction of a building addition, to enclose an existing one-car carport and turn it into attached garage, to be located 13.3 feet to its eave from the eastern side yard. A minimum yard requirement of 15 feet is required; therefore, a modification of 1.7 feet was requested. Staff recommended approval of SP 2011-HM-049 subject to the proposed development conditions.

Mr. Hodge presented the special permit request as outlined in the statement of justification submitted with the application. He stated that it was an existing carport, and the building would be an improvement to the neighborhood.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-HM-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

SHIRA & MARK ENSTROM, SP 2011-HM-049 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from side lot line. Located at 1928 Baton Dr. on approx. 15,262 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((11)) 71. 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 27, 2011; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the applicants have met the six required standards, subsections set forth in that provision of the Ordinance.

3. This is really to enclose an existing carport.
4. There is no more encroachment to the side lot line than previously existed.
5. The Board has a favorable staff recommendation, which the Board incorporates and relies on.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of an addition (one-story, approximately 276 sq. ft.) as shown on the plat prepared by Alexandria Surveys International, LLC, dated February 16, 2011, revised May 18, 2011, as sealed on May 19, 2011, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,780 square feet existing + 4,170 square feet (150%) = 6,950 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. BERNADETTE M. KEANY, VC 2011-MV-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 21.1 feet from front lot line, 5.2 feet from one side lot line and 11.7 feet from other side lot line and deck 7.2 feet from side lot line. Located at 5736 Mallow Trail on approx. 7,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (20) 15 and 17. (Converted from an SP and admin. moved from 7/27/11)

Chairman Ribble noted that SP 2011-MV-050 had been administratively moved to August 10, 2011, at 9:00 a.m., and converted to a variance.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. FREDI G. GUERKE, SP 2011-MV-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 4.3 ft. from side lot line such that side yards total 13.7 ft. Located at 7918 Grimsley St. on approx. 9,176 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (25) 5. (Decision deferred from 5/11/11 and 7/13/11)

Chairman Ribble noted that SP 2011-MV-013 had been deferred for decision from July 13, 2011.

Deborah Hedrick, Staff Coordinator, stated that a memorandum to the Board had been distributed which included proposed revised development conditions that potentially addressed the court order that was still in the judge's chambers waiting to be signed.

Mr. Byers moved to approve SP 2011-MV-013 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FREDI G. GUERKE, SP 2011-MV-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit dwelling to remain 4.3 ft. from side lot line such that side yards total 13.7 ft. Located at 7918 Grimsley St. on approx. 9,176 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (25) 5. (Decision deferred from 5/11/11 and 7/13/11). Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2011; and

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

1. The applicant is the owner of the land.
2. The Board made the determinations that follow on A through G.
4. It is understood that this is not dissimilar from a case that had been before the Board before.
5. It is understood from discussions with staff that the County Attorney has reviewed this and is in compliance with what is purported to be the new development condition.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of an addition (attached garage), as shown on the plat prepared by Scartz Surveys dated January 5, 2011 as revised through February 17, 2011, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the garage addition within 180 days of approval of this special permit.
3. The issuance of the special permit is conditioned upon the applicant obtaining an Amended Final Court Order within 180 days of this special permit 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. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. NELSON AND NOEMY RAMIREZ, SP 2011-LE-035 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 16.1 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6001 Clames Dr. on approx. 25,804 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((16)) 5. (Decision deferred from 7/20/11)

Chairman Ribble noted that the Board had been provided with revised proposed development conditions.

Mr. Byers made a disclosure and indicated that he would recuse himself due to his absence from the previous public hearing.

Mr. Hart asked whether the applicant and staff were in agreement with the revised development conditions. Deborah Hedrick, Staff Coordinator, stated that they were; however, the applicants' agent wanted clarification to include the maximum of six months for the items in Development Conditions 2 and 4 to be completed, which staff had not previously included. Robert L. Calhoun, the applicants' agent, 510 King Street, Suite 301, Alexandria, Virginia, stated he was agreeable to the six months. Mr. Calhoun said he had used the same language in Conditions 2 and 4 regarding the six months that had been used in Condition 5.

Mr. Hart moved to approve SP 2011-LE-035 for the reasons stated in the Resolution. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers recused himself from the hearing.

In reference to Sect. 2-205, Ms. Gibb asked whether something completely clear that did not interfere with sight distance, like a plexi-glass wall, could be in the sight distance triangle. Ms. Hedrick stated that, according to her discussion with the Zoning Administrator, even branches or bushes could not be in the sight distance triangle. Ms. Gibb said she was talking about something that by definition did not interfere with sight distance. Ms. Hedrick said that would be determined by the Zoning Administrator, who indicated that the pillars and the fencing could be reduced to three and a half feet within the sight distance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NELSON AND NOEMY RAMIREZ, SP 2011-LE-035 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 16.1 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6001 Clames Dr. on approx. 25,804 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((16)) 5. (Decision deferred from 7/20/11). Mr. Hart moved that the Board of Zoning Appeals adopts the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2011; and

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

1. The applicants are the owners of the land.
2. There were some questions at the July 20th public hearing, but it is understood that everything has been resolved based on the revised conditions that the Board has and the confirmation from the applicant.
3. The Board does not think there is a problem with approving this contingent on the court order subsequently being approved. It was mentioned at the July 20th hearing that the Board has conditioned things before on a future approval of a parking reduction by the Board of Supervisors or approval by the Health Department or something like that. It is logical to do it that way rather than wait for the court order.
4. There were some concerns at the July 20th hearing about the Board's ability to approve something where the revised plat had a conflict with the sight distance triangle, but that issue has been resolved by Development Condition 2.
5. It was not expected that there was a 25 percent problem necessarily, but apparently there is, and Development Condition 4 is resolving that.
6. The fence itself is of a fairly open design.
7. The fence is a high quality fence.
8. It does not seem that the fence would be bothering anybody.
9. The shed also is a fairly high quality structure.
10. The shed is fairly far from the property lines.
11. The shed has been there for some time.
12. It is not thought that the fence would be necessarily bothering anyone in that location.
13. It is believed, with the imposition of the development conditions, the potential impacts from this have been satisfactorily mitigated.
14. With respect to the mistake section resolution, the applicable standards have been met.
15. With respect to the increase in fence height, the applicable standards have been met.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 fences in the front yards, a maximum 6.0 feet in height, and pillars and decorative features at the maximum heights as shown on the special permit plat, and an accessory storage structure (shed) as shown on the plat prepared by Dominion Surveyors Inc. dated July 9, 2008 as revised through July 20, 2011, as submitted with this application and is not transferable to other land.
- 2. Notwithstanding what is shown on the plat, the portion of the fence and pillars within the sight distance triangle at the intersection of Clames Drive and Higham Drive shall be reduced in height to a maximum of 3 ½ feet or relocated outside of the sight distance triangle, per Section 2-505 of the Zoning Ordinance, within six months of this special permit approval.
- 3. The issuance of the special permit is conditioned upon the applicant obtaining an Amended Final Court Order within six months of this special permit approval.
- 4. Notwithstanding what is shown on the plat, the impervious area in the front yard shall be reduced to no more than 25% front yard coverage, per Section 11-102 of the Zoning Ordinance, within six months of this special permit approval.
- 5. All applicable permits shall be obtained if required, including electrical permits, within six months of this special permit 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.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Byers recused himself from the hearing.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. LINDA WASHINGTON-ROBINSON AND DWIGHT ROBINSON, SP 2011-DR-042 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.0 ft. from rear lot line. Located at 12034 Sugarland Valley Dr. on approx. 8,800 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((4)) 422.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Dwight Robinson and Linda Washington Robinson, 12034 Sugarland Valley Drive, Herndon, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a reduction of certain yard requirements to permit construction of a screened porch addition to be located 20 feet to its eave from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a modification of 5.0 feet was requested. Staff recommended approval of SP 2011-DR-042 subject to the proposed development conditions.

Mr. Robinson presented the special permit request as outlined in the statement of justification submitted with the application. He said the staff report explained the addition, and he had nothing to add.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-DR-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

LINDA WASHINGTON-ROBINSON AND DWIGHT ROBINSON, SP 2011-DR-042 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.0 ft. from rear lot line. Located at 12034 Sugarland Valley Dr. on approx. 8,800 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((4)) 422. 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 27, 2011; and

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

1. The applicants are the owners of the land.
2. The Board of Zoning Appeals adopts the standard Special Permit Resolution under the Sect. 8-922.
3. The staff has given the Board a favorable staff report.
4. It is noted that the property backs up to the Fairfax County Parkway property.
5. The proposed screened porch will impact no one in the rear.
6. Staff has found that it meets all the required standards of Sect. 8-922.
7. The Board of Zoning Appeals has found that the applicant has presented testimony indicating compliance with the standards for Provisions for Reduction of Certain Yard Requirements as contained in Sect. 8-922 of the Zoning Ordinance. Those are Standards 1 through 6.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (approximately 303 square feet), as shown on the plat prepared by DRS Architecture, dated September 13, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,660 square feet existing + 8,490 square feet (150%) = 14,150 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. N. ELIZABETH KELLEHER & P. ROSS TAYLOR, VC 2011-DR-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of one addition 16.1 ft. from one front lot line and 11.5 ft. from other front lot line and another addition 10.9 ft. from front lot line. Located at 2304 Highland Ave. on approx. 10,007 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((18)) 11. (Admin. moved from 6/29/11 at appl. req.)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Bill Baskin, the applicants' agent, 301 Park Avenue, Falls Church, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of three variances for two additions to permit construction of a one-story addition, a garage, to be located 16.1 feet to its eave from the southern front lot line facing Highland Terrace and 11.5 feet to its eave from the western front lot line facing Highland Terrace; and construction of another one-story addition, a room addition, to be located 10.9 feet to its eave from the western front lot line facing Highland Terrace. A minimum front yard of 30 feet is required; therefore, modifications of 13.9 feet and 18.5 feet were requested for the garage addition and 19.1 feet was requested for the room addition.

Mr. Hammack asked whether the demolition of the existing garage would be required. Ms. Hedrick answered yes.

Mr. Hammack asked where the new wall of the garage was to be relocated. Ms. Hedrick presented a plat on the overhead viewer that showed the location of the garage which would be demolished and the location of the new construction.

Mr. Smith said that in one of the photographs it appeared there was a large tree located in the front yard on Highland Avenue that would have had to be removed if the applicants had expanded in that direction, and he asked if it was correct that by doing so, they were saving the large tree. Ms. Hedrick said the application had not been reviewed by the Urban Forrest Management Office, and staff was not making a recommendation. She did not note that there was any vegetation to be removed to accommodate the addition, but she would defer the question to the applicants' agent. Mr. Smith stated that, in his understanding, by doing what they could have otherwise done by right, what looks to be a relatively large tree in that front yard would be saved.

Mr. Hart asked whether there was a record of how the structure was approved in its current location and why the existing structure was located so close to the street. Ms. Hedrick said the structure had been constructed in 1952, and she would look through her file to locate any older building permits. In response to a question from Mr. Hart regarding whether the location had been legal in 1952, Ms. Hedrick said she assumed so.

Mr. Baskin presented the variance request as outlined in the statement of justification submitted with the application. He said the applicants were currently suffering water damage due to faulty building design in the way the garage roof met up with the main roof of the house. Their desire was to move the garage forward as shown on the plat so they could realign the roof to create an acceptable drainage situation, and in doing so they wanted to enclose the rear porch so it would become flush with the back of the existing garage. The rear of the existing garage was just a little over seven feet from the rear lot line. What was proposed was to slide the garage forward and have the rear of the garage 11.1 feet from the rear lot line. That would move it slightly closer to the front lot line on the side of the house. Currently at 16.5 feet, the new structure would be 16.1 feet. The dimension that was requested in the variance for 10.9 feet was for closing in the existing porch at the rear of the house, which would become flush with the line of the new garage. Mr. Baskin said there would be minimal, if any, impact on the neighborhood. He said there were five or six letters of support from neighbors, which indicated that all the surrounding neighbors were comfortable with the application. Because the property sat atop a steep hill and it was an older lot with three front yards, the only way to redevelop the lot into a functional dwelling would be to go up. There were other houses in the vicinity on very small lots that had gone to two- or two-and-a-half-story houses, but to do that on the subject lot, the structure would loom over the houses that are on the downhill side. He said the neighbors recognized that the proposed variances and alterations to the existing structure would be a benefit to them and actually be more harmonious with the neighborhood. Mr. Baskin stated that the applicants met all the standards for obtaining a variance.

With regard to the large tree near Highland Avenue which Mr. Smith asked about, Mr. Baskin indicated that moving forward towards Highland Avenue as opposed to keeping the same distance as the existing garage from the lot line would impact the large tree, and the structure would become even closer to the front lot line on the side.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve VC 2011-DR-006 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

N. ELIZABETH KELLEHER & P. ROSS TAYLOR, VC 2011-DR-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of one addition 16.1 ft. from one front lot line and 11.5 ft. from other front lot line and another addition 10.9 ft. from front lot line. Located at 2304 Highland Ave. on approx. 10,007 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((18)) 11. (Admin. moved from 6/29/11 at appl. req.). Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2011; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,007 square feet.
4. In this case the applicants have done a significant amount of homework. There is a lot of support from the directly impacted surrounding property owners.
5. It certainly seems like it would be an improvement to the neighborhood.
6. It will alleviate a difficult condition relative to the drainage that was pointed out.
7. The Board adopts the Statement of Justification provided by the applicants.
8. It is noted that the subject property was acquired in good faith.
9. The subject property has at least one of the following characteristics:
 - A. Narrowness, it is less than the required width for an R-4 zoned property.
 - B. There are some exceptional topographic conditions on the property.
 - C. It is unusual that it has the three front yards.
 - D. In this case also it has what is effectively an alley on two sides.
10. Also, being at the top of the hill and the water drainage issue, there is an extraordinary situation or condition on the subject property that the condition or situation of the property, or the intended use of the property, is not of so general or recurring in nature as to make reasonably practicable the formulation of a general regulation adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
11. In this case, the strict application of the Ordinance would produce an undue hardship.
12. The hardship is not shared generally by other properties in the same zoning district in the same vicinity.
13. In this case there actually is a benefit, as was pointed out by the applicants.
14. The applicants could have gone higher.
15. The applicants could have built out towards Highland Avenue, which would, frankly, have a more detrimental effect on the surrounding property in the community with the loss of the large tree out front.
16. If you look at the location of the existing garage, the setback from what is effectively the rear of the property is actually less where it is 7.7 now and that changes to 11.5.
17. There is a pretty minimal change on the left side as you are looking at the house of the property, which is still a front yard, but that is going from 16.5 to 16.1, so it is relatively minimal impact there.
18. It is not going to have an adverse impact on property owners as was confirmed with the letters of support that have been received.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 as shown on the plat prepared by APEX Surveys dated July 31, 2009, revised through April 10, 2011, submitted with this application and is not transferable to other land.
- 2. The additions shall be generally consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants 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 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.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. JOACHIM M. FANALE, TRUSTEE, SP 2011-SP-037 (Admin. moved from 7/20/11 at appl. req.)

Chairman Ribble noted that SP 2011-SP-037 had been withdrawn.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. LAWRENCE F. KAMBA, SP 2011-SU-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit addition to remain 5.9 ft. from side lot line and such that side yards total 14.7 ft. Located at 13412 Melville La. on approx. 11,152 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 45-3 ((3)) 448. (Admin. moved from 7/20/11 for ads)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Lawrence F. Kamba, 13412 Melville Lane, Chantilly, Virginia, reaffirmed the affidavit.

Brenda Cho, 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 permit a two-story addition to a single-family detached dwelling to remain. The addition measured 880 square feet in area, 28 feet in height and was on the left or west side of the house. The request was for the addition to remain 5.9 feet from the side lot line with total side yards of 14.7 feet. A minimum side yard of 8.0 feet with side yards totaling 24 feet is required; therefore, modifications of 2.1 feet and 9.3 feet, respectively, were requested.

Mr. Kamba presented the special permit request as outlined in the statement of justification submitted with the application. He said he submitted the original plat and asked how large of an addition he could put in. In the beginning, he said it appeared he had 26 feet on the west side of the house and was told he could be as close as 18 feet for an addition, but he only went to 16 feet.

Ms. Gibb asked if the applicant was relying on Attachment A, the Patton, Harris, Rust plat. Mr. Kamba said he had.

Mr. Hart stated that he looked at the plat and tried to do the math and thought the shape of the lot and the dimensions were the same. He said he understood one foot of the mistake was because the house was really located at 9.9 feet, but the applicant's plat showed 8.9 feet.

A discussion ensued between Mr. Hart and Mr. Kamba regarding the discrepancies between the dimensions reflected on plats and the actual locations.

Mr. Hart asked whether there had been a complaint filed. Ms. Cho responded that the error had actually been caught when the applicant applied for the setback certification. She said the plat that had been submitted was part of the setback certification plat, and that was where the error was caught.

Ms. Gibb asked whether a setback certification was normally requested, similar to a final house location survey. Ms. Cho stated that it was required for any structures or additions that were located within two feet of the required side yard. Because the required side yard was eight feet and the permit issued stated nine feet from the side lot line, the applicant was then required to have a setback survey.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2011-SU-044 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LAWRENCE F. KAMBA, SP 2011-SU-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit addition to remain 5.9 ft. from side lot line and such that side yards total 14.7 ft. Located at 13412 Melville La. on approx. 11,152

sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 45-3 ((3)) 448. (Admin. moved from 7/20/11 for ads) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 2011; 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 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.
3. As the applicant, Mr. Kamba pointed out he was working off an original plat that actually was on record at the County.
4. This was done in extreme good faith.
5. The applicant even held for a margin of a couple feet when he went forward with his construction.
6. The property is in a PDH District, which is not specific, but, again, is analogous to R-2.
7. There was no complaint in this particular case.
8. The Board has also, again, the following Findings of Fact A through G contained within the mistake section.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the two-story addition, as shown on the plat prepared by Apex Surveys, dated and signed April 11, 2011, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the addition shall be diligently pursued and obtained within six months of final approval of this application.

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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. KAREN M. WOOD, TRUSTEE, SP 2011-HM-045 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.5 ft. from rear lot line. Located at 2502 Branding Iron Ct. on approx. 8,839 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((14)) 91A.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Nicholas Vitale, the applicant's agent, 11800 Sunset Hills Road, Apartment 1112, Reston, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an addition, a screened porch, to be placed 14.5 feet from the rear lot line. The proposed porch would be built over an existing open wood deck and would measure approximately 234 square feet in area. A portion of the open deck would not be enclosed. The height of the porch would be 17.1 feet. A minimum rear yard of 25 feet is required; therefore, a reduction of 10.5 feet was requested. Staff recommended approval of SP 2011-HM-045 subject to the proposed development conditions.

Mr. Hart asked whether Parcel D1 was an unbuildable lot, perhaps owned by the homeowners association. Ms. Cho answered yes.

Mr. Vitale stated that he had nothing to add.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-HM-045 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KAREN M. WOOD, TRUSTEE, SP 2011-HM-045 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.5 ft. from rear lot line. Located at 2502 Branding Iron Ct. on approx. 8,839 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((14)) 91A. 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 27, 2011; and

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

1. The applicant is the owner of the land.
2. The construction involved is simply the enclosure with a screened porch of part of an existing deck.
3. It will not encroach any closer to the rear yard than the deck already does.
4. The parcel immediately adjacent to the rear of the property is open space, and in the photograph, it looks like it is treed so it won't impact on any of the other neighbors in any way that could be detrimental.
5. The Board has a favorable staff recommendation, which is adopted.
6. 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 Provisions for the Reduction of Certain Yard Requirements, as contained in Sect. 8-922 of the Ordinance.
7. The Board has determined that the applicant has satisfied the six required subsections set forth in 8-922.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the screened porch (234 square feet), as shown on the plat prepared by Scartz Surveys, dated April 7, 2011, revised May 17, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [2,697 square feet existing + 4,046 square feet (150%) = 6,743 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The deck shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On at approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, 7/28/10, 12/15/10, and 2/16/11 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to October 26, 2011, at 9:00 a.m., at the appellants' request.

Mr. Hart stated that the appeal had been deferred several times and wanted to know whether there was anything resulting from deferring it. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the results so far were that the appellant had received a special exception, and one of the conditions of the special exception was the parking study, which had been submitted. Ms. Stanfield said they had done part of the work and were awaiting approval. They would then have to restripe the parking lot, plant a tree, put in a bench, and they would be done.

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~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. RP MRP TYSONS, LLC, A 2010-PR-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located at 7950 Jones Branch Dr. on approx. 17.34 ac. of land zoned C-3. Providence District. Tax Map 29-2 (915) C1. (Admin. moved from 11/3/10, 2/2/11, and 5/4/11 at appl. req.)

Chairman Ribble noted that A 2010-PR-011 had been administratively moved to November 2, 2011 at the appellant's request.

~ ~ ~ July 27, 2011, Scheduled case of:

9:00 A.M. ANTHONY ELLER AND BARBARA D. ELLER, A 2011-PR-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and a storage yard and have erected an accessory fence in the front yard that exceeds the 4-foot height and use restriction, all on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 1927 Byrd Rd. on approx. 10,934 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((10)) (4) 5B. (Admin. moved from 7/20/11 at appl. req.)

The following is a verbatim transcript of the proceedings had in this matter:

CHAIRMAN RIBBLE: Lastly, Anthony Eller and Barbara D. Eller, Appeal 2011-PR-011. Anyone wishing to speak to this case please stand, raise their right hand, to take an oath.

PAULA MCFARLAND: Do you swear or affirm that your testimony will be the truth under penalty of the law?

(Those standing indicated their testimony would be the truth.)

CHAIRMAN RIBBLE: Thank you. I'll let the appellant introduce himself first. Would you like to --

JIM ISHEE: I'm sorry. Me?

CHAIRMAN RIBBLE: -- step to the microphone.

MR. ISHEE: Yes.

CHAIRMAN RIBBLE: State your name and address for the record.

MR. ISHEE: My name is Jim Ishee. I live at 11609 Popes Head Road, Fairfax, Virginia. I'm an attorney, and I'm representing Mr. and Mrs. Eller.

CHAIRMAN RIBBLE: Thank you. We'll get the location. We'll hear from the staff first on this.

MAVIS STANFIELD: Thank you, Mr. Chairman. If you wouldn't mind taking one moment, I would like to address Ms. Gibb's earlier question. Just take one moment.

CHAIRMAN RIBBLE: Okay.

(Ms. Stanfield and Ms. Gibb spoke briefly off the record.)

CHAIRMAN RIBBLE: Thank you.

MS. STANFIELD: Sorry for the interruption.

JILL COOPER: Good morning. I'm Jill Cooper with the Ordinance Administration Branch. With me are Mavis Stanfield, Deputy Zoning Administrator for Appeals, and Senior Zoning Inspector Chip Moncure, and Laura Gori from the County Attorney's Office will be here as well, we believe.

This is an appeal of a determination that the appellants have established a junkyard and a storage yard in their carport and have erected an accessory fence in the front yard that exceeds the four-foot height restriction, all on property in the R-3 District, in violation of Zoning Ordinance provisions. The appeal is the result of a notice of violation.

The subject property is located at 1927 Byrd Road and is developed with a single-family dwelling constructed in 1969 and several accessory structures. The notice of violation that is the subject of this appeal was limited to the items being stored in the appellants' carport and the fence that exceeds the height limitation in the front yard. The appellants are currently in litigation with the County regarding a 2007 consent decree that involved outdoor storage on the property. The current notice of violation and basis of this appeal do not include the issues involved in the 2007 consent decree or the pending litigation.

It has been the clear position of the Zoning Administrator, as substantiated by the County Attorney, that the maintenance of excessive storage in a carport may constitute a junkyard and/or storage yard. Based on site inspections, it is clear that the items stored in the appellants' carport are excessive. The appellants do not dispute the fact that there is fencing in the front yard that exceeds four feet in height. Although the appellants claim that this fence has existed in its current configuration for the last 18 years, it cannot be considered vested due to the lack of any records of its existence. As noted in the staff report, the appellants may either remove the section of fence that exceeds four feet in the front yard or pursue a special permit to allow it to remain. We would also note that it may be possible for the appellants to obtain a building permit to enclose the carport, thus providing resolution to that part of the violation as well.

The state of the appellants' property has had a substantial negative impact on the surrounding community and is in clear violation of the noted Zoning Ordinance provisions. Staff, therefore, recommends that the BZA uphold the determination of the Zoning Administrator as set forth in the notice of violation dated March 18th, 2011. Thank you. We'd be happy to answer any questions.

CHAIRMAN RIBBLE: Any questions of Ms. Cooper?

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: Thank you. Ms. Cooper, procedurally, the March 31 order from Judge Alden, it looks like it's a final order. Is that over? I mean, has that been appealed or something else happening?

MS. COOPER: For that, I'd like to defer to Laura Gori for the County Attorney's Office.

CHAIRMAN RIBBLE: Would you state your name and address for the record.

MS. GORI: Yes, Chairman. My name is Laura Gori. I'm with the County Attorney's Office. The address is 12000 Government Center Parkway, Suite 549, Fairfax, Virginia. The status of that litigation is that that was a final order that was entered by Judge Alden. It has been ap- -- our office filed a petition for appeal, and that is currently pending before the Court. They've not decided on that yet.

MR. HART: Okay. I'm -- I think I understand this, but what's before us today, the Zoning Administrator, after this order, started over with a new violation notice. Is that what happened?

MS. COOPER: Yes. This -- what's before you today is a new notice of violation that is based on different areas of violation, only to do with the carport and the fence in the front yard.

MR. HART: Whatever track this March 31 order is still on, whatever the Supreme Court does with that, we're not jumping in the middle of something today by dealing with the new letter. That's an independent case. This isn't overlapping with that in some way?

MS. COOPER: That's correct.

MS. GORI: And if I may interject very briefly, I have a copy of the transcript here from the March 17th, 2011 hearing, and it specifies -- Mr. Emerick from our office specifically said that he did not include photos of the carport because there was a pending notice of violation and appeal to the BZA, and we're not here on that matter. So he made that very clear, that it was a separate matter --

MR. HART: Okay.

MS. GORI: -- before the Circuit Court.

MR. HART: The notice that we're here for today and the appeal of that predate the March 31 hearing?

CHAIRMAN RIBBLE: They must.

MR. ISHEE: May I address that, because I was there, and they do. They --

CHAIRMAN RIBBLE: Step up to the microphone, if you --

MR. ISHEE: Jim Ishee, counsel for the Ellers. The reissued notice of violation was on March 18th, which was the day after the first hearing on the -- in the Circuit Court, and then there was a March 31st hearing in which the judge, Judge Alden, issued her ruling. So that occurred -- the reissuance that we're here for today occurred on -- after the first court hearing, but before the final court hearing in Circuit Court.

CHAIRMAN RIBBLE: Thank you.

MR. HART: All right. I'll stop. Thank you.

CHAIRMAN RIBBLE: Further questions of staff? Mr. Ishee, would you like to state your position.

MR. ISHEE: Yes, thank you, Mr. Chairman, members. The Ellers are here because they had -- they've had a long history with the Zoning Administrator, and while they respect the Zoning Administrator's efforts and diligence, they feel that they have been asked to do things with standards that are confusing, inconsistent, often contradictory, and shift over time. And while they certainly have no desire or wish in any way to be outside of the rules of the Zoning Ordinance, they think that sometimes the Zoning Ordinance has been interpreted in their case to require them to do things that are not required by the Zoning Ordinance, and that's why they're here. In the past, they've guessed at what was meant about particular requests, like clean up the property or to do particular vague things like that, and it's gotten them in trouble.

So I'll give you a very brief -- and this is just a very brief highlight of the history of this, because I think it's relevant to your determination.

Initially in 2006, the owners were cited for violation of outdoor storage on their property. They didn't get counsel. They thought they would work the County. They cleaned up the things that were specifically mentioned. They thought that would -- cured the problem. The next communication they get was a lawsuit, petition for injunctive and declaratory relief. They again thought that they would work with the County. They entered into a consent decree of their own without having an attorney and thought that they would work it out, but each time they would remove items from the property, that would turn out to be not enough.

So eventually they did reach an agreement. They had a consent decree, and then they reached an agreement which we refer to as the agreed order which was entered by the Circuit Court. It was entered on February 1st of 2008, but it provided that the condition of the property as of November 5th, 2007, satisfied the consent decree, which dealt with outdoor storage. And this -- I understand the County's position that this is something different. But in reaching that agreement, the Ellers had a lot of space on their carport at the time, and they had a number of items out in their yard. And following the directions of the Zoning Administrator and the inspector at the time, they removed items from their yard, put it in the carport.

And you can see the pictures that I've attached as Exhibit F. I believe that you can see brown bins with red tops that are sitting kind of beside the carport. Those tak- -- pictures taken, you can see at the top, it was taken by Mr. Cohenour, who is the County zoning inspector, in 2006. Those are those same brown bins with red tops that are now in their carport, which are, we believe, a big part of the reason for this hearing. And Mr. Eller will testify that at that time he put them on the carport at the direction of the Zoning Administrator so that they could be in compliance with the Zoning Administrator at that time, and they entered an agreed order with the Circuit Court to effectuate their compliance with the requirements of the Zoning Administrator at that time. They thought that it was settled at that point in time.

Then the first notice of violation occurred in October of this year -- of last year, 2010, and it dealt only with the yard, didn't deal with the carport. It was rescinded and reissued again dealing with the yard, not with the carport, but then when it was rescinded and reissued the next time on March 18th, the yard was no longer the subject matter. It was the carport that was the subject matter. That's because there was a parallel proceeding that had been filed at the -- on the same day as the first rescission that claimed a violation of the outdoor storage provisions under the consent decree with the Circuit Court, and that's the case that you were referring to, Mr. Hart, with respect to the -- what's being appealed to the Virginia Supreme Court that -- at this time.

And it is true that the County Attorney did say in the course of that proceeding that they weren't including it as part of it, although I think the Ellers' position would be that that's partly why things are so confusing for them, is that they were originally included as part of it. Then they weren't as part of their agreed order. Then the pictures were part of it at first for -- or their understanding was that it was -- the carport was part of the outdoor storage provision, and then it wasn't when we got to court. And now when you look at page 5, the last paragraph of page 5, the County's Zoning Administrator's position, they -- response, the staff report, they say that it's always been their position that outdoor storage includes the carport. And so from the Ellers' perspective, they can't tell what they're talking about. They can't -- they had no good basis to guide what their actions are.

I might also point out that while the Circuit Court proceeding did not include specific language on the carport, the judge, Judge Alden, did find -- and I have the portion of the record here if you would like to see it, but Judge Alden did find that the yard did not constitute a junkyard or a storage yard under the Zoning Ordinance.

Now dealing with the particular provisions of the storage yard and junkyard that the Ellers are charged with here, the storage yard contains -- it's not a layman's term. It's a defined term under the Zoning Ordinance, and it contains specific language of what constitutes a storage yard. And what constitutes a storage yard is the use of any space, whether inside or outside of a building, for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, boats, and/or farm machinery. If you look at their -- what their allegations are of what they have that constitutes a storage yard, it's really none of those things. They do say auto parts, which would be part of equipment, but Mr. Eller would testify that while there were two hubcaps in the carport, he removed those promptly. And there were no auto parts, and those were the only auto parts. And none of the other items that they have listed that they con- -- they say constitute a violation

as a storage yard are present in the Ellers' carport. As a matter of fact, there is an old washing machine/dryer machine combo there, and that is a machine. But aside from that, there's nothing else that would be considered in any of these items for a storage yard.

So in evaluating -- and clearly it's not really the gist of the Zoning Administrator's position that all of these things are there. They just argue that there are excessive items in the Ellers' carport and that, therefore, it needs to be cleaned up. And that's generally been the way it's been in the past if they say you need to clean things up generally, it's just too much stuff. And the Ellers have tried to do that, but they tried to do it in accordance with what their legal requirements are. And they find that they get nowhere with it. And in this case, if it were just a matter of removing that washing machine, well, that would have happened a long time ago, but they've learned from past experience. And I think you can tell from the appeal that that's not gonna be enough. They want it to be an empty carport space, but the Zoning Ordinance doesn't require that, or at least the storage yard provision does not.

The junkyard provision also, I would argue, is something that deals with more of a -- in the context of the definition, deals with something more like an industrial junkyard or typical understanding of what a junkyard is with cars and equipment and pieces like that. Admitted, that's clearly not the situation in the Ellers' carport where they have storage bins with some other items around. They have some old lawn chairs and so forth, but it's -- it doesn't meet anybody's general recognition of the definition of a junkyard. It does -- the junkyard definition does include the word "junk," although it includes the word "junk" in the context of scrap metal and scrap materials from dismantling equipment or machinery and so forth, but it does include the word "junk." And the Zoning Administrator refers to the word "junk" and gives Webster's Dictionary definition of it, and it includes phrases such as items of poor material and poor quality. And I might even add that even to get to that level of specificity, the word "junk" is probably one of the most vague words in the English language. And to -- even to get to that level of specificity, they've had to zero in on Definition Number 2 of the Webster's Dictionary definition, and it includes items like poor -- items of poor quality.

And, furthermore, they -- at least from my definition of Webster's Dictionary, even in that subsection 2 definition, it also includes language of something of little meaning, worth, or significance, and so when they say that they have on their property junk, which includes something of poor quality or something of little meaning or significance, that's not a standard that they can -- that the Ellers can use to evaluate whether or not they're in compliance. And the Ellers have repeatedly asked for a specific list, not in this -- I should say not in this, this particular -- in the past in other context, the Ellers have asked for a specific list of what items are offensive and what is it that they say constitutes outdoor storage and kind of -- and the junkyard and storage yard definitions are used by the County Attorney as part of the explanation of outdoor storage. So it's come up in that context before, and they've never really gotten a list. They thought they had at the time of the agreed order when -- in 2007 when they had an agreement that that condition of their yard was acceptable, but since that time they haven't gotten anything.

And if I haven't mentioned it already, I should say that Mr. Eller would testify that the condition of the carport today is the same as it was the items with -- there might be -- he says there might be some minor exceptions, but really the condition of the carport today was the same as it was November 5th, 2007, which was the baseline date for the agreed order in which the County said they were in compliance with the Zoning Ordinance. So the owners have -- feel that they -- they have not been given clear direction and that the requirement that they remove excessive items overreaches what the Zoning Ordinance provides for.

And then I also had arguments with respect to res judicata and collateral estoppel if the Board would like to hear those.

CHAIRMAN RIBBLE: Thank you. Questions?

MR. HART: Mr. Chairman.

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart, then Mr. Beard.

MR. HART: Thank you. Mr. Ishee, if we could turn to Photos 6 and 9 for a moment in the staff report. Is the vehicle that's shown in Photo 6 the same vehicle as Photo 9?

MR. ISHEE: Yes, they are. Those -- by the way, those are -- those have been -- those were removed prior to the institution of this of notice of violation. There was a separate violation. Those vehicles were there in 2007 as well, but there was a separate notice of violation related to those vehicles, and the owners promptly removed those and resolved that notice of violation. So those vehicles aren't there today, but they were a subject of a separate notice of violation that the Coun- -- the owners had received from the County.

MR. HART: The orange vehicle in the photos is not there today?

MR. ISHEE: It is not.

MR. HART: Okay. All right. Ms. Stanfield or Ms. Cooper, staff agrees with that, the vehicles are gone?

CHAIRMAN RIBBLE: Mr. Moncure, do you want to state your name and address if you're gonna answer this one.

MR. MONCURE: William Moncure, Department of Code Compliance Investigator. I was not sworn in at the beginning of the hearing.

CHAIRMAN RIBBLE: Would you like to raise your right hand --

MR. MONCURE: Yes.

CHAIRMAN RIBBLE: -- and get sworn in. Thank you.

MS. MCFARLAND: Do you swear --

MR. MONCURE: I do.

MS. MCFARLAND: -- or affirm that your testimony will be the truth under penalty of the law?

MR. MONCURE: I do.

CHAIRMAN RIBBLE: Thank you.

MR. MONCURE: In regards to the orange vehicle, the van, it has been removed from the property since the early on onset, the notices of violation --

MR. HART: Okay.

MR. MONCURE: -- that were delivered at the property.

MR. HART: Mr. Ishee, let me ask generally about Photos 4 through 9. If I understood your argument in the paperwork, one of the issues was that the items were art rather than junk or something else. I'm paraphrasing a little bit. We've had that argument before, but --

MR. ISHEE: Well --

MR. HART: -- I guess what I was trying to understand, in Photos 4 through 9, for example, what is it that you're saying is art?

MR. ISHEE: They made no claim the -- in the previous -- this -- the initial version, two versions of this notice of violation referred to the Ellers' front yard and didn't explicitly refer to the carport at all. They had items in their front yard that they considered to be art. There's nothing in the carport that they're claiming relates in any way to art.

MR. HART: Okay. With respect to the carport then, you're not making -- okay.

MR. ISHEE: No.

MR. HART: The -- let me ask staff, because I'm -- I misunderstood the timing of the photos, I guess. Do Photos 4 through 9 accurately depict what is there now as separate from the orange vehicle?

MR. MONCURE: At this exact moment, I do not know, sir. The photographs were taken at the time that I was on the property doing the investigation. I was present with Mr. Ishee and the Ellers. Subsequent to that, notice of violation was issued specifically for the storage yard/junkyard separate from the other litigation involving the outside storage issue.

MR. HART: Are there any photos that show the carport situation that we're supposed to decide today?

MR. MONCURE: Other than the photos that are in the package that have photographs of the actual carport itself, there's no other photographs other than what was submitted, if that's what -- if I understand your question.

MR. HART: Well, I'm not under- -- I'm not sure I understand the answer. Photos 4 through 9 I thought were showing items, whatever they were, in -- I thought that was probably the carport area from different perspectives.

MR. MONCURE: Yes, sir, it is.

MR. HART: But what I'm asking is, do 4 through 9 show what's there now or these were taken in some earlier time?

MR. MONCURE: These were taken at the time of the notice of violation and the inspection.

MR. HART: Let me come back, because I'm not sure we're connecting on this. Did -- except for the orange vehicle, is the situation that the violation is about basically what's shown in Photos 4 through 9 or is there some substantive change between then?

MR. MONCURE: The vehicle is not in question in the matter. The Photographs 4 through 9 are depicting the interior of the carport the -- for the -- for which this specific violation notice was issued.

MR. HART: Mr. Ishee, do you agree that, except for the orange vehicle, 4 through 9 are essentially representative photos of the carport area?

MR. ISHEE: Yes.

MR. HART: Okay. Thank you.

CHAIRMAN RIBBLE: I'm gonna get to Mr. Beard in a second. Could I ask one question first. Mr. Moncure, did -- do you know of anybody that directed that these things be taken from the yard, put in the carport? I think I heard that from Mr. Ishee.

MR. ISHEE: Yes, it was Mr. Cohenour.

CHAIRMAN RIBBLE: Oh.

MR. MONCURE: Mr. Ribble, I -- can I comment on that? That was -- if -- those were facts that I was not aware of that were handled in a previous litigation regarding the property. My response was I was originally sent there regards to a question concerning the original agreed order.

CHAIRMAN RIBBLE: So, Mr. Ishee, is --

MR. MONCURE: That's where I picked up the matter.

CHAIRMAN RIBBLE: -- was it Mr. Cohenour or somebody else or --

MR. ISHEE: Yeah, Mr. Eller will testify that Mr. Cohenour suggested -- didn't tell him he had to put them there, but suggested that those items in the yard were a violation, there was space in the carport, and if they were in the carport, it wouldn't be a violation.

CHAIRMAN RIBBLE: Thank you.

MR. ISHEE: So in response to that, he moved the items from the yard to the carport.

CHAIRMAN RIBBLE: Okay. Mr. Beard, I'm sorry.

MR. BEARD: Okay. I guess my question is directed to staff, and I'll just dovetail onto that for a moment. So we are not here at all about the carport issue, correct? That's --

MS. COOPER: We are here about the carport issue.

CHAIRMAN RIBBLE: That's why we're here.

MS. COOPER: It's only the carport and the fence in the front yard.

MR. BEARD: So this comes under junkyard and storage yard?

MS. COOPER: Within the carport.

MR. BEARD: Well, it -- so the court issue is the yard?

MS. COOPER: Yes, outdoor storage for the yard.

MR. BEARD: Okay. All right. Now, if I could have some clarity on the notice of violation and then be -- the -- it being rescinded and reissued, if you could go through that, and perhaps Mr. Moncure could go through that with me.

MR. MONCURE: Mr. Beard, when I was originally sent to the location based on complaint, it was to follow up in regards to the original litigation that had gone against the property. There was an agreed order. I went there to look into the matter regards to outdoor storage at the time. Subsequently, I filed appropriate paperwork in regards to that rule to show cause. During the course of the investigation, I observed that it was a large quantity of items in -- that -- filling the entire carport area, that there had been a fenced enclosure in front of the carport area.

Based on the fact that there was existing litigation, I contacted the County Attorney's Office to seek counsel regards to this matter as to whether the original order encompassed anything that was in the carport based on my observations. It was based on the fact that the original litigation did not address that, that subsequent to this notice of violation the Zoning Administrator had done an interpretation whereby addressing issues of this nature. It was advice of counsel that the issue in the specific carport area be addressed separately through a notice of violation -- through the issuance of a notice of violation for storage yard/junkyard.

Regarding your question in regards to the question of the issue and rescind, the purpose of that timing was the fact that the -- it -- that -- during that particular timeframe, the County was looking into the matter of reducing the appeals fee. It was -- I was instructed, based on the fact that there was subsequent litigation and subsequent rulings by the Board within days, that -- at the time I did this, that the appeals fee would be, in fact, reduced. To avoid any issues, I was instructed to go ahead, rescind and reissue the notices reflecting the law change as far as the appeals fee for the different violations.

MR. BEARD: And, Mr. Ishee, that agreed order is the pro se order that your client entered into. Is that the one --

MR. ISHEE: No, I was counsel with the agreed order. They had -- they entered into at first a consent decree pro se. That consent decree required them to remove all outdoor storage from their property or face a contempt of court, possible a hundred dollar day fine, and after that happened and they were unable to reach an agreement with the County, they hired me, and we worked out an agreement. It went back and forth several times. It occurred over a period of several months, but went back and forth several times. The Ellers removed the items that the County required. We had a specific list of the items that needed to be removed. The County came back out, did a subsequent inspection after those items were removed.

And then the County Attorney and I entered into an agreed order, which said that as of November 5th, 2007, which was the last date that the Ellers' property was in compliance, and as part of that process, Mr. Eller removed the items from his yard, put -- placed them in his carport, which prior to that time had not -- had items in it. And as a matter of fact, one of the pictures from the original motion for declaratory and injunctive relief included a picture of the carport, which had some items in it, but it was far less items -- far fewer items than the present time. And in working with the County at the direction of the County, he took items from the yard, placed them in the carport, and that -- his testimony would be that that car -- those items that are the subject of the present notice of violation were placed there at the suggestion of the Zoning Administrator and as part of an agreed disposition resulting in the agreed order in the Circuit Court.

MR. HAMMACK: Mr. Chairman.

MS. GIBB: Mr. Smith.

CHAIRMAN RIBBLE: I think Mr. Smith wanted to go.

MR. SMITH: I was going in a new direction, so if this was a follow-up --

MR. HAMMACK: Wha- --

MR. SMITH: -- that's fine.

MR. HAMMACK: This is --

CHAIRMAN RIBBLE: Mr. --

MR. HAMMACK: (Inaudible.)

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: Looking at the original consent order, which I'm not sure is superseded exactly by the agreed order, but it says that on or before July 15th, 2007, the Ellers shall remove all outdoor storage from the subject property to a lawful site. And my question is: What in the Ordinance -- I mean, first question is: What in the Ordinance says you can't use your carport for the storage of the types of things that are in there right now? And then it has "or," so, I mean, they get an alternative, or locate all outdoor storage on the rear half of the subject property, screen it from view, and -- from the first floor window of any neighboring dwelling, and locate it in an area not greater than 100 square feet. But I want to go to back to lawful site.

What precludes a carport -- I mean, I see carports all over the county that have storage in it. I mean, they have bikes. They have hoses. They have all sorts of things, and, I mean, if some neighbor could come in and say, gee, you know, we don't like the way that carport looks and the County can issue a ruling saying you're maintaining a junkyard in your carport, I want to know more about that, the legal aspects of that in the Ordinance. Why should we accept that this is a storage yard or a junkyard inside a carport?

CHAIRMAN RIBBLE: I think that's for you, Ms. Gori.

MS. GORI: Yeah, Laura Gori. As I believe you have seen in the staff report, it refers to the Zoning Ordinance definition of a carport and specifically says that a carport is to be used for parking a vehicle, parked motor vehicle. In its current state, there is so much stuff in there, it cannot accommodate a parked motor vehicle, and for that reason, it no longer even sat- -- it's not used as a carport, and that's the reason that it can't have this much stuff inside of it.

MS. GIBB: Mr. Chairman.

MR. HAMMACK: Where in the Ordinance does it say that, though, that you can't use your carport for something other than a car?

MS. GORI: Well, and I believe you were referring to the consent order where it talks about removing the outdoor storage to a lawful site.

MR. HAMMACK: Yeah.

MS. GORI: And a lawful site is not a place where -- you're only permitted, under the Zoning Ordinance, to have outdoor storage within a hundred square foot area. And this exceeds the hundred square feet, and it needs to be in the rear yard. So that's the only outdoor storage that's permitted on a property, so a lawful site does not include a carport, which is to be used for parking a motor vehicle.

MR. HAMMACK: Well, I don't have anything in the record that says that this exceeds a hundred square feet.

MR. BEARD: Why is it outdoor?

MS. GIBB: Yeah, why does it have to be outdoor?

MR. BEARD: Why is it outdoor?

MR. HAMMACK: Where these trash bins that are blue and white that are stacked up on top of each other, that -- I don't necessarily know that that exceeds a hundred square feet.

MS. GORI: I apologize if I've confused the issue at all, but in terms of outdoor storage, it can only be in the rear half of the property as well, and this carport, it's my understanding, is not in the rear half of the property.

MR. HAMMACK: Well, what constitutes a lawful site under this consent order, then? I mean, the County entered into it, so it must know what a lawful site is.

MS. GORI: A lawful site would just be anywhere where it's not illegal to have these items.

MR. HAMMACK: Well, I fairly assume that. I mean, that's good. Who decides?

MS. GORI: Well, it -- I assume it depends on a case-by-case basis in terms of where they elect to put the stuff. In this particular case where they've put it under the carport, the Zoning Administrator has determined that that is not a lawful site for the reasons that are already set forth here in the staff report.

MR. HAMMACK: Well, like I say, what -- where in the Ordinance does it say that, that you can't do that, just because it says a carport's for car -- parking a car?

MS. GORI: And because a junkyard and a storage yard are not permitted under the Zoning Ordinance, and it's the Zoning Administrator's decision and determination that the items that are currently in the carport constitute a junkyard and a storage yard, which can be found either inside or outside a building, and a carport is part of both, I assume.

MS. GIBB: Mr. Chairman.

MR. HAMMACK: Okay. Thank you.

CHAIRMAN RIBBLE: Ms. Gibb.

MS. GIBB: My problem is what is the junk, and so how do we get to junk?

CHAIRMAN RIBBLE: Who's the question for?

MS. GIBB: Ei- -- staff or someone. What -- is junk defined somewhere?

MS. COOPER: Junkyard is defined --

MS. GIBB: Right, but it says --

MS. COOPER: -- and has specific items --

MS. GIBB: Right.

MS. COOPER: -- you know, that it lists there, many of which are included in the Ellers' carport.

MS. GIBB: Well, I don't know what -- I mean, I didn't hear what those were.

MR. BEARD: Stuff.

MS. GIBB: It says that keeping or abandonment of junk, which I don't know what that is yet, including scrap metals, which I don't -- I didn't hear that there were scrap metals, or other scrap materials. I still -- you know, I don't know. There are those bins, and I've seen -- I can see a few things in here, a chain and a bag, but, you know, I --

MS. STANFIELD: Ms. Gibb.

MS. GIBB: Yes.

MS. STANFIELD: I discussed this with Mr. Emerick, the attorney who was on the property previously. He said that, in his opinion, it would be that which is deteriorating and is unusable.

MS. GIBB: And where is that defined?

MS. STANFIELD: Well, that's a response. I don't have a definition, but that --

MS. GIBB: Yeah.

MS. STANFIELD: -- you know, the appearance of junk is just pretty clear in this case, I think.

MS. GIBB: Well, that's the problem. You know, some people -- you know, some person's junk is another person's treasure, as we say, so -- and, you know, when it's in something, I mean, you -- especially when the County Attorney starts talking whether it's in a garage, which could be completely closely, and you're not allowed to have it in there because that's where you're supposed to store a car, I mean, that's -- that's -- I mean, everyone's got junk in their garage. I -- I mean, I'm having trouble here.

MS. STANFIELD: I would suggest that when you have a situation like this where it's not even -- it's very difficult to even discern what is there because there's so many things in it, that it meets -- clearly meets any definition of junk.

MS. GIBB: Okay. Well, if you have gold stored in it, you know, something very valuable, so full that you cannot get your car in it, is that illegal, or boxes neatly pack- -- neatly stacked, is that a junkyard, I mean, junk, or a storage yard? I don't -- it's tortured, and we've had this problem before. It's the darn definitions. You know, they don't work.

CHAIRMAN RIBBLE: Mr. Hart, you had a follow-up.

MR. HART: I did. I have two follow-up.

CHAIRMAN RIBBLE: Then we'll get to Mr. --

MR. HART: But I didn't know if we got the answer to Ms. Gibb's question.

MR. BEARD: Could I -- Mr. Hart, could I have -- one quick question.

CHAIRMAN RIBBLE: Yes, Mr. Beard.

MR. BEARD: Yeah, it will just help me. A question of staff and who -- but a carport is outside. I mean, that's considered outside, period, no question about it.

MS. COOPER: Yes.

MR. BEARD: Okay.

MS. COOPER: Any space outside of a building and contiguous thereto.

MR. BEARD: Okay. Again, to address what Ms. Gibb was talking about, Ms. Gori from the Attorney -- County Attorney's Office, you said three times "stuff." You know, "stuff" is a very broad -- again, as she said, some people's stuff is junk, some is treasure, and so forth, but I'm just confused. If we put sides on it, then it's a garage, and it -- I'm hearing, I think, that it's okay. But with the sides open, it's outside and that therein lies the rub. Okay. Thank you. Thank you, Mr. Hart.

MR. HART: It -- thank you. I think, well, Mr. Beard kind of asked one of my questions. Why are we saying that the carport is outdoor? Why isn't the carport just a structure? I mean, we have carport cases every week about, you know, the structure is so many feet from the lot line or something. Why is a carport outdoor? Is there something in the Ordinance that --

MS. COOPER: Well, the definition --

MR. HART: -- says that?

MS. COOPER: The definition of a carport stated that it's any space outside a building and contiguous thereto wholly or partially covered by a roof.

MR. HART: Is there anything that relates the outdoor storage limitation to like being under roof in a carport, that that counts towards the outdoor storage?

MS. COOPER: I don't believe so, no.

MR. HART: Okay.

MR. HAMMACK: Let me --

MR. HART: The other -- well, I have one other --

MR. HAMMACK: Go ahead.

MR. HART: -- follow-up.

MR. HAMMACK: I'm sorry.

MR. HART: Coming back to Ms. Gibb's question and coming back to my question about the photos, I -- you know, we try and call balls and strikes on this given the paperwork that we're given and the definitions that we've got. I see the pictures, and I see sort of -- I don't know what these things are, plastic tubs and sticks and a hose, and there's a rusty chain. There's some sort of something with wheels. I don't know what these things are.

The letter says lumber, metal, wire, and other debris, and I'm not sure I'm seeing where the lumber, metal -- I mean, I guess we're telling them they have a junkyard. You're storing in the carport of this property the following materials, debris, and junk: Lumber, I haven't seen any lumber yet. Metal, well, I mean, there's a rusty chain. I see that. There's a thing that's got wheels that's got some metal parts on it, I guess. Wire, I don't see any wire. And other debris, I'm not sure -- I mean, there's some -- I don't know. There's like a pie pan or something, and there's some sticks. I guess what seems to be the bulk of the stuff in the pictures, I'm -- maybe I'm looking at the wrong thing. I'm not sure I'm following the -- what is it that -- well, let me back up. Where is the lumber -- is the lumber, metal, wire, and other debris, is there a picture of that?

MR. MONCURE: Mr. Hart, Chip Moncure, Code Compliance. On top of some of the structures inside the carport, I think it's Photograph Number 5, you may see some of it. This carport, at the time that I was there and allowed to take these photographs, the carport is full from one end to the other with items. A lot of specifics, they appear to be of a plastic or Rubbermaid configuration, almost like they're structures that are housing items in them.

To the -- one of the issues that you questioned earlier was on the side. We could not walk through the carport. We were walking around the perimeter of the carport because there's no way to get through the center of the carport. On the right-hand side, coming from the rear of the house toward the front of the house where the gated area is that you see in Photograph Number 6, that's where you saw those -- for lack of a better term, the containers that appear to be a Rubbermaid container with the orange tops. If you look at Number 6, look back into the eaves of the structure itself, you'll see metal items, wood items. All of these are stored on top of all these structures that are in --

MR. HART: Can you point that out on the overhead, because I'm just -- I'm not seeing -- I see some sticks, but I don't --

MR. ISHEE: May I address that question?

CHAIRMAN RIBBLE: Wait just a minute.

MR. HART: Well, let Mr. Moncure --

CHAIRMAN RIBBLE: Hold on just a minute. Let Mr. Moncure finish his --

MR. HART: I'm assuming Mr. Moncure took the picture. Where is the -- where is the lumber?

MR. MONCURE: If you --

MR. HART: I'm just not seeing it.

MR. MONCURE: If you look to the upper left-hand corner of this photograph, just under the eave of the roof, that's what I was referring to a moment ago in regards to there's a metal --

MR. HART: Ms. Stanfield, can you point to it?

MS. STANFIELD: I need to have you come down and point to this. Thank you.

MR. MONCURE: There's some metal items, and they don't even show up at resolution in this photograph. The black and white shows it even better. In this area right here. There's a subsequent photograph, and I didn't see the one I was looking at a moment ago.

MR. HART: Let's put up a better photo if there is one.

MS. STANFIELD: Can you find a better photo?

MR. HART: And I guess the same would go for the -- not just the lumber, but metal or wire or something. I'm not seeing it.

MR. MONCURE: If you look to this area here, you can see metal hanging in the -- from up in the rafters. There's several other items up in the rafters. That's what I was referring to in regards to that. Along this edge here that's backed up underneath the carport.

MR. HART: Okay. Well, I guess Paul, Mr. Hammack --

CHAIRMAN RIBBLE: I think Mr. Smith --

MR. HAMMACK: I had --

CHAIRMAN RIBBLE: -- has been waiting a long time.

MR. HAMMACK: Mr. Chair --

CHAIRMAN RIBBLE: Go ahead.

MR. HART: Paul had a question, too.

MR. SMITH: I actually had a question -- maybe this is for Ms. Glory (phonetic), I think it was. The -- there was a res judicata argument made here, and I guess I'm struggling a little bit with this because I look back at the 2007 decree that was entered, and it talks about outdoor storage. And it can be moved to a lawful site or lo- -- relocated to the rear half of the property or screened from view or not be greater than a hundred square feet. Well, it seems like this is still in violation, which is -- I assume is why the contem- -- it was a -- was it a contempt hearing that was held? So why is this not res judicata? Why doesn't this just violate the 2007 order that was entered is my question.

MS. GORI: Mr. Smith, it's Laura Gori, hence the confusion.

MR. SMITH: Okay. Thanks.

MS. GORI: It's my understanding that prior to the institution of this 2006 litigation, the Zoning Administrator had not yet determined that outdoor storage within a carport violated the Zoning Ordinance. That determination was made after this litigation started, which is why we've always kept the carport issue very separate from this particular litigation. We didn't choose to bring a rule to show cause to enforce this consent decree because the carport was never part of this litigation at the time.

And the -- another reason it's not res judicata is because we could only litigate the issues that were in the notice of violation for which this consent decree was entered and for which it resolved that litigation, and the junkyard/storage yard within the carport was never part of that litigation. So essentially what he is arguing is an estoppel argument, that we didn't cite them for that at the time, and so now we're estopped from issuing a new notice of violation and requiring them to remove it now, but estoppel does not bind the County, as I'm sure you know.

MR. SMITH: Right, and that doesn't seem fair to me, but it does seem -- I guess I thought this -- the way this order was written, it seems pretty broad, that it would have precluded what's happening here as well. That's where I'm getting confused. I mean, the order is pretty broad. Shall remove all outdoor storage from the subject property to a lawful site or locate all outdoor storage on the rear half of the subject property or screen it from view or locate it in an area greater -- not greater than a hundred square feet, that's pretty clear on what's supposed to happen going forward. And now we have new conditions that didn't exist at the time, but that would arguably still violate this order. But I guess the distinction is that was specifically carved out at the time, the carport, and that's the point you were making about the transcript.

MS. GORI: That's correct, that the carport was not part of this litigation, and so to bring a rule to show cause to enforce a consent decree when the carport was not part of that litigation before just didn't seem appropriate, and for that reason, we instituted a new enforcement action through the notice of violation that was issued on March 18.

CHAIRMAN RIBBLE: Mr. Hammack, you had a question.

MR. HAMMACK: Yeah, Mr. Chairman, thank you. Another question for staff, I -- the definitions involving a storage yard and a junkyard, automobile graveyard have always given me trouble. And, again, I think I understood the County Attorney to say that the Zoning Administrator's made a determination that because the appellant can't keep her vehicles in the carport, that the Ordinance requires a carport for the keeping of vehicles, and, you know, I agree with the definition. It's here in the notice of violation, but the definition says - - of a storage yard says the use of any space, whether inside or outside of a building, for the storage or keeping of, among other things, vehicles. And then it says a storage yard is not permitted in R-3 Districts. So you take your Ordinance terms literally. If they store the vehicle in their carport, they're in violation of something that's permitted in another section of the Ordinance, a structure to store a car. I mean, you have -- to me, if you read it literally, you have some contradictory provisions in the Zoning Ordinance. But I don't know about the use of the word "junk," and to follow up on Ms. Gibb, is there anything in the Ordinance that defines junk more than just what's in the mind of the Zoning Administrator or whoever the inspector is?

MS. GORI: I'm not aware of any specific definition of junk, only a junkyard, within the Zoning Ordinance.

MR. HAMMACK: Is there a definition in the Ordinance that says a junkyard is also a structure or a structure can be a junkyard? I mean, this definition says the use of any space, whether inside or outside of a building.

But the definitions are for a yard, and I would assume a yard is -- even under the Ordinance, would be considered different from a structure.

MS. COOPER: Well, the definition specifically says whether inside or outside a building, a building being a structure, so it is possible to have a junkyard within a structure.

MR. HAMMACK: Now, could the appellants take these what appear to be Rubbermaid tubs that you all object to and put them in the backyard and just put them back there and line them up? Would that be legal?

MR. MONCURE: Mr. Hammack, as long as they didn't have issues based on the fact they did not exceed size requirements of accessory storage structures, if that's what you're -- want to call them.

MR. HAMMACK: That's --

MR. MONCURE: As long as they didn't violate setback requirements and we didn't have a situation whereby they were put in such a position that they took over the entire minimum required rear yard, the 30 percent minimum required rear yard. I'm assuming that theoretically they could.

MR. HAMMACK: Well, that might be the answer to your problem, Mr. Ishee.

MR. ISHEE: Well, I --

MR. HAMMACK: Put them all in the backyard.

MR. ISHEE: I suspect --

CHAIRMAN RIBBLE: There wasn't a question.

MR. HAMMACK: No, that's a --

MR. ISHEE: Okay. Sorry.

MR. HAMMACK: That's a comment. All right. Thank you.

CHAIRMAN RIBBLE: Mr. Byers, you had something.

MR. BYERS: I think this is for the representative from the County Attorney. I'm reading Judge Alden's opinion. It says the Court finds the consent decree lacks sufficient description to inform them of what they may or may not place on their property, and the evidence does not show a violation of the consent decree. If they have moved the same indescribed or not described articles from the yard to the carport, why don't they still fit this lacks sufficient description definition? It seems like we're going down the same road that you went down with the Circuit Court before, and it's the same lack of description from the standpoint of the same articles.

MS. GORI: As I understand Judge Alden's decision, she was saying that the consent decree itself, as you pointed out, lacks sufficient specificity to be enforced in the rule to show cause proceeding, whereas, here what's before you today is a new notice of violation. Rather than trying to enforce an old order and a determination of whether or not what's currently on the property falls within the specifics of that order, we have a new notice of violation here. So Judge Alden's decision really has no impact or bearing at all on this procedure today.

MR. BYERS: But they're the same articles. Have they -- they haven't violated anything on the property other than they put the articles in the carport, correct? They're still in compliance with the consent decree. They're not in contempt, right?

MS. GORI: I don't know if they are the same articles or not. What I know is that they -- although they are saying that they put the same articles within the carport, the agreed order itself just said that they were in compliance as of the day it was entered, and the Court speaks through its order, so that's all the information we have about that time. The notice of violation now that's before you, March 18, contains its own information and its own specifics in terms of what was on the property, so it really is irrelevant what the

consent decree said was on the property. What we have before you today is the Zoning Administrator's determination that the specific items that are currently in the carport violate the Zoning Ordinance.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: But you're using evidence that was prepared five years ago in preparation of this particular consent decree. We're not -- we -- I don't think we've been given anything that shows what the garage is -- was like immediately prior to the -- this particular notice of violation. You're using photographs that are really out of date, aren't we?

MR. MONCURE: Mr. Hammack, in regards to that, when I went there to do the initial investigation following up with the rule to show cause, that's the timeframe -- from that point forward is when these photographs were taken. As to whether the carport was or was not full prior to that, anything I may have to comment on, it's strictly hearsay based on discussing the matter with the previous investigator.

MR. HAMMACK: A -- maybe a follow-up question for counsel, why did the order not -- the consent order expressly not exclude the carport if it wasn't covered under the original consent decree? I mean, that -- that's something as -- that could be done, I'm sure, if you wanted to preserve your rights under -- to go under some -- under the notice of violation.

MS. GORI: Well, again, during the time of this original litigation, it's my understanding that the Zoning Administrator had not yet determined that storage within a carport was a violation, so there would be no reason to carve that out at that time.

MR. HAMMACK: I see. So this is all based on the Zoning Administrator making up her mind subsequent to this litigation that there is another violation?

MS. GORI: Completely unrelated to this litigation, but, yes, it was right around the same time period, I believe sometime in 2007.

MR. HAMMACK: It's very hard for me to think that it's completely unrelated. I mean, we have notices of violation with the front yard and rear yard, and, you know, you're talking about the property.

MS. STANFIELD: Mr. Hammack.

MS. GORI: If I may briefly respond, as I understand it, the reason for the change was because of a change of Zoning Administrator and that the -- maybe Mavis can speak to this.

MS. STANFIELD: Yes, just a little bit clarification, it was my understanding, and others can correct me if I'm wrong, but this was actually something that was generated by the supervisor of Lee District, so it's not even in the same vicinity, and it was a request made of the Zoning Administrator.

MR. HART: Mr. Chair.

CHAIRMAN RIBBLE: Okay. I want to get to --

MR. HAMMACK: I (inaudible).

CHAIRMAN RIBBLE: -- some other speakers here sooner or later, but go ahead.

MR. HART: I -- I'm sorry. I just -- I want to hear the other speakers, too, but it just raises more and more questions. The Tupperware containers, are they part of the March 18 violation, lumber, metal, wire, and other debris, yes or no? I guess, I mean, is the Tupperware -- it's other debris?

MS. COOPER: Well, I believe that Mr. Moncure's notice stated storage containers.

MR. HART: Where?

MS. COOPER: That would be the Rubbermaid bins, I believe.

MR. HART: Where does it say that?

MS. COOPER: (Inaudible) full of items including auto parts, buckets, storage containers, electric cords, toys, damaged plastic pool, animal cages, lumber, metal, wire, and other debris.

MR. HART: I'm looking at the first page of the March 18 letter about what's the items in the carport.

CHAIRMAN RIBBLE: Ms. Cooper, can you identify what you're reading from, please.

MS. COOPER: Let me --

MR. HART: Oh, I see what you're saying. You're saying that's a -- the storage yard. It's not a junkyard. I'm still on junkyard.

MS. COOPER: Oh, okay.

MR. HART: Okay. The storage containers would be the Tupperware?

MS. COOPER: Yeah, under the -- under 2-302, paragraph 5, of the notice of violation, on the second page of the NOV, storage yard in a residential district.

MR. HART: Okay.

MS. COOPER: That's what references the --

MR. HART: I got it.

MS. COOPER: -- storage containers.

MR. HART: The damaged plastic pool and animal cages, I haven't seen that in the -- it's not in the pictures?

MS. COOPER: Probably, it's, I think, a difficult exercise to, you know, appropriately photograph what's in there.

MR. HART: How about the washing machine or whatever it is?

MS. COOPER: That is in the photographs. It's --

MR. HART: Right, but is that in the notice of violation in either of these sections, either junkyard or storage yard?

MS. COOPER: I don't know if it's specifically stated.

MR. HART: Well, if it -- what I want to -- if we're saying it's a violation to have it, it seems to me the letter would have to address it in some way, either in one of these categories or mention it, and I'm -- I guess I'm asking, are we saying that the vi- -- that the washing machine, I don't know if it's a washing machine or whatever it is, washer/dryer, something, is that one of the complaints in the letter?

MS. COOPER: I think that's one of the things that we would include under machinery under storage yard.

MR. HART: Where are we saying they had machinery?

MS. COOPER: Again, under 2-302, paragraph 5, page 2 of the notice of violation, under storage yard in a residential district.

MR. HART: Right, that -- machinery's in the definition, but what I'm saying is, have we told them we're saying they have machinery in their carport?

MS. COOPER: Well, we're saying that they have a storage yard, and it specifically says that the inspection revealed the storage in the carport of, but not limited to, the following, because, again, it's -- it was a difficult exercise to try to catalog the items in the carport.

MR. HART: Okay. One more question. If you had the Tupperware bins, whatever they are, and you had a shed in your backyard and you filled it to the roof with them, that's legal if the -- as long as the shed is okay under the 30 percent and it's -- the shed isn't too close to the line or whatever?

MS. COOPER: Yes, sir. A shed --

MR. HART: You can put them in a shed.

MS. COOPER: -- is for storage.

MR. HART: But you can't put them in a carport.

MS. COOPER: Right. A shed is for storage. A carport is to park your car.

MR. HART: Is there a point in which you have too many of them or is it just you can't ever have them?

MS. COOPER: Basically, I mean, you know, it comes down to still meeting the definition of a carport, whereas, you could at least potentially park a car there, and also the Zoning Administrator's determination that if the items are excessive, they could constitute a junkyard or a storage yard.

MR. HART: Right, but, I mean, is there a mathematical point? Maybe you could maybe get your car in the carport, but have, you know, two or three of them in the corner and nobody would -- I don't know, but --

MS. COOPER: I'm not aware of a formula that we use for that.

MR. HART: It's just if you can't get the car in or it's excessive, but there's --

MS. COOPER: Well, if you can't get the car in, then it doesn't meet the definition of the carport. But the Zoning Administrator has determined that if the items stored in the carport are excessive, and, again, there's no mathematical formula there, but I'm not sure if that can be quibbled with as far as it being excessive in this case, then those items could constitute a junkyard or a storage yard even within a carport.

MR. HART: All right. Thank you.

CHAIRMAN RIBBLE: This will be the last question. We're gonna take a five-minute break for our clerk.

MR. HAMMACK: Well, to follow up on that just briefly, I mean, every garage and carport I know in my neighborhood has Triple A trash collection or some other trash collecting company. They have their yard waste in their garage. They have their -- perhaps their lawnmower, which is not brand new, so it might be considered somewhat used or deteriorated, and a lot of other stuff, implements to work in the yard, storage. And it seems like this would allow the Zoning Administrator to simply come in and say, in almost any given case, that since there's no formula or definition as to when it becomes excessive, to say that this could be a storage yard, and you're in violation. I mean, people do that around here, and the Ordinance doesn't deal with it. This is something that I think this Board has asked for clarification in years past, and it never makes it up to the top of the list. If the County Board, in its wisdom, wants to regulate hoarding or that sort of thing or certain other types of things, these definitions are very difficult to apply to this sort of situation.

MS. STANFIELD: Mr. Hammack, in response to that, as you know, the inspectors do investigations based upon complaints, so with respect to your neighbors, you know, I don't know if there are violations there or not, but in this situation there clearly was a complaint. And it's ongoing, and it's an ongoing issue for the neighbors. You know, you can go into any neighborhood in Fairfax County and see fences that are higher than four feet in front yards and accessory structures that don't meet the requirements, but we do respond on a complaint basis, and clearly these were complaints associated with this property.

MR. HAMMACK: Thank you.

CHAIRMAN RIBBLE: Okay. The Board will take a five-minute break, be right back, don't like to do it in the middle of a hearing, but 11 o'clock's when we usually do it.

(The meeting recessed at 11:00 a.m. and reconvened at 11:07 a.m.)

CHAIRMAN RIBBLE: Are there any further questions? At this point I want to ask anyone else that wishes to speak, do so. Is there anyone would like to speak to this appeal? Step forward, sir. You'll state your name and address for the record.

MARK ROBINSON: I'm Mark Robinson. My address is 1906 Kentsdale Lane. I share that home with my family and my wife, co-owner, Alice Snow Robinson. Our home shares a back property line with the Ellers' residence at 1927 Byrd Road. I also might mention, I'm president of the Tysons Place Homeowners Association, which represents 31 homeowners with houses on Byrd Road, Kentsdale Lane, Brandywine, and Lord Fairfax. Thank you for the notice in our neighborhood concerning this, this appeal.

I fully support and agree with the ruling of the Fairfax County Board of Zoning, that the property at 1927 Byrd Road has been converted into a junkyard, a storage yard, in violation of Residential-3 Zoning Ordinance. As my role as president, the Tysons Place Homeowners Association, I've been asked many times over the past 15 years what action could the homeowners take to have the Ellers clean up their property. Since the Ellers' property is not covered by the covenants of the Tysons Place Homeowners Association, there was no direct action that the homeowners association could take. The Tysons Place Homeowners Association supports the actions taken by the Zoning Board.

Some of the items that I've observed on the Ellers' property are piles of waste on the property, dead bamboo, tree limbs, and things left on the ground to rot, old tires in the yard, children's toys left on the property after all the Ellers' children had been -- left at least ten years ago, an old travel trailer, an old car, screened from view. Quite frankly, the Ellers' property's a fire hazard, and with the piles of junk, it provides home for pests and varmints. So with that, I fully support the actions taken by the Zoning Board.

CHAIRMAN RIBBLE: Thank you.

MR. ROBINSON: Thank you.

CHAIRMAN RIBBLE: Anyone else like to speak to this appeal, step up to the microphone, please. Good morning. If you'll state your name --

JUDITH CARTER: Good morning.

CHAIRMAN RIBBLE: -- and address for the record.

MS. CARTER: My name is Judith Carter. I live at 2000 Byrd Road, Vienna. I didn't realize I'd be able to speak, so I may ramble a little bit, so excuse me.

CHAIRMAN RIBBLE: We got a letter from you, I believe.

MS. CARTER: Pardon me?

CHAIRMAN RIBBLE: We got a letter from you, I think.

MS. CARTER: Yes, yes, I did. Several people wrote letters to Ms. Cooper.

First of all, I'd like to say that it was purely by accident that I found out about this hearing. The sign, the zoning hearing signs, as you know, are quite large, quite bright orange, but it has been totally covered by the Ellers' van parked in front of it, which has not -- well, first they had their SUV parked there, and then the van's bigger, so they parked the van. You can see a small triangle of the sign, and that's how we found out. We saw the orange sign.

I have known the Ellers quite a long while, 30-some years. Their property has slowly deteriorated over the years. It is reaching its all-time high. I don't know what is it that carport. You cannot see what is in that carport. The yard, I walked up yesterday just to get a glance around. There are huge tree trunks cut up like a

tree was -- had fallen and you've cut it, all over the yard. There's all kinds of debris from other limbs and everything. The side yard, I looked and it's just totally covered with piles of branches and wood and debris. There was a pile of bamboo in the driveway, but I think after they were issued this summons, they moved it over to the side of the yard, off of the driveway leading up to the carport.

I think this property is a fire hazard, especially with all the dryness that we've had. I think this property is a health hazard. I know that there are lots of animals, rats, et cetera, in that backyard. I have seen a dead rat, not mouse, in front of their property, probably hit by a car. Now there's no -- you know, I can't say it came from their property, you know. I've seen raccoons waddle across the road into their property. We have raccoons on Byrd Road. We have deer. We have all kinds of wildlife at Tysons Corner. So -- but I -- I'm glad to see something like this is happening. Our neighbors have said for years, why isn't something done? I would challenge each of you to ride down Byrd Road and look at that property, and you would never allow that in your neighborhood. I wish that you would, and I'll be happy to go with an inspector on a clipboard and label everything. Any questions?

CHAIRMAN RIBBLE: Thank you. Anyone else to speak to this appeal? I think I saw other person with their hand up. Good morning. Would you state your name and address for the record, sir.

FRANK MALLOY: My name is Frank Malloy. I live at 1929 Byrd Road, directly adjacent to the right of the property. I would concur with what has been said by the other residents in the neighborhood. I would also say that I don't know if this can be enforced or not, but it doesn't appear that they have a trash removal that happens, like most people in the neighborhood have an actual service that takes the trash and recyclables, and it doesn't appear that they have that kind of service. And I think they store things either on their property or elsewhere. So I -- like I say, I didn't have much to add from what was said, but I think that would be a helpful thing to enforce to at least coerce them to get rid of some of the items on their property. Thanks.

CHAIRMAN RIBBLE: Thank you. Mr. Ishee.

MR. ISHEE: Yes, thank you. What I would like to do for rebuttal is just address what I think were a few of the questions that came up that I think I might be able to add some information to, to be helpful for your decision. First, with respect to the question of outside or whether or not the -- this carport is outdoor storage or not, I think some of the confusion that the Ellers have had has maybe been voiced by Board members at this hearing, and I -- at least as I've heard it, it seems like in the course of this hearing, there's been several different iterations or several different explanations of whether or not the carport is outside or what is outside and what is not outside. I think the final word on it was that the Zoning Administrator made an opinion sometime either around or after the Ellers' first case, first court hearing, but if you look at page 5 of the staff report and the response, on -- at the bottom of page 5 in that paragraph, third sentence into that paragraph, it says it's always been the opinion of the current Zoning Administrator, as substantiated by an opinion of the County Attorney, that, with few exceptions, the storage of items within a carport shall be considered outdoor storage.

And I don't know what the proper definition is or isn't. It's impossible for me to tell, but I think that's really the point that the Ellers are making in this hearing and what they made in Circuit Court, is that before they can be charged with a violation of an Ordinance, there has to be some clarity and specificity to what they're being charged with. And I think that that runs through -- it has run through the entire process of dealing with the County on this issue and with vague definitions, vague expressions of corrective behavior, such as the items are clearly excessive. So what items are clearly excessive? What has to be taken out? Give us a list, anything like that. And they hit a brick wall when they do that, and they've -- they pretty much hit a brick wall here as well. It's not so much that they don't want to cooperate. They really have tried to cooperate. It's that they can't get specific -- within the law, as they see it, a description of what they're doing that's wrong, and I think that they're entitled to that.

With respect to other issues that have come up, there's a number -- there were a number of questions with respect to whether or not lumber, wires, all those sorts of things are in the carport. I think I should just direct your attention to the first two notices of violation, of which this is the last iteration. The first two dealt with only the front yard area. They didn't mention the carport, and the items that were listed as the violation in those first two, one October 14th and November 30th, are the exact same items. They didn't change that part of it. They only changed the language "carport." So the items that they found in the front yard on October 14th are listed still as the items that violate the carport, and they -- and there was never any change. It's -- I -- I'm

not sure if there's an overlap, if they said there's lumber in the yard and also, but they didn't change any of the wording or any of the allegations from the time it was the front yard to the time it was the carport. And, again, this is symptomatic of what the Ellers feel have been the way that they're getting directions from the County, that things are very unclear. They're very -- and I mean no disrespect. I know that they're trying to do their job and so forth, but they feel -- the Ellers feel like they're not getting clarity and not getting a fair opportunity to respond to these things.

The -- with a question, I'll just briefly deal with the question of res judicata and estoppel. I know it hasn't been raised too much. I would say that the flip-flopping definition of outdoor storage and what constitutes outdoor throws into question whether or not it should have been and -- or should be part of what happened with the prior proceeding. But in addition to that, the standard, and I pointed this out quoting Rule 1:6 of the rules of the -- of court, that the standard nowadays for res judicata is what could have been brought up should have been brought up. It's not a question of whether or not it's the same cause of action. When they amended the rules of court in 2006, they broadened it, so anything that could have been brought up at that time should have been brought up. And in this case, clearly it should have been brought because the very items that are in the carport are put there because they told them to, so it's something that should have been dealt with in that prior proceeding. And it was dealt with in the prior proceeding, but it was just dealt with in a different manner. And now what they were instructed to do has become a source of -- a potential source of a violation.

I also should mention that I think that it's an appropriate argument, 15.2-2311, which is the pro- -- code provision that allows a person to appeal to the Board of Zoning Appeals, has in paragraph C of that code section a statutory exception to the idea that there's no estoppel against the County. And that provision says that if a person -- if a Zoning Administrator makes a decision that's memorialized in an order and a person relies upon that to their detriment, that after 60 days the Zoning Administrator can't come back and change it, and that's what the Ellers allege has happened.

CHAIRMAN RIBBLE: Thank you. Staff, would you like to --

MS. COOPER: Thank you. Staff believes that the areas of violation in this case are actually very clear. The case involves clearly excessive storage in the carport and a fence that clearly exceeds the four-foot height limitation, and the position of the Zoning Administrator that we're discussing is of the current Zoning Administrator, who started in 2006. She has been very clear on this matter, and her opinion has been substantiated by the County Attorney, that if the items are excessive, it's a junkyard and a storage yard. Staff believes that it's not possible to dispute the fact that the items stored in the Ellers' carport are excessive.

We also believe that it's really not possible to go through the exercise of cataloging the items that are stored in the carport in order to tell them what needs to go or what can stay. I don't believe that staff has been purposefully withholding this information from them, but, you know, a person cannot enter the carport, let alone a car. The evidence that you see from the photographs, Mr. Moncure has said that those photographs are from October 6, 2010, so they are not five-year-old photos. The appellants' attorney al- -- has also stated that with the exception of the orange van, the contents of the carport appear virtually the same.

You have heard from neighbors about the negative impact of the Ellers' property on their homes and on their properties and on their lives. And staff believes that the areas of violation are very clear in this matter, and we ask you to uphold the determination of the Zoning Administrator as set forth in the notice of violation dated March 18th, 2011. I'd also like to ask Ms. Gori if she has additional comments.

MS. GORI: Very briefly, if I may just mention a few things. One was that, again, in terms of res judicata, the complaint was originally filed against the Ellers in 2006, and at that time the Zoning Administrator was not looking to items in the carport. So this could not have been part of this litigation, and indeed it was not, nor was it ever part of the consent decree or agreed order. And in terms of the argument that 15.2-2311C binds the Zoning Administrator and now she can't change any sort of determination, the 2008 agreed order never says that they were authorized to keep these items in the carport. There is no written decision from the Zoning Administrator to the effect that Mr. Ishee has stated. And, again, when I was speaking before about the reason that the consent decree is -- and Judge Alden's decision are entirely separate, I think there was some confusion that we're currently relying on five-year-old evidence, but, in fact, this evidence, these photos were taken in 2010, as you heard, and the neighbors have confirmed that the photos are accurate depictions of the current state of the property. So we are not relying on photo -- el- -- evidence from five years ago.

CHAIRMAN RIBBLE: Thank you.

MS. GIBB: Mr. Chairman.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Ms. Gibb.

MS. GIBB: I had a question for staff about the testimony of the neighbors and regarding -- I mean, some of it was just regarding the property, not having to do with the carport, the brush and stuff piled up. I mean, was that the earlier violation and is that something that --

MS. COOPER: I believe that the neighbors, you know, testified to the impact of the property on their lives.

MS. GIBB: No, but --

MS. COOPER: A lot of the neighbors have -- had said that you can't really see the carport without entering the property.

MS. GIBB: No, but I'm talking about things piled up outside, put aside the carport.

MS. COOPER: That is part of the previous matter.

MS. GIBB: That's part of the previous matter, which is part of an enforcement matter, or it's been already adjudicated and it was part of the consent and --

MS. GORI: If I may respond to that, that's part of the litigation that's currently on appeal to the Supreme Court.

MS. GIBB: Okay. All right.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: Yeah, I guess I'm still a little confused. Is the carport considered inside or outside storage by -- in this particular notice of violation?

MS. COOPER: Outside.

MR. HAMMACK: Well, if that's being the case, why doesn't paragraph E of the consent order that says the establishment and/or maintenance of outdoor storage on the subject property at any time in the future that is not located on the rear half of the subject property, not screened from view of the first story window of a neighbor dwelling, or occupies an area in excess of a hundred feet is prohibited, if outdoor storage is prohibited other than that in the backyard, why isn't this consent order applicable and why isn't Judge Alden's decision in March determinative?

And to get to a secondary point, paragraph F says the Zoning Administrator and/or her agent shall be allowed to enter upon and inspect the subject property at reasonable times in the future to monitor compliance with the terms of the consent decree. So why has the Zoning Administrator not been able to determine with a little more specificity what's in the -- you know, in your -- in the bins or whatever that you're objecting to that are in the carport? And I think there's another term that lets DPWES go in, if they want to, at the expense of the applicants, and I haven't heard anybody say they've done that.

MS. GORI: I'd like to respond briefly to your first question, which is about the consent decree, and although the junk and storage could be considered part of this outdoor storage, as was stated in the memorandum that was attached here, this consent decree was resolving the litigation that was filed in 2006. And that litigation arose from a May 2nd, 2006 notice of violation, and in that notice of violation, it specifically referred to the items located in the front, rear, and side yards. It did not include the carport, and as I previously

pointed out from the transcript, Mr. Emerick from our office, during the litigation before Judge Alden, carved out the carport and said that those items were not included in that litigation.

MR. HAMMACK: But it's not shown in this decree because it says outdoor storage on the property at any time in the future except the rear yard. It doesn't specify front yard, side yard, you know. It says any outdoor storage at any time in the future is prohibited, and it doesn't incorporate the transcript, I don't think, for more specificity.

MS. GORI: Well, it is a resolution only of the matters that were before the court in 2006. And the complaint was filed based on violations of the May 2nd, 2006 notice of violation, and that only referred to the front, rear, and side yards and not the carport.

MR. HAMMACK: The order doesn't limit it to that, the way I read it, and it's recorded in the land records to give notice of prohibitions, restrictions to any successors-in-interest. So it must be looking for -- towards future violations as well because if it were just a simple violation, they wouldn't -- you wouldn't have to record it.

MS. GORI: On the first page at the bottom, it says it further appearing to the Court that the parties have agreed to settle this case. So although it doesn't specifically refer to the May 2nd, 2006 notice of violation, this case is the Case CL-2006-14177, which was instituted when the complaint was filed based on the May 2nd, 2006 notice of violation, and even though the items that are in the carport could be considered outdoor storage, when the rule to show cause was brought against the Ellers, the carport wasn't included because it was never part of this original litigation, which is the reason why we've issued the new notice of violation.

MR. HAMMACK: My question is: Why hasn't the Zoning Administrator gone back to monitor compliance or, as stated under paragraph C, that -- it says if the Ellers fail to comply with the provisions of paragraph B above by August 15th, the Fairfax County Department of Public Works and Environmental Services shall be authorized, but not required, to enter upon the subject property and bring it into compliance at the expense of the owners. Why hasn't that been done? The order doesn't limit it to what was in the notice of violation. The way I read it, it seems to be broader and applies to future violations. I could be wrong in the way this order is written. It's my -- just the way I read it. I'm not trying to say that I'm necessarily right, but it seems like this order covers outdoor storage, except in the rear yard, prohibited in the future. I mean, I

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: If Mr. Hammack's finished.

MR. HAMMACK: I'm finished. Thank you.

MR. BEARD: Did he get an answer?

MR. HART: Ms. -- well, I asked because I thought the pause meant there was nothing else.

CHAIRMAN RIBBLE: He said he was finished.

MR. BEARD: Well, I -- isn't he waiting for a response?

MR. HAMMACK: Well, I guess there isn't a response.

MS. GORI: I'm sorry. I would like to briefly respond to that and just refer to the memorandum of authorities that is included in this packet, in which Mr. Emerick pointed out that there are several provisions of the Zoning Ordinance that govern the storage of items. Outdoor storage is one of them, and it says depending on the nature of the items stored outdoors, the maintenance of excessive outdoor storage may also constitute a junkyard or a storage yard.

MR. HAMMACK: All I can say is I read that that is pro- -- already prohibited in the consent order.

MS. GORI: My only response to that is that had we tried to enforce the items, tried to require the Ellers to remove the items under the carport based on the consent decree that was a resolution of litigation that never included the carport, that might have been considered to be unfair to the Ellers and maybe a violation of their

right to be heard on this matter. And so for that reason, it was -- a new notice of violation was issued, because at the time this litigation was instituted and resolved by the consent decree, the very consent decree you're referring to, items under a carport were never considered part of outdoor storage or a junkyard/storage yard, as far as I know, and so to try to enforce that through a consent decree that didn't include it before would have been something that we just would have chosen not to do, which is why we issued a new notice of violation.

MR. HAMMACK: All right. Thank you.

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: Thank you. I don't remember what Mr. Shoup's position or Ms. Gwinn's position or anybody else's was earlier. I know that we've struggled with junkyard and storage yard definitions before, but the definition about -- or the limitation on a hundred square feet of outdoor storage is pretty objective. And it wouldn't matter so much whether it's -- what the nature of the materials was. It's just really the size of it. I thought the argument was being made that when the litigation started, there was some -- the carport wasn't part of it or that that position hadn't quite evolved yet, but it looks like on the order it was April of 2007. I think Ms. McLane was already the Zoning Administrator by then. She's listed as the plaintiff in the case.

And, I mean, frankly, I agree with Mr. Hammack. I think you have to go by the plain language of the order and just go by what the order says. The order says nothing about excluding the carport or some -- going back to what the original petition was about or something. It -- it's just -- I mean, this is plain English. I don't think there's anything ambiguous about it. The establishment and/or maintenance of outdoor storage on the subject property at any time in the future that is not located on the rear half of the subject property, not screened from view from the first story window of any neighboring dwelling or occupied -- occupies an area excess of 100 square feet is prohibited.

If Ms. Gwinn was the Zoning Administrator at that time and this is an agreement entered into on her behalf, she knows what outdoor storage means or she's developed this interpretation by this point in time. It seems to me it's a much clearer issue to say that they've got outdoor storage in excess of a hundred square feet. If the carport counts as outdoor storage, who cares what the items are. It's the size of it that's prohibited under E. But I guess you're saying you chose not to pursue that. You're telling us to read into this something that's not there, and I don't think we can do that. But you're saying the Zoning Administrator has not pursued the hundred square foot violation because it's not part of the consent decree?

MS. GORI: Though -- correct, that was not part of the prior litigation.

MR. HART: Why wasn't the hundred square feet part of this latest -- the March 18 violation? I mean, that seems to be a much easier proof issue. You just measure it.

MS. GORI: Maybe Mr. Moncure wants to speak to the notice of violation issue.

MR. HART: I mean, is that being excluded for some reason?

MR. MONCURE: The original matter had been litigated, and I had done the work-up for the rule to show cause in regards to the outdoor storage. The fact at that time that this matter of the whole carport, that was not addressed originally by the original investigator, and until after two thou- -- until recently when the Zoning Administrator did an interpretation that stated that outdoor storage would be part of issues found in a carport, we had not approached that. Based on advice of counsel after talking to the County Attorney's Office concerning the matter and the fact that it was already under rule to show cause, that it was pending to be -- it would be heard in Circuit Court on the previous issues, when I brought the information forward, I was advised that the best course of action would be to go ahead and look into it as the potential for storage yard/junkyard based on the quantity size that what we saw was in the carport because we couldn't -- we were -- there was some concern about bringing forward an interpretation that was done after the fact and after this matter had already been to Circuit Court and an agreed order filed and that we were act- --

MR. HART: Was the rule to show cause --

MR. MONCURE: I'm sorry.

MR. HART: -- about everything but the carport?

MR. MONCURE: Yes, sir.

MR. HART: It was about the yard.

MR. MONCURE: It was about the outdoor storage.

MR. HART: There's never been a violation or never been a rule to show cause that the carport storage exceeds a hundred square feet?

MR. MONCURE: No, sir.

MR. HART: It just seems like it's a lot easier way to get there. Okay.

MS. GIBB: Mr. Chairman.

CHAIRMAN RIBBLE: Ms. Gibb.

MS. GIBB: You know, in our page 5 of our staff report, it says it has always been the opinion of the current Zoning Administrator, as substantiated by an opinion by the County Attorney, that, with few exceptions, the storage of items within a carport shall be considered outdoor storage and shall be subject to the limitations set forth. So is that correct?

MS. STANFIELD: Yes, Ms. Gibb. That was in 2008, upon request by Supervisor McKay, that that interpretation was made.

MS. GIBB: So when you say always, I thought I just heard that it was since 2006.

MS. STANFIELD: Well, she was asked at that time, and it has been always her interpretation of -- she had not been asked the question prior to that, but at that point she was asked the question, and that was her interpretation.

MS. GIBB: Oh, it's her opinion. It had always been her opinion, but she hadn't expressed it? I'm trying to get this because -- trying to understand why it was a part of the suit, you know, and it -- the testimony that br-- someone told them to put the stuff in the carport, zoning person, inspector, and if it was okay to put it in it at one time, and, you know, I -- I'm just trying to figure that out. So was this opinion expressed anywhere?

MS. STANFIELD: Yes, ma'am. It was in writing.

MS. GIBB: It was in writing, but --

MS. STANFIELD: Yes.

MS. GIBB: But before 2008?

MS. STANFIELD: It was in 2008.

MS. GIBB: But before 2008, was it expressed anywhere? I mean, we can all have opinions, but --

MS. STANFIELD: We don't believe so, ma'am.

MS. GIBB: So how do we know it was her opinion? How would anyone know? I'm just trying to --

MS. STANFIELD: She was requested to respond to complaints in -- I believe it was Lee District, regarding excessive storage in carports. And that's -- she was asked for her opinion, and in consultation with the County Attorney, she provided her opinion.

MS. GIBB: Right, in 2008, but what I'm saying is when you say it was always, that sounds like, you know, a long time, and it --

MS. STANFIELD: You know, I really don't know.

MS. GIBB: Oh, okay.

MS. STANFIELD: But, I mean, she's been --

MS. GIBB: All right. I'm sorry.

MS. STANFIELD: -- a Zoning Administrator since 2006.

MS. GIBB: Okay. I guess I would have put since 2008, since this lawsuit was going on and everything in 2006, that might have been helpful, but I understand now what was said here. Okay.

MR. SMITH: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Smith.

MR. SMITH: I'm still struggling. I -- you know, I think I agree with everything I was hearing from Mr. Hammack and Mr. Hart on this. I'm having trouble with this 2007 consent decree. It seemed like it was written pretty broadly to me. It seemed like the easiest course for the County would be to go in and enforce it at this point because of the way it's broadly written. When you went in with the -- and this is for the County Attorney again -- the -- and Judge Alden made the decision in March of 2011, that was not focused on the carport, correct? The storage was elsewhere.

MS. GORI: Correct.

MR. SMITH: And it seems to me you could go in and do it again and -- in -- to enforce it in the carport, even though you already have a March 2011 decision, because it's un- -- you know, it would be unfair for a property owner to just move storage, you know, around the property. I just don't understand. I don't think the 2007 decree would be limited to the circumstances that existed on that date. It was meant to be, you know, prospective and to apply to the entire property. Outdoor storage includes, we now -- we learned, and it says it always has, it's always been the opinion that it included a carport. So if -- I don't understand how you can just move property into an outdoor -- what the County believes is an outdoor storage area, the carport, and not be in violation of the 2007 decree. So it seems -- I just don't understand why you wouldn't just -- that seems to be the easiest course, is to enforce the 2007 decree. It was pretty -- it was -- as was referenced, it was recorded in the land records. It's pretty -- it's relatively comprehensive and clear. It would require evidence, and you can go on the property and gather that evidence and present it. Am I missing something? And I understand yours -- your position about, you know, is that fair to the property owner, but it seemed to me that the decree was written that broadly to -- I mean, you already litigated the issue. I don't understand why we have to go -- where we need to go through and do it again.

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Beard.

MR. BEARD: Quick question having to do with that. But did all -- and, again, I'm not an attorney, so bear with me. But did not all this get voided out by this agreed order of November the 5th? Did that not void out the consent decree of April '07 --

MR. SMITH: I --

MR. BEARD: -- when they said everything's in conformity?

MR. SMITH: As of that date, it was, but that doesn't mean that the next day it wasn't. So I -- you know, I think, as of that date, somebody went in and determined, okay, it was in conformance with the decree, but the decree is pro- -- it -- you know, it's recorded in the land records. It continues to apply. And if you have a violation the day after that and the circumstances are different, it seems to me you could go in and enforce

the decree, the original 2007 decree, and it seems to me that's where we are today. You're still looking at issues that arguably violate the 2007 decree, and I don't -- that's why I don't understand why that is not the course of action that's underway right now.

MS. GORI: My response to that is that that issue was never litigated.

MR. SMITH: It couldn't because it didn't exist at the time, but the decree -- but it would -- see, that's where I'm saying it's unfair for the County to go through and litigate an issue all the way through and have the consent decree and then have somebody just move the property around different areas of the -- you know, move -- move storage materials around areas of the property and say, oh, well, it's in a different place than we litigated at the time so we have to start over. That doesn't seem reasonable to me. It's still the very same issue. You're just mak- -- you're taking materials and you're moving them to a different area of the property. The decree should still apply. That's my -- that's the way I would have viewed it.

MS. GORI: Well, the notice of violation includes the front, rear, and side yards, so even if the items were moved to anywhere in the front, the rear, or the side yards, that would have been included under the notice of violation that was the subject of the litigation in 2006. So the only area of the property that was not part of the litigation was the carport.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: I mean, I -- not to belabor it, but it -- paragraph E doesn't say the maintenance of outdoor storage in the front, rear, and side yards and excepting everything else. It says the maintenance of outdoor storage on the subject property at any time in the future is prohibited, and it -- it has the rear half of the property exception. I mean, what am I missing in this language? I mean, I think it's pretty clear. The County is given authority to come on the property and inspect. DPWES is given the prop- -- the authority to come on and inspect and actually fine at a hundred dollars a day for noncompliance. I mean, and you're saying, well, it didn't apply to something that wasn't in the notice of violation, but it's not limited. The order isn't limited to just what was in the notice of violation.

MS. GORI: The Zoning Administrator is not estopped from issuing a notice of violation now relating to the junkyard and storage yard in the carport because of the terms of this consent decree. This doesn't preclude her from issuing a new notice of violation for the junkyard and storage yard in the carport that now exists and that was never part of the prior litigation. Res judicata can only bar the issues that were litigated, and this was never a part of the litigation. And in terms of the authority and this order to go onto the property and inspect, in fact, the inspector has gone onto the property and inspected, and that was the subject of the rule to show cause. So he has used those rights to enforce the consent decree in the front, rear, and side yards, but not in the carport.

MR. HAMMACK: Well, again, back to Mr. Smith's question, why not the carport?

MS. GORI: Again, it just goes back to the fact that at the time this complaint was filed and the notice of violation was issued in 2006, the Zoning Administrator had not yet documented her opinion that I -- Ms. Stanfield testified was in 2008, that car- -- out- -- storage in a carport is a violation of the Zoning Ordinance, so it was not part of that litigation.

MR. HAMMACK: Thank you.

CHAIRMAN RIBBLE: The public hearing is closed. Who's got this one?

MR. HART: Ah, Paul.

MR. HAMMACK: Not mine. Is it mine?

MR. HART: Isn't it?

MR. HAMMACK: I don't know. Am I -- well, I'll do it.

CHAIRMAN RIBBLE: Not everybody at the same time.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: I'll make a motion. You can decide whether you like it or not.

MR. HART: Oh, is it -- was it mine?

MR. HAMMACK: Yeah, I think it is. I think --

MR. HART: I've been making notes, and I haven't thought of making a motion. Okay. All right. Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: I'm sorry. I didn't think this was my case. All right.

MR. HAMMACK: You've been Byered.

MR. HART: Yeah, I guess I got Ribbled is what happened.

(Laughter.)

MR. HAMMACK: Byered. You got Byered.

MR. HART: In Appeal Application A 2011-PR-011 by Anthony Eller and Barbara D. Eller for property located at 1927 Byrd Road, Tax Map Reference 39-1 ((10)) (4) 5B, for an appeal of a determination that appellants have established a junkyard and a storage yard and have erected an accessory fence in the front yard that exceeds the four-foot height restriction, all of property in the R-3 District in violation of Zoning Ordinance provisions, I'm going to move that we uphold the determination in part and overturn in part. And I'll talk through my reasons for this.

The fence is the easy part, and it's the smallest part of the violation. I think that it's -- it is essentially un rebutted that there is a small portion of the fence that is in excess of four feet in height in a front yard, and that really isn't seriously controverted. I don't think that there's been a showing that the fence predates the Ordinance provision, even if it's been there for a while, and the fact that it may be just a small issue, I think, doesn't stop the Zoning Administrator from enforcing it. So I think at least the determination is correct to that extent.

Let me deal with the storage yard issue next. My conclusion would be, and I think this is not the first time this has come up, whatever this situation is, it is not a storage yard and that the evidence in front of us doesn't fit that definition at all. The definition of a storage yard is the use of any space, whether inside or outside a building, for the storage or keeping of, and then it lists several things. Construction equipment, no. Machinery, well, possibly a washing machine. Vehicles or parts thereof, the vehicle was gone, and I don't think we have evidence of the parts. Boats, no. And/or farm machinery. So with respect to the itemized categories, I think the only one that's arguable is perhaps the washing machine, and I'm not sure that one washing machine gets it to being a storage yard. So at least from a categorical analysis, the -- whatever this is, it's not a storage yard.

We've had this situation before where junkyard and storage yard are issued together as a violation maybe in the hope that if it's not one, it's the other and that somehow there's some violation of something. The items that are listed again in the letter as the violation of a storage yard. Auto parts, I think that would be perhaps a violation, but I don't think we have any evidence that there were any auto parts. There didn't seem to be anything in the photos. There didn't seem to be any testimony about that. Buckets, I didn't see any buckets. I don't know that buckets fits the definition. Storage containers, yes, there seem to be plenty of storage containers, but that's got nothing to do with the storage yard definition. Electric cords, same thing. Toys, damaged plastic pool and animal cages, I didn't see any of that in the pictures. There were some little bicycles. I assume those were children's bicycles, but, again, those items don't fall into the storage yard

definition, whatever they were. And, again, to the extent that auto parts might do it, I think there was a failure of proof at least on the record before us. I don't think we have any evidence of that other than what's in the letter.

The hardest part on this one, I think, is the junkyard, and I saved that for last. This is obviously a very difficult situation. It's gone on for a long time. I was struck by a number of things in the paperwork. In the beginning of the staff report, photo section, there was an aerial photo of the neighborhood, and I knew instantly without knowing anything else which house this was gonna be from the photo. This house stands out from all the others in terms of the appearance of the property. The problem is where does that intersect with the Ordinance or particularly with the March 18 violation, and I've struggled with that because the only things that have been listed in the first page of the March 18 letter, we have lumber, metal, wire, and other debris. We have some testimony from Mr. Moncure that there was lumber, metal, and wire, and there is some other debris in the photos. It's difficult to see that, but we do have some evidence before us that that, in fact, is the state of affairs. It is obvious from the photographs that the carport is full of stuff, whatever it is, whether it's the Tupperware bins or the combination of other things, that there's a lot of sort of general disorganization around it. I don't know that the area around the carport really counts, but that the carport is full up.

The appellants' arguments with respect to the junkyard violation are largely procedural and I think things that we don't necessarily get to reach. I think they are things that perhaps are for a Circuit Court judge. There's a very difficult path of court orders leading up to this. And the March 18 order from Judge Alden, although I think it's been explained to us that it didn't include the carport, it didn't include the outdoor storage, to the contrary, the March 18 order expressly recites -- and I'm gonna get to that if I can find it. On the first page of the March 31 order, excuse me, under the numbered Section 1, there's references to outdoor storage on the sep- -- subject property and located in an area not greater than a hundred square feet, which is something they weren't supposed to do, but Judge Alden found on March 31st that the evidence does not show a violation of the consent decree. I don't think we know what evidence was presented about that hundred square foot problem, and I don't think we want to get behind that or get into that.

Whatever the reasons were to not pursue the carport originally or not send the violation now about the hundred square foot, I don't know. I don't read the March 18 violation as reaching the hundred square foot issue. Whether that's covered in Judge Alden's March 31 order, I don't know. Why that's not part of something to this point, I don't know, and I'd agree with Mr. Hammack also that the clear language of the 2007 consent decree, particularly paragraph E, it says what it says, and it seems to me paragraph E expressly prohibits the storage in excess of a hundred square feet if this is outdoor storage. If it's within the carport, apparently that's the Zoning Administrator's interpretation. I would disagree, although, it's -- again, it's not part of what's been appealed, but I don't think we can read into paragraph E of this order some limitation that outdoor storage means outdoor storage not in the carport or that the carport is excluded at any time in the future or some other reading of that. I think the order says what it says. Many consent decrees reserve -- resolve issues that were not initially part of the pleadings, but as part of parties agreeing, and I think it's certainly reasonable for the Zoning Administrator, in the course of resolving a zoning violation, to put in a lot of things that would make enforcement speedier or easier for future issues, and I think that the 2007 order did cover that.

Again, we're back to the junkyard issue. I think it's a very close case. I think the evidence is very thin, but I would conclude that on the evidence before us, there has been a showing that there is a violation under 2-302, subsection 5, related to the storage in the carport, lumber, metal, wire, and other debris. It's not the biggest junkyard in the world. We've certainly seen more extensive piles of things where we're able to identify the objects better, but I think that ordinarily we have to be shown that the Zoning Administrator was plainly wrong. I have trouble concluding that the Zoning Administrator was plainly wrong with respect to what's going on in the carport.

So back to the three issues, the fence, she was right; the storage yard, she's wrong; and, the junkyard, they clear the bar barely, but I think we uphold on the junkyard. So that's my motion.

MR. SMITH: Second.

CHAIRMAN RIBBLE: Motion is seconded by Mr. Smith. Discussion?

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Beard.

MR. BEARD: Again, you know, I'm not a lawyer, but it looks to me like the County really blew this one. I think the County let the neighbors down insofar as not taking action on that decree. I mean, I see the way the County moves on commercial establishments and so forth when there are problems in that regard, and I think they had, you know, a wide open route to resolving this situation. I think what we're doing now and what they did is just basically piling on, and -- but apparently, as stated by the County Attorney, they have the right to do that, again, notwithstanding the order. You know, I -- again, notwithstanding all the technicalities that have been argued and so forth, I see these are learned people here, and they're fighting hard to live the way they want to here, the Ellers. And I have great respect for individual liberties, but I guess when those individual desires spill over into the community and really clash so, if you will, arduously and adversarially with the community, then you have to go back to the old, I guess, common sense approach about the duck analogy. You know, walking, looking, and quacking, it must be a duck. So, again, notwithstanding the ambiguity that's gone on here, I'll have to come down on the side of infringing on some -- what people might think are their rights to do with their property, so I'm gonna support Mr. Hart's motion. Thank you.

MR. SMITH: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Smith.

MR. SMITH: I am also going to support the motion. I think I agree with Mr. Hart. It is a close call on this issue of junk, but I -- on this issue of junk, I'm kind of looking at it as you sort -- you know it when you see it. It's awfully hard to define, but in this case, looking not just at pictures, but also the testimony not only from staff, but also from the citizens, it does seem to me that this is a situation where you do have junk. And I guess I had maybe a different perspective on -- from Mr. Beard on the County's position. I -- you know, I think you had -- I think this -- here you're -- the County elected to pursue the -- you know, the storage yard and the junkyard, which were not technically, I guess, part of that first decree. I actually thought there was more of an effort to bend over backwards to make sure that they were being fair in terms of not using the -- because of the carport issues. So I think they're -- enforcing the decree is another possibility that the -- you know, avenue that the County could have taken, but it seems to me that this is -- this one is not precluded. So I'm going to go ahead and support the motion.

CHAIRMAN RIBBLE: All those in favor --

MR. HAMMACK: Mr. --

CHAIRMAN RIBBLE: -- of the motion --

MR. HAMMACK: Mr. --

CHAIRMAN RIBBLE: Do you have something to add, Mr. Hammack?

MR. HAMMACK: Well, yeah, I'll add. I think that, in a technical sense, the fence violation, although a fairly minor violation in a sense, was not part of what was litigated back in 2006. It's a separate issue from -- apart from the storage yard or junkyard.

And I would agree with Mr. Hart's analysis of the storage yard, but I don't really agree with the proof that the County has established really a junkyard in this. I mean, I'm not condoning what's being kept in that carport, but in terms of proof and squaring what Mr. Moncure said, well, there's a little bit of metal up in this part of the photograph, which is very difficult to see, and there may be a few little things up there that constitute the junkyard, and -- I just don't think that's enough to make it a junkyard. Under the definition, it's storage, keeping, and abandonment of junk. There doesn't seem to be a definition of junk, but including scrap metals and other scrap materials. And I think that -- and then it goes on to say for dismantling, demolition or abandonment, automobiles or other vehicles, machinery and parts, but there is some -- this doesn't exceed a hundred square feet. There's been no showing of that. There's got to be some -- to me, there has to be more substantial proof to make it a junkyard than what has been presented before us in this hearing. I'm not saying that it couldn't be made or made in the future, but I'm not satisfied that the County has established a junkyard under the definition that we have in the Ordinance.

With respect to the consent order, well, which -- while I would -- I'd conclude by saying that I couldn't support Mr. Hart's motion for that reason, but I -- but really on procedural grounds, I think the consent order gives the County all the authority it needs to go in and clean up the property if it wants to, if it just took the initiative to go forward under that particular -- I mean, the case has been litigated, and you could probably get the result that is desired by being more vigorous on that score than new violations. So that's, I guess, pretty much it.

CHAIRMAN RIBBLE: Thank you.

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Further discussion? Mr. Hart.

MR. HART: Yeah, I'd like to respond at least and maybe I can amplify the conclusion about the junkyard. I think that Photos 4 through 8 show a mess, and it's difficult to know what exactly all those items are. And I can understand the difficulty in writing that up.

But from what I can see in Photo 4, there's like a bag or a seat cover or something. It's -- there's sticks. There's some kind of wooden frame. There's parts of hoses. There's a lot of things piled up, and there's bamboo sort of through it. There's like a -- I don't know if it's a -- like a birdcage or something with a sort of a hat type thing on it. I don't know.

The Photo 5 shows part of -- I don't know if it's a stroller or a -- what it is, but it has wheels and sort of an aluminum frame, part of a hose. There's a dirty blanket. There's some kind of a dish. There's a plastic -- I don't know what they are, things at the top. There's, again, bamboo, parts of tarp.

Photo 6 shows -- I don't know if it's part of a stroller, a lot of bamboo and sticks. There's a box. There's trash in the foreground.

Photo 7 shows trash and sticks, again, the same blanket and hose and things.

And although each of these things, they don't seem to relate to each other, I think the total package at some point in time, as Mr. Beard says, we have use our common sense. The aggregation of all this stuff, whatever it is or whatever's inside these containers, this amount of it would fall within the other debris kind of description. And I think using our common sense in our evaluation, there is evidence in the record, coupled with Mr. Moncure's testimony, that I don't think has been satisfactorily rebutted to show that the Zoning Administrator was plainly wrong.

So with that amplification -- and, Mr. Chairman, I neglected to mention two other things. This, to my mind, again, suggests that this is an area for the work program, that the concept of conflicts between neighbors and hoarders or neighbors and hoarding or situations that approach that, obviously that's a concern. Outdoor storage, whether it's in a carport or what you can put in a carport or how that all works, I don't know, but when we get these cases, it's very difficult to apply definitions like we have for junkyard and storage yard to that. We've got a lot of things on the work program, but maybe that's an issue.

Also for the benefit of the neighbors, I don't -- we got several letters. I don't know if the letter writers are all here. Many of the letters were about things that we weren't doing today. All we were dealing with was the carport. Rats, rodents, whatever that is, I'm not sure if that's the health department or someone else, but it -- I know it's not -- it's not us. That's not something for this morning. There may be other agencies that are involved or other avenues to resolve some of these issues. I don't mean to suggest that we are in any way getting into that or blessing a situation. We are dealing with a very narrow issue, whether the March 18 letter was correct or not and limited to just the issues in that letter, and I did want to address that. Thank you.

MR. HAMMACK: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hammack.

MR. HAMMACK: Just to respond briefly, not to try to do it all at once, the hose we're looking at looks like about a two-foot piece of hose. There could be a half a dozen, maybe more than that, bamboo poles that look to be maybe four feet high or five feet high that are stacked up next to a fence.

The -- I mean, I see some, looks like tools in one photograph, on 7. This thing across a red -- it looks like -- I'm not sure whether it's a cabinet or shelves or something, looks like a piece of terrycloth or some kind of a towel. But I just don't think the sufficiency and that the type of items satisfies the junkyard definition. I mean, it's -- there's got to be -- every garage in Fairfax would be in violation if this standard or proof was all that's required.

CHAIRMAN RIBBLE: If there were garages, you couldn't see what was inside. Years ago in the early '50s when these carports were all put in, it was because of open space. That was the idea of the planners and dreamers at the time. And you're right. We see a lot of things in carports now just driving by, and that's why a lot of the folks come in here to enclose them and turn them into garages don't have a lot of opposition.

Anybody else have anything, discussion on this? All those in favor of the motion as stated by Mr. Hart signify by saying aye.

MR. BEARD, MR. SMITH, MR. HART, CHAIRMAN RIBBLE: Aye.

CHAIRMAN RIBBLE: Opposed?

MS. GIBB: Nay.

MR. HAMMACK: No.


CHAIRMAN RIBBLE: Okay. The vote is four to two, and Mr. Hart's motion is approved as stated.


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

Minutes by: John W. Cooper

Approved on: June 6, 2012


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, August 3, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals.

During Board Matters, Mr. Byers said the Board's thoughts were with Suzie Frazier, a deputy clerk to the Board, and her husband, Kevin. He noted that Mr. Frazier had been ill recently and wished him a speedy recovery.

Chairman Ribble called for the first scheduled case.

~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. ALFREDO & MARY AUNON, SPA 2008-MA-072 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 2008-MA-072 to permit reduction of certain yard requirements to permit construction of garage addition 32.75 ft. from front lot line and 9.0 ft. from side lot line. Located at 6384 Lakeview Dr. on approx. 11,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 135.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Alfredo Aunon, 6384 Lakeview Drive, Falls Church, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant wanted to construct a garage addition 32.75 feet from the front lot line and 9.0 feet from the western side lot line. Therefore, reductions of 2.25 feet for the front yard and 6.0 feet for the side yard were requested. Ms. Langdon said the applicants proposed to enclose and slightly enlarge an existing carport to accommodate a two-car garage. Staff recommended approval of SPA 2008-MA-072 subject to the proposed development conditions.

Mr. Hart said he had read the minutes from the 1955 meeting, but could not figure out what "14.4 inches from the side lot line" was referencing. Ms. Langdon explained that it was a typo which should have read 14 feet, 4 inches.

Mr. Hart, Mr. Aunon, and Ms. Langdon discussed Development Condition 5, which addressed tree preservation before and during construction. Ms. Langdon said that the trees in question would better be described as southwest of the driveway.

Mr. Aunon presented the special permit request as outlined in the statement of justification submitted with the application. He said that the requested two-car garage would protect his cars from the elements and was consistent with those in the neighborhood. Mr. Aunon said a flat roof would be extended forward to cover the front of the house. He said the requested space was minimal, only enough to drive two cars inside with room to walk around them.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 2008-MA-072 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALFREDO & MARY AUNON, SPA 2008-MA-072 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 2008-MA-072 to permit reduction of certain yard requirements to permit construction of garage addition 32.75 ft. from front lot line and 9.0 ft. from side lot line. Located at 6384 Lakeview Dr. on approx. 11,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 135. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 2011; and

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

1. The applicants are the owners of the property.
2. The motion to approve is based on the presentation of the applicants.
3. The Board has a favorable staff report.
4. It appears the applicants are making improvements to the property that can be beneficial not only to the property, but to the whole neighborhood.
5. It will not have any minimum impact on neighbors.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit amendment is approved for the location and size (approximately 177 square feet) of the proposed addition as shown on the plat prepared by Ramon Santos, dated May 5, 2011 as revised through May 23, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,261 square feet existing + 7,891 square feet (150%) = 13,152.50 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit amendment.
4. The addition shall be consistent with the architectural renderings included in Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the southwest side of the driveway and within six feet of the proposed garage addition as tree save areas to protect existing on-site and off-site vegetation and shall install tree protection fencing such as 14-gauge welded wire or orange plastic fence to protect the vegetation in these

areas from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit amendment shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit amendment. The request must 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. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. AMY J. SLENKER-SMITH, SP 2011-SU-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.6 ft. from the rear lot line. Located at 13233 Stone Heather Dr. on approx. 8,635 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 238.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Amy J. Slenker-Smith, 13233 Stone Heather Drive, Herndon, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to add onto the rear of the house to enlarge the existing addition and reconfigure the existing deck to slightly increase the size and change the overall shape. The proposed addition would be located 13.6 feet from the rear lot line; therefore, a modification of 45.6 percent was requested. Staff recommended approval of SP 2011-SU-048 subject to the proposed development conditions.

Ms. Slenker-Smith stated she had nothing to add, but said she would be happy to answer any questions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-SU-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

AMY J. SLENKER-SMITH, SP 2011-SU-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.6 ft. from the rear lot line. Located at 13233 Stone Heather Dr. on approx. 8,635 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 238. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 2011; and

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

1. The owner of the property is the applicant.
2. The Board has determined that the application meets all of the submissions requirements set forth in Sect. 8-922.
3. Staff recommends approval, and the Board adopts its rationale.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 122 square feet) of the addition, as shown on the plat prepared by DRS Architecture, dated and signed February 7, 2011 as revised through April 6, 2011 by Dwight R. Stonerook, Architect, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,994 square feet existing + 4,491 square feet (150%) = 7,485 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. T-MOBILE NORTHEAST LLC & COMMONWEALTH SWIM CLUB, INC., SPA 79-A-075-03
Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 79-A-075 previously
approved for a community pool and tennis courts to permit addition of a telecommunications

facility. Located at 9800 Commonwealth Blvd. on approx. 5.49 ac. of land zoned R-2. Braddock District. Tax Map 069-3 ((5)) B. (In association with SE 2009-BR-020 and 2232-B08-7.) *(Indefinitely deferred from 2/10/10) (Reactivated from indefinite deferral on 11/16/10.) (Indefinitely deferred from 4/20/11 at appl. req.) (Reactivated on 5/9/11.)*

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James Michal, agent for T-Mobile Northeast, LLC, 1120 20th Street, N.W., Washington, D.C., reaffirmed the affidavit.

Marian Bader, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested the installation of a wireless telecommunication facility consisting of a 120-foot tall tree-style monopole and associated equipment at an existing swim and racquet club. Ms. Bader noted that the request had been reviewed by the Planning Commission as a special exception concurrent with a 2232 application. The Planning Commission approved the 2232 request and recommended to the Board of Supervisors that they approve the special exception application with modifications to the development conditions. Staff concluded that as conditioned, the proposal was in harmony the Comprehensive Plan and in conformance with all applicable Zoning Ordinance provisions. Therefore, staff recommended approval of SPA 79-A-075-03 subject to the proposed development conditions.

Mr. Michal presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the public demand for more services and more capacity necessitated the filing of the application. Mr. Michal noted that the original application had been for a 150-foot fake tree tower, but the height had been lowered to 120 feet after community meetings, noting that the reduced height pole would better blend in with the existing tree cover. He pointed out that only some homes would have a limited view, and it would have the appearance of a brown pole in the winter. Mr. Michal stated they had experienced 100 percent success with poles being co-located with other swim clubs, specifically naming the Village West and Broyhill Crest Swim Clubs.

In response to a question from Mr. Hart, Mr. Michal said he agreed with the revised language in Development Condition 9.

Mr. Hart commented that the Board had received letters from citizens who had concerns about the maintenance of the screening and site landscaping, trimming weeds, et cetera. Mr. Michal responded that the swim club had agreed to the maintenance.

In response to a question from Mr. Hammack about the status of the clouded land title and the non-profit qualification, Mr. Michal said the land title had been resolved, and the swim club was eligible to be a non-profit organization, noting that by federal law, the swim club was allowed to have a lessee.

Chairman Ribble called for speakers.

Dan Joyce, 9809 Vertain Court, Fairfax, Virginia, came forward to speak. He stated he was the vice president of the swim club, which was incorporated in Virginia and consisted entirely of volunteers. He stated his support for the application, noting 92 percent of the club members had voted in favor of the T-Mobile proposal, and that he felt it was in the best interest of the community.

Charles Anderson, 5104 Walport Lane, Fairfax, Virginia, came forward to speak. He said his property adjoined the swim club on the northeast corner. He stated his concern about tree management, specifically trees falling from his property onto the swim club property. Mr. Anderson also noted his apprehension about trees being endangered by runoff from the club parking lot. He asked if the office of urban forestry had been contacted regarding tree maintenance.

Ms. Bader said that Development Condition 9 had been revised to address the appropriateness of the parking lot material. She stated that a tree assessment would be done by the swim club and reviewed by the Urban Forest Management before the pole was erected. Ms. Bader noted that staff could add a new development condition which addressed site maintenance.

In response to a question from Mr. Byers, Ms. Bader said that T-Mobile had no other tower to co-locate on, but that this one would allow others to co-locate.

Ronald Schell, 5100 Walport Lane, Fairfax, Virginia, came forward to speak. He said his property was directly across from the entrance to the club, and he was opposed to the application. He said he would be able to see the tower when he walked out of his home or pulled out in his car. Mr. Schell noted that he currently had AT&T coverage and had not experienced any problems. Regarding the maintenance of the tower site by the swim club, Mr. Schell said that recently installed tennis courts had not been maintained and were engulfed by weeds. He added that the swim club parking lot was not maintained either. Mr. Schell asked that the maintenance requirement be incorporated into the special permit so it could be enforced.

Keith Simmons, 9712 Commonwealth Boulevard, Fairfax, Virginia, came forward to speak. He stated his concern about the long-term ability of the swim club to maintain the tower landscaping, noting the time and cost involved. Mr. Simmons wanted assurance that the pole would be refreshed after aging, stating that he wanted the pool to thrive and survive.

In his rebuttal, Mr. Michal said the landscaping around the previously mentioned tennis courts would be taken care of, noting that the pool had not been able to maintain the area due to the loss of membership and lack of funds. He said that in the future, if anyone had a problem or concern, they could call him. Mr. Michal asked Mr. Joyce to confirm that the swim club was committed to the maintenance issue, which he did. Mr. Michal said the proposal addressed the community's issues and provided the services the community wanted.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 79-A-075-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

T-MOBILE NORTHEAST LLC & COMMONWEALTH SWIM CLUB, INC., SPA 79-A-075-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 79-A-075 previously approved for a community pool and tennis courts to permit addition of a telecommunications facility. Located at 9800 Commonwealth Blvd. on approx. 5.49 ac. of land zoned R-2. Braddock District. Tax Map 069-3 ((5)) B. (In association with SE 2009-BR-020 and 2232-B08-7) (Indefinitely deferred from 2/10/10) (Reactivated from indefinite deferral on 11/16/10) (Indefinitely deferred from 4/20/11 at appl. req.) (Reactivated on 5/9/11) 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 3, 2011; and

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

1. Telecommunications applications are difficult anyway, and in recent years with the proliferation of electronic devices, the need for increasing coverage and bandwidth for people to have these devices in their homes has meant that the locations for these telecommunication facilities increasingly are going into residential areas.
2. It is difficult to find places to put them.
3. It is difficult to put them in a location where they are not going to have a negative effect.
4. In this situation, the Board has a staff report recommending approval, and the Board adopts the rationale in the staff report.
5. The Planning Commission has already looked at the 2232 application and found that it met the criteria and also recommended approval to the Board of Supervisors of the special exception, which they are going to hear in a few weeks.

6. With respect to the special permit standards, the applicant has presented testimony that those have been met.
7. The pole itself is going to be a tree pole instead of some kind of a lattice tower or something else that would be more visible and maybe less compatible with what is around it.
8. From the photograph simulations in the staff report, there are locations where you cannot see it from the surrounding streets, and there are other locations where the top of it is partly visible above the tree line; however, with respect to experience with other tree poles in the county, unless you are really looking for it, you do not tend to notice it.
9. The design largely camouflages it.
10. If there is going to be a facility like this, putting it in the middle of a space like this where it is like a tree and among many trees largely hides it and mitigates that impact.
11. With the development conditions that staff has proposed, with a couple of amendments to be included, the overall situation can be improved for the neighbors.
12. There is difficulty with telecommunications applications.
13. There is another problem in the county with swim clubs that were 40 or 50 years old where the demographics of the neighborhood have changed over time and there maybe are not as many families as there were 40 or 50 years ago with young children or maybe not as much participation in it.
14. It is difficult to keep these facilities going.
15. If the pool goes under, as some pools have, that does not help anybody.
16. The site would probably be even more neglected than it is now.
17. One of the things the Board cannot change with the development conditions is weather.
18. We live in an area where sometimes there are snowstorms and sometimes hurricanes, one extreme or the other.
19. Trees are going to fall over or tree branches are going to be lost or something.
20. This is a site where on one side they put in some landscaping 40-some years ago that over time has deteriorated.
21. It has been learned that certain kinds of trees do not survive as well over time, and hopefully that will be addressed.
22. There are areas where the landscaping is going to be taken out and replaced as shown on the drawings.
23. Addressing the area with the weeds in the photographs, everyone acknowledges it should not look like that, and hopefully that is going to be improved.
24. By putting it in the development conditions, even if it is an Ordinance requirement, it is clearer for the applicant.
25. The conditions will be posted.
26. Everyone will be aware of it.
27. If there are enforcement issues, staff can deal with that.
28. Everyone is on the same page with this. It should be a win-win situation. If the swim club is getting revenue now from the tower, then they have money to maintain the site in a way that is advantageous to the neighbors.
29. With the development conditions, with a couple of modifications, the potential impacts of the facility are satisfactorily mitigated.
30. With this motion, the Board is not reaching any questions about the title to the land or the corporate status or the consequences of if there was a lapse in the corporation somewhere along the way.
31. That is not really an issue for the Board. It is not really a land use issue.
32. Staff has accepted the application for what it was.
33. The Clerk to the Board has accepted the affidavit such as it is.
34. If there is an issue about the ownership of the land or the consequences of some gap in the corporate status as that would affect the title, that is for a judge to decide.
35. That is a separate matter, and it really is not part of the special permit application.
36. The Board cannot reach that in the middle of this proceeding.

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 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 Commonwealth Swim Club, Inc. and T-Mobile Northeast, LLC or its successors, and is not transferable without further action of this Board, and is for the location indicated on the application, 9800 Commonwealth Blvd., and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Entrex Communication Services, Inc., dated September 18, 2007, last amended May 20, 2011.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) 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(s).
4. This special permit amendment 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 entitled "Commonwealth Swim Club", prepared by Entrex Communication Services, Inc. consisting of eight sheets dated September 18, 2007, last amended May 20, 2011, and these conditions. Minor modifications to the approved Special Exception may be permitted pursuant to Paragraph 4 of Sect. 8-004 of the Zoning Ordinance.
5. Memberships shall be limited to a maximum of 350.
6. Seventy parking spaces shall be provided on-site.
7. The maximum daily hours of operation shall be as follows:
 - Swimming Pool – 9:00 am to 9:00 pm.
 - Tennis Courts – 7:00 am to 10:00 pm.
 - Basketball Courts – 7:00 am to 9:00 pm
8. After-hour parties for the swimming pool and tennis courts facility shall be governed by the following:
 - o Limited to six per season.
 - o Limited to Friday, Saturday and pre-holiday evenings.
 - o Shall not extend beyond 12:00 midnight.
9. The transitional screening and barrier requirements shall be modified provided the existing vegetation and barriers are retained and provided the supplemental landscaping is planted as depicted on the SE/SPA Plat. The size, type and number of plantings shall be subject to Urban Forest Management Division (UFMD) review and approval. Trees along the existing entrance drive off of Walport Lane and to the rear of the houses along Commonwealth Blvd. shall be re-evaluated by UFMD. A tree assessment to determine the quality and condition of the existing trees shall be done by the applicant. Trees which are found to be in poor condition shall be removed and replaced to the satisfaction of UFMD prior to the issuance of the Non-RUP for the pole. The applicant shall be responsible for maintaining the transitional screening plant material in a good and healthy condition.
10. Light standards shall not exceed twelve feet in height and shall be located as close as possible to the edge of pavement of the driveway. All lighting shall be in conformance with Part 9 of Article 14 of the Zoning Ordinance.
11. The applicant shall be responsible for regularly maintaining the site landscaping, including trimming or removing weeds along fences.

These development conditions incorporate and supersede all previous development conditions. The 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 Section 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, 30 months after the date of approval unless construction has commenced and been diligently pursued. 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.

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~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. JAMES E. LAYTON, SP 2011-PR-039 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.3 ft. from side lot line and 21.8 ft. from rear lot line. Located at 2855 Cherry St. on approx. 5,000 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((8)) 6.

Chairman Ribble noted that SP 2011-PR-039 had been indefinitely deferred at the applicant's request.

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~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. DARRYL & HELEN HICKMAN, SP 2011-SU-046 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.6 ft. from rear lot line. Located at 6412 Creek Bed Ct. on approx. 9,089 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-1 ((4)) (3) 48.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Karen L. Rendon, the applicants' agent, 112 Elm Tree Lane, Sterling, Virginia, reaffirmed the affidavit.

Chairman Ribble noted that the affidavit did not contain Ms. Rendon's name. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the staff did not have an approved copy of the affidavit listing the agent's name.

Helen Hickman, 6412 Creek Bed Court, Centreville, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to construct a sunroom addition 13.6 feet from the rear lot line. An existing deck would be removed for the new sunroom and an open deck. Ms. Cho noted that a minimum rear yard of 25 feet is required in the R-5 District; therefore, a modification of 11.4 feet or 46 percent was requested. Staff recommended approval of SP 2011-SU-046 subject to the proposed development conditions.

Ms. Hickman presented the special permit request as outlined in the statement of justification submitted with the application. She said she wanted to turn her existing deck into a sunroom, noting that a couple of her neighbors had done the same thing.

Chairman Ribble called for speakers.

Karen Rendon, contractor for the applicants, reiterated that other homes in the neighborhood had enclosed their existing decks. She said the sunroom would be built in conformance with the existing architectural style of the neighborhood and should add value to the applicants' and adjacent homes.

Ms. Gibb asked whether Parcel F was open space owned by the homeowners association. Ms. Rendon said it was.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-SU-046 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DARRYL & HELEN HICKMAN, SP 2011-SU-046 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.6 ft. from rear lot line. Located at 6412 Creek Bed Ct. on approx. 9,089 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-1 ((4)) (3) 48. 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 3, 2011; and

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

1. The applicants are the owners of the property.
2. The Board has a staff report that recommends approval.
3. Based on the applicant's testimony and that of her spokesperson, the applicant is simply enclosing an already existing deck to make a sunroom.
4. There will not be any impact on the neighbors.
5. There is an open parcel owned by the homeowners association to at least the rear half of the property.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the enclosed sunroom addition (240 square feet), as shown on the plat prepared by Tri-Tek Engineering, dated March 11, 2011, revised and signed May 18, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [2,050 square feet existing + 3,075 square feet (150%) = 5,125 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. SRIDEVI V. SARMA, SP 2011-DR-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 open deck to remain 4.8 ft. from one side lot line, 0.8 ft. from other side lot line and 1.6 ft. from rear lot line. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18. (Concurrent with VC 2011-DR-008).

9:00 A.M. SRIDEVI V. SARMA, VC 2011-DR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18. (Concurrent with SP 2011-DR-054).

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sridevi V. Sarma, 6510 Chesterfield Avenue, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an at-grade stone patio to remain 4.8 feet from the western side lot line, 0.8 feet from the eastern side lot line, and 1.6 feet from the rear lot line. She noted that the Zoning Ordinance permits the patio to be no closer than five feet to any side or rear lot line. Ms. Hedrick said the applicant also requested a variance to permit greater than 30 percent rear yard coverage, noting that the current impervious surface area in the rear yard was 68 percent. She stated the rear yard included a stone patio, swimming pool, hot tub, barbeque pad, decorative walls, areaways, and steps.

In response to a question from Mr. Hart, Mike Caudle from the Department of Code Compliance said a complaint had been received on the property regarding an excess of 30 percent rear yard coverage.

Mr. Hart, Mr. Beard, and Ms. Hedrick discussed the confusion surrounding the permits as they related to the pool and spa approval, and the location of the patio. Ms. Hedrick said the applicant would be providing additional information during her testimony.

In response to a question from Mr. Hart, Ms. Hedrick referenced the June 1, 2010 permit which stated that a portion of the patio was to be removed. She said she believed the person who came in to obtain the permit made the "removal" notation, but deferred further explanation to the applicant.

Mr. Hart, Mr. Beard, Mr. Smith and Ms. Hedrick discussed the size and configuration of the current patio decking, with Ms. Hedrick noting that deck was counted in the 30 percent calculation. Mr. Smith clarified that if the house and patio decking had been separated by three feet and were still in the current location relative

to the side and rear lot lines, it would not be in violation of the setback requirements, but would still have the same issues with the rear yard coverage. Ms. Hedrick said Mr. Smith's statement was correct.

Ms. Sarma presented the special permit and variance requests as outlined in the statement of justification submitted with the application. She began by thanking Virginia Ruffner, Debbie Hedrick, and Mike Caudle for their helpfulness with the application process. Ms. Sarma gave a brief history of the property, noting that when she purchased the property in 2009, she had landscaping done which included a stone patio and grill area. In March of 2010, she decided to add a pool and spa area in the backyard. After she discussed the addition with her neighbors, she hired Apex Pools, noting that it was their permit runner who had made the notations on the permit plat. Ms. Sarma said a building permit was issued in June of 2010, and it took six weeks to construct the pool and spa, during which multiple inspectors visited the property. She stated that it was not until 90 percent of the project was completed that an inspector told her she was in violation of the Zoning Ordinance. Ms. Sarma stated that after construction, the rear yard neighbors voiced concerns about drainage issues; however, she noted that there was an infiltration ditch already in place to prevent or minimize stormwater runoff.

In response to a question from Mr. Beard, Ms. Sarma said the stormwater runoff in the area was greatly improved by the construction on her property, since the ground had been leveled and five new drainage pipes were added which directed water to the infiltration ditch.

Mr. Byers, Ms. Langdon, and Mr. Caudle discussed the review process for an approved plat versus a building plan, with Ms. Langdon noting that she did not believe there was an "as built" review for a patio or pool.

Mr. Hart and Ms. Sarma discussed the patio dimensions. Ms. Sarma said it was never her intention to remove any part of the patio, and she did not know why the permit runner had marked an area on the plat to be removed.

Chairman Ribble called for speakers.

James Peter, no address given, came forward to speak. He said he prepared the layout and landscape design for the project, noting that the added impervious surface for the decking was approximately 200 to 250 square feet. Mr. Peter said the infiltration trench was 25 feet long and 9.0 feet wide, which was enormous for a yard of this size.

Ms. Gibb, Mr. Smith, and Mr. Peter discussed the workings of the infiltration ditch, with Mr. Peter stating that stormwater runoff goes into the gravel-laden ditch and then infiltrates the water table, representing a significant improvement over preconstruction conditions.

In response to a question from Mr. Smith, Mr. Caudle said the infiltration ditch had been constructed when the home was originally built and had not been modified subsequent to that time.

Mr. Smith and Mr. Peter discussed the flow of stormwater prior to construction on the applicant's property. Mr. Peter said the size of the ditch was more than adequate and had never experienced an overflowing problem.

In response to a question from Mr. Byers, Mr. Caudle said the complaint had not been about the water situation, but about the rear yard coverage exceeding 30 percent. Mr. Peter commented that all existing drains captured every bit of water on the additional surface.

Stephen Wolmer, 6508 Chesterfield Avenue, McLean, Virginia, came forward to speak. He commented on the prior stormwater problems on this property when it was a vacant lot, including standing water and mud runoff. He said since construction of the infiltration ditch, even with significant rain, the water had never pooled or flowed. Mr. Wolmer stated that the applicant had a beautiful backyard, and he felt the application should be approved.

Ann Simeone, 6511 Tucker Avenue, McLean, Virginia, came forward to speak. She said she lived directly behind the applicant and had been adversely affected by the construction. She stated she had been calling the County since 2005 about drainage and over-construction issues, noting that she had spent over \$20,000 to repair damage to her home. Ms. Simeone asked that the Board not approve the variance.

Mr. Beard, Mr. Hart, Mr. Caudle, Mr. Hammack, Mr. Smith, Mr. Peter, and Ms. Simeone discussed the stormwater runoff situation on her property. Mr. Peter explained that if the grade of the slope on Ms. Simeone's property was lower than the trench, the only runoff onto her property would be if the trench overflowed. Ms. Simeone stated that the trench had overflowed in 2008, and she did not feel that the trench was the sole solution to the runoff problem. Mr. Hart asked staff to have the Department of Public Works Environmental Services review the properties involved and the infiltration trench to see if it was functioning appropriately.

Doug Lowe, 6509 Tucker Avenue, McLean, Virginia, came forward to speak. He said he felt there were three parties who were at fault: the applicant who did not consult with him or Ms. Simeone; the builder who probably knew they should not proceed with the project because of the drainage issue, but went ahead anyway; and Fairfax County officials who did not nip it in the bud.

In response to a question from Mr. Hammack, Mr. Lowe said he had not had drainage problems because the slope of his property was different than Ms. Simeone's lot, and he felt her situation was different.

In her rebuttal, Ms. Sarma said she had not contacted Ms. Simeone and Mr. Lowe since she did not believe they would be impacted by her project. She said that Ms. Simeone came to her house, and she discussed the plans with her at that time.

Chairman Ribble closed the public hearing.

Mr. Smith moved to defer decision on SP 2011-DR-054 and VC 2011-DR-008 to October 5, 2011, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-2. Mr. Beard and Ms. Gibb voted against the motion.

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~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. SCI VIRGINIA FUNERAL SERVICES, INC. (FORMERLY NATIONAL MEMORIAL PARK, INCORPORATED), SPA 88-P-050-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-P-050 previously approved for cemetery uses and structures to permit change in permittee and site modifications. Located at 7482 Lee Hwy. on approx. 76.34 ac. of land zoned R-1. Providence District. Tax Map 50-1 ((1)) 36.

Chairman Ribble noted that SPA 88-P-050-03 had been administratively moved to September 21, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 3, 2011, Scheduled case of:

9:00 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09, 10/27/09, 1/27/10, 5/26/10, 11/3/10, 2/2/11, 4/13/11, 5/25/11, and 6/29/11 at appl. req.)

Chairman Ribble noted that A 2009-PR-006 had been administratively moved to September 14, 2011, at 9:00 a.m., at the appellant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, commented that there was only one issue left to be resolved.

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~ ~ ~ August 3, 2011, After Agenda Item:

Request for Reconsideration
Mary Ann Mattern regarding Fredi G. Guerke, SP 2011-MV-013


No motion was made; therefore, the request for reconsideration was denied.


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As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Suzanne Frazier

Approved on: June 11, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, August 10, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. HENRIETTA BURKE, SP 2011-MV-040 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yards on a corner lot. Located at 8201 East Boulevard Dr. on approx. 24,541 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-4 ((1)) 73.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Lee Fifer, applicant's agent, 1750 Tysons Boulevard, McLean, Virginia, reaffirmed the affidavit.

Matthew Mertz, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a fence to remain up to six feet in height in both front yards of a corner lot. The Zoning Ordinance currently permits fences 4.0 feet in height by right; however, through a special permit, an applicant could request a fence in a front yard up to 6.0 feet in height. The lot had two front yards, as it was a corner lot with property lines adjacent to East Boulevard Drive and Herbert Springs Road. Staff recommended approval of SP 2011-MV-040 subject to the proposed development conditions.

Mr. Fifer presented the special permit request as outlined in the statement of justification submitted with the application. He referenced the pending move of the applicant's daughter to the property and the lack of privacy in the back of the lot and said the building of the fence was for privacy and safety. The fence pattern was a continuation of the existing pattern on the adjacent lot, which was also owned by the applicant. The applicant had not been aware of the changes of the Zoning Ordinance, but currently satisfied all the criteria for the granting of a special permit to allow a six-foot fence along with certain changes. The line of sight changes would be made where Herbert Springs and East Boulevard met. There would be a correction to the section where the topography had created sections of the six-foot fence that made it higher than six feet. Mr. Fifer said the application and the staff report noted that a section of the fence was actually off-site on a property known as Bellapais, and he had learned that section of fence was a part of Bellapais' fence and was not owned by Ms. Burke. It was properly located on that lot and not on Ms. Burke's lot. He said he would make sure that Zoning understood, and if there were additional corrective actions Ms. Burke could take, she was more than happy to do so. Mr. Fifer said there were a number of residents in support of the application. He said Ms. Burke accepted the proposed conditions, but noted the Bellapais fence was not owned by Ms. Burke.

Mr. Hammack asked whether Mr. Fifer had read the proposed development conditions and was agreeable to Condition 4 as it related to the detached garage. Mr. Fifer confirmed that he had read the condition and that the garage was vested.

Mr. Hammack asked whether there were any issues or requirements for electrical. Mr. Mertz replied that he was not sure.

A discussion ensued between Mr. Hart and Mr. Mertz regarding the fence referenced in Condition 2, the fence Mr. Fifer had said belonged to the next-door neighbor, and whether Condition 2 was necessary. Mr. Mertz agreed with Mr. Hart that Development Condition 2 should be included.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-MV-040 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HENRIETTA BURKE, SP 2011-MV-040 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yards on a corner lot. Located at 8201 East Boulevard Dr. on approx. 24,541 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-4 ((1)) 73. 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 10, 2011; and

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

1. The applicant is the owner of the land.
2. There were several letters in support of the application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 the fence as shown on the plat prepared by R.C. Fields, Jr. & Associates, dated and signed April 22, 2011, as submitted with this application and is not transferable to other land.
2. Within six months of approval of this special permit application, the applicant shall relocate the portion of fence in the front yard of 909 Herbert Springs Road onto the property subject to this application at a height of no greater than 6.0 feet.
3. Within six months of approval of this special permit application, the applicant shall reduce all portions of the fence in the front yards to a maximum of 6.0 feet in height and relocate the fence out of the sight distance triangle.
4. Within six months of approval of this special permit application, if determined necessary by the Department of Public Works & Environmental Services, the applicant shall obtain all necessary permits for the detached garage.
5. The applicant shall assume all responsibility for repair and/or replacement of any portions of the fence which must be removed to accommodate repairs and/or maintenance within any of the easements as shown on the special permit plat.

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

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~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. AHMAD H. BAHABIB, SP 2011-MV-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 5135 James Franklin Ct. on approx. 20,215 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((35)) 3.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Ahmad Bahabib, 5135 James Franklin Court, Alexandria, Virginia, reaffirmed the affidavit.

St. Clair Williams, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow an accessory dwelling unit in the basement of the existing single-family detached dwelling on the site. The single-family detached dwelling had a total of 5,150 square feet of living area on two floors. There were five bedrooms, four full bathrooms, and one half bathroom in the principal dwelling. The 1,400-square-foot basement of the dwelling was used for the accessory dwelling unit. The accessory dwelling would have two bedrooms, a living area, one bathroom, and a kitchenette, which would be 27.3 percent of the home's total living area. The proposed square footage was less than the 35 percent permitted maximum of the total gross floor area of the principal dwelling unit. A separate main entrance to the proposed accessory dwelling unit already existed. Following the publication of the staff report, the applicant had informed staff that he intended to make the accessory dwelling unit available for rent; however, the applicant resided in the principal dwelling unit and was over 55 years of age. Staff recommended approval of SP 2011-MV-047 subject to the proposed development conditions.

Mr. Beard asked for clarification as to what the applicant had informed staff. Mr. Williams replied that the applicant wished to make the proposed dwelling available for rent.

Mr. Bahabib presented the special permit request as outlined in the statement of justification submitted with the application. He said in general he would like to follow the directions of the County, and he had enough space to accommodate the dwelling without imposing on his neighbors.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-MV-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

AHMAD H. BAHABIB, SP 2011-MV-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 5135 James Franklin Ct. on approx. 20,215 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((35)) 3. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2011; and

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

1. The applicant is the owners of the land.
2. The present zoning is R-2.
3. The lot area is 20,125 (*sic*) square feet.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen in the accessory unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Ahmad H Bahabib, and is not transferable without further action of this Board, and is for the location indicated on the application, 5135 James Franklin Court (20,215 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Alexandria Surveys International, LLC., dated April 28, 2011, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 1,400 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. 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.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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 as outlined above. 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. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. BERNADETTE M. KEANY, VC 2011-MV-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 21.1 feet from front lot line, 5.2 feet from one side lot line and 11.7 feet from other side lot line and deck 7.2 feet from side lot line. Located at 5736 Mallow Trail on approx. 7,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (20) 15 and 17. (Converted from an SP and admin. moved from 7/27/11)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Rebecca Bostick, the applicant's agent, 1819 Drury Lane, Alexandria, Virginia, reaffirmed the affidavit.

St. Clair Williams, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to allow construction of a second- and third-story addition to an existing single-family detached dwelling 21.1 feet from the front lot line, 5.2 feet from the western side lot line, and 11.7 feet from the eastern side lot line. In addition, the applicant requested permission to construct a deck 7.2 feet from the western side lot line. The bulk regulations for the R-E District in Par. 2 of Sect 3-E07 of the Zoning Ordinance require a minimum front yard of 50 feet and a minimum side yard of 20 feet; therefore variances of 27.9 feet, 14.8 feet, 8.3 feet, and 12.8 feet, respectively, were requested. The proposed dwelling would meet the rear yard requirements, as well as the maximum permitted height. A building envelope was represented on the variance plat.

Mr. Hart asked whether there was a requirement for the septic tank to be displayed on the plat accompanying the application. Susan Langdon, Chief, Special Permit and Variance Branch, answered that all structures were required to be shown on the plat, but somehow through the process of submitting additional plats, the location of the septic tank had been left off the most recent plat. She said the Board could add a condition requiring a revised plat if they desired..

Ms. Bostick presented the variance request as outlined in the statement of justification submitted with the application. She said Ms. Keany purchased the property knowing there were problems and the property would need remodeling. The first thing the applicant had done was replace the septic system and had worked with the County trying to come up with a solution since it was a small lot. When the septic system was finished and work began on the building design, it was discovered that the lot was 10 percent the size of a normal R-E lot, limiting what could actually be done. The plan was to remodel on the existing foundation, but it was discovered that 98 percent of the existing house sat in the front and side yard setbacks. The new septic system did not allow remodeling to go backwards, so the property owner was limited to the existing foundation. Ms. Bostick said the applicant was requesting that the existing one-and-a-half-story house be made into a three-story house that would still be a three-bedroom house, but just a little more open and fitting for the size of a house in the area.

Mr. Beard asked for clarification on the location of the sewer field. Ms. Bostick confirmed the location of the septic field as shown on the plat viewed on the overhead projector.

Mr. Hart asked whether any of the trees would be removed to accommodate the construction. Ms. Bostick responded that there was no intention to remove any vegetation.

Mr. Hart asked whether building the house would exceed any height limits. Ms. Bostick replied that the structure would be 31 feet, and the requirement is less than 35 feet.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2011-MV-010 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BERNADETTE M. KEANY, VC 2011-MV-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 21.1 feet from front lot line, 5.2 feet from one side lot line and 11.7 feet from other side lot line and deck 7.2 feet from side lot line. Located at 5736 Mallow Trail on approx. 7,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (20) 15 and 17. (Converted from an SP and admin. moved from 7/27/11) 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 10, 2011; and

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

1. The applicant is the owner of the land.
2. The property has an extraordinary condition in that it is zoned R-E, but the lot is only 75 feet wide and 100 feet deep.
3. It is a very tiny lot in an area that requires minimum two-acre lots.
4. This is an old subdivision from the 1920s with small lots and predate the Zoning Ordinance.
5. Many of the homes in the subdivision do not meet the current requirements.
6. It would be very difficult to engineer homes that meet the setbacks for R-E on lots as small as this.
7. The requests are relatively modest in that the existing house and the existing footprint of the house are almost identical to what is being requested.
8. The principal change in the house is basically going up, getting taller.
9. It is unusual that the Board would be approving a three-story house with an eave that is 5.2 feet from the side line, but the existing house is in a very similar situation.
10. Looking at the photographs, adding a third story to this house is not going to have a significant negative impact on the neighbors.
11. To the contrary, from the drawings, it appears that the upgrade of this property would be an improvement and not a negative impact on the neighbors.
12. Many of the homes in this neighborhood are also quite close to the lot line and have other discrepancies from what the current requirements would be.
13. As the older homes become obsolete and are upgraded or redeveloped, there are going to have to be similar modifications on some of these properties.
14. In order to make use of a lot that is as small as this, there is going to have to be some flexibility with respect to the setbacks.
15. The Board has concluded that the applicant has presented testimony showing compliance with the required standards for a variance.
16. This is not necessarily just a convenience for the applicant based on the evidence that has been presented to the Board.
17. It would be a hardship for the applicant to have to rebuild an old house, but on a smaller footprint than what they already had and a footprint which is consistent with many of the homes around it with respect to these nonconforming old lots.
18. The Board has concluded that the application meets the standard in the amended state code provision.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 maximum size and location within the building envelope of a single-family detached dwelling, as shown on the plat prepared by Dominion Surveyors Inc., dated (originally certified) July 9, 2008, and signed (recertified) by Rebecca Bostick, dated June 17, 2011, and for the purposes of depicting the septic field, the plat prepared by Rebecca Bostick dated May 17, 2011 (for that purpose only), as submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.
3. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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 including requirements for building permits.

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. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. MELISSA & PHILIPPE BRADY, SP 2011-SP-051 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit existing accessory storage structure to remain 2.9 ft. from side lot line and patio to remain 9.7 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of deck 10.5 ft. from side lot line. Located at 7530 Evans Ford Rd. on approx. 31,232 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 85-2 ((1)) 1A.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Melissa Brady, 7530 Evans Ford Road, Clifton, Virginia, reaffirmed the affidavit.

Suzianne Zottl, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an accessory storage structure, specifically a shed, which measured 12 feet in height, to remain 2.9 feet from the western side lot line. The second request was to permit an existing patio to remain 9.7 feet from the western side lot line. The Zoning Ordinance requires that accessory storage structures which exceed 8.5 feet in height must meet the minimum side yard requirements. The third request was to permit a reduction of certain yard requirements to permit construction of a second-story deck to be located at its closest point 10.5 feet from the western side lot line. A minimum side yard of 20 feet is required; however, patios are permitted to extend 5.0 feet into the minimum side yard; therefore, modifications of 17.1 feet, 5.3 feet, and 9.5 feet, respectively, were requested. Staff recommended approval of SP 2011-SP-051 for the deck subject to the proposed development conditions.

Mr. Hammack asked where the house was located on Lot 13A. Ms. Zottl stated that the house was located in the western part of the property and not near the subject property.

Mr. Hart asked what the blue line on the slide represented and whether anything would be changed with the location of the structures. Ms. Zottl responded that the blue line represented the watershed overlay district line and would not affect the proposed structures.

Ms. Brady presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she purchased the property with the intention of building a deck, but discovered the errors in building when the permit was pulled to start construction. The application had been submitted to rectify the errors.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 20011-SP-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

MELISSA & PHILIPPE BRADY, SP 2011-SP-051 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit existing accessory storage structure to remain 2.9 ft. from side lot line and patio to remain 9.7 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of deck 10.5 ft. from side lot line. Located at 7530 Evans Ford Rd. on approx. 31,232 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 85-2 ((1)) 1A. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2011; and

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

1. The applicants are the owners of the land.
2. The property is zoned R-C and WS.
3. The shed is right up against the house and could not be moved any farther to the front.
4. This is a bit of an unusual shaped lot and placement of a house where there is a side yard in the rear of the house.
5. The shed is not having an impact on the lot in the rear of the property, Lot 13A, as was referenced, nor is the deck or the patio.
6. These are pretty modest intrusions.
7. There will not really be an impact on Lot 13A.
8. To force compliance with the minimum yard requirements would cause an unreasonable hardship on the owner, who would have to remove the patio and the shed.
9. With respect to the 8-922 request for a deck, similar issue, it is not going to be visible to the adjacent house, which is on a 5.8-acre lot.
10. Staff has recommended approval, and the rationale staff has indicated in the staff report is adopted.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 structures (accessory storage structure and patio) and location and size of a second-story deck, as shown on the plat prepared by

Alexandria Surveys International, LLC, dated April 15, 2011, as revised through May 18, 2011, submitted with this application and is not transferable to other land.

2. The deck shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. RICHARD & SABRINA CAMPBELL, SP 2011-MV-053 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building location to permit addition to remain 22.4 ft. from rear lot line and deck to remain 0.9 ft. and 1.1 ft. from side lot lines, and reduction of certain yard requirements to permit construction of two-story addition 7.9 ft. from side lot line. Located at 1907 Joliette Ct. on approx. 12,458 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 46.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard Campbell, 1907 Joliette Court, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow reductions to minimum yard requirements based on errors in building locations to permit an existing screened porch addition to remain 22.4 feet to its eave from the rear lot line and to permit an existing open concrete patio to remain 0.9 feet from the western side lot line and 1.1 foot from the northern side lot line. The applicants also requested special permit approval to allow construction of a 2,456-square-foot, 21.1 feet in height, two-story addition 7.9 feet from the northern side lot line. A minimum rear yard of 25 feet and minimum side yard of 10 feet are required; therefore, reductions of 2.6 feet, 4.1 feet, 3.9 feet, and 2.1 feet, respectively, were requested. Staff recommended approval of SP 2011-MV-053 for the addition subject to the proposed development conditions.

Mr. Beard asked if the errors regarding the screened porch addition and the patio were discovered when the applicants came in for a building permit for the two-story addition. Ms. Hedrick stated that was correct.

Mr. Hart asked whether there was a complaint about the patio and if the applicants were under the 30 percent coverage in the rear yard. Ms. Hedrick indicated that there had been no complaint, and the applicants were under the maximum coverage in the rear yard.

Mr. Campbell presented the special permit request as outlined in the statement of justification submitted with the application. He said the primary reason for the application was for a single-car garage and to increase the space in the garage for wheelchair access. The second issue was the decking around the pool, which had been installed by a patio company, and the applicants had been unaware there was a problem with the zoning at the time. The third issue was the screened porch. Mr. Campbell said it had been built with a permit, inspected, and approved, and the issue with the eave had been discovered when they had applied for the permit for the two-story addition.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2011-MV-053 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD & SABRINA CAMPBELL, SP 2011-MV-053 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building location to permit addition to remain 22.4 ft. from rear lot line and deck to remain 0.9 ft. and 1.1 ft. from side lot lines, and reduction of certain yard requirements to permit construction of two-story addition 7.9 ft. from side lot line. Located at 1907 Joliette Ct. on approx. 12,458 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 46. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2011; and

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

1. The applicants are the owners of the land.
2. Staff recommends approval.
3. This is a uniquely sized or shaped lot.
4. The Board has a letter of support.
5. The application meets all the eight general standards under 8-006 as well as the germane standards under 8-922, especially Standards 4, 6, 7, 8, and 9, as well as 8-903 for all Group 9 uses.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the screened porch and deck (concrete patio) and the location and size of a two-story addition (2,456 square feet), as shown on the plat prepared Dominion Surveyors, Inc., dated and sealed through January 31, 2011, as revised through June 10, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,414 square feet existing + 5,121 square feet (150%) = 8,535 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. ADRIANE HART & JOHN NELMES, SP 2011-MA-052 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.0 ft. from side lot line. Located at 6427 Overhill Rd. on approx. 18,995 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 58.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Adriane Hart, 6427 Overhill Road, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction of certain yard requirements to permit construction of an

addition to be located 17 feet to its eave from the northern side lot line. A minimum side yard of 20 feet is required; therefore, a reduction of 3.0 feet was requested. Staff recommended approval of SP 2011-MA-052 subject to the proposed development conditions.

Ms. Hart presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she wished to renovate and enclose the existing screened porch to turn it into livable space. The screened porch was built in 1949, and at that time the side yard setback was 15 feet from the property line. Ms. Hart said their main concern with enclosing the porch was not to disturb or damage two existing mature maple trees on the side. She said they had hired two arborists for advice regarding tree protection during renovation, and if approved, they planned to use the existing porch foundation to protect the trees. Ms. Hart said she had spoken with the surrounding neighbors, who had indicated support for the project, and she was unaware of any opposition.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-MA-052 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ADRIANE HART & JOHN NELMES, SP 2011-MA-052 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.0 ft. from side lot line. Located at 6427 Overhill Rd. on approx. 18,995 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 58. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 2011; and

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

1. The applicants are the owners of the land.
2. The construction is really the enclosure of an existing screened porch, so there will be no real impact on the neighborhood whatsoever or on the impervious surface.
3. The Board has a staff recommendation of approval.
4. The Board has determined that the applicant has met the six specific standards set out in Sect. 8-922, and it satisfies those standards.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of an addition (approximately 288 square feet), as shown on the plat prepared by Highlander Surveying Services, P.C., Curtis L. McAllister, L.S., dated January 22, 2002, as sealed by John K. White, P.E., on May 24, 2011, as submitted with this application and is not transferable to other land.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,016 square feet existing + 3,024 square feet (150%) = 5,040 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. WILLIAM HULVER, SP 2011-MV-041 Appl. under Sect(s). 8-918 AND 8-922 of the Zoning Ordinance to permit an accessory dwelling unit and reduction of certain yard requirements to permit construction of addition 9.0 ft. from side lot line. Located at 1505 Wake Forest Dr. on approx. 12,881 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((6)) (5) 4.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William Hulver, 1505 Wake Forest Drive, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of two special permit requests. The first request was for a two-story addition to be built 9.0 feet from the side lot line. The two-story addition would be built at the southwest corner of the house and would measure 1,572 square feet and 21.5 feet in height. An existing carport and sunroom would be removed to construct a new carport, mudroom, and addition. The second request was for an 894-square-foot accessory dwelling unit to be located on the ground floor of the aforementioned addition. In total, the gross floor area of the principal structure and addition, as well as the expanded mudroom, would be 3,652 square feet. A minimum side yard of 12 feet is required; therefore, a reduction of 3.0 feet was requested. Staff recommended approval of SP 2011-MV-041 subject to the proposed development conditions.

Mr. Hammack asked whether the second-story addition would enlarge the footprint of the existing dwelling. Ms. Cho responded that the plat showed the addition extending from the existing dwelling into the rear and side yards, and it was a new structure.

Mr. Hammack asked why the addition could not be kept within the 12-foot building restriction. Ms. Cho stated she asked the applicant about the possibility of shifting the new structure further towards the existing dwelling, but to preserve the rear façade of the house, the applicant determined that was the best location.

Mr. Hammack asked whether staff had any problems with the encroachment into the 12-foot restriction line. Ms. Cho stated that staff believed the intrusion into the side yard was very minimal since it was just the corner of the eave and the building.

Mr. Hulver presented the special permit request as outlined in the statement of justification submitted with the application. He stated the primary reason for the request was that he wanted to construct an accessory dwelling unit for his in-laws who were both 60 years old. He had worked with his mother-in-law as to the requirements for the kitchen and the space. He said the footprint did extend three feet over the property line (sic), but he wanted to maintain the view into what he referred to as a courtyard. Mr. Hulver said he did not want to build the addition directly behind the house where it would shadow the existing structure.

Mr. Hammack asked whether the owner of Lot 3 supported the application. Mr. Hulver stated that there was no opposition to the addition.

Mr. Hart asked whether the front part of the addition was an outside porch. Mr. Hulver stated that the front part would be an overhang of the second level, which he would like to construct as part of the existing primary structure.

In regard to the downstairs area, Mr. Hart asked whether the front area was an open outdoor porch. Mr. Hulver stated that the front area would be the primary entrance to the accessory dwelling. Mr. Hart asked if behind that entrance was the laundry room. Mr. Hulver stated that it was the laundry and utility room. Mr. Hart asked whether there was a functional reason the washer and dryer could not be shifted to the other side of the room. Mr. Hulver stated they could, but he was reserving that space for the air conditioning unit and the utilities. Mr. Hart asked whether the area right behind the washer and dryer was a closet. Mr. Hulver stated that it was a stand up shower.

Mr. Hart stated that the standards that needed to be met was that the reduction requested was the minimum necessary to accommodate the structure on the lot, and it seems that with a very slight shift to the left, the entire structure would fit, even if it were a couple feet to the left, or if the corner with the back of the washer and dryer and the corner of the porch were modified a little bit, the application would not be needed. Mr. Hulver stated that the primary reason for the location of the right corner was because there was a three-foot corridor between the shower and the bathroom, which he would like to maintain, as well as the stair within the mudroom. The stair could not shift to the left or the east. Mr. Hart asked why the yellow line affected the steps. Mr. Hulver asked if Mr. Hart was referring to shrinking the footprint of the accessory dwelling unit. Mr. Hart replied that if the laundry room and porch came forward a little, there were ways to do so, stay behind the yellow line, and have a room even larger than what had been proposed. He said he thought there were options, and he did not know if there was a functional reason the door had to be as far back from the front. Mr. Hart asked what was above the corner in question. Mr. Hulver said it was an open area used as a play area.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-MV-041 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Hart stated that he did not have a problem with the accessory dwelling unit and the way it was laid out, but he did not believe the lack of opposition waived any of the standards of the Ordinance, and under Subsection 9, the Board had to conclude that this was the minimum necessary to accommodate the structure. He said this was a fairly large pie-shaped lot with a large backyard, and there were other ways to accommodate the structure with a slight tweaking of the laundry room and the porch. He stated that he could not conclude that Subsection 9 had been satisfied and could not support an approval in the proposed configuration. He said the Board's function was to determine whether all the standards had been met, and there had been cases where Subsection 9 had been a bigger issue, but it was not as flexible as the absence of opposition meant the Board could skip over that.

Mr. Hammack stated that he would adopt Mr. Hart's rationale and noted that the length of the house was 66 feet long, all very close to the side lot line, and it was a two-story addition. He said that although he knew there was no opposition and he liked the design, he thought it could be tweaked and the applicant could still have everything he wanted. Mr. Hammack said the applicant's statement that he did not want to shift the

addition because it would block the view from the main house was a convenience and not a justification under the Ordinance. Mr. Hammack said he did not have a problem with the accessory dwelling unit, but he could not support the reduction in the side yard requirements.

Mr. Beard stated he liked to give the applicants the benefit of doubt. He said that for the applicant to have gone through the design efforts that he had and come forward with somewhat of a minimal request and for the Board to start architecturally redesigning, he would like to think that before the applicant came to the Board, they had gone through lot of in-depth design. Mr. Beard said he was familiar with the area and did not think it would be that much of an issue. If the Board wanted to start taking strict interpretations on all requirements, that was another issue, but he would support the motion.

Mr. Smith stated that the Board had previously struggled with Standard 9, but he would support the motion. He said what the Board had to consider was whether the proposed reduction represented the minimum amount of reduction necessary to accommodate the proposed structure. The Board could look at a lot of different factors, including the orientation of the structure on the lot, and it seemed that it was laid out with the living room overlooking the backyard and was well designed. He said that if the size of the laundry room and bathroom was shrunk, it might not be what was necessary to accommodate the people who would live there. Mr. Smith said that when one entered the door and turned to the right, the stairway was in front of it, so it would be difficult to shift it to the left, and it could not be moved backward because it would be approaching the rear lot line. He said the infringement on the side lot line was minimal, and it was appropriate to maintain as much of the rear yard open space as possible. It seemed like a good utilization of the property available on the lot and was within the Board's purview to approve the application as recommended by staff, and he supported staff's analysis on Standard 9.

Chairman Ribble called for the vote. The motion carried by a vote of 4-2. Mr. Hart and Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM HULVER, SP 2011-MV-041 Appl. under Sect(s). 8-918 and 8-922 of the Zoning Ordinance to permit an accessory dwelling unit and reduction of certain yard requirements to permit construction of addition 9.0 ft. from side lot line. Located at 1505 Wake Forest Dr. on approx. 12,881 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((6)) (5) 4. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,881 square feet.
4. Staff recommends approval for the addition and the accessory dwelling unit, and its rationale is adopted.
5. Comments of Board members were noted with regard to the rationale for the application, but there is no opposition to it.
6. The addition itself has been judiciously planned.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the addition and kitchen in the accessory dwelling unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, William Hulver and/or Meghan Hulver, Barbara Fleming, Michael Fleming and is not transferable without further action of this Board, and is for the location indicated on the application, 1505 Wake Forest Drive (12,881 square feet), and is not transferable to other land.
3. This special permit is approved for the location and size of the addition (1,572 square feet), as shown on the plat prepared by Scartz Surveys, dated May 2, 2011, as sealed through March 10, 2011, as submitted with this application and is not transferable to other land.
4. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [2,025 square feet existing + 3,037.5 square feet (150%) = 5,062.5 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
5. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
6. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
7. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
8. The accessory dwelling unit shall contain a maximum of 894 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
9. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
10. 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.
11. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
12. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the

property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

13. All parking shall be provided on site as shown on the special permit plat.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Beard seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

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~ ~ ~ August 10, 2011, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation uses in conjunction with a place of worship by right. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A. (Admin. moved from 5/25/11 and 6/29/11 at appl. req.)

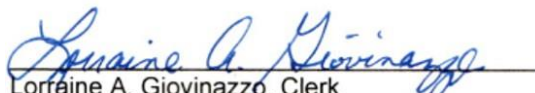
Chairman Ribble noted that SP 2011-SU-011 had been indefinitely deferred at the applicant's request.

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As there was no other business to come before the Board, the meeting was adjourned at 10:20 a.m.

Minutes by: John W. Cooper

Approved on: June 27, 2012


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, September 14, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:04 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. MANSION HOUSE CLUB, INC., SPA 77-V-247-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP-77-V-247 previously approved for a swim and tennis club to permit site modifications including increase in height of light poles. Located at 9321 Old Mount Vernon Rd. on approx. 5.04 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 9D. (Admin. moved from 4/6/11 and 6/8/11 at appl. req.)

Chairman Ribble noted that SPA 77-V-247-02 had been administratively moved to November 16, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. LARRY B. ATKINSON, TRUSTEE, SP 2011-SU-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from side lot line such that side yards total 13.9 ft. Located at 4612 Granite Rock Ct., 20151-2477 on approx. 11,188 sq .ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 596.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Daniel W. Whitaker, the applicant's agent, 4104 Gumwood Court, Chantilly, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested permission to reduce certain yard requirements to allow the construction of a two-story addition, approximately 213 square feet in size, to be located 6.6 feet to its eave from the western side lot line, such that side yards totaled 13.9 feet. Ms. Hedrick noted that a minimum side yard of 8.0 feet with total side yards of 24 feet is required; therefore, a modification of 1.4 feet or 18 percent was requested to the minimum side yard and a modification of 10.1 feet or 42 percent was requested for the total side yards. She said staff recommended approval of SP 2011-SU-059 subject to the proposed development conditions.

Mr. Whitaker presented the special permit request as outlined in the statement of justification submitted with the application. He said the intended use of the addition would be a main level bedroom and bathroom off the study to accommodate the owners if and when their ability to take the stairs became difficult. Mr. Whitaker stated the addition would add a sitting room to the current master bedroom on the second floor.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-SU-059 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LARRY B. ATKINSON, TRUSTEE, SP 2011-SU-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from side lot line such that side yards total 13.9 ft. Located at 4612 Granite Rock Ct., 20151-2477 on approx. 11,188 sq .ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 596. 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 14, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant has met the six standards specifically set forth in Section 8-922.
3. The proposed addition is a modest addition.
4. It certainly, in terms of total square foot area, is modest compared to the entire house.
5. It is the only the location on the house where this could be constructed to meet the applicant's requirements.
6. The Board has a favorable staff report recommendation.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 213 square feet) of the proposed two-story addition as shown on the plat prepared by Patton Harris Rust & Associates dated April 28, 2011 as sealed and signed through June 17, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,172 square feet existing + 3,258 square feet (150%) = 5,430 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. IRINEO VARGAS, SP 2011-LE-061 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 7508 Nancemond St., 22150-3817 on approx. 11,549 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (58) 13.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Dunia Pardo, the applicant's agent, 4336 Thomas Brigade Lane, Fairfax, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an accessory dwelling unit to be located within the basement of the existing dwelling. The 721-square-foot accessory unit contained two bedrooms, a combined living and dining area, a full bathroom, and a full kitchen. She said the proposed unit would comprise 29.5 percent of the total living space. Ms. Hedrick stated that all occupants of the home, both the principal and accessory dwelling units, were occupied by immediate family members, and she noted that the applicant was over the age of 55. She said staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of SP 2011-LE-061 subject to the proposed development conditions.

In response to a question from Mr. Hart, Susan Langdon, Chief, Special Permit and Variance Branch, explained that staff usually allowed a utility room and storage space to be removed from the total area of an accessory dwelling unit since they were normally used by all occupants of the property.

Mr. Hart questioned the amount of parking necessary to accommodate the occupants. He referenced a letter which had been received by the Board which complained that eight or nine cars had been parked there at one time. Ms. Hedrick said that the applicant claimed there were only four cars, which staff felt could be comfortably parked in the driveway without blocking the sidewalk.

Ms. Pardo presented the special permit request as outlined in the statement of justification submitted with the application. She said that two of the property owners, Mr. and Mrs. Vargas, were 67 and 64 years old, and that a basement living area would allow them to age with dignity. The remaining property owner was their daughter.

In response to a question from Mr. Hart, Ms. Pardo said that a total of eight people resided in the house, three of which were children. The adults owned four cars.

Chairman Ribble called for speakers.

Bruce Waggoner, 6944 Essex Avenue, Springfield, Virginia, came forward to speak. He noted that he was speaking as president of the Springfield Civic Association. He said his main concern was that this property, with a second kitchen, could easily be turned into a boardinghouse.

Ms. Gibb pointed out that under the Ordinance, homeowners had a right to apply for an accessory dwelling unit in cases where occupants qualified as elderly and/or disabled. Mr. Waggoner said he had spoken with

Wayne Bass, an inspector with the Department of Code Compliance, who had recently made him aware of that provision.

In response to a question from Mr. Smith, Ms. Hedrick stated that the occupants were there by right. The only issue before the Board was the matter of a second kitchen.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-LE-061 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

IRINEO VARGAS, SP 2011-LE-061 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 7508 Nancemond St., 22150-3817 on approx. 11,549 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (58) 13. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2011; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 11,549 square feet.
4. The staff has made a favorable recommendation.
5. The Board reviewed the letter dated September 13, 2011, from the Beecrofts, and also noted the testimony of the President of the Springfield Civic Association.
6. Every case stands on its own merits; there is no precedent setting.
7. If the circumstances were different and the people were not in Code Compliance, then that would be dealt with on a case-by-case basis.
8. The applicant's agent has worked diligently with the staff to remedy the issues and concerns which were addressed by incorporating the additional development conditions.
9. The applicant has corrected those items that were noted with regard to the Notice of Violation, including the Fire Code.
10. Under Development Condition 5, the occupants of the accessory dwelling unit are limited to the applicant's immediate family members. This should give some relief to those who are concerned about the issue of a boarding house.
11. Rather than to have appliances and items that have not been inspected, the Board typically likes to have applicable building permits and final inspections on properties just from a safety standpoint, which is one of the development conditions with regard to this application.
12. This accessory dwelling unit is only approved for a period of five years.
13. If there is any change from the standpoint of immediate family or any of the development conditions, then, in fact, it could render this inviolate and would be addressed again.
14. There was testimony, both from the applicant's agent and also from County staff, that the parking is going to be provided on-site in accordance with the special permit plat. The Board encouraged adherence to that development condition, and all development conditions, to ensure that this moves forward smoothly.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Irineo Vargas, Garciela N. Vargas, and Clotilde Claros, and is not transferable without further action of this Board, and is for the location indicated on the application, 7508 Nancemond Street, (11,549 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Suburban Development Engineering, dated March 5, 1990, as signed and sealed on July 30, 2002, by Charles E. Janson, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the accessory dwelling unit shall be limited to the applicant's immediate family members.
6. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
7. The accessory dwelling unit shall contain a maximum of 721 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
8. All applicable building permits and final inspections shall be obtained for the kitchen in the accessory dwelling unit.
9. 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.
10. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
11. If the use of the accessory dwelling unit ceases for the applicant's immediate family members and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
12. All parking shall be provided on site as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. 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 7-0.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. MICHAEL F. AND CONSTANCE Z. THOMASSON, SP 2011-MV-060 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of carport 17.9 ft. from front lot line. Located at 2105 Popkins La., 22307-1831 on approx. 27,590 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 96.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Christine A. Kelly, the applicants' agent, 2109 Popkins Lane, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction of certain yard requirements to allow a carport 17.9 feet from the front lot line. Ms. Cho said the existing driveway would be modified for the carport and have room for two cars. The proposed roofline and materials would be compatible with the existing dwelling. Ms. Cho noted that a minimum front yard of 35 feet was required in the R-2 District; therefore, a modification of 17.1 feet or 49 percent was requested. She stated that staff recommended approval of SP 2011-LE-061 subject to the proposed development conditions.

Ms. Kelly presented the special permit request as outlined in the statement of justification submitted with the application. She said the proposed carport was in the best possible location on the site to provide ingress and egress for the applicants. Ms. Kelly stated that she had the approval of the Design Review Committee of Hollin Hills, and had revised the carport design based on their suggestions. She also noted that two immediate neighbors had submitted letters of support for the proposal.

Chairman Ribble called for speakers.

Douglas McKinley, 2107 Marthas Road, Alexandria, Virginia, came forward to speak. He said he thought the proposed carport would improve and enhance the neighborhood.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-MV-060 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL F. AND CONSTANCE Z. THOMASSON, SP 2011-MV-060 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of carport 17.9 ft. from front lot line. Located at 2105 Popkins La., 22307-1831 on approx. 27,590 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 96. 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 14, 2011; and

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

1. The applicants are the owners of the property.
2. The Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. Hollin Hills is a unique community of what we call now "mid-century modern" homes.
4. Many of them are what might initially appear to be oddly placed on the lot, but they are taking advantage of topography or preserving vegetation or allowing for views into these homes.
5. This house was placed at a funny angle on what is a fairly large lot, but there is not a lot of room to work with.
6. The location of the carport, although it extends into the minimum required front yard, is the logical place for covered parking on this lot.
7. To do almost anything else, you would have to take out trees and extend the asphalt, which would mean more impervious surface.
8. The renderings, which are incorporated into the development conditions, show the design of the carport is actually very slight. It is not massive at all.
9. The carport matches the design of the house.
10. The Board does not think there would be any significant negative impact on anyone.
11. It also is consistent with other carports in the neighborhood.
12. The Board does not ordinarily look to what the association has done, but in this case, Hollin Hills has an active design review committee.
13. The Board has the minutes from the committee's review of this case in the staff report, and it looks like they looked at this very carefully and there were some changes to it, but they supported it.
14. Over a period of years, they have been the guardians, to some extent, of an architecturally unique and special community.
15. If they were not approving it, maybe we would look at this a little differently, but the Board thought their approval tends to confirm that this is not in any way doing violence to the unique character of the neighborhood.
16. With the development conditions, any potential impacts have been satisfactorily mitigated.
17. Some of the existing pavement will be removed, and that also tends to reduce the impervious surface.

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 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 and size of the carport (approximately 430 square feet), as shown on the plat prepared by Dominion Surveys Inc., dated March 4, 2011, revised and resealed May 28, 2011, as submitted with this application and is not transferable to other land.
2. The carport shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
3. A portion of the existing driveway shall be removed as shown on Attachment 2 to these conditions.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. JEAN C. VAN NEST, SP 2011-MV-063 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit modification of certain yard requirements to permit construction of addition 19.9 ft. from rear lot line. Located at 8510 Silverdale Rd., 22079-3066 on approx. 8,518 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-3 ((8)) 12.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jean Van Nest, 8510 Silverdale Road, Lorton, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction of certain yard requirements to allow a sunroom addition 19.9 feet from the rear lot line. An existing deck would be removed for a 186-square-foot addition and wood deck. She noted that a minimum front yard of 25 feet is required in the R-3 Cluster development; therefore, the applicant requested a modification of 5.1 feet or 20 percent to permit the carport. She said staff recommended approval of SP 2011-LE-061 subject to the proposed development conditions.

Ms. Van Nest presented the special permit request as outlined in the statement of justification submitted with the application. She thanked staff for their assistance, particularly Ms. Cho for her helpfulness in seeing that all preparation requirements were met. Ms. Van Nest said the proposed sunroom addition would be architecturally compatible with the neighborhood and would be consistent with the current design. She said she had not received any opposition to the proposed sunroom, and had obtained verbal support from the surrounding neighbors. Ms. Van Nest said one neighbor had submitted his support in writing to the Board.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-MV-063 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEAN C. VAN NEST, SP 2011-MV-063 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit modification of certain yard requirements to permit construction of addition 19.9 ft. from rear lot line. Located at 8510 Silverdale Rd., 22079-3066 on approx. 8,518 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-3 ((8)) 12. 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 14, 2011; and

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

1. The applicant is the owner of the property.
2. The Board has a favorable staff report.

3. The sunroom is going to require only a 5% reduction in the yard.
4. It backs up on a large open area owned by the homeowners association, so it seems as if there will be very minimal impact.
5. The Board received one letter of support from a neighbor and no apparent opposition.
6. The addition will be architecturally similar in material and style to the existing house.
7. The Board has determined that the applicant has met all the Requirements 1 through 6.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the enclosed sunroom addition (183 square feet), as shown on the plat prepared by Dewberry & Davis LLC, November 17, 2010, revised and sealed June 7, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [4,789 square feet existing + 7,183.5 square feet (150%) = 11,972.5 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. OWEN M. AND JOYCE Z. MCCALL, SP 2011-HM-057 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.81 ft. from side lot line . Located at 9522 Rockport Rd., 22180-3446 on approx. 11,200 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 38-1 ((17)) 22.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Noel L. Tagliaferre, the applicants' agent, 1972B Villaridge Drive, Reston, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to certain yard requirements to allow construction of an addition 8.81 feet from the side lot line. Ms. Horner noted that the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 3.15 feet, or 26.2 percent, was requested. She said staff recommended approval of SP 2011-LE-061 subject to the proposed development conditions.

Mr. Tagliaferre presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicants wanted to add a country porch to the front elevation of the property and to enclose the existing carport, creating a two-car garage. Mr. Tagliaferre stated that the proposed garage would maintain the current footprint of the property.

Chairman Ribble called for speakers.

Dennis Bair, the designer of the project, stated his support for the application. He noted that there were several similar garages in the neighborhood.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2011-HM-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

OWEN M. AND JOYCE Z. MCCALL, SP 2011-HM-057 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.81 ft. from side lot line. Located at 9522 Rockport Rd., 22180-3446 on approx. 11,200 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 38-1 ((17)) 22. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2011; and

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

1. The applicants are the owners of the property.
2. The Board determined that the application meets all the submission requirements of Section 8-922.
3. The Board adopts the rationale of the staff in the staff report, which has recommended approval.
4. There really will be very minimal impact from this application.
5. It is really not adding significant additional impervious area, if any.
6. It was clearly in character with the rest of the neighborhood.
7. As was referenced, there may be some enhancements in addition to the water enhancements that were referenced in the testimony.
8. There is a letter of support in the file from a neighboring property owner at 9517 Rockport Road.
9. It is a relatively minimal modification of 3.1 feet.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 122 square feet) of the addition, as shown on the plat prepared by Land Development Consultants, Inc. June 20, 2011 by John C. Maganello, Professional Engineer, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,170 square feet existing + 4,755 square feet (150%) = 7,925 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The applicant shall complete a Resource Protection Area (RPA) Exception application for review and approval by the Department of Public Works and Environmental Services (DPWES), prior to approval of a building permit.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. LUCIO SEJAS, SP 2011-MA-066 Appl. under Sect(s). 8-918 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 9.5 ft. from side lot line and open deck 1.42 ft. from side lot line and reduction of certain yard requirements to permit construction of a second story addition 8.0 ft. from side lot line. Located at 3911 Larchwood Rd., 22041-1107 on approx. 10,214 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 203.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Lucio Sejas, 3911 Larchwood Road, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on errors in building locations to permit an addition to remain 9.5 feet from the side lot line and an open deck/patio to remain 1.42 feet from the side lot line. She said the applicant also requested a reduction to certain yard requirements to permit construction of a second-story addition 8.0 feet from a side lot line. Ms. Horner said that staff was unable to make a finding that the second-story addition was in harmony with the Comprehensive Plan and unable to find conformity with the Zoning Ordinance provisions. She said staff believed that the addition as proposed was architecturally incompatible with the surrounding neighborhood, that an addition could be constructed over the original portion of the home without approval of a special permit, and that with the lack of existing vegetation and inability to plant vegetation as mitigation, the proposed structure was problematic. Therefore, Ms. Horner said staff recommended denial of SP 2011-MA-066.

In response to a question from Mr. Hart, Ms. Horner said there were no other houses in the neighborhood that appeared to be three stories with vinyl over brick.

Mr. Hart and Ms. Horner discussed the setback of the current addition. Ms. Horner said the application was not the subject of a Notice of Violation, nor were there any building permits in the street file. She did note that historic overhead aerial photos showed that the addition was present in 1999, prior to the transfer of ownership to the applicant.

Ms. Sejas presented the special permit request as outlined in the statement of justification submitted with the application. She said the one-story addition was there when she purchased the property, as was the patio. Ms. Sejas explained that she would like to now add a two-story addition so that she can move her grandparents here from Bolivia.

Mr. Beard, Mr. Hammack, and Mr. Hart discussed possibly remodeling the house by right, but Ms. Sejas said she had already spent \$6,000 on an architect, so she wanted to go ahead with the two-story addition.

Mr. Beard said he was going to recommend denial or would consider deferring the application to see if there was a way to resolve the setback issues through redesign, noting that the staff had recommended denial.

Mr. Hart stated his agreement with a deferral, noting that the existing addition and patio did not bother him, but putting a room on top of it and going closer to the side lot line would make the situation worse. He asked the applicant if she would be willing to defer the case so that another attempt could be made at redesigning the proposed addition. Ms. Sejas said she would be willing to do that.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to defer decision on SP 2011-MA-066 to October 26, 2011, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. SANJEEV KAPOOR, A 2010-HM-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a use not permitted (a truck rental establishment) to operate on property in the PRC District without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 11410 North Shore Dr., 20190-4227 on approx. 37,096 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 7. (Admin. moved from 3/2/11 at appl. req.)

Chairman Ribble noted that A 2010-HM-015 had been administratively moved to December 14, 2011, at 9:00 a.m., at the appellant's request.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. CLS LAWN & LANDSCAPE, A 2011-DR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a contractor's offices and shops and a storage yard without site plan approval, a valid Non-Residential Use Permit, valid Building Permits, or approved sign permit applications and that this business has established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., 22066-2801 on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 4/20/11 and 6/8/11 at appl. req.)

Chairman Ribble noted that A 2010-HM-015 had been administratively moved to September 21, 2011, at 9:00 a.m., at the appellant's request.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. LOUIS BONFIGLIO, A 2011-LE-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit and is allowing outdoor storage that does not meet size, location or screening requirements, all on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 5603 Cornish Way, 22315-4018 on approx. 24,530 sq. ft. of land zoned R-3. Lee District. Tax Map 100-2 ((2)) 348A.

Chairman Ribble called the appellant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jill Cooper, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. She said the appellant had been issued a Notice of Violation (NOV) because he was maintaining a second dwelling unit in the basement of the property and was allowing outdoor storage in violation of the Zoning Ordinance. Ms. Cooper stated that during an April inspection, both dwellings units were determined to be unsafe for use and occupancy. While on the property in July, Wayne Bass, Property Maintenance and Zoning Enforcement Inspector, observed that the outdoor storage had been removed and the stove in the basement kitchen had been relocated to another part of the kitchen. Ms. Cooper also noted that the family who had been renting the basement had vacated the unit. Since the property was in violation at the time of the NOV, Ms. Cooper asked that the Board uphold the determination of the Zoning Administrator.

Louis A. Bonfiglio, 5603 Cornish Way, Alexandria, Virginia, presented the arguments forming the basis for the appeal. He stated that the appeal was not disputing that there were violations on the property. He was disputing the corrections that the County has imposed in the NOV letter. Mr. Bonfiglio said he did not know he was in violation of the Zoning Ordinance when he allowed a friend to temporarily reside in the basement. He stated that the stove had since been removed, and the Fire Marshall, upon further inspection, had given the property a clean bill of health.

In response to a question from Chairman Ribble, Mr. Bass said he had not inspected the property recently, but had the pictures taken by the Fire Marshall which showed the basement was up to Code. He noted that he had inspected the backyard and confirmed that the outdoor storage had been removed.

Mr. Hart and Mr. Bonfiglio discussed Photo 14, which showed the current kitchen area, noting that a wooden panel now covered where the stove had previously been situated. Mr. Bonfiglio said there was a kitchen in the basement when he purchased the property, but that he had upgraded it and added a stove. A new granite countertop had been installed upon removal of the stove. Mr. Bonfiglio said he wanted to leave the basement reflected in Photo 14, since the rooms could not safely be used for bedrooms due to the window size and the stove had been removed. However, Ms. Cooper stated that it was a longstanding position of the Zoning Administrator that all kitchen cabinets, the sink, and the refrigerator had to be removed.

Ms. Gibb and Mr. Bonfiglio discussed the removal of the stove, with Mr. Bonfiglio again noting that he had added a granite countertop over the stove area so that it could not be reopened.

Ms. Gibb commented about large houses having a wet bar, refrigerator, microwave, bar stools, and cabinets in the basement and asked if they were considered second kitchens. Mavis Stanfield, Deputy Zoning Administrator for Appeals, responded that she could not speak to hypotheticals; however, a complaint had been received regarding the property, and upon inspection, a second dwelling unit was discovered. She said that it had always been the Zoning Administrator's position that all components of the kitchen needed to be removed because if they were not, the violation could be reestablished very quickly. Ms. Gibb remarked about the high cost of removing all the cabinets and other components of the kitchen. Ms. Stanfield stated that the appellant had been receiving rent on the property which would probably help offset some of those charges.

Mr. Bonfiglio stated that he had no intention of reestablishing a second dwelling unit. He invited Mr. Bass and his neighbors to come inspect the property at any time.

Chairman Ribble called for speakers.

Lenore Funkhouser, 5604 Cornish Way, Alexandria, Virginia, came forward to speak. She asked that the Board fully enforce the Zoning Ordinance and deny the appeal. She presented a letter which had been signed by ten neighbors who supported the position.

In response to a question from Mr. Hart, Ms. Funkhouser said that she believed the temporary tenant moved in on Halloween weekend of 2010 and moved out about a week after Mr. Bass' visit. She could not confirm whether there had been any other tenants in the house.

Ana Arguelles, 5605 Cornish Way, Alexandria, Virginia, came forward to speak. She said she believed there had been a tenant living in the basement previously and that a new tenant had recently moved in. She could not confirm whether the new tenant was living in the basement or on the first floor. Ms. Arguelles said she was tired of tenants going through on her property to access the side entrance to the basement. She asked that the Board uphold the Zoning Administrator.

In his rebuttal, Mr. Bonfiglio promised there would be no future tenants in the basement and no one using his neighbor's property for access. He again extended an invitation to Mr. Bass and his neighbors to inspect the basement at any time. Mr. Bonfiglio stated he just could not see any reason for him to spend money ripping out the cabinets.

In response to a question from Mr. Hammack, Mr. Bonfiglio said there was no other washbasin in the basement, but that a bathroom was there when he bought the house. Ms. Cooper commented that there were no building permits on file for a bathroom in the basement.

Mr. Hart and Mr. Bonfiglio discussed Photo 15, with Mr. Bonfiglio stating that the stove which had been removed was right outside the kitchen area, but not operational.

Ms. Cooper said that in the past, without removal of all kitchen components, a second kitchen is reestablished.

Chairman Ribble closed the public hearing.

Mr. Hammack said that since the appellant did not dispute the existence of the violations, he moved that the Board uphold the Zoning Administrator's determination. He referenced copies of second kitchen cases which were attached to the staff report that had been upheld by the Circuit Court.

Mr. Byers seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

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~ ~ ~ September 14, 2011, Scheduled case of:

9:00 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St., 22042-1011 on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (Admin. moved from 5/19/09, 10/27/09, 1/27/10, 5/26/10, 11/3/10, 2/2/11, 4/13/11, 5/25/11, 6/29/11, and 8/3/11 at appl. req.)

Chairman Ribble noted that A 2009-PR-006 had been administratively moved to November 21, 2011, at 9:00 a.m., at the appellant's request.

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~ ~ ~ September 14, 2011, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by SNSA, Inc., d/b/a Fast Eddie's Billiard Café.

The following is a verbatim transcript of the proceedings had in this matter:

CHAIRMAN RIBBLE: After Agenda Items, we have Consideration of Acceptance, Application for Appeal filed by SNA- -- SNSA, Inc., doing business as Fast Eddie's Billiard Café. Mr. Hammack.

MR. HAMMACK: Mr. Chairman, I -- you know, I have recused myself on this on previous occasions, and I'm gonna continue to do so on this particular after agenda item.

CHAIRMAN RIBBLE: Thank you. Everybody had a chance to read the request?

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: Yeah, I did read, but I had a couple questions for staff.

CHAIRMAN RIBBLE: Okay.

MR. HART: Ms. Stanfield, if I understood what has happened, staff has accepted an appeal about the determination, and that's been scheduled for some future date, but sort of bifurcated from the papers that were filed the issue of the appeal of the denial of the dance permit, and that's the item that staff is saying not to accept.

MAVIS STANFIELD: Mr. Hart, there are two requests by the appellant, and there are two separate responses. One was for a dance permit, and one was for a determination of accessory uses. Therefore, there were two responses and two -- there was only one appeal filed. You know, I would take the position that there should have been two appeals filed, just as there are for all kinds of appeal applications where you have, say, an owner and a tenant or for -- for example, for Cap One for Cityline's acceptance. There have been four appeals filed for four different letters of acceptance dealing with the same issue. So, yes, we did accept the appeal having to do with the accessory uses, and that has been scheduled. And depending on the outcome of your decision today, we would also schedule the other one in conjunction with that appeal.

MR. HART: Okay. I -- it was kind of a mishmash to me. Maybe someone else understands this better, but -- as to how many letters were written or what, but the -- procedurally if we -- if we are gonna hear the determination issue about the accessory uses, if we reversed the Zoning Administrator on that, what happens to the dance permit issue? Is the dance permit dependent on the determination in some way?

JOSEPH BAKOS: Mr. Hart, Joe Bakos, Zoning Inspections. The dance permit's based on Chapter 27 of the Code, not the Zoning Ordinance.

MR. HART: Let me ask Ms. Stanfield also about Mr. McKinley's position, as I understand it, and we haven't had, or if we have, I don't remember, an appeal before about a denial of a dance permit, or I don't remember that issue coming up one way or the other. If I understood Mr. McKinley's position, it was basically -- and I may be oversimplifying, and he can probably correct me, but it was something like, under the statute, you can appeal anything about an officer or agent administering the zoning ordinance, you can appeal that to the BZA. Under the Ordinance, it says if you've got a problem with the dance permit denial, you may -- and I think "may" is the word, you may appeal that to the County Executive. I think -- I don't know if a judge has ruled on this, but I assume that if a county wants to establish all kinds of optional, extra procedures, that they can do that. Is it the Zoning Administrator's position that the dance permit denial exclusively goes to the County Executive, that they can't appeal that to the BZA under the statute if they want to?

MS. STANFIELD: Yes, sir, because it is specific. It is a very specific appeal requirement in Chapter 27, and due to the specificity of that particular statute, it would prevail.

MR. HART: The letter that's denying the dance permit is what?

MS. STANFIELD: I'm sorry?

MR. HART: The letter that's denying the dance permit is what letter in this package?

MS. STANFIELD: I believe it's the first letter after the appeal application. The Attachment A, of course, is the appeal application, and then there's a statement. And then I believe it's that next letter, which is signed by Mr. Bakos.

MR. HART: August 4, 2011?

MS. STANFIELD: Yes, sir. Ms. McLane's letter is the very last document.

MR. HART: Well, I guess what was troubling me about that letter, again, it's kind of a mishmash. It's hard to tell what happened when, but the letter deals with a lot of things. But the letter seems to be dealing with the Zoning Ordinance and Article 20, not just a dance permit, unless I'm looking at the wrong --

MS. STANFIELD: No, I think you're right. I think -- well, which letter? Which letter are you referring to?

MR. HART: Well, August 4, Mr. Bakos' letter, we're saying that's the letter that denied the dance permit?

MS. STANFIELD: Yes, sir.

MR. HART: I mean, doesn't this letter deal with the Zoning Ordinance? It's quoting Article 20, Article 20 of the Zoning Ordinance, et cetera. We're talking about definitions being amended, accessory use set forth, et cetera. I guess where you have a letter that meanders between the Zoning Ordinance and this Chapter 27, how can we -- if it's all in one letter, how can we separate the issues?

MS. STANFIELD: I would just say that it's laid out in the statute for Chapter 27 that this may be appealed to the County Executive.

MR. HART: And -- but it may -- it -- that wipes out their right under the statute? I mean, if it didn't have that appealed to the County Executive thing, they could appeal this, I assume, to the BZA?

MS. STANFIELD: I don't know, sir.

MR. HART: Okay. All right. Thank you.

MR. BEARD: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Beard.

MR. BEARD: Ms. Stanfield, what is staff's interpretation or understanding, if you will, about what the present operation consists of or what's going on there now?

MS. STANFIELD: I would ask perhaps a mem- -- Mr. Congleton or Mr. Bakos to address that.

MR. BAKOS: Mr. Beard, Joe Bakos, Zoning Inspections. When last there, the operations inside the facility included a bar, a restaurant portion, pool tables. There were some video machines, some dartboards, and a dance floor. People were also playing pool.

MR. BEARD: And when was this?

MR. BAKOS: It was this summer, sir.

MR. BEARD: I'm just -- I want to make sure I understand. After this big raid and all that went on, are they open now, do you know?

MR. BAKOS: They were up -- they were open. Customers were at the bar receiving drinks. Others were playing pool. I didn't see anybody at any of tables dining or --

MR. BEARD: And, again, you have no more specific time than this summer?

MR. BAKOS: I can verify that in a moment if you'll let me look in the file.

MR. BEARD: Please.

CHAIRMAN RIBBLE: Any further questions of staff?

MR. SMITH: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Smith.

MR. BAKOS: Mr. Beard, that was July 18th.

MR. BEARD: July 18th.

MR. BAKOS: Yes.

MR. BEARD: Thank you.

MR. SMITH: I have an additional question for Ms. Stanfield. Do you know, so if it then is appealed to the County Executive, I don't know if you've seen this happen before, what would the recourse be if then the County Executive, you know, affirmed the decision and then the -- somebody wanted to appeal that? Is there some way specified to do that?

MS. STANFIELD: Well, if it -- perhaps someone in the room can correct me if I'm wrong, but I would think that would be the Circuit Court.

MR. SMITH: But you haven't seen that happen. Okay.

CHAIRMAN RIBBLE: Excuse me. In essence, you're saying this one letter's broken down into two letters, one addressing the dance hall --

MS. STANFIELD: No, I believe there's separate letters actually. There was a letter signed by Mr. Bakos and a letter signed by the Zoning Administrator.

CHAIRMAN RIBBLE: Okay.

MS. GIBB: Mr. Chairman.

CHAIRMAN RIBBLE: Ms. Gibb.

MS. GIBB: Ms. Stanfield, when you say that there should have been two appeals filed, is that sort

of -- that's not fatal to this, though. The real issue is for the County the language that says that they go -- needs to go to the County Executive?

MS. STANFIELD: Well, I think that it's pretty clear that each appeal should be filed separately, so I don't know that it is not fatal to this, to be honest with you. I don't know why they chose to make it one application. They made a comment that they're inextricably intertwined; however, as I've mentioned, we have many appeals where they're multiple applications that are in a similar situation where they're filed separately.

MS. GIBB: Well, if it's one letter that they get and it says -- and they say in their appeal that they're being adversely affected by the decisions, plural, which were in response to SNSA request dated July 6th, and, you know, it costs \$600 every time you file an application --

MS. STANFIELD: Yes, ma'am, but --

MS. GIBB: So --

MS. STANFIELD: -- you know, everyone is subject to those fees.

MS. GIBB: Well, I -- right, but you talk about Capital One. Some people have more money than other people.

MS. STANFIELD: Well, I mean, in the Cronen situation, their tenant appealed separately as well.

MS. GIBB: Yeah, look -- I know and look what happened to them. I mean that money was the issue. I'm just saying -- back to the -- whether you -- I couldn't tell whether you felt that that was really fatal or that was just sort of an afterthought, that they needed to file two appeals.

MS. STANFIELD: I think that has always been our position, that -- you know, if there is -- are more than one party involved in a particular issue at hand, that two appeals should be filed.

MS. GIBB: And the two parties are the County Executive, and the -- because you're saying they have to file with the County Executive, and the Board of Zoning Appeals is the other party?

MS. STANFIELD: Yes, ma'am. I would note that there's no fee involved in the appeal for the County Executive.

MS. GIBB: Okay.

MR. SMITH: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Smith.

MR. SMITH: Thanks, one more additional question. In the appellant's brief, they reference the case, Application A 2007-LE-104, and it says we -- looks like we had a similar issue. The Zoning Administrator claimed the Fairfax County Code Section 27-1 should be interpreted to mean that an appeal of a revocation of a permit to allow dancing may be made only to the County Executive and that the Board rejected it in that case. Do you -- does -- do either of you on staff -- does anybody recall that case or --

MS. STANFIELD: I apologize. I'm not sure. I'm assuming this is the Cerro Grande case; is that right?

DOUGLAS E. MCKINLEY: Yes.

MS. STANFIELD: Okay. And in that case, there was actually a lot of muddled language in that notice of violation. It did say this is appealable to the Board of Zoning Appeals, and I think that this is a very different type of an issue because we've made it very, very clear in this letter that it is, in fact, appealable to the County Executive.

MR. SMITH: Okay. Thank you.

MS. STANFIELD: And we've established a timeframe.

CHAIRMAN RIBBLE: Anybody else, ask any questions?

MR. HART: Yeah, let me ask one more and I'll try and get right to the point. Staff is saying that Mr. Bakos' August 4 letter is not a, and let me get the quote exactly, decision of the Zoning Administrator, and I guess or any agent, employee, or something. I'm -- I don't have the clause in front of me, but a staff person makes a decision in the administration or enforcement of the Zoning Ordinance. The General Assembly says anybody can appeal that if they're aggrieved to the BZA, and it's staff's position that Mr. Bakos' August 4 letter is not a decision of a staff person in the administration or enforcement of the Zoning Ordinance --

MS. STANFIELD: No. No, sir. I --

MR. HART: -- because it mentions Chapter 27?

MS. STANFIELD: No, sir. I think that all what we're saying is that in this particular situation, this particular decision is very clear in the statute that it is appealable to the County Executive rather than to the Board of Zoning Appeals.

MR. HART: I guess the -- what -- what's concerning me about that is that I don't think the Board of Supervisors can take away, that somebody's right to appeal to the BZA something involving the administration or enforcement of the Ordinance, and this letter is just full of references to the Zoning Ordinance and Article 20 and quoting things and talking about non-RUPs and what the BZA did and a lot of things. I mean, if the letter was just about Section 27, it might not be a decision in the administration or enforcement of the Zoning Ordinance, but it's got so much other stuff in here. I mean, I don't know ultimately, if we took the appeal, whether we can issue a dance permit or not or I think all we could -- well, I won't say that. Whether we can do anything, I don't know, but I think, as long as the decision -- I mean, I guess you wrote two letters. It didn't have to go this way, but it did for whatever reason. You're still saying it's exclusive because the Chapter 27 is -- that's the exclusive remedy, is to go to the County Executive?

MS. STANFIELD: Yes, sir.

MR. HART: Okay.

MS. STANFIELD: That language is specific.

MR. HART: All right. Thank you.

MR. SMITH: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Smith.

MR. SMITH: Just one other question. Has the County Attorney's Office weighed in on this; do you know?

MS. STANFIELD: I am not sure.

MR. SMITH: Okay, because I -- you know, I share the same concern looking at this Section 15.2-2311, Appeals to the Board, and it seems like normally you'd look at this and you'd say absolutely it's appropriate to appeal here. But then you're looking at -- and that's the County legislature speaking, and then you look at the Coun- -- I mean, the state legislature speaking, and then you have the County Ordinance, and I -- and the Dillon's Rule and the case that was cited in the appellant's brief. And I just -- I'm just concerned that it seems to me it'd be a lot easier for us to just go ahead and hear it. It's the safest thing even from the County's perspective because all we're gonna do is -- and it seems to me it's also worth having the County Attorney just take a look at this code provision just to be sure. I don't -- it seems to me that right now it provides another option for appeal, but I don't know that it's going to provide an exclusive route for appeal. And I would -- I wouldn't be surprised if the County Attorney's Office looks at that and says it is providing an additional option, but not an exclusive one.

MS. STANFIELD: Well, I think that there is definitely the appearance of a conflict, and I would certainly say, yes, that's absolutely true.

MR. SMITH: Yeah. Okay. Thank you.

MR. BYERS: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Byers.

MR. BYERS: I move we accept the appeal.

MS. GIBB: Second.

CHAIRMAN RIBBLE: Discussion?

MR. HART: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Hart.

MR. HART: Thank you. I was confused by this at the beginning, and I think we've talked our way through it. I think there might be a scenario under which a determination or decision by somebody didn't involve the Zoning Ordinance and wasn't appealable, but the letter that's apparently the denial of the dance permit deals more with the Zoning Ordinance than anything else. And I think that's within the scope of what the General Assembly has said was appealable. I look also to the wording. I think if -- in a local ordinance if the word "may" is used, ordinarily in statutory construction, the word "may" is permissive. It's not "shall" or "must," which would be an imperative or mandatory. I think what we've done here is locally create an option whereby, on something like this which is maybe a slight kind of administrative decision, somebody could appeal it to the County Executive without having to pay the appeal fee and go through that, and many people might elect to do that. But I think, like what Mr. Smith has said, it sounds to me that that's optional. I don't think that the locality would have the authority to make that an exclusive remedy, and I don't read anything as saying that they can't appeal that.

Where that goes, if we hear it, I don't know because I don't -- I'm not familiar enough with this to know whether we, in fact, could do anything with it, but to the extent that the question today is should we hear this or not, if the August 4 letter is the letter that we're concerned with, it is within the scope of 15.2-2311. And it doesn't mean that we're gonna overturn anything, but I think we can hear it. And I think also if we're going to hear the related -- the determination on the same day anyway, and maybe this is a friendly amendment to Mr. Byers' motion, let's do it all at once and advertise it all at once. Let's do everything together, not split it up, if that's --

MR. BYERS: Mr. Chairman.

CHAIRMAN RIBBLE: Mr. Byers.

MR. BYERS: I'll accept that as a friendly amendment. What concerns me about this is, and some of this is a reiteration of what has been said, number one, the language that was used in the original letter was very imprecise. If you're going to quote Chapter 27, then that's the only thing that should have been in the letter. You're not. You're quoting the Zoning Ordinance.

The second thing that concerns me, we've had a case we'll remember where the issue was "shall" or "may." When the Board of Supervisors says "shall," to me that means that's exactly what you do. "May" to me is a much softer meaning. You may do this, but that does not mean that that is inclusive.

So what -- there are a couple of things I would suggest, and number one is that we need to be -- Boards mean something. And if we're going to quote Chapter 27, then I think that needs to be much more precise than what it is. And I agree with Mr. Hart. That may have been an easy way to do it administratively, but I do not believe that that precludes the right of anyone from the standpoint of moving forward with an appeal.

And that's exactly -- again, I don't know how this is gonna turn out, but if the issue -- as Mr. Hart has indicated, if the issue is should the BZA, in fact, hear the appeal, then I come down on the side of saying, yes, we should.

CHAIRMAN RIBBLE: Further discussion? All those in favor of the motion signify by saying "aye."

MR. BEARD, MR. SMITH, MS. GIBB, MR. HART, MR. BYERS, CHAIRMAN RIBBLE: Aye.


CHAIRMAN RIBBLE: Opposed? The vote's unanimous, and we will hear -- accept both of these appeals.


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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Suzanne Frazier

Approved on: May 21, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, September 21, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:05 a.m. Chairman Ribble asked if there were any Board Matters. Mr. Hart mentioned a proposed Zoning Ordinance Amendment regarding independent living facilitates for low income residents, and specified within the amendment was a proposal to amend the definition of dwelling unit. He stated the Planning Commission public hearing regarding the amendment had been deferred to November 17, 2011, so there was time for concerned parties to evaluate it. As there were no further Board Matters, Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. Chairman Ribble called for the first scheduled case.

~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. THOMAS BASSAM, SP 2011-SP-062 (accessory dwelling unit)

Chairman Ribble noted that SP 2011-SP-062 had been administratively moved to October 26, 2011 at the applicant's request.

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~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. ZHANNA V. BUZOV, SP 2011-MA-065 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 6936 Regent La., Falls Church, 22042, on approx. 10,702 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 195.

Chairman Ribble noted that SP 2011-MA-065 had been administratively moved to October 26, 2011 for notices.

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~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. LTF REAL ESTATE COMPANY, INC., SP 2011-HM-056 Appl. under Sect(s). 5-303 and 5-403 of the Zoning Ordinance to permit a health club. Located at Terminus of Business Center Dr. on approx. 11.10 ac. of land zoned I-3 and I-4. Hunter Mill District. Tax Map 18-3 ((8)) 6 A3.

Chairman Ribble noted that SP 2011-HM-056 had been administratively moved to November 16, 2011 at the applicant's request.

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~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. MARK W. GRAPIN, VC 2011-MA-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in a front yard on a lot containing 36,000 sq. ft. or less. Located at 7415 Marc Dr., Falls Church, 22042, on approx. 12,916 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((2)) 94.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mark Grapin, 7415 Marc Drive, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Discussion ensued regarding the incorrectly identified accessory structure in the original notice of violation letter—the issue being a result of complaints—staff’s interactions with the applicant prior to the completion of the unpermitted tree house, whether there was a need for a building permit, and where on the property the structure would be permitted.

Eric Grapin, 7415 Marc Drive, Falls Church, Virginia, and Sean Grapin, 7415 Marc Drive, Falls Church, Virginia, the sons of the applicant, came forward and provided testimony regarding why they wanted to keep their tree house. They discussed the building of the structure, and the widespread approval of the tree house as demonstrated by a signed petition.

Mr. Grapin presented the variance request as outlined in the statement of justification submitted with the application. He expressed dissatisfaction with some of the processes in place in the County, as his neighbors did not approach him regarding any discontent with the tree house during its installation.

Discussion ensued regarding the regulations on satellite dishes, the significance of the property being a corner lot, the applicant’s understanding of the typographical error in the notice of violation, the nature of the submitted complaints, the appearance and possible screen seeping of the structure, and when the County would issue a stop-work order.

Chairman Ribble called for speakers.

Adele Knott, 7410 Marc Drive, Falls Church, Virginia, came forward. She expressed her support and appreciation of the addition of the tree house to the character of the neighborhood.

As there were no additional speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to deny VC 2011-MA-007 for the following reasons. The granting of a variance approval vested the right for the applicant to keep the tree house indefinitely, a similar structure could be built on the property without the granting of a variance, financial hardship is not meant to be considered by the Board, and the tree house was a convenience. Additionally, the owner of the property was the applicant, the present zoning was R-4, the area of the lot was 12,916 square feet, and the applicant did not satisfy the required variance standards.

Mr. Byers seconded the motion.

There was discussion regarding support and opposition to the motion. The main points discussed was whether the tree house could be built elsewhere on the property or not, the level of discretion permissible of the Board, the evidence of support from neighbors, how the application did and did not meet the variance standards, and the good faith efforts of the applicant.

Chairman Ribble called for a vote for the motion, which carried by a vote of 4-3. Mr. Smith, Mr. Beard, and Ms. Gibb voted against the motion.

Subsequent to the hearing, the applicant submitted a request for reconsideration, which was granted by the Board at the September 28, 2011 meeting. The new hearing was scheduled for November 30, 2011.

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~ ~ ~ September 21, 2011, Scheduled case

9:00 A.M. WAYNE MOTICKA, SP 2011-MA-055 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 0.0 ft. from rear lot line and 0.7 ft. from side lot line. Located at 3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with VC 2011-MA-009).

WAYNE MOTICKA, VC 2011-MA-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 7.0 ft. in height to remain in rear and side yards. Located at

3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with SP 2011-MA-055).

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Wayne Moticka, 3206 Wayne Road, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report.

Discussion ensued regarding whether portions of the fence were located on an adjacent property, the applicant's pursuance of the subject applications without a notice of violation being issued, clarification of structures on the plat, and whether the Board was permitted to take action.

Vice Chairman Hammack assumed the Chair.

There was discussion concerning the proposed structure being attached, the limited records regarding the history of the property, the previous approval of the garage, and the information presented by the various plats.

Mr. Moticka presented the special permit request as outlined in the statement of justification submitted with the application. He explained the retaining wall, his efforts in pursuing the subject applications, and his desire to have everything on his property approved in order to allow for ease of selling in the future.

In response to Board questions, Mr. Moticka explained he did not rent any space on his property, the previous owner had not informed him of the unpermitted structures, and the connection of the family room and the retaining wall.

Mr. Moticka provided additional clarification regarding the structures on the property as related to the plats from various years, the disclosures made at the settlement when the applicant obtained ownership of the property, and how his property compared to those adjacent.

There was discussion regarding the reason the fence required a variance application, whether the applicant would prefer a deferral to allow for time to explore alternative solutions, and the Board's concerns with the application.

As there were no speakers, Chairman Hammack closed the public hearing.

Mr. Byers moved to defer decision on SP 2011-MA-055 and VC 2011-MA-009 to November 30, 2011, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Smith were not present for the vote.

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The Board recessed from 11:15 a.m. to 11:24 a.m.

Chairman Ribble resumed the Chair and called the meeting to order.

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~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. SCI VIRGINIA FUNERAL SERVICES, INC. (FORMERLY NATIONAL MEMORIAL PARK, INCORPORATED), SPA 88-P-050-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-P-050 previously approved for cemetery uses and structures to permit change in permittee and site modifications. Located at 7482 Lee Hwy., Falls Church, 22042, on approx. 76.34 ac. of land zoned R-1. Providence District. Tax Map 50-1 ((1)) 36. (*Admin. moved from 8/3/11 at appl. req.*)

Chairman Ribble called the applicant to the podium.

Tara Boyd, the applicant's agent, no address given, reaffirmed the affidavit.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 88-P-050-03, subject to the proposed development conditions.

Discussion ensued regarding whether the applicant was willing to landscape surrounding properties as a method of mitigation requested by surrounding property owners, the relevance of other active cases related to the subject application, the existing procedures related to drainage requirements given application approval, lack of specificity in the development conditions related to permitted vehicular access, and concern that the proposed screening was insufficient given the state of the existing storage structure.

Ms. Boyd presented the special permit request as outlined in the statement of justification submitted with the application. She detailed the applicant's plan of action following an approval from the Board, and compared the restrictions agreed to for SPA 88-P-050-03 to a similar case. Ms. Boyd explained her preferred modifications to be made to the proposed development conditions.

There was discussion regarding soil removal and storage, the impact of a decision deferral, a quantifiable way of determining when a stockpile needs to be removed, the repair of the dilapidated structure and fence on the property, the height of the adjacent apartment building preventing the applicant from providing adequate screening, the paths used by the different vehicles and equipment involved in moving soil within and off the property, development conditions preferred by the applicant versus those proposed as related to constructing mausoleums and a barrier fence, and the applicant's plan for remediation for damage dealt to neighboring properties.

Chairman Ribble called for speakers.

Blaire Harsh, 2609 Holly Manor Drive, Falls Church, Virginia, came forward in opposition. He discussed the danger of falling trees and flooding, the degradation of properties surrounding the cemetery, and the applicant being a bad neighbor. He explained what he wanted was for the applicant to make remediation efforts for the damage suffered as a result of their operations.

Ms. Hedrick clarified that the applicant's originally proposed remediation plan was removed when staff learned the necessary approval to use private easements was not going to be obtained.

Mr. Harsh expressed wariness at allowing the applicant to construct barrier fences, and explained the drainage pipe on his property.

There was discussion about the concern that the inspections performed evaluated the incorrect drainage pipe, and the steps neighboring property owners should take in order to seek proper remediation.

The following speakers came forward: Todd Lester, 2613 Holly Manor Drive, Falls Church, Virginia; Heather Variava, 2615 Holly Manor Drive, Falls Church, Virginia; Meryl Curley, 2570 Holly Manor Drive, Falls Church, Virginia; Katerina Cuto-Brand, President of the Home Owners Association; and Sue Moy, 2605 Holly Manor Drive, Falls Church, Virginia. Their main points included the history of the applicant as a poor neighbor, the desire for remediation, the impact of the damage on the use of properties by their occupants, and the economic impact of hiring private engineers.

Discussion ensued regarding concern about the possibility that without a private engineer working for the affected property owners, the properties may still flood following any remediation and preventative measures provided by the applicant.

There was also discussion about the development of the applicant's remediation plan, the inability to follow through with the original plan due to not being granted access to necessary easements, and the justification for why property owners did not grant easement access.

There was an extensive explanation of the existing drainage system on the applicant's property, the intended solution to the drainage issues, the impact of neighboring properties' added structures on the existing drainage concerns, and the function of the silt fence.

Mr. Hart moved to continue SPA 88-P-050-03 to October 26, 2011, at 9:00 a.m., with all new comments to be submitted by October 14, 2011. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

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~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. WRNS ASSOCIATES, A 2011-DR-017

Chairman Ribble noted that A 2011-DR-017 was administratively moved to October 26, 2011, at the appellant's request.

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~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. GREAT FALLS EQUIPMENT REPAIR, LLC, A 2011-DR-019

Chairman Ribble noted that A 2011-DR-019 was administratively moved to October 26, 2011, at the appellant's request.

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~ ~ ~ September 21, 2011, Scheduled case of:

9:00 A.M. CLS LAWN & LANDSCAPE, A 2011-DR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a contractor's offices and shops and a storage yard without site plan approval, a valid Non-Residential Use Permit, valid Building Permits, or approved sign permit applications and that this business has established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd. on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 4/20/11, 6/8/11, and 9/14/11 at appl. req.)

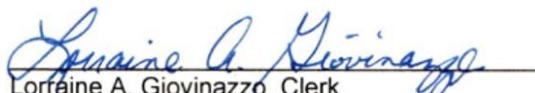
Chairman Ribble noted that A 2011-DR-003 was administratively moved to October 26, 2011, at the appellant's request.

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As there was no other business to come before the Board, the meeting was adjourned at 1:40 p.m.

Minutes by: Paula A. McFarland/Emily J. Armstrong

Approved on: January 24, 2018


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, September 28, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; and Paul W. Hammack, Jr. Nancy E. Gibb and Norman P. Byers were absent from the meeting.

Chairman Ribble called the meeting to order at 9:04 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ September 28, 2011, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC.,
SP 2011-SP-069

Chairman Ribble noted that SP 2011-SP-069 had been administratively moved to November 30, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 28, 2011, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit addition to remain 20.0 feet from front lot line and accessory storage structures to remain 0.0 feet from rear lot line and 1.2 feet from the side lot line. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006). (*Admin. moved from 12/1/10 and 5/4/11 for ads.*) (*Admin. moved from 1/26/11 at appl. req.*) (*Decision deferred from 6/22/11.*)

9:00 A.M. ASHLEY NICOLE M. LE, VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage and accessory structures greater than 200 square feet in size. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5))10 (Concurrent with SP 2010 LE-053). (*Admin. moved from 12/1/10 and 5/4/11 for ads.*) (*Admin. moved from 1/26/11 at appl. req.*) (*Decision deferred from 6/22/11.*)

Chairman Ribble reminded the Board that the applications were for decision only.

Mr. Smith commented on the expressed concern about the location of the storage facilities that encroached upon the adjoining property. He asked whether the 30 percent coverage issue would remain if the Board disallowed the storage facilities.

Shelby Johnson, Staff Coordinator, said she was unsure. The calculation included not only the sheds but a significant part of the driveway and the garage. She said it appeared that it still could be over the 30 percent limitation even without the sheds.

In response to a question from Mr. Hammack, Ms. Johnson said the garage had been previously taxed. She said there had been a determination by the Zoning Administration Division that it was vested.

Mr. Hart asked if Ms. Johnson had been in contact with the applicant and whether she had requested additional time to straighten out the remaining issues. Ms. Johnson said that when she spoke to the applicant the previous week, she had indicated she was awaiting word from the attorney assigned to her by Legal Aid.

Mr. Hart and Ms. Johnson discussed the notations on the plat which indicated that 34 percent of the rear yard was covered. Mr. Hart said he felt it looked like more than 50 percent of the yard.

Mr. Hammack said his inclination was to approve-in-part and deny-in-part. He said he was hesitant to take action with the applicant awaiting consultation with her attorney.

In response to a question from Mr. Hammack, Ms. Johnson said she believed the first contact the applicant had with Legal Aid was in August. In terms of how long it might be before she heard from the attorney, Ms. Johnson did not know.

Mr. Hammack moved to defer decision on SP 2010-LE-053 and VC 2010-LE-006 until October 26, 2011, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

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~ ~ ~ September 28, 2011, Scheduled case of:

9:00 A.M. LINDA M. FIGURA, SP 2011-MA-071 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building locations to permit deck to remain 8.4 ft., patio 2.2 ft. and stoop 6.9 ft. from side lot lines, and accessory storage structure to remain 6.8 ft. from rear lot line and 2.7 ft. from side lot line. Located at 6408 Second St., Alexandria, 22312, on approx. 5,500 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((8)) (B) 36 and 37.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Linda M. Figura, 6408 2nd Street, Alexandria, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a reduction of minimum yard requirements based on errors in building locations to permit a deck to remain 8.4 feet from the eastern side lot line; an at-grade patio to remain 2.2 feet from the eastern side lot line; a stoop to remain 6.9 feet from the western side lot line; and an accessory storage structure, frame shed, which measured 10.3 feet in height, to remain 6.8 feet from the rear lot line and 2.7 feet from the eastern side lot line.

Ms. Figura presented the special permit request as outlined in the statement of justification submitted with the application. She said that soon after she purchased the property in 1998, she hired a contractor to build a shed and patio, noting that she had no knowledge of any zoning requirements. Ms. Figura stated that although she hired a contractor to replace the old deck in 2009 and the contractor said he would obtain any necessary permits required by the County, he did not. She said the errors were made in good faith, and if she was required to remove the shed, patio, and deck, it would cause her unreasonable hardship.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-MA-071 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA M. FIGURA, SP 2011-MA-071 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building locations to permit deck to remain 8.4 ft., patio 2.2 ft. and stoop 6.9 ft. from side lot lines, and accessory storage structure to remain 6.8 ft. from rear lot line and 2.7 ft. from side lot line. Located at 6408 Second St., Alexandria, 22312, on approx. 5,500 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((8)) (B) 36 and 37. 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 28, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant has presented testimony showing compliance with the required standards.
3. The stoop, deck, and patio do not seem to be bothering anyone.
4. The patio is at grade and, given the existing fences and configuration of the lot, it would be very difficult for anyone to see much of it anyway.
5. The applicant did not do any the deck in this location without a permit; she hired a contractor to do it and it was the contractor that messed up.
6. The deck also is barely closer to the lot line than the existing house.
7. It appears to be an attractive and well-constructed deck.
8. If the deck is permanent and inspected, there should not be any problem with it.
9. The steps on the other side are relatively modest.
10. The steps are closer to the house than even the air conditioner and should not be a problem.
11. The shed in the back is not in an ideal location, but it seems to have been there for a long time.
12. With the topography, it is somewhat concealed.
13. There are fences around it, making it mostly difficult to see except for the roof.
14. Given the topography on the lot and the existing landscaping, it would not be appropriate to have to move that.
15. This is a very narrow property; it is actually two little lots put together, but still only 50 feet wide.
16. Given all this, there is not going to be any significant negative impact on anyone.

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 the Zoning Ordinance.

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

1. This special permit is approved only for the location of a deck, at-grade patio, stoop and an accessory storage structure (frame shed), as shown on the plat prepared by Alexandria Surveys International, LLC, dated October 14, 2010 as revised through May 6, 2011, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the deck within 120 days of approval of this special permit or the structure shall be removed or relocated to comply with applicable Zoning Ordinance provisions.

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. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

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~ ~ ~ September 28, 2011, Scheduled case of:

9:00 A.M. DAVID A. WATSON, SP 2011-SP-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.6 ft. from side lot line. Located at 9514 Debra Spradlin Ct., Burke, 22015, on approx. 11,086 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((17)) 22.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David A. Watson, 9514 Debra Spradlin Court, Burke, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to allow a reduction of certain yard requirements to permit construction of a two-story addition 10.6 feet from the side lot line. The addition would enlarge living space on the first floor and expand the bedroom space on the second floor. Ms. Horner noted that the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 1.4 feet, or 1.1 percent, was requested. Staff recommended approval of SP 2011-SP-070 subject to the proposed development conditions.

Mr. Watson presented the special permit request as outlined in the statement of justification submitted with the application. He referenced two letters of recommendation from supporting neighbors.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2011-SP-070 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID A. WATSON, SP 2011-SP-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.6 ft. from side lot line. Located at 9514 Debra Spradlin Ct., Burke, 22015, on approx. 11,086 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((17)) 22. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 28, 2011; and

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

1. The owner of the property is David A. Watson and Deborah C. Watson.
2. Staff has recommended approval and the Board adopts their recommendations and rationale as contained in the staff report.
3. This is a pretty modest and simple request.
4. This is as easy as they come for the Board, a 1.1 percent reduction in the side yard setback requirements.
5. It is certainly a very reasonable location for this addition.
6. It will follow the same eastern line of the garage.
7. It meets the requirements of Section 8-922.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 471 square feet) of the addition, as shown on the plat prepared by Dominion Surveyors Inc., dated/signed May 4, 2011 as revised through June 27, 2011 by George M. O'Quinn, Land Surveyor, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,391 square feet existing + 5,086.5 square feet (150%) = 8,477.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

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~ ~ ~ September 28, 2011, Scheduled case of:

9:00 A.M. SJD-ZP, LLC DBA ZPIZZA, A 2011-PR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating an accessory service use in accordance with the limitations and conditions of Non-Residential Use Permit #110970039 in violation of Zoning Ordinance provisions. Located at 8442 Lee Hwy., Fairfax, 22031, on approx. 1.2 ac. of land zoned I-5 and H-C. Providence District. Tax at Map 49-3 ((15)) 2.

Chairman Ribble noted that A 2011-PR-028 had been administratively moved to November 30, 2011, at 9:00 a.m., at the appellant's request.

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~ ~ ~ September 28, 2011, Scheduled case of:

9:00 A.M. PAUL D. RINALDI TRUST, KATREEN K. RINALDI TRUST, DOODY CALLS FAIRFAX VA LLC, A 2011-PR-020

Chairman Ribble noted that A 2011-PR-020 had been administratively moved to November 30, 2011, at 9:00 a.m., at the appellants' request.

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~ ~ ~ September 28, 2011, Scheduled case of:

9:00 A.M. GEORGE KARSADI, A 2011-MV-021

Chairman Ribble noted that A 2011-MV-021 had been withdrawn.

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~ ~ ~ September 28, After Agenda Item:

Request for Additional Time
Armando Estrada Fernandez, SP 2010-PR-028

Mr. Hammack moved to approve four months of additional time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting. The new expiration date was October 28, 2011.

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~ ~ ~ September 28, After Agenda Item:

Request for Intent to Defer
Sridevi V. Sarma, SP 2011-DR-054 and VC 2011-DR-008

Mr. Hart moved to approve the request for an intent to defer to November 30, 2011, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

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~ ~ ~ September 28, After Agenda Item:

Approval of BZA Meeting Dates for 2012

Mr. Hammack moved to approve the proposed meeting dates for 2010 as stated in the memorandum dated September 20, 2011. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Byers were absent from the meeting.

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~ ~ ~ September 28, After Agenda Item:

Request for Reconsideration
Mark W. Grapin, VC 2011-MA-007

Chairman Ribble moved to approve the request for reconsideration. Mr. Beard and Mr. Smith seconded the motion, which carried by a vote of 4-1. Mr. Hart voted against the motion. Ms. Gibb and Mr. Byers were absent from the meeting.


Susan Langdon, Chief, Special Permit and Variance Branch, said she would contact the applicant to obtain a new hearing date.

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As there was no other business to come before the Board, the meeting was adjourned at 9:40 a.m.

Minutes by: Suzanne Frazier

Approved on: May 21, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, October 5, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. JAMES EPISCOPAL CHURCH AND T-MOBILE NORTHEAST LLC, SPA 86-V-052-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 86-V-052 previously approved for church with child care center to permit the addition of a telecommunications facility. Located at 5614 Old Mill Rd. on approx. 4.88 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((1)) 4B. (Indefinitely deferred from 10/6/09 at appl. req.) (Reactivated and scheduled for 11/17/10) (Admin. moved from 11/17/10, 1/26/11, 2/16/11, 4/20/11, and 6/22/11 at appl. req.)

Chairman Ribble noted that SPA 86-V-052-03 had been administratively moved to January of 2012, at 9:00 a.m., at the applicants' request.

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. KIMBERLY HARRIS, SP 2011-DR-058 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 0.3 ft. from rear lot line and 0.0 ft. from side lot line. Located at 2148 Lily Pond Dr., Falls Church, 22043, on approx. 11,924 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((6)) (G) 20.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler P. Ahrens, the applicant's agent, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart and Ms. Cho discussed the original submission for the pool from 1969, with Ms. Cho noting that no additional structure had been proposed to house the pool equipment. Mr. Hart commented that the accessory structures each appeared to encroach onto Lot 19. Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that the eaves did minimally encroach onto Lot 19.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he had submitted a letter of support signed by all ten neighbors who were sent notification letters, including Lot 19.

In response to a question from Mr. Hammack, Mr. Ahrens said that although it appeared on the plat to represent three different structures, it was only one with a common roof.

Mr. Hammack and Mr. Ahrens discussed the original foundation for the accessory structure, with Mr. Ahrens noting that the foundation had not changed in 20 years. Mr. Ahrens explained that the two original structures were built in the '60s and '70s, and the small shed was added three years ago.

In response to a question from Mr. Hammack, Ms. Cho said that although the revisions were made three years ago, a complaint was lodged with the County only last year. Mike Adams, supervisor with the Department of Code Compliance, said the complaint was received on February 6, 2011, and was because

the accessory structure was too close to the fence. Mr. Ahrens commented that he believed the complaint came from a disgruntled contractor, since the surrounding homeowners supported the application.

Mr. Hart and Mr. Ahrens discussed the separate sections of the structure, with the pool equipment on the left, the workshop on the right, the cabana in the middle, and the workshop and cabana being the older portions.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision for additional information about the expansion.

Mr. Hart seconded the motion, which failed by a vote of 2-5. Chairman Ribble, Ms. Gibb, Mr. Beard, Mr. Byers, and Mr. Smith voted against the motion.

Ms. Gibb moved to approve SP 2011-DR-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

KIMBERLY HARRIS, SP 2011-DR-058 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 0.3 ft. from rear lot line and 0.0 ft. from side lot line. Located at 2148 Lily Pond Dr., Falls Church, 22043, on approx. 11,924 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((6)) (G) 20. 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 5, 2011; and

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

1. The applicant is the owner of the property.
2. This is a close call.
3. This is a big structure.
4. There was testimony that the structure here composed of three units was basically replacing structures that were similar in size.
5. The concrete patio that it is sitting on exists already, all the way to the property line, and has for a number of years, predating construction of the sheds.
6. The Board received letters in support from all the neighbors surrounding the property.
7. It is a nice looking structure.
8. With the development conditions contained in the staff report, the inspections that the Board considers necessary will be obtained.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the accessory structure, as shown on the plat prepared by Scartz Surveys, dated March 18, 2011, revised June 10, 2011, as submitted with this application and is not transferable to other land.
2. Appropriate permits and final inspections for the accessory structure shall be diligently pursued and obtained within six months of final approval of this application.

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. Beard seconded the motion, which carried by a vote of 4-3. Mr. Byers, Mr. Hammack, and Mr. Hart voted against the motion.

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. MINERVA ESPINOSA, SP 2011-LE-064 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 4.0 ft. from side lot line, awning 2.7 ft. from side lot line, and accessory storage structure to remain 0.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 6735 Bowie Dr., Springfield, 22150, on approx. 9,783 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (8) 2.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Minerva Espinosa, 6735 Bowie Drive, Springfield, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Espinosa presented the special permit request as outlined in the statement of justification submitted with the application. She said the shed was on the property when she bought the house in 1998, not knowing that the previous owner had put an unapproved addition on the house by enclosing the carport.

Responding to a question from Mr. Hart, Ms. Espinosa said the original carport already had walls surrounding it, but she put up better walls so it would be more energy efficient.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-LE-064 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MINERVA ESPINOSA, SP 2011-LE-064 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 4.0 ft. from side lot line, awning 2.7 ft. from side lot line, and accessory storage structure to remain 0.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 6735 Bowie Dr., Springfield, 22150, on approx. 9,783 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (8) 2. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 2011; and

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

1. The applicant is the owner of the property.
2. The Board determined that the applicant is in compliance with A through G.
3. There have been no complaints.
4. The shed has neither plumbing nor electricity from the standpoint of needing permits.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the addition, awning and accessory storage structure as shown on the plat prepared by Dominion Surveyors Inc., but not to the extent of any encroachment onto adjoining properties, dated and sealed January 13, 2010 and revised July 6, 2010, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the addition shall be diligently pursued and obtained within six months of final approval of this application.

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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. SRIDEVI V. SARMA, SP 2011-DR-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 open deck to remain 4.8 ft. from one side lot line, 0.8 ft. from other side lot line and 1.6 ft. from rear lot line. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with VC 2011-DR-008). (Decision deferred from 8/3/11)

9:00 A.M. SRIDEVI V. SARMA, VC 2011-DR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with SP 2011-DR-054). (Decision deferred from 8/3/11)

Chairman Ribble noted that on September 28, 2011, the Board had approved an Intent to Defer the cases to November 30, 2011. Mr. Hart moved to defer SP 2011-DR-054 and VC 2011-DR-008 to November 30, 2011, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. PAULINE B. RAMPRASAD, SP 2011-SP-067 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit existing deck to remain 17.3 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of addition 16.4 ft. from front lot line. Located at 6462 Honey Tree Ct., Burke, 22015, on approx. 14,716 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((10)) 11.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler P. Ahrens, the applicant's agent, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial of SP 2011-SP-067 for the proposed two-story addition for the reasons outlined in the staff report, specifically that there were alternate locations available on the site.

In response to a question from Mr. Hart, Ms. Hedrick said a development condition regarding screening of the addition was not included since staff was recommending denial. Regardless, she said she did not believe there was adequate space to provide any kind of vegetative buffer given the trail easement and future widening of Old Keene Mill Road.

Mr. Hart and Ms. Hedrick discussed alternate locations for the addition, with Ms. Hedrick noting that multiple additions had already been constructed on the property. She said that if the addition was approved as proposed, the house would be approximately 80 feet in length.

Mr. Byers commented on the planned widening of Old Keene Mill Road to four lanes in that area, further limiting the available space on the property.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He noted that 6444 Honey Tree Court, a nearby residence, appeared to have the same structure on the front of their house, comparable to what the applicant was requesting, except it was two stories. Mr. Ahrens also stated that the application property was consistent with the bulk and size of the rest of the neighborhood. However, he said the applicant was willing to reduce the structure by an additional four feet. Mr. Ahrens said the applicant was nearing retirement and was concerned that she have enough space if her grown son, his wife, and their child moved back in with her. He stated he was willing to defer decision on the application to work out a compromise with staff.

In response to a question from Mr. Hart, Ms. Hedrick said that the widening of Old Keene Mill Road was included in the Comprehensive Plan; however, the design had not been finalized.

Mr. Hart and Mr. Ahrens discussed the location of the eight-foot trail easement in relation to the proposed addition. Mr. Hart said he felt it would be like living in a fishbowl.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on SP 2011-SP-067 to November 16, 2011, at 9:00 a.m. He said he was not troubled by the deck or fence, but that the two-story addition had some geometric challenges. Mr. Hart noted the applicant's willingness to reduce the size of the addition.

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

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. DANIEL WEINBERG, SP 2011-MV-072 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.5 ft. from rear lot line. Located at 2501 Lisbon La., Alexandria, 22306, on approx. 18,692 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((19)) 3.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Daniel Weinberg, 2501 Lisbon Lane, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-MV-072, subject to the proposed development conditions.

Mr. Weinberg presented the special permit request as outlined in the statement of justification submitted with the application. He said the main purpose of the application was to allow him and his wife to remain in the

house as they age. Mr. Weinberg said he had observed his elderly neighbors having difficulty going up and down stairs to get to a bathroom, giving him the idea to install one on the main floor, which was reinforced following a quadriceps tendon tear he had suffered. Mr. Weinberg said he also wanted to add a larger room to allow for hospice care, if necessary. He noted that he had verbal approval of all his neighbors.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-MV-072 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL WEINBERG, SP 2011-MV-072 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.5 ft. from rear lot line. Located at 2501 Lisbon La., Alexandria, 22306, on approx. 18,692 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((19)) 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 October 5, 2011; and

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

1. The applicant is the owner of the property.
2. Staff has recommended approval.
3. The applicant is making a modest addition to his home which is basically on the same footprint as an existing deck.
4. The applicant testified that he has the support of his neighbors.
5. It appears that the impact will be very minimal.
6. The Board has made the findings 1 through 6.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story sunroom addition (approximately 503 square feet), as shown on the plat prepared by ALine Architecture, LLC, dated March 29, 2011, as revised through April 27, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,440 square feet existing + 3,660 square feet (150%) = 6,100 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of

a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. ARTYA, INC., D/B/A FAIROUZ MEDITERRANEAN CAFE, SP 2011-MA-068 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a commercial recreation facility (hookah bar). Located at 3815 A/F South George Mason Drive, Falls Church, 22041, on approx. 2,350 sq. ft. of land zoned C-6, CRD and SC. Mason District. Tax Map 62-3 ((13)) 9 and 22.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Sam W. Burgan, the applicant's agent, 5673 Columbia Pike, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Horner said the applicant had operated a business at the site since 2006, noting that staff from the Fire Marshal's Office, the Mason District Police Department, and the Department of Code Compliance had expressed concerns over noise, parking, and access, revealed by their inspections of the site. She said staff only supported approval of the request with adoption of specific development conditions which addressed appropriate parking, noise, maintaining compliance with the Virginia Clean Air Act, limited hours of operation to no later than 2:00 a.m., and provided appropriate ventilation.

Mr. Hammack noted that the hours of operation for live entertainment had been revised, as were the holiday hours. Ms. Horner responded that both were at the applicant's request.

In response to a question from Mr. Hammack, Ms. Horner explained that the designation of the use as a "private club" was made by the Virginia Department of Health, stating that the necessary criteria had been met by the applicant. It was not a Fairfax County zoning designation.

Mr. Smith and Ms. Horner discussed the parking requirements and noise generated from the parking lot.

In response to a question from Mr. Hart, Tim Miscovich from the Fire Marshall's Office said the parking lot was usually the fullest between the hours of 11:00 p.m. to 2:00 a.m., but he had not seen anyone parking in the fire lanes or aisles, and no tickets had been written.

Mr. Burgan presented the special permit request as outlined in the statement of justification submitted with the application. He said the purpose of the special permit request was to bring the property into compliance with the Zoning Ordinance, noting that several citations had been previously issued. Mr. Burgan addressed the parking and noise issues, stating that 85 percent of the businesses were only open until approximately

8:00 to 9:00 p.m. He said a large number of patrons did not drive, but walked from the nearby high rises. Mr. Burgan noted that the application had the support of the Baileys Crossroads Revitalization Corporation.

Mr. Hammack and Mr. Burgan discussed the reasons for and the requirements involved in designating the business as a private club, at the suggestion of the Health Department, to avoid having a separate ventilation unit.

Mr. Smith and Mr. Burgan discussed the parking situation. Mr. Burgan acknowledged that the parking lot was close to capacity, but still felt there was adequate parking available. In response to a question from Mr. Smith, Mr. Burgan said that approximately 20 to 30 percent of the patrons walked from the nearby high rise buildings.

Chairman Ribble called for speakers.

John Farrell, no address given, came forward to speak in opposition. He said he was representing the Aladdin restaurant, a neighbor of the applicant. He discussed the parking situation, stating that it was supposed to be an industrial space, and the parking spaces were based on that assumption. Mr. Farrell said he had seen cars parked in the fire lanes.

Mr. Hart made a disclosure regarding Mr. Farrell's law firm, but indicated he did not believe his ability to participate in the case would be affected.

In response to a question from Mr. Hart, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the shopping center currently recognized two other uses: eating establishments and offices. She said shopping centers anticipated different uses at different times of the day. Ms. Stanfield stated that in this case, based on the changing of tenants over the years, there had been five parking tabulation studies done since 1983.

Mr. Hart, Ms. Gibb, Mr. Smith, Mr. Byers, Mr. Miscovich, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the parking situation and the Code requirements for a restaurant. Mr. Byers questioned why this was not considered a restaurant, noting the number of chairs anticipated by the applicant. Ms. Langdon said the private club distinction was a Health Department designation, a separate process that Fairfax County was not involved in.

In his rebuttal, Mr. Burgan said the applicant was a small business. He stated that parking spaces were adequate based on the number of patrons using the establishment and considering that some patrons would be walking.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2011-MA-068 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTYA, INC., D/B/A FAIROUZ MEDITERRANEAN CAFE, SP 2011-MA-068 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a commercial recreation facility (hookah bar). Located at 3815 A/F South George Mason Drive, Falls Church, 22041, on approx. 2,350 sq. ft. of land zoned C-6, CRD and SC. Mason District. Tax Map 62-3 ((13)) 9 and 22. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 2011; and

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

1. The present zoning is C-6, SC, and CRD.
2. The gross area of the lot is 2,350 square feet.
3. This is a somewhat difficult case.
4. The parking poses a number of different challenges.
5. There are 311 parking spaces at this shopping center.
6. The Board needs to be consistent with how they are handling these cases.
7. The Board looked at the others similarly with a shopping center rate. It is how the Board reviewed them.
8. There was some conflicting testimony.
9. County staff went out on a Friday night and saw the lot at what is understood to be one of the peak hours at 60 percent use.
10. We heard from a Fire Marshall Lieutenant that talked about being out there maybe a half a dozen times and it has not been 100 percent full, although it is getting close.
11. John Farrell went out and had seen where it has been full.
12. In this case, the Board does not have any other opposition.
13. There is a dense residential area out there; Mr. Smith is familiar with it and used to work out there in the summer at Skyline.
14. There was some conflicting testimony with different experiences from the Aladdin Restaurant than the applicant, who referenced the 20 to 30 percent of patrons who are walking.
15. The Board was not particularly surprised by that number.
16. The Bailey's Crossroads Revitalization Corporation has submitted a letter endorsing and supporting the application.
17. There was no other opposition other than the Aladdin Restaurant, which is a similar use in proximity.
18. The Board gave great deference to the experts.
19. The County has analyzed this, and the Board wants to treat it consistently.
20. The Board notes that the County has recommended approval in this case and will adopt their rationale.

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 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, Artya, Inc. d/b/a Fairouz Mediterranean Café and is not transferable without further action of this Board, and is for the location indicated on the application, 3815-A/F South George Mason Drive, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit site layout plan provided by the applicant, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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 use shall be in general conformance with the floor plan, included as Attachment 1. Minor modifications to the floor plan may be permitted.

6. Maximum occupancy shall be based on the approved Non-RUP occupancy as issued by the Fairfax County Department of Public Works and Environmental Services, and subject to final approval by the Fire Marshal's office, but under no circumstances shall the occupancy exceed 88.
7. The maximum hours of operation of the use shall be limited to 11:00 a.m. to 2:00 a.m., daily.
8. Employees shall be a minimum of eighteen (18) years of age.
9. Entry to the establishment shall be limited to customers who are eighteen (18) years of age and older. A door counter shall be present during the hours of operation to validate the age of patrons and to ensure compliance with the maximum occupancy permitted.
10. The number of required parking spaces shall be provided in conformance with the provisions of Article 11 of the Zoning Ordinance, as determined by DPWES. All parking for the use shall be on site of the BuildAmerica shopping center.
11. If alcohol is served, the applicant shall maintain a valid ABC liquor license at all times, and the site shall be in conformance with the provisions of said license.
12. If food is served, the applicant shall maintain a valid food handler's permit with the Virginia Department of Health at all times, and the site shall be in conformance with the provisions of said permit at all times.
13. The applicant shall maintain the designation of a "private club," whereby the clean air act provisions exempt the subject property from separate ventilated spaces for food sales, at all times and maintain conformance with said designation at all times. In the event the applicant loses the exemption of clean air act provisions, the applicant shall amend the interior site layout to become in conformance with all applicable provisions of the Virginia Department of Health for Eating Establishments and apply for all applicable permits from Fairfax County. In the event the Clean Air Act is amended to allow facilities to operate through exemptions, the applicant can continue to operate even if it ceased its private club designation.
14. Live entertainment shall be limited to Friday and Saturday, as well as special occasions such as New Year's Eve, Christmas Eve, Halloween, St. Patrick's Day, Valentine's Day, Martin Luther King Jr. Day, President's (Washington's) Day, Easter, Labor Day, Memorial Day, Mother's Day, Independence Day, Eid Al Fitr, Eid Al Adha, Columbus Day, and Thanksgiving, between the hours of 10:00 p.m. and 2:00 a.m., and the applicant shall amend the building plan and install a double-door vestibule system to reduce noise spillage to areas outside of the premises walls. The applicant shall also install triple pane glass on the front façade of the building to reduce noise from exiting the interior of the premises.
15. The applicant shall provide appropriate ventilation for a smoking lounge to prevent smoke infiltration into adjacent units through the building plan review process to the Department of Public Works and Environmental Services.
16. The site shall be available for inspection by the Fairfax County Office of the Fire Marshal during the hours of operation.
17. All exit doors shall be installed with panic hardware, to the satisfaction of the Fairfax County Office of the Fire Marshal.
18. The applicant shall reduce the GFA of the subject property in order to meet all parking requirements. Prior to the issuance of a new Non Rup, the interior space shall be altered as per the floor plan included in Attachment 1, and/or any other floor plans approved by DPWES, and all building permits and final inspections shall be obtained.
19. The use shall be open to inspection by all departments of the County of Fairfax during the hours of operation.

20. The applicant shall complete a Fire Safety Technical Inspection once a year. A copy of the inspection shall be filed with the Fairfax County Department of Planning and Zoning.
21. Prior to approval of a new Non-RUP, a tenant layout plan shall be submitted for review in accordance with the currently adopted Virginia Construction Code.
22. The Non-RUP shall include restrictions on the maximum occupancy permitted, number of permitted tables and the maximum hours of operation.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval unless the use has been established as outlined above. 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 6-1. Mr. Byers voted against the motion.

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. SHAROKH TAYEBI, A 2011-DR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-E District in violation of Zoning Ordinance provisions. Located at 900 Utterback Store Rd. on approx. 1 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 27. (Decision deferred from 6/22/11)

Chairman Ribble reminded the Board that the case was for decision only.

Roger Marcy, Staff Coordinator, Zoning Administration Division, noted that the case had been deferred so that the appellant could file for a special permit. He said he met with the appellant immediately after the public hearing regarding the special permit process and then spoke with him on the telephone, but that no application had been filed. Mr. Marcy asked that the Board uphold the decision of the Zoning Administrator.

In response to questions from Mr. Beard, Mr. Marcy said the addition was built in 1986, prior to the appellant's purchase of the house. He said that no changes had been made to the property since the last inspection.

The appellant, Sharokh Tayebi, deferred to Georgette McKee, a tenant of the property, to speak on his behalf. She said that letters were written to the department that issued the Notice of Violation, asking for further clarification of the violations, but no response was received. Ms. McKee said that since the public hearing in June, the tenant had moved out of the second dwelling unit, noting that it was uninhabitable due to mold. She said Mr. Tayebi had received an estimate of \$10,000 to make the house habitable, but that it would be a financial hardship on him to do so.

Al Sanchez, a building inspector with the Department of Code Compliance, said he did respond to an e-mail from Mr. Tayebi, saying he wanted to hold off on any further action regarding the addition until after this hearing. Mr. Sanchez said the current violations on the site were too numerous to count.

Mike Adams, Supervisor with the Department of Code Compliance, said that Ms. McKee's questions should have been directed to the Zoning Administration Division.

Mr. Beard commented that nothing he had heard should have prevented the appellant from filing a special permit application.

Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. He said he felt this was a fairly straightforward case, and the appellant still could have filed a special permit application while awaiting word on what future actions might be necessary. Mr. Beard said that based upon inspection of the property and statements on the condition of the premises, the Board should uphold the Zoning Administrator.

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

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. VASELIUS LIMITED LIABILITY COMPANY, A 2011-LE-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has allowed the erection of a sign that does not conform to the approved sign permit and the installation of numerous signs without approved sign permits on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 6701 Franconia Rd., Springfield, 22150, on approx. 16,015 sq. ft. of land zoned C-8, H-C and SC. Lee District. Tax Map 90-2 ((1)) 97.

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jill Cooper, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant wanted to continue the public hearing to allow time to apply for a sign permit. She said staff supported a deferral to January 11, 2012.

Ms. Gibb moved to continue A 2011-LE-022 to January 11, 2012, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 5, 2011, Scheduled case of:

9:00 A.M. CAPITAL ONE BANK (USA), N.A., A 2011-PR-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination to accept for processing Rezoning Application RZ 2011-PR-009. Located at 1820 Dolley Madison Blvd., McLean, 22102, on approx. 9.41 ac. of land zoned C-3 and H-C. Providence District. Tax Map 29-4 ((5)) 9, 9A and 10A.

9:00 A.M. CAPITAL ONE BANK (USA), N.A., A 2011-PR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination to accept for processing Rezoning Application RZ 2011-PR-010. Located at 1651 and 1700 Old Meadow Rd., McLean, 22102, on approx. 6.93 ac. of land zoned C-3 and H-C. Providence District. Tax Map 29-4 ((6)) 101A and 102.

9:00 A.M. CAPITAL ONE BANK (USA), N.A., A 2011-PR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination to accept for processing Rezoning Application RZ 2011-PR-011. Located at 1575, 1600 and 1616 Anderson Rd. and 7598 and 7600 Colshire Dr., McLean, 22102, on approx. 22.50 ac. of land zoned C-3 and H-C. Providence District. Tax Map 30-3 ((1)) 6A, 6B, 6C and 6D; 30-3 ((28)) A, C1, 4B and 4C (formerly 4A1).

9:00 A.M. CAPITAL ONE BANK (USA), N.A., A 2011-PR-027 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination to accept for processing Proffered Condition Amendment Application PCA 92-P-001-09. Located at 1820 Dolley Madison Blvd., 1651 and 1700 Old Meadow Rd., 1575, 1600 and 1616 Anderson Rd., and 7598 and 7600 Colshire Rd., McLean, 22102, on approx. 38.84 ac. of land zoned C-3 and H-C. Providence District. Tax Map 29-4 ((5)) 9, 9A and 10A; 29-4 ((6)) 101A and 102; 30-3 ((1)) 6A, 6B, 6C and 6D; 30-3 ((28)) A, C1, 4B and 4C (formerly 4A1).

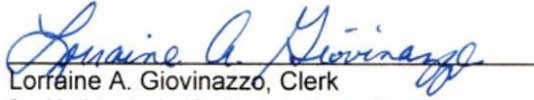
Chairman Ribble noted that A 2011-PR-024, A 2011-PR-025, A 2011-PR-026, and A 2011-PR-027 had been administratively moved to February of 2012.


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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: Suzanne Frazier

Approved on: July 23, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, October 26, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit addition to remain 20.0 feet from front lot line and accessory storage structures to remain 0.0 feet from rear lot line and 1.2 feet from the side lot line. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006). (Admin. moved from 12/1/10 and 5/4/11 for ads) (Admin. moved from 1/26/11 at appl. req.) (Decision deferred from 6/22/11 and 9/28/11)

9:00 A.M. ASHLEY NICOLE M. LE, VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage and accessory structures greater than 200 square feet in size. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5))10 (Concurrent with SP 2010 LE-053). (Admin. moved from 12/1/10 and 5/4/11 for ads) (Admin. moved from 1/26/11 at appl. req.) (Decision deferred from 6/22/11 and 9/28/11)

Chairman Ribble stated that staff had received a letter from the attorney representing the applicant requesting a deferral.

Mr. Hammack moved to defer the decisions on SP 2010-LE-053 and VC 2010-LE-006 to January 11, 2012, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. LUCIO SEJAS, SP 2011-MA-066 Appl. under Sect(s). 8-918 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 9.5 ft. from side lot line and open deck 1.42 ft. from side lot line and reduction of certain yard requirements to permit construction of second story addition 8.0 ft. from side lot line. Located at 3911 Larchwood Rd., 22041-1107 on approx. 10,214 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 203. (Decision deferred from 9/14/11)

Chairman Ribble reminded the Board that the application was for decision only.

Ms. Horner reminded the Board of the reason for the deferral, specifically giving the applicant time to explore options for the second story addition. Through that process, the applicant amended their plans and provided new architectural elevations showing a second story addition which could be developed by right. She said the applicant had withdrawn the request for the reduction of certain yard requirements as previously submitted. Mr. Horner noted that the remaining requests were to allow an open deck and addition, both built in error, to remain. She noted that there were revised development conditions which addressed the open deck and existing first story addition.

Chairman Ribble asked if the applicant was present. Ms. Horner replied that she did not see him in the audience.

Mr. Byers moved to approve SP 2011-MA-066 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LUCIO SEJAS, SP 2011-MA-066 Appl. under Sect(s). 8-918 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 9.5 ft. from side lot line and open deck 1.42 ft. from side lot line and reduction of certain yard requirements to permit construction of second story addition 8.0 ft. from side lot line **(THE APPLICANT WITHDREW THE REQUEST FOR THE NEW ADDITION)**. Located at 3911 Larchwood Rd., 22041-1107 on approx. 10,214 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 203. (Decision deferred from 9/14/11) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 2011; and

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

1. The applicant is the owner of the property.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and open deck/patio **(THE APPLICANT WITHDREW THE REQUEST FOR THE NEW ADDITION)** as shown on the plat prepared by Toan R.V. Nguyen dated June 27, 2011, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections if required shall be obtained for the existing first floor addition within nine months of approval of this special permit.

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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. DONALD KIRKLEY AND LISA D. STREIT, SP 2011-MV-076 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 11.1 ft. from a side lot line. Located at 2317 Kimbro St., Alexandria, 22307, on approx. 15,380 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((21)) 11.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Rebecca Bostick, the applicant's agent, 1819 Drury Lane, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants were seeking to allow an addition to remain 11.1 feet from a side lot. Ms. Horner stated that the applicants had received a building permit for the addition, however, the addition was found to encroach into the side yard during the setback certification process. She noted that the Zoning Ordinance requires a minimum side yard of 15 feet, resulting in a modification of 26 percent.

Ms. Bostick presented the special permit request as outlined in the statement of justification submitted with the application. She said that when the addition was constructed, the applicants believed it was within the setback limits, but noted that it was only one corner of the overhang which extended into the side yard.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-MV-076 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD KIRKLEY AND LISA D. STREIT, SP 2011-MV-076 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 11.1 ft. from a side lot line. Located at 2317 Kimbro St., Alexandria, 22307, on approx. 15,380 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((21)) 11. 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 26, 2011; and

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

1. The applicants are the owners of the property.
2. The encroachment into the side yard is minimal.
3. The house is positioned on the lot at about a 45-degree angle to the side lot line, which complicates any extensions to it.
4. Many of the homes in Hollin Hills are set at strange angles because of topography or trees.
5. This placement tends to take advantage of what natural features are on the lot, but it also makes it harder for people to expand their houses.
6. Based on the photographs, there would not be any significant negative impact on anyone from this very slight extension into the side yard.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of an addition, as shown on the plat prepared Alexandria Surveys International, LLC dated December 7, 2010, revised by Rebecca L.G. Bostick dated June 23, 2011, 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.

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. HAROLD AND HAVYN KINBACK, VC 2011-MV-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 8.0 ft. from rear lot line and side yards totaling 14.2 ft. Located at 7706 Groveland Heights Ct., Springfield, 22153, on approx. 3,120 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-1 ((7)) 115.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Derek Oldham, 9346 Crather Road, Gaithersburg, Maryland, the applicants' agent, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants were seeking to construct a sunroom addition 8.0 feet from the rear lot line and side yards totaled 14.2 feet. Ms. Cho stated that an existing deck and stairs would be removed and replaced with the sunroom measuring approximately 100 square feet in area.

Responding to a question from Mr. Smith, Ms. Cho stated that looking at the placement of the house on the site, the rear yard setback was only 18.5 feet, which was less than the required 25 feet under the R-3 Cluster zoning.

Mr. Smith and Ms. Cho discussed the zoning on the property, with Ms. Cho noting that it was originally developed under the PDH-3 district. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the yards become whatever is approved on the development plan at the time, and then subsequent additions are developed under the closest similar district which, in this instance, is the R-3 cluster.

Mr. Oldham deferred to the homeowner/applicant, Harold Kinback.

Mr. Kinback said he had very little to add to the staff's presentation, but reiterated that the application was basically to replace a 8 x 8 foot deck with a 10 x 10 foot sunroom, providing him with additional living space.

Ms. Gibb commented on the tough standards which had to be met to grant a variance. Since the property was acquired in good faith, she asked whether the property had any problems, such as the its shape or topographically. Mr. Kinback replied that it was exceptionally shallow lot.

In response to a question from Mr. Hart, Ms. Langdon stated that the minimum lot size for a cluster lot was 6,800 square feet; a conventional lot was 8,400 square feet.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 2011-MV-012 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HAROLD AND HAVYN KINBACK, VC 2011-MV-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 8.0 ft. from rear lot line and such that side yards total 14.2 ft. Located at 7706 Groveland Heights Ct., Springfield, 22153, on approx. 3,120 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-1 ((7)) 115. 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 26, 2011; and

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

1. The applicants are the owners of the property.
2. This is an extremely close case.
3. It could go either way on this.
4. There is no doubt that the property was acquired in good faith and that the property has one of the following characteristics that is required: (2)(c) it has an exceptional size at the time of the effective date of the Ordinance. It was exceptionally small.
5. This addition to the existing deck of two feet is certainly not going to have any impact on anyone in the neighboring area.
6. It is hard to say whether the strict application of the Ordinance would produce an undue hardship.
7. It may produce some hardship.
8. According to the applicants' statement of justification, it is an undue hardship not generally shared by other properties in the same zoning district.
9. Under paragraph 6, the Board has to find that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property.
10. It will not effectively prohibit, but it does perhaps unreasonably restrict.
11. The authorization of the variance will not be of a substantial detriment to an adjacent property.
12. The character of the zoning district will not be changed by the granting of the variance.
13. The variance will be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 maximum size and location of the proposed addition, as shown on the plat prepared by Laura Lee Scott Surveys, Inc., December 8, 2010, revised through August 1, 2011, as submitted with this application and is not transferable to other land.
2. The addition shall be generally consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

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 including requirements for building permits.

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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. THOMAS BASSAM, SP 2011-SP-062 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 6803 Dante Ct., Springfield, 22152, on approx. 10,660 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((7)) 60. (Admin. moved from 9/21/11 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler Ahrens, agent for the applicant, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. She noted that following a complaint and subsequent inspection, a Notice of Violation (NOV) was issued to the applicant on June 14, 2010, for excessive dwelling units. The inspection noted that the basement contained an apartment unit with a bedroom, bathroom, living room area and a kitchen. Ms. Cho said the applicant filed the special permit application shortly after receiving the NOV. Electric and plumbing/gas permits for the basement were originally issued to the previous owner in January 1996, but were not finalized. The current owner recently completed final inspection of the permitted uses. Ms. Cho said that staff recommended approval of the application subject to the proposed development conditions.

Mr. Hart, Ms. Cho, and Susan Langdon, Chief, Special Permits and Variance Branch, discussed the calculations for the accessory dwelling unit (ADU), with Ms. Langdon noting that when there are shared uses, they are not usually included in the calculations, even when there is access to the ADU.

In response to a question from Mr. Hart, Ms. Cho stated that three to four cars could park in the driveway, with another one parked in the garage. Ms. Langdon clarified that only two parking spaces were required for the house, and then whatever number staff felt necessary for the ADU.

Mr. Smith asked if the special permit application was denied, could the same number of people reside in the house. Ms. Cho deferred to Charles Fitzhugh, Code Compliance Inspector. He said the applicant and his son lived in the upper portion of the house, and there were two boarders living in the basement, all of which were

in compliance with the Zoning Ordinance. He acknowledged that if the application was denied, the only change required would be the dismantling of the separate kitchen in the basement.

Mr. Smith and Ms. Cho discussed the Ordinance limitations on ADUs, specifically that occupants were limited to two.

In response to a question from Mr. Hammack, Ms. Cho said a building permit had not been obtained for the kitchen, and that a final inspection was never done for plumbing, gas, and electrical lines.

A discussion ensued regarding the number of individuals who could legally reside in the house under the Ordinance. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that four unrelated people or any number of related people were allowed. She continued that she was calling the Zoning Administrator to see if the applicant could rent out space in the upstairs portion of the house to additional boarders.

In response to a question from Ms. Gibb, Ms. Langdon said that technically, the family could live downstairs and the tenants upstairs, but that a development condition could limit the tenants to the downstairs living area.

Mr. Hart asked if two people would be sleeping in the one bedroom. Ms. Cho replied that it was the tenants' choice, however, that all the basement rooms were considered "legal" rooms.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the applicant was a 65-year-old retired gentleman who was taking care of his 7-year-old son and needed a live-in assistant to help him. Several friends had recommended a very reliable live-in couple who could aid him. Mr. Ahrens said the couple had lived in the basement for a year and a half without incident, noting that the male tenant helped out with the yard work. He pointed out there was full ingress and egress from the walk-out basement.

Mr. Ahrens addressed the parking concerns, noting that the driveway could easily fit five cars. He said that several neighbors park their cars in the street. Mr. Hammack stated that the Board had received a letter in opposition from a neighbor stating that he had previously had parking problems with the applicant. Mr. Ahrens showed a photograph of an orange van which belonged to the author of the opposition letter. He said the neighbor regularly parked the orange van in front of the applicant's home, all the while the neighbor's driveway remained empty. Mr. Ahrens said it was a neighbor issue.

Mr. Smith asked if the applicant would agree to a development condition which would limit the number of occupants in the basement. Mr. Ahrens said he would agree in principle, since he is not an attorney.

Mr. Hammack asked who installed the stove in the basement. Mr. Ahrens said it was done while the house was under the applicant's ownership, but deferred to Mr. Bassam.

Thomas Bassam, 6803 Dante Court, Springfield, Virginia, stated that a gas line was already present in the basement for the washer and dryer, so he moved the dryer and put a stove in there. He pointed out that the gas line had been inspected and approved by the County approximately two months ago.

In response to a question from Mr. Hammack, Ms. Cho said a building permit would be required for a second kitchen.

Mr. Hart and Ms. Cho discussed the 1995 building permit, which was to relocate appliances including hooking up a gas dryer and washing machine. Since the building permit had nothing to do with a kitchen in the basement, Mr. Hart asked how it got there. Mr. Bassam explained that a licensed contractor came out, moved the dryer, and replaced it with a stove. He stated that the contractor said a building permit was not necessary.

In response to a question from Mr. Hammack, Mr. Bassam said the contractor moved the washer and dryer a few feet into the laundry room.

Chairman Ribble called for speakers.

William McCarrin, 8200 Wythe Street, Springfield, Virginia, spoke in opposition to the application. He felt the application had the potential to change the neighborhood from single family homes to multi-family homes, thus negatively affecting the character of the community and property values.

Louise Calise, 6802 Dante Court, Springfield, Virginia, asked that the Board deny the application. She was afraid that if the ADU was granted, it might set a precedent for rooming houses in the neighborhood.

David Clark, 8104 Ashford Court, Springfield, Virginia, stated his opposition to the application. He questioned the calculations for the ADU, noting that he felt it comprised 40 percent of the basement, not less than 35 percent as required by the Ordinance. Mr. Clark also stated that there were two other unapproved dwellings in the cul-de-sac, which exacerbated the parking problem.

In response to a question from Mr. Smith, Mr. Clark said the unapproved ADU at 6800 Dante Court had a pending special permit application. He stated that it was his understanding that these two ADUs had complete "mother-in-law" suite arrangements. Ms. Cho confirmed that a special permit for an ADU had been filed for 6800 Dante Court, but had not been accepted as of that time.

Mr. Hart questioned whether you could just pull into a cul-de-sac or if you had to park along the curb. Ms. Cho responded that she was not aware of any specific parking regulations for cul-de-sacs. Ms. Stanfield said that the issue had come up before and parking along the curb was required.

In response to Mr. Beard's earlier question regarding occupancy regulations, Ms. Stanfield said there were different rules for ADUs with boarders. While one of the options for standard occupancy was a family with not to exceed two roomers or boarders, the same was not true for ADUs, where you could have a group of not more than four persons not necessarily related by blood or marriage.

Mr. Hart asked if the Board could impose a development condition requiring that the applicant and his son occupy the upper floor of the residence with no more than two unrelated people downstairs. Ms. Langdon replied in the affirmative.

In rebuttal, Mr. Ahrens said he did not believe granting the application would be precedent setting since the Board considered every submission on a case-by-case basis. He stated that in this case, it was an elderly gentleman needing help with his young son's care. Mr. Ahrens noted that the female boarder had submitted a statement affirming that she helped with childcare and household duties.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2011-SP-062 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 BASSAM, SP 2011-SP-062 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 6803 Dante Ct., Springfield, 22152, on approx. 10,660 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((7)) 60. (Admin. moved from 9/21/11 at appl. req.). Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 2011; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-2 Cluster.

3. The area of the lot is 10,660 square feet.
4. The Board is very sympathetic to the concerns of the neighbors.
5. Mr. Smith lives in a cul-de-sac, next to someone who leases the downstairs space to an occupant/renter. It does not have a separate dwelling unit. It is a by-right use.
6. The issues that can arise from granting the special permit are not really any different than the issues that would arise from not granting it.
7. You can have the same issues with a family next door or with unrelated people next door.
8. It is all about people.
9. It depends on the people that you happen to have.
10. If the Board were to deny this, it does not necessarily change anything.
11. The same two people can live in the house where they are now. It just means that the kitchen would be disconnected and they all be using the same kitchen effectively.
12. The Board is very sympathetic to the issue of starting the ball rolling in a precedent for what would be perceived as being a boardinghouse.
13. That is why it is very important to talk about how the Board could develop conditions to make it clear, because if the Board were to grant this without any development conditions, right now, you could have the two unrelated folks downstairs and you could have the applicant and his son and three potentially additional unrelated folks in the principal dwelling unit.
14. As a condition of this special permit, the Board would want to restrict that.
15. The applicant was receptive to that and agreed to that in the comments that were made.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen in the accessory unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Thomas Bassam, and is not transferable without further action of this Board, and is for the location indicated on the application, 6803 Dante Court (10,660 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Dewberry, Nealon, Davis, March 24, 1967, revised September 9, 1967, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 700 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.

8. 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.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.
12. The occupancy of the principal dwelling unit shall be limited to the applicant and others related by blood or marriage. The accessory dwelling unit may not be occupied by more than two persons not necessarily related by blood or marriage.
13. The applicant shall bring the basketball net into compliance with 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.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. 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 6-1. Mr. Hammack voted again the motion.

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. ZHANNA V. BUZOV, SP 2011-MA-065 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 6936 Regent La., Falls Church, 22042, on approx. 10,702 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 195. (Admin. moved from 9/21/11 for notices)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Zhanna Buzov, 6936 Regent Lane, Falls Church, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. She said the application sought to allow a home child care facility with 10 children between two to five years of age in a single-family detached dwelling. Ms. Cho noted that the Ordinance allowed seven children in a single-family detached dwelling as a permitted accessory use. The hours of operation would be 8:00 a.m. to 6:00 p.m., and, in addition to the resident and provider, there would be one additional employee on site. There was a large fenced yard with play equipment and toys. A concrete driveway accessed via Wayne Road accommodated two parking spaces.

Following a complaint, a Notice of Violation (NOV) was issued to the property owner on April 12, 2010, for noncompliance with the use limitations of home child care facilities, since ten children and a sign for the home child care facility were found on site. The operator of the home child care facility was issued a

Conditional License for a Family Day Home by the Virginia Department of Social Services on December 8, 2009. The applicant's license was renewed and was valid until May 29, 2012, according to the Virginia Department of Social Services.

Mr. Beard asked about the number of children allowed by the State versus the County. Ms. Cho said the County allowed seven children by right, but up to ten at any one time with a special permit. She stated that the State permits up to twelve children. In response to a question from Mr. Beard, Ms. Buzov said she at that time had a total of ten children enrolled.

Ms. Buzov presented the special permit request as outlined in the statement of justification submitted with the application. She said she was a licensed provider by the Virginia Department of Social Services and provided services to children from two to five years of age. Ms. Buzov said she was requesting a special permit to allow ten children on site.

In response to a question from Mr. Hart, Ms. Buzov said she was in agreement with the proposed development conditions. She stated that there were two access points to the house, one on Regent Lane and one on Wayne Road, with two entry gates. Ms. Buzov said that parking in the driveway was not usually necessary since it was a corner lot and had two streets available for pick-up and drop-off. Mr. Hart felt it would be safer for children to be dropped off in the driveway.

In response to a question from Mr. Hart, Ms. Cho stated that staff had strongly suggested to the applicant that pick-up and drop-off be conducted from the driveway, which was why staff requested that the driveway be widened.

Mr. Hart asked if there was a development condition limiting pick-up and drop-off to the driveway. Susan Langdon, Chief, Special Permit and Variance Branch, responded that it was the intention of Development Conditions 9 and 11 that access to the daycare facility be on site.

In response to a question from Mr. Beard, Ms. Cho stated that the application was before the Board as the result of a complaint filed in 2010. Ms. Buzov said she didn't know she needed a zoning permit to have ten children at her facility.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2011-MA-065 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ZHANNA V. BUZOV, SP 2011-MA-065 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 6936 Regent La., Falls Church, 22042, on approx. 10,702 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 195. (Admin. moved from 9/21/11 for notices) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 2011; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-4.
3. The area of the lot is 10,702 square feet.
4. Staff recommends approval.
5. All eight of the general standards of 8-006 are met, as well as 8-303.

6. The situation with the sign has been resolved. The sign is down.
7. The Board saw no letters of opposition. No one came in opposition.
8. Seven children are permitted by right.
9. The applicant stated that she was unaware or confused by the fact that the state license notes that they can have up to 12 children and the county allows up to 10 children, only through the special permit process.

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 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, Zhanna V. Buzov, and is not transferable without further action of this Board, and is for the location indicated on the application, 6936 Regent Lane, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Real Estate Surveyors & Developers, LLC, dated November 17, 2008, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of children permitted at the home child care facility at any one time shall not exceed ten (10) children.
5. The maximum hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
6. The maximum number of employees shall be limited to one (1) on site at any one time in addition to the provider.
7. The dwelling that contains the home child care facility shall be the primary residence of the provider.
8. There shall be no signage associated with the home child care facility.
9. The new driveway and parking shall be generally consistent with the drawing shown as Attachment 1 to the development conditions. A minimum of four (4) parking spaces shall be provided in the driveway. All parking for the use shall be on-site. The driveway shall be widened within six (6) months after the date of approval or this special permit shall be null and void.
10. The applicant shall install tree protection fencing at the drip line of the Holly tree to the south of the driveway to protect the vegetation from construction activities. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment and materials do not occur within the area.
11. The driveway gates shall remain open during pick up and drop off times.
12. In no instance shall be the driveway or parking area exceed 30% of the front 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.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. 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. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. JAMES E. FORTMULLER AND JULIA A. TROTTER, SP 2011-MV-077 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.9 ft. from one side lot line, deck to remain 2.0 ft. from other side lot line and reduction of certain yard requirements to permit construction of addition 7.0 ft. from side lot line. Located at 6915 Quander Rd., Alexandria, 22307, on approx. 7,464 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (7) 9.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James Fortmuller, 6915 Quander Road, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants were requesting approval of a special permit to allow an accessory storage structure to remain 2.9 feet from the northern side lot line, and an at-grade flagstone patio to remain 2.0 feet from the southern side lot line. A minimum side yard of 10 feet is required for the storage structure; therefore, a modification of 7.1 feet or 71 percent was requested. A minimum side yard of 10 feet with a permitted 5.0 foot extension is required for the at-grade patio; therefore, a modification of 3.0 feet or 30 percent was requested.

Ms. Hedrick said the applicants were also requesting approval of a special permit to allow the construction of a 260 square foot addition, which would consist of enclosing an existing one-car carport, to be located 7.0 feet from the southern side lot line. A minimum side yard of 10 feet is required; therefore, a modification of 3 feet or 30 percent was requested. She said staff recommended approval of SP 2011-MV-077 subject to the proposed development conditions.

Mr. Hart referred to pictures I and K, asking if the current area over the carport was accommodated within the advertising. Ms. Hedrick stated that it was, noting that the advertisement was to permit an addition 7.0 feet from the side lot line, encompassing anything within the minimum side yard setback requirement.

Mr. Fortmuller presented the special permit request as outlined in the statement of justification submitted with the application. He said he had nothing further to add except to compliment Ms. Hedrick for her assistance during this process.

In response to questions from Mr. Hart, Mr. Fortmuller said there was no electricity or plumbing in the shed, nor was it on a foundation.

Mr. Hart asked how far the shed would have to move to be legal. Ms. Hedrick stated that it would have to be relocated 7.1 feet to comply with the 10-foot side lot line requirement.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-MV-077 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES E. FORTMULLER AND JULIA A. TROTTER, SP 2011-MV-077 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.9 ft. from one side lot line, deck to remain 2.0 ft. from other side lot line and reduction of certain yard requirements to permit construction of addition 7.0 ft. from side lot line. Located at 6915 Quander Rd., Alexandria, 22307, on approx. 7,464 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (7) 9. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 2011; and

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

1. The applicants are the owners of the property.
2. There is a favorable staff recommendation.
3. The applicants have met the standards under each of the sections of the Zoning Ordinance.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for an accessory storage structure (shed) and deck (flagstone patio) and the location and size of an addition (260 square feet), as shown on the plat prepared Walter L. Ralph, Certified Land Surveyor on January 2, 1951, as revised through October 14, 2011, by Rebecca L.G. Bostick, Architect, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,048 square feet existing + 3,072 square feet (150%) = 5,120 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. All applicable permits shall be obtained for the existing covered front stoop.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. MERRIFIELD GARDEN CENTER CORP., SPA 2006-PR-038-03 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 2006-PR-038 previously approved for error in building location to permit modification of development conditions and reduction of land area. Located at 8132 Lee Hwy., Merrifield, 22116, on approx. 2.87 ac. of land zoned C-8, CRA and HC. Providence District. Tax Map 49-2 ((1)) 26C.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Frank McDermott, the applicant's agent, 1751 Pinnacle Drive, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The application was to permit modification of Development Condition 3, to allow more time to obtain applicable building permits for a retail sales structure which was built in error. Ms. Hedrick stated that staff had proposed a development condition which would provide the applicant an additional eighteen (18) months of time to obtain final approval for the structure.

Mr. Hart asked if 18 months would be enough time. He commented that the area had been undergoing development for the last 28 years and was still a work in progress. Ms. Hedrick deferred to the applicant.

Mr. McDermott said he understood Mr. Hart's concern, stating that it was a "snake bit" proposition. He said the requested time extension should be fine, but noted that he had been before the BZA previously saying the same thing. Mr. McDermott said staff had been working with the applicant to obtain trade permits and inspections within the allotted time.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 2006-PR-038-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MERRIFIELD GARDEN CENTER CORP., SPA 2006-PR-038-03 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 2006-PR-038 previously approved for error in building location to permit modification of development conditions and reduction of land area. Located at 8132 Lee Hwy., Merrifield, 22116, on approx. 2.87 ac. of land zoned C-8, CRA and HC. Providence District. Tax Map 49-2 ((1)) 26C. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 26, 2011; and

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

1. The applicant is the owner of the property.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size (approximately 438 square feet) of the existing one story structure as shown on the plat prepared by William H. Gordon Associates, Inc. dated, June 28, 2011, as submitted with this application and is not transferable to other land.
2. Other by-right, special permit and special exception uses on site shall be permitted without a special permit amendment if such uses do not affect this special permit use.
3. Building permits and final inspections for the structure shall be diligently pursued within 60 days and obtained within eighteen (18) months of final approval or this special permit shall be null and void.

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

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. SCI VIRGINIA FUNERAL SERVICES, INC. (FORMERLY NATIONAL MEMORIAL PARK, INCORPORATED), SPA 88-P-050-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-P-050 previously approved for cemetery uses and structures to permit change in permittee and site modifications. Located at 7482 Lee Hwy., Falls Church, 22042, on approx. 76.34 ac. of land zoned R-1. Providence District. Tax Map 50-1 ((1)) 36. (Admin. moved from 8/3/11 at appl. req.) (Continued from 9/21/11)

Chairman Ribble called the case, reminding the Board that this matter had been continued from September 21, 2011.

Deborah Hedrick, Staff Coordinator, stated that the record had remained open for written and electronic information to be submitted. She said a status update memo had been provided to the Board on October 19, 2011, which included staff's proposed revised development conditions. Ms. Hedrick noted that material from the Holly Crest Homeowners Association had been submitted, as well as information from the applicant's agent addressing the Board's concerns and issues from the September 21, 2011 public hearing. She said staff believed the conditions as proposed represented a consensus between the applicant and staff, and which the staff recommended for approval.

Responding to a question from Mr. Hart, Ms. Hedrick stated that staff and the applicant were in agreement on proposed Development Conditions 38 and 48.

Mr. Hart asked if the reference to adequate outfall in Condition 38 was intended to be more severe than what was required in the Public Facilities Manual (PFM). Ms. Hedrick deferred to Betsy Smith from the Site Development and Inspection Division of DPWES. Ms. Smith said it was not intended to be more severe than the PFM requirements. It was her understanding that the BZA was looking for language in its simplest form so that a reader could understand the term "adequate outfall" and address how the County made sure it was in compliance.

A discussion ensued between Mr. Hart, Ms. Hedrick, and Susan Langdon, Chief, Special Permit and Variance Branch, regarding Condition 36, which allowed the Department of Planning and Zoning staff to

review and approve changes to the boundary fencing. Mr. Hart felt the Zoning Administrator should be the entity to consider those changes.

Mr. Hammack and Ms. Langdon talked about a development condition requiring the special permit to be reviewed by the BZA, with Ms. Langdon noting that review was mandated by the state every five years. However, Mr. Hammack felt that with all the serious violations which had been brought to light, a more frequent review was necessary. Ms. Langdon said if development conditions were violated, the application would return to the BZA on its own.

William Shumate, an attorney with LeClairRyan, stated he represented the applicant in this matter. He said he essentially agreed with the conditions as set forth by the staff, with a couple of comments:

Regarding Condition 48, he was comfortable with the proposed language as long as it did not require anything in excess of what the Ordinances require.

He conceptionally did not have a problem with Condition 37. Mr. Shumate just wanted to be sure that the County was proceeding in good faith. His concern was the turnaround time for obtaining the County's approval for a new mausoleum, noting that the family of the deceased would be in a sensitive state and grieving. The applicant would want to give the family a time frame for building of the mausoleum.

Mr. Shumate thanked staff for their assistance, particularly Deborah Hedrick who had done an incredible job and an extraordinary amount of work.

Mr. Beard referenced a letter from the Holly Crest Homeowners Association (HCHA) which requested reimbursement by the applicant for the properties that were damaged by the illegal dumping of soil and non-removal (sic) of dead trees. Further, HCHA asked that the damages be assessed by an independent landscaper or other qualified professional. Mr. Beard said a proposal had been made for \$350.00 to each affected property owner, and asked where that amount originated. Mr. Shumate responded that the applicant had approached HCHA and offered to make a donation, however, the HCHA wanted the applicant to work with each homeowners individually. Further, Mr. Shumate said that the HCHA and the applicant had agreed to have a meeting with a landscape architect, supplied by the applicant, to try to identify and remedy the run-off issues.

In response to a question from Mr. Hammack, Mr. Shumate said that there was nothing in the proposed development conditions that would adversely impact any suggestions made by the landscape architect, since the HCHA property was outside the scope of the special permit requirements.

Mr. Hart said he did not totally understand Condition 48. For instance, if the property did not get four good reports in a row and DPWES said they needed a retention pond, then who would oversee the corrections? Ms. Langdon replied that if the deficiency was outside the limits shown on the SPA, then it would have to come back to the BZA. She pointed out there would be a conservation easement between the cemetery and HCHA property.

Mr. Hart stated his concern with the wording in Condition 36, noting that he felt the Zoning Administrator should also be reviewing any fence changes, not just DPZ staff. Mr. Shumate said he had no objection to adding the Zoning Administrator to the review process. Mr. Hart then suggested an additional sentence to be added to Condition 36.

Mr. Hammack and Mr. Shumate discussed Condition 2, with Mr. Hammack stating that the site plan should be brought back before the BZA for review of additional structures to be built. Mr. Shumate said he did not want to come back before the BZA for a site plan amendment, stating he was confident the outfall requirements would be met.

Mr. Hart and Mr. Byers noted that members of the HCHA were present in the audience, and asked for their input.

Blair Harsh, 2609 Holly Manor Drive, Falls Church, Virginia, stated his objection to the wording of Condition 36. He said the neighborhood felt it was very important that a natural visual buffer be implemented where their property abutted the cemetery.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 88-P-050-03 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SCI VIRGINIA FUNERAL SERVICES, INC. (FORMERLY NATIONAL MEMORIAL PARK, INCORPORATED), SPA 88-P-050-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-P-050 previously approved for cemetery uses and structures to permit change in permittee and site modifications. Located at 7482 Lee Hwy., Falls Church, 22042, on approx. 76.34 ac. of land zoned R-1. Providence District. Tax Map 50-1 ((1)) 36. (Admin. moved from 8/3/11 at appl. req.) (Continued from 9/21/11) 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 26, 2011; and

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

1. The applicant is the owner of the property.
2. The Board has a staff report recommending approval, and the rationale in the staff report is adopted generally.
3. This case has come a long way over the last couple of years.
4. The Board was not sure that they would get to this point by today, but in large part, the issues in dispute between staff and the applicant have been resolved in the most recent set of conditions.
5. The principal outstanding issues with the use are addressed with the development conditions, which mitigates the visual and other impacts from the cemetery on the neighbors and address the remediation of the existing situation with the placement of soil, particularly to the west, the side up against the neighbors.
6. A lot of that material is going to be removed, and the area will be revegetated.
7. The applicant also has to comply with certain other requirements, which the Board understands from both staff and the applicant, are intended to address the existing stormwater problem.
8. If the applicant does not, the Board still has some concerns, but the bottom line, with the approval, the impacts on the adjacent neighbors that are getting flooded now should be significantly improved.

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 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, SCI Virginia Funeral Services, Inc., (formerly National Memorial Park), only and is not transferable without further action of this Board, and is for the location indicated on the application, 7482 Lee Highway (76.34 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses as indicated on the special permit plat prepared by christopher consultants dated January 7, 2011, as revised through August 22, 2011, and Sheets 10A, 10C and 10D through August 26, 2011, and approved with this application, as qualified by these development conditions. This does not require that new

crypts, columbaria, mausoleums, niches, decorative walls, ledgers, bong boons, be shown on the SPA plats provided they meet the language contained in Development Condition #37.

3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment 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) as qualified by these conditions. 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 approval of this special permit amendment is conditioned upon the applicant obtaining an Amended Final Court Order within three months of approval of this SPA to extend the completion date beyond December 31, 2011, to the extent not already addressed in the Final Order, if necessary.
6. A site plan (or minor site plan and/or rough grading plan if necessary) shall be submitted within 90 calendar days of the approval of this SPA and shall depict Phase I improvements (the area generally outside of the RPA) and Phase II improvements (the area generally inside the RPA) for the construction activities as depicted on the SPA plat. This plan shall include all areas of site disturbance and remediation. A full size copy of the approved SPA plat and development conditions shall be included with the first site plan submission and all subsequent site plan submissions.
7. The site plan shall be reviewed by County staff and shall be approved or comments provided within 60 calendar days. If not approved, the applicant shall resubmit or provide inserts with all comments clearly addressed within 30 calendar days.
8. Bond/escrow shall be posted prior to final plan approval. The plan shall be ready for distribution within 45 calendar days following staff recommendation of plan approval.
9. All construction activities as depicted as Phase I on the site plan shall be completed within 9 months of the commencement of the first site work, unless the findings in Condition #11 require additional permitting and remediation. All construction activities as depicted as Phase II on the site plan shall be completed within 18 months of the commencement of the first site work.
10. During the construction activities in Phase I and Phase II, no construction vehicles, or private vehicles of workers, shall be permitted to park on Holly Manor Drive to access the construction site.
11. The applicant shall remove all debris from the areas of the property that have been subject to unauthorized soil and debris storage and stockpiling, and such debris shall be disposed of appropriately off-site. Within these areas, all tree trunks, concrete and other materials larger in size than subsurface materials than would be expected to be encountered in the site's natural condition shall be considered to constitute debris.

During debris removal activities, the applicant shall provide on a weekly basis a report to the Fire and Rescue Department detailing all debris materials removed (identifying the types of materials encountered and the relative prevalence of each type of material) and the disposition of these materials.

If warranted by any of the debris removal reports as determined by the Fire and Rescue Department, a monitoring program shall be pursued in order to determine if soil, surface water, or ground water contaminants are present on the property and/or have migrated from the property. If such a program is pursued, monitoring parameters shall be subject to the approval of the Fire and Rescue Department.

If contaminants are detected in concentrations requiring remedial action, a remediation program shall be performed in accordance with all applicable Federal, State, and County requirements. Sufficient documentation of completion of the remediation program (with the possible exception of long term

follow-up monitoring efforts) or an appropriate corrective action plan consistent with the proposed development shall be provided to the Fire and Rescue Department.

12. Tree Preservation: The applicant shall submit a Tree Preservation Plan and Narrative as part of the first and all subsequent plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division (UFMD), DPWES.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees located within the tree save area living or dead with trunks 8 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) and 35 feet outside of the proposed limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of disturbance shown on the special permit amendment and those additional areas in which trees can be preserved as a result of final engineering. The tree

preservation plan and narrative shall include all items specified in the Tree Conservation Ordinance. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

13. Tree Preservation Walk-Through: The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD DPWES representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw, and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. 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 adjacent trees and associated understory vegetation and soil conditions.
14. Limits of Clearing and Grading: The Applicant shall conform strictly to the limits of clearing and grading as shown on the SPA plat, subject to allowances specified in these conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SPA, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
15. Tree Preservation Fencing: All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" condition below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall

be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.

16. Tree Appraisal: The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 8 inches in diameter or greater located on the Application Property that are shown to be saved on the Tree Preservation Plan and within 35 feet of the limits of clearing and grading. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the respective plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called "Trunk Formula Method" contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective plan approvals, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the "Bonded Trees") that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Application Property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the improvements on the Application Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant.

17. Root Pruning: The Applicant shall root prune, as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

18. Site Monitoring: During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as conditioned and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation development conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

19. Site Remediation Monitoring: All approved work within designated tree preservation areas, as specified in the site remediation activities identified on sheet 10C of the SPA, shall be conducted under the direct supervision of the project arborist. The project arborist shall be on-site to monitor and direct all work within designated tree preservation areas to ensure compliance with the site remediation activities identified on sheet 10C of the SPA.

20. Protection of Existing Understory Vegetation and Soil Conditions in Tree Preservation Areas: All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved, including any woody, herbaceous or vine plant species that occurs in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation or soil disturbance in tree preservation areas, including the removal of plant species that may be perceived as noxious or invasive, such as poison ivy, greenbrier, multi-floral rose, etc., shall be subject to the review and approval of UFMD, DPWES.

The use of motorized equipment in tree preservation areas shall be limited to hand-operated equipment such as chainsaws, wheelbarrows, rakes and shovels. Any work that requires the use of motorized equipment, such as skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by UFMD, DPWES.

21. A thirty-six foot (36 foot) buffer area shall be provided along the entire length of the western property line (approximately 1,583 feet) of the cemetery property and shall be deemed to meet the Transitional Screening requirements. This buffer strip shall contain no structures, roads, except the existing Loop Road, or gravesites, except for existing gravesites. No burials shall take place within the 36 foot buffer area along the entire western property line from the southwestern corner of the property to the northern end of the decorative concrete wall. This buffer area shall contain the following:
- A decorative concrete wall, six-feet (6 feet) in height and two hundred and ninety-five feet (295') in length along the western property line to a point adjacent to the existing Loop Road. This reduced length (from 425 feet) shall be permitted provided the existing holly trees in the 36-foot buffer area are preserved and maintained in a healthy condition and the shade-tolerant and other evergreen trees existing are maintained in a healthy condition. The decorative concrete wall shall be maintained and replaced/repared as needed in such a way as to minimize disturbance to the existing holly trees.
 - All maintained vegetation required by these conditions for screening purposes shall be maintained in a healthy condition and be replaced as necessary by the applicant if any such trees should die or become diseased.
22. Additional supplemental landscape plantings shall be provided within the open areas of the 36-foot buffer as determined necessary by UFMD, DPWES.
23. The barrier requirements shall be waived except for the aforementioned decorative concrete wall.
24. All existing fencing on the property shall be maintained and kept in good repair with missing links and/or boards replaced and rust cleaned and/or fencing painted or replaced.
25. The existing vegetation along the northern and southern lot lines as shown on the SPA plat shall be maintained in perpetuity to meet Transitional Screening requirements. Supplemental and/or replacement vegetation may be required as determined necessary by UFMD. All vegetation required for screening purposes shall be maintained in good health. Dead or dying vegetation shall be replaced with like-kind vegetation.
26. Landscaping shall be provided as shown on Sheet 11 to screen the concrete walls around the stockpile soil storage area within the maintenance yard from the adjacent properties to the south. The number, size and species shall be as determined by UFMD.
27. Existing vegetation on the cemetery property shall be preserved to the maximum extent reasonable, consistent with the uses approved with this SPA, as set forth under the PFM and County Code requirements to ensure the tree cover canopy requirements are maintained.
28. The Conservation Easement areas shown on the SPA plat shall remain as undisturbed forested areas and shall not be used for future cemetery uses and shall be subject to a recorded Conservation Easement running to the benefit of Fairfax County, in a form approved by the Office of

the County Attorney. The easement shall prohibit the removal of trees, except those of which that are dead, dying, damaged, or diseased, as determined by the UFMD, DPWES and that the Conservation Easement shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass, or dumping of soil or other debris.

29. Signage shall be provided around the perimeter of the RPA, as shown in detail on Sheet 9A of the SPA plat, to ensure no disturbance or dumping will occur within these areas. A copy of the locations of the placement of the signage shall be kept in the sales office and maintenance office on-site.
30. Signage shall be placed along the edge of the revegetated slope, as shown on Sheet 9 of the SPA plat, to ensure no disturbance or dumping will occur within these areas. A copy of the locations of the placement of the signage shall be kept in the sales office and maintenance office on-site.
31. The ultimate grade of the site along the western boundary shall be as shown on Attachment 1 cross sections and Sheets 8 and 9 of the SPA plat.
32. The proposed soil stockpile area located in the maintenance yard shall not extend beyond the limits as shown on page 2 of the SPA plat. This area shall only be used for storage of excess soil from graves and construction of crypts, columbaria, mausoleums or niches from Lots 30 and 36. No soil, dirt, and/or other debris shall be imported from off-site sources for inclusion in the soil stockpile area, and no construction debris of any kind shall be placed within the soil stockpile area shown. All soil must be routinely removed from the site and taken to an approved landfill off-site when the soil within the storage area reaches a maximum of 1,000 cubic yards.
33. Any land disturbance, including, but not limited to the area depicted on the SPA plat as "soil stockpile storage area" shall meet the requirements of Chapter 104 of the Code of the County of Fairfax, Erosion and Sediment Control, and be in accordance with the Erosion and Sediment (E&S) Control Handbook, as determined by DPWES.
34. All soil from construction activities shall be disposed of at an off-site permitted location as approved by the County, while any debris shall be disposed of at a lawfully approved landfill off-site. All soil from the future soil stockpile storage area shall be removed from the application property and disposed of at a lawfully approved landfill off-site.
35. Hours of operation for the maintenance yard shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, provided, however, that the routine removal of soil from the soil stockpile area referenced in Condition #32 shall not be conducted on weekends.
36. Notwithstanding Note 23 on Sheet 2 of the SPA plat, no boundary fence shall be constructed along the boundary with the Holly Crest Subdivision without prior written notice by certified mail to all adjacent property owners of record, and prior approval by the Department of Planning and Zoning (DPZ) staff and the Zoning Administrator of the location, materials, color, height and installation of such fence, including, without limitation, procedures for minimizing harm to existing vegetation in order to preserve and protect the natural planted visual barrier. Any boundary fence shall be compatible with the residential character of the adjacent neighborhood.
37. Except for those structures shown on the SPA plat as "previously approved," all new above ground crypts, columbaria, mausoleums, niches and decorative walls may be located any place within the cemetery, with the following limitations:
 - Not more than six (6) new above ground structures, as described above, shall be placed on the subject property until the site plan for the Phase I improvements described in Condition #6 has been approved. Between site plan approval and completion of all remediation activities in Phase I and Phase II, any additional structures as set forth above are subject to approval on a case by case basis at the discretion of the Zoning Administrator;
 - No structures containing human remains shall be located on top of occupied gravesites;
 - All structures shall be a minimum 100 feet from any exterior lot line;
 - All structures shall have a maximum height of 25 feet above the concrete foundation upon which it is placed;

- All structures shall have a maximum footprint of 400 square feet;
 - All structures shall be screened from the view of any adjacent residential use property by evergreen vegetation with a minimum planted height of six (6) feet and an ultimate growth height equal or exceeding the height of the crypts, columbaria or mausoleums; and
 - All applicable building permits shall be obtained prior to construction.
38. There shall be no final time limitation on commencement of construction for those features noted in Condition #37 above unless otherwise noted in these conditions.
 39. There shall be no chapel within mausoleums, or permanent installation of chimes or bells in conjunction with this use, except as previously approved and shown on the SPA plat.
 40. No burials shall take place within 25 feet of the western property line north of the decorative concrete wall.
 41. Other than existing burials, and/or burial plots that have been sold prior to the effective date of this special permit amendment, no future burials shall take place within 50 feet from any public street line, to comply with Sect. 8-203 of the Zoning Ordinance.
 42. The number of burial services within each of the mausoleum or columbarium structures shall be limited to one at a time except that multiple services may be allowed if more than one member of the same family.
 43. No new sale of gravesites, or burials, shall take place within the designated RPA delineation as shown on Sheet 9A, without the prior review and approval of the Chesapeake Bay Preservation Exception Review Committee.
 44. Notwithstanding Note 9 on Sheet 10C of the SPA plat, the determination of whether an issue is minor, whether a further interpretation of the SPA is required or whether an amendment to the SPA is required shall be made by DPZ staff.
 45. All requirements pertaining to adequate outfall (including necessary inlet comps, storm drain comps, etc.), and stormwater quantity and quality control shall be provided for review and approval if required by DPWES. If stormwater detention and/or BMP ponds must be provided, they shall be provided at locations acceptable by DPZ and DPWES.
 46. The applicant shall submit additional plan types as determined necessary by DPWES to demonstrate that runoff is conveyed adequately through and from the application property to the off-site regional detention pond. As defined by the PFM, no erosion problems and flooding on adjacent properties shall be permitted.
 47. After the Phase I and Phase II improvements are completed, the applicant shall obtain a qualified third party inspector to monitor the site. This monitoring shall confirm that all conditions of adequate outfall, as defined by the PFM (to include, but not limited to, erosion, flooding outside existing drainage easements on adjacent properties, proper inlet and storm drain capacity), are met and maintained. Adequate outfall is described as the effective conveyance of storm and other surface waters through and from the development site and the discharge of such waters into a natural watercourse or manmade drainage facility with sufficient capacity without adverse impact upon the land over which the waters are conveyed or upon the watercourse or facility into which such waters are discharged. Monitoring of the site shall occur for a minimum of two years after the completion of the project occurs. This monitoring shall include a visual inspection of the slope, the properties downstream of the slope, the existing conveyance channels and pipe systems and confirmation that there is no erosion or siltation occurring in these areas and confirmation that the area is properly vegetated and all trash is removed. The criteria defined in Chapter 6-0202 and Chapter 6-0203 of the PFM have been complied with. This report prepared by the qualified third party inspector shall be provided to the Site Development and Inspections Division, DPWES, every 6 months, detailing the results of the site monitoring and any remedial action taken. A copy of each report shall be provided to the Association President of the Holly Crest and Misty Woods Subdivisions. Any necessary bonding and/or conservation escrow shall be held until the satisfactory completion of this monitoring period, as determined by DPWES, after a minimum of four consecutive reports outlining that the

conditions of adequate outfall, as outlined above, have been met. If it is determined by DPWES, as a result of the reports or otherwise that stormwater detention and/or BMP ponds must be provided, then an application for an amendment to this special permit must be filed, to address those features.

48. Upon completion of the remedial activities approved on the SPA plat, the applicant shall prepare and submit to DPWES a topographic "As-built" of the site disturbance and remediation areas.
49. In addition to any requirements specified in the Zoning Ordinance or the PFM, for any land disturbance greater than 2,500 square feet, the applicant shall provide notification to those properties directly adjacent to the area of disturbance.
50. The delineated truck route as shown on Sheet 4 of the SPA plat shall be used for transporting future soil to the concrete temporary storage enclosure within the maintenance yard to ensure that the use of Hollywood Road is minimized.
51. All signs shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.
52. All applicable permits and final inspections shall be obtained for the maintenance building located within the maintenance yard.
53. The exterior façade of the maintenance structures located within the maintenance yard shall be maintained in good repair and/or the structures shall be removed from the site.

These conditions incorporate and supersede all previously approved 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 any required Non-Residential Use Permits through established procedures, and this special permit amendment shall not be valid until this has been accomplished.

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

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La., Annandale, 22003, on approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, 7/28/10, 12/15/10, 2/16/11, and 7/27/11 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to November 11, 2011, at 9:00 a.m., at the applicants' request.

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~ ~ ~ October 26, 2011, Scheduled case of:

9:00 A.M. WRNS ASSOCIATES, A 2011-DR-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing two separate businesses to operate without site plan approval, valid Non-Residential Use Permits, valid Building Permits, or approved sign permit applications and that these businesses have established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 9/21/11 at appl. req.)

- 9:00 A.M. GREAT FALLS EQUIPMENT REPAIR, LLC, A 2011-DR-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses on property in the C-8 District without site plan approval, valid Non-Residential Use Permits, valid Building Permits, Special Exception approval, or approved sign permit applications, has established accessory outdoor storage that does not meet size or location requirements, and has established a heavy equipment and specialized vehicle sale, rental and service establishment, which is a use not permitted, all in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 9/21/11 at appl. req.)
- 9:00 A.M. CLS LAWN & LANDSCAPE, A 2011-DR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a contractor's offices and shops and a storage yard without site plan approval, a valid Non-Residential Use Permit, valid Building Permits, or approved sign permit applications and that this business has established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 4/20/11, 6/8/11, 9/14/11, and 9/21/11 at appl. req.)

Chairman Ribble noted that A 2011-DR-017, A 2011-DR-019, and A 2011-DR-003 had all been administratively moved to January 25, 2012, at the applicants' request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she hoped all three appeals would be resolved by that date.

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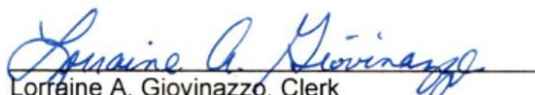
Chairman Ribble announced that all the applications scheduled for the following week had been administratively moved; therefore, that meeting had been cancelled. He said the BZA would meet the following week.

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As there was no other business to come before the Board, the meeting was adjourned at 12:48 p.m.

Minutes by: Suzanne Frazier

Approved on: April 16, 2014


 Lorraine A. Giovinazzo, Clerk
 for Kathleen A. Knoth, previous Clerk
 Board of Zoning Appeals


 John F. Ribble III, 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 Wednesday, November 16, 2011. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr.; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; and Norman P. Byers. V. Max Beard and was absent from the meeting.

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

~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. ROBERT H. ALLRED, TRUSTEE, SP 2011-PR-079 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit addition to remain 5.7 ft. from side lot line and existing fence 6.0 ft. in height to remain in front yard of a through lot. Located at 8423 Hunt Valley Dr., Vienna, 22182, on approx. 10,540 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 39-1 ((22)) 4.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Robert Allred, 8423 Hunt Valley Drive, Vienna, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation.

Mr. Allred presented the special permit request as outlined in the statement of justification submitted with the application. He said when he tried to sell his home in 2010, the sale fell through, because the sunroom was too close to the side lot line. He now wanted to bring it up to Code and have it properly permitted. Mr. Allred said he had installed new support beams, windows, and flooring, and noted this special exception was the only outstanding item. Regarding the fence, the property abutted major roads, and Mr. Allred felt it was important to have a 6-foot fence to protect the privacy of the yard.

Chairman Ribble called for speakers.

Vijay Alsi, 8475 Wolftrap Road, Vienna, Virginia, came forward in favor of the application. He agreed with the applicant that the fence was necessary due to traffic considerations.

There being no other speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-PR-079 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT H. ALLRED, TRUSTEE, SP 2011-PR-079 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit addition to remain 5.7 ft. from side lot line and an existing fence 6.0 ft. in height to remain in front yard of a through lot. Located at 8423 Hunt Valley Dr., Vienna, 22182, on approx. 10,540 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 39-1 ((22)) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant testified the construction was actually completed by a prior owner.
3. The applicant had no knowledge of the error when he bought the property.
4. The applicant has done everything to rectify it.
5. It is only a sliver of the sunroom that is in violation of the setback ordinance, and a lot of that is the overhang.
6. The applicant is on a through lot with frontage on a busy road, Wolf Trap Road.
7. Under the circumstances, with a trail in the rear of the property, a 6-foot fence is justified.
8. It is the functional rear yard of the property.
9. The applicant has met the six subsections set forth under Sect. 8-914, in particular, that the noncompliance was done in good faith.
10. The reduction will not impair the purpose and intent of the Ordinance or be detrimental to the use and enjoyment of the property.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the addition and fence, as shown on the plat prepared by Dominion, dated June 7, 2011, as revised through July 25, 2011, as submitted with this application and is not transferable to other land.
2. Appropriate permits and final inspections for the addition shall be diligently pursued and obtained within six months of final approval of this application.

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. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. WASHINGTON ELIM PRESBYTERIAN CHURCH, SPA 98-D-049 Appl. under Sect(s).
3-403 of the Zoning Ordinance to amend SP 98-D-049 previously approved for a church to
permit change in permittee and development conditions. Located at 6901 Haycock Rd., Falls
Church, 22043, on approx. 1.21 ac. of land zoned R-4. Dranesville District. Tax Map 40-4
((1)) 8C.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jane Kelsey, the applicant's agent, 4041 Autumn Court, Fairfax, reaffirmed the affidavit.

Matt Mertz, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the application was to allow a change in the permittee and in the development conditions.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said when the church was purchased in 2010 by the applicant, they did not know they needed to obtain a special permit to change the church's name. The church originally was only applying for a change of permittee, but staff noted some issues needed to be addressed and proposed some development conditions. The applicant had already complied with the sign requirement at the entrance gate, and had obtained estimates to repave the parking lot. In addition, steps had already been taken to replace dead and/or dying landscaping.

Ms. Kelsey introduced Robert Strom, 5469 Ladues End Lane, Fairfax, Virginia, and asked that he be allowed to address the Board as an elder of the church.

Mr. Strom stated that he had sent out letters to the surrounding neighborhood regarding the public hearing and asked if they had any input. He said they received only one response from an adjacent property owner, which stated that they were happy to have the church in the neighborhood.

In response to a question from Mr. Hart, Ms. Kelsey said that the dumpster would be completely removed after the parking lot was repaved. However, if it was demonstrated that there was sufficient parking with space to accommodate the dumpster, it would be returned to the site. She suggested it be placed to the right of the shed with plantings around it, so that it would be screened.

Mr. Hart asked about a photo showing a black chain link fence with overgrown branches and debris on the ground. Ms. Kelsey stated that the fence was not owned by the church, but belonged to the property to the north. She said that any debris on the church property would be removed.

Mr. Hart and Ms. Kelsey discussed the trees marked for saving, and Ms. Kelsey noted that unless a tree was dead, dying, or diseased, it could not be removed.

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

Mr. Byers moved to approve SPA 98-D-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

WASHINGTON ELIM PRESBYTERIAN CHURCH, SPA 98-D-049 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 98-D-049 previously approved for a church to permit change in permittee and development conditions. Located at 6901 Haycock Rd., Falls Church, 22043, on approx. 1.21 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 8C. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 2011; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-4.
3. The area of the lot is 1.21 acres.
4. The staff recommends approval, but only with the imposition of the proposed Development Conditions.
5. As the applicant's agent has indicated, they are in agreement with those development conditions.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Washington Elim Presbyterian Church and is not transferable without further action of this Board, and is for the location indicated on the application, 6901 Haycock Road (1.21 acres), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by B.C. Consultants dated, June 1998, as revised through October 23, 1998, 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 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 sanctuary shall not exceed 288. There shall be a minimum of 72 parking spaces. All parking shall be on-site as shown on the special permit plat.
6. The existing vegetation, landscaping, and tree save area shall be maintained and preserved and shall be deemed to satisfy the transitional screening along the north, west and east property lines. The playground to the west of the building may remain, but may not encroach any further into the tree save area. Any dead, dying, or damaged vegetation in the transitional screening areas shall be

replaced with like kind as needed to maintain the screening as determined by the Urban Forestry Branch.

7. The barrier requirements shall be waived along the east and west property lines. A six-foot high solid wood fence shall be provided and maintained along the northern property line between the limits of clearing and grading and the edge of the parking lot.
8. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.
9. Any existing lighting of the parking lot shall not be increased in height and the lights shall be of a design which focuses the light directly on the subject property and shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
10. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
11. Reflective markers shall be permanently installed on the entrance gate.
12. The dumpster shall be removed from the site, unless the applicant demonstrates that sufficient parking exists on site to accommodate the dumpster. If retained, the dumpster must be screened to meet Zoning Ordinance requirements.
13. Uneven areas of the parking lot shall be smoothed/repaved to prevent tripping hazards and maintain a well-kept appearance.
14. The locations of the shed and play area shall be generally as shown on Attachment 1 of the development conditions.

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. The applicant may not obtain the Non-Residential Use Permit before achieving compliance with the conditions listed above.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless a new Non-Residential Use Permit has been obtained. The Board of Zoning Appeals may grant additional time to obtain a new Non-Residential Use Permit 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. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. 7031 JK, INC., SPA 96-M-006-02 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 96-M-006 previously approved for commercial recreation use to permit a change in permittee. Located at 7031 Little River Tpke., Annandale, 22003, on approx. 3.07 ac. of land zoned C-6, CRD, HC and SC. Mason District. Tax Map 71-1 ((1)) 116A.

Chairman Ribble noted that SPA 96-M-006-02 had been administratively moved to December 14, 2011 at 9:00 a.m., due to notices.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. ENES ALIC, SP 2011-LE-074 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.9 ft. from rear lot line. Located at 7130 Cold Spring Ct., Alexandria, 22306, on approx. 2,280 sq. ft. of land zoned R-5 (Cluster) and HD. Lee District. Tax Map 92-4 ((6)) 152.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Enes Alic, 7130 Cold Spring Court, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2011-LE-074, subject to the Proposed Development Conditions in the staff report.

In response to a question from Mr. Hammack, Ms. Cho said she did not believe the proposed addition height would block the sight lines of the abutting property owners.

Mr. Alic presented the special permit request as outlined in the statement of justification submitted with the application. His mother-in-law, who was 87 years old, lived in the house with he and his wife. Mr. Alic said the additional room would enhance the quality of her life and theirs. He also mentioned that he had discussed the addition with his neighbors, who approved of the proposal.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-LE-074 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ENES ALIC, SP 2011-LE-074 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.9 ft. from rear lot line. Located at 7130 Cold Spring Ct., Alexandria, 22306, on approx. 2,280 sq. ft. of land zoned R-5 (Cluster) and HD. Lee District. Tax Map 92-4 ((6)) 152. 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 16, 2011; and

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

1. The applicant is the owner of the property.
2. The Board has a staff report recommending approval, and the Board adopts the rationale in the staff report.
3. The sunroom addition is largely screened from view by the existing fence and the location of the backyard.
4. The addition is not really visible from the street.
5. The sunroom is located in the logical place for it on the yard.
6. It is a minimal extension beyond the 20-foot minimum rear yard.
7. The Board has a letter from Linda Cornish Blank, the Historic Preservation Planner, advising the Board that the Architectural Review Board has approved the application with the development conditions that are incorporating the architectural drawings.
8. It is actually a very attractive structure.

9. Any potential impacts have been mitigated.
10. It is unusual that there are townhouses like this in a Historic District, but this modification will not be doing any harm to the character of the Historic District.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the enclosed sunroom addition (215 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated June 3, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [1,282 square feet existing + 1,923 square feet (150%) = 3,205 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The proposal shall be reviewed by the Fairfax County Architectural Review Board prior to the issuance of a building permit.

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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the construction has commenced and been diligently pursued. 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. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. MARIA L. MICHAELS, SP 2011-SU-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit an accessory structure to remain 9.7 ft. and accessory storage structure to remain 0.4 ft. from side lot line. Located at 11224 Sorrel Ridge La. on approx. 2.34 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((3)) 18. (*Admin. moved from 6/29/11 at appl. req.*) (*Decision deferred from 7/13/11*)

Chairman Ribble reminded the Board that this application was for decision only. Since he was not present for the original public hearing, he recused himself from this one.

Vice Chairman Hammack assumed the Chair.

Mr. Hart and Deborah Hedrick, Staff Coordinator, discussed the adjacent property owner's request for a 7-foot wooden privacy fence along the property line. Ms. Hedrick noted that the neighboring property owner was in agreement with the proposed fencing, stating that the fencing was preferable to the suggested additional vegetation buffer.

In response to a question from Mr. Hart, Ms. Hedrick said that there was no development condition addressing the proposed fencing. It was only shown on the plat. She explained the fence boundaries, and noted that it was not proposed to extend to the property line, which would have blocked the neighbor's view of Fox Lake.

Mr. Byers questioned whether there was enough space for placement of a fence. Ms. Hedrick said that the adjacent property owner had similar concerns, which was why they wished to have the property staked prior to the fence being installed, which would ensure all portions of the fence remain on the application property.

Mr. Smith asked if this fence would be in lieu of any screening. Ms. Hedrick replied that it would.

Mr. Hammack inquired as to the status of the pending litigation. George Trowbridge, the applicant's attorney, stated that he had offered to nonsuit the case, but wanted to retain the right to adverse possession.

In response to a question from Mr. Hart, Mr. Trowbridge said he had not yet seen the neighbor's survey, and was taking their word that a fence could be built.

Ms. Gibb and Mr. Trowbridge discussed the utility easement situation, with Mr. Trowbridge explaining that the developer had reserved utility easements for all the properties, but then went out of business. He noted that a Vepco easement was recorded on the applicant's property between the road and the garage. Ms. Gibb asked about utility easements on the other neighboring properties. Mr. Trowbridge said that easements had been reserved by County Placement, Inc., but since they went out of business, no other entity can grant them.

Discussion ensued with concerns regarding the issue of the stone wall and where the fence posts conflict with the stone wall. Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff had discussed creating a development condition which would address the concerns.

Ms. Hedrick stated that a new survey, which had been provided by the owners of lot 19, was currently on the overhead projector, and might better shows the property line, adjacent structures, and easements on lot 18.

Mr. Byers asked whether any thought had been given to removing the current 4-foot fence and replacing it with a 7-foot privacy fence. Mr. Trowbridge said it had not been suggested, noting that the neighboring property owners were still not communicating. He also pointed out that any such change would have to be approved by the architectural review board of the homeowners association. Ms. Hedrick clarified that the neighboring property owner does not want a privacy fence located on their property.

As there were no further questions, Vice Chairman Hammack asked for a motion.

Ms. Gibb moved to approve SP 2011-LE-074 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARIA L. MICHAELS, SP 2011-SU-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit an accessory structure to remain 9.7 ft. and accessory storage structure to remain 0.4 ft. from side lot line. Located at

11224 Sorrel Ridge La. on approx. 2.34 ac. of land zoned R-1. Sully District. Tax Map 36-4 ((3)) 18. (Admin. moved from 6/29/11 at appl. req.) (Decision deferred from 7/13/11) 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 16, 2011; and

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

1. The applicant is the owner of the property.
2. This case is a tough one.
3. The gazebo and the storage structure are too close to the property line, especially the storage structure.
4. The Board very, very rarely approves something so close to a property line, but in this case, it is a very substantial building.
5. It is well built and blends in with the rest of the property.
6. It was built in 1995 and replaced an existing structure that was coming down, according to the applicant's testimony.
7. It was there before the property owners on Lot 19 moved in.
8. It was there without objection for many years because apparently it was screened by some trees, which have since been taken down.
9. Nevertheless, they did exist for a number of years without objection.
10. In this case, it would be very, very expensive to try to move the buildings, they are tied into a sort of an architectural and aesthetic scheme of the home, and they have been there a long time.
11. The Board has been struggling with how to screen the two structures, which are so close to the property line, especially the storage structure.
12. The applicant and the neighbors on Lot 19 have come to sort of a reluctant agreement about a privacy fence.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of an accessory structure (gazebo) and an accessory storage structure (brick building), as shown on the plat prepared by Schools & Townsend, P.C., dated February 17, 2010 as sealed through March 31, 2011, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the accessory structure (approximate 256 square foot gazebo) within 120 days of approval of this special permit or the structure shall be reduced in height, relocated or removed to comply with applicable Zoning Ordinance provisions.
3. The applicant shall construct a 7-foot solid privacy fence on Lot 18 along its perimeter with Lot 19 between the front of the brick dwelling unit to the rear of the shed with the outside of the fence facing Lot 19, with color, materials, and construction subject to the approval of the Architectural Review Board, after the property line has been surveyed and staked by a certified surveyor. The 7-foot solid privacy fence shall be constructed within 180 days from the date of approval of this special permit.
4. Approval of the location of the shed shall be expressly subject to any rights which utility companies or other parties with a proper interest may have in the right to use the utility easement.

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. Chairman Ribble recused himself from the hearing. Mr. Beard was absent from the meeting.

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Chairman Ribble resumed the Chair.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. MANSION HOUSE CLUB, INC., SPA 77-V-247-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP-77-V-247 previously approved for a swim and tennis club to permit site modifications including increase in height of light poles. Located at 9321 Old Mount Vernon Rd. on approx. 5.04 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 9D. (Admin. moved from 4/6/11, 6/8/11, and 9/14/11 at appl. req.)

Chairman Ribble noted that SPA 77-V-247-02 had been administratively moved to April 14, 2012 at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. PAULINE B. RAMPRASAD, SP 2011-SP-067 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit existing deck to remain 17.3 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of addition 16.4 ft. from front lot line. Located at 6462 Honey Tree Ct., Burke, 22015, on approx. 14,716 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((10)) 11. (Decision deferred from 10/5/11)

Chairman Ribble reminded the Board that this application was for decision only, with the record having been left open for written submissions.

Debbie Hedrick, Staff Coordinator, said the applicant's agent was present, and had presented additional information to the Board, modifying the request to reduce the size of the proposed structure by 2 feet to 18.4 feet to the front lot line facing Old Keene Mill Road. This was the first staff had seen it, and it was submitted with a revised plat submission as well.

In response to a question from Mr. Hammack, Ms. Hedrick stated that the new proposal provide two more feet of cushion between the trail and any future expansion of Old Keene Mill Road. However, she clarified that the new plat showed the trail easement to be 12.0 feet in width, and the addition would then be 18.4 feet from the edge of the property line.

Chairman Ribble asked what the staff's position was on the application at this point. Ms. Hedrick replied that staff was recommending denial of the two-story addition to the front lot line of Old Keene Mill Road.

Chairman Ribble said he would entertain a motion.

Mr. Smith moved to approve-in-part SP 2011-SP-067 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAULINE B. RAMPRASAD, SP 2011-SP-067 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit existing deck to remain 17.3 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of addition 16.4 ft. from front lot line **(THE BOARD DID NOT APPROVE THE ADDITION.)** Located at 6462 Honey Tree Ct., Burke, 22015, on approx. 14,716 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((10)) 11. (Decision deferred from 10/5/11) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 2011; and

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

1. The owner of the property is the applicant.
2. The property is zoned in the R-3 zoning category.
3. Regarding the proposed addition:
 - A. The applicant has not presented testimony indicating compliance with the general standards for special permit uses as set forth in Section 8-006 and the additional standards for the provisions for reduction of certain yard requirements as contained in Section 8-922 of the Zoning Ordinance.
 - B. This addition, under these circumstances, is too much.
 - C. It is the wrong placement of the addition.
 - D. Just looking at it, it does not feel right.
 - E. When looking Old Keene Mill Road, and considering the modifications proposed to Old Keene Mill Road, and looking also at the trail easement, the Board thought it was too much to be adding to a front yard in this location.
 - F. The Board agreed with the analysis in the staff report.
 - G. The Board had some concerns, even looking at the general conditions, about compliance and being in harmony with the adopted Comprehensive Plan, as well as the Section 8-922 provisions about whether the proposed reduction represents the minimum amount of the reduction necessary to accommodate the proposed structure on the lot.

- H. In this case, you have a 14,700 square feet lot and have several additions that have been constructed already, including a two-story sunroom addition, two-level deck, not to mention gazebos and sheds and patios.
 - I. It seems that this is overloading this lot in a location in a front yard on Old Keene Mill Road.
 - J. The Board had a concern with Section 8-006, General Standard 3, about the proposed use being harmonious with and not adversely affecting the use and development of neighboring properties in accordance with the applicable zoning district regulations and adopted Comprehensive Plan, being so close to a major thoroughfare.
 - K. The Board had a concern with Section 8-922, Standard 6, about the bulk along the lot line with Old Keene Mill Road, 24-feet in length and now 12-feet in width, still is too much bulk there and does not meet the requirements of Standard 6.
 - L. The Board had a concern with Standard 7 with vegetation in a limited area in which to plant vegetation as mitigation of the significant impact of the structure and not harmonious with the surrounding off-site uses in the neighborhood.
 - M. The Board had a concern with Standard 8, right-of-way for a major thoroughfare shown on the Comprehensive Plan to be widened to a four-lane divided road with a 12 to 16-foot trail easement.
 - N. The Board was concerned about the impact of living space for a single-family dwelling unit directly adjacent to a high noise generating use.
 - O. The Board did not think it met Standard 8.
 - P. The Board had a concern about Standard 9. It has a large rear yard, and it looked like there were other places this could go.
4. Regarding the existing deck:
- A. This has a setback now of 17.3 feet from the same lot line in a front yard.
 - B. In this case, the impact is significantly less.
 - C. This is a wooden deck that was built from all indications in good faith, through no fault of the property owner.
 - D. To force compliance with the standard in this case would cause an unreasonable hardship in tearing out the deck that is otherwise usable.
 - E. It is easier to mitigate and address in the future.
 - F. It does raise some of the same concerns, but, again, given the good faith component and the hardship component, it swayed the Board to approve this portion of the application.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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-IN-PART**, with the following development conditions:

1. This special permit is approved for the location of the wood deck, as shown on the plat prepared by Scartz Surveys, dated April 1, 2011, as signed and sealed through November 15, 2011, submitted with this application and is not transferable to other land.
2. As shown on the special permit plat, the "Frame Shed" shall be removed, relocated or reduced in height to comply with current Zoning Ordinance requirements.
3. The applicant shall assume all responsibility for repair and/or replacement of any portions of the fence which must be removed to accommodate repairs and/or maintenance within the trail easement as shown on the special permit plat.
4. The applicant shall remove the brick/block planters as shown on the SP plat inside of the trail easement within 90 days of approval of this application.

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. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. WILLIAM HAIGHT, VC 2011-BR-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 5.1 ft. from side lot line. Located at 9119 Saranac Ct., Fairfax, 22032, on approx. 16,887 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 23.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David Vogt, the applicant's agent, 4701 Sangamor Road, Bethesda, Maryland, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation.

Mr. Hart questioned other locations for the proposed carport. Susan Langdon, Chief, Special Permit and Variance Branch, responded that a patio was currently to the left of the house. She said that the front of the house was most likely too shallow for a carport.

Mr. Hammack pointed out that the existing garage was outside the 15-foot building restriction line, and asked if that was permitted. Ms. Horner said the garage had been previously constructed with a building permit and was determined to have vested rights for the encroachment.

Mr. Vogt presented the variance request as outlined in the statement of justification submitted with the application. He said he called the County for setback information, and was told that you could have an extension into the side yard of 5 feet and then could ask for a special permit for a 50 percent reduction. Mr. Vogt said the applicant had proceeded on that information. He was later told it was incorrect. Mr. Vogt said the requested carport was to provide covered access into the house in inclement weather. He added that the applicant hoped to have his mother move in within the next three to five years.

In response to Mr. Hammack's query regarding the possibility of attaching the carport to the back of the house, Mr. Vogt stated that it would not be possible since there was a 6-foot grading difference.

Mr. Hammack stated that he thought one of the reasons for the carport was to put a hobby shop in the garage. Mr. Vogt said the homeowner could address that issue.

Catherine Haight, spouse of the applicant, said she was representing her husband, who was currently in Afghanistan. She said the primary reason for the carport was always to reduce the effect of the weather going from the parking spaces in the driveway into the house. She there were perpetual flooding issues, along with ice on the driveway. Ms. Haight said the garage was primarily used for hobby storage, but even if a hobby room was placed elsewhere, it would not solve the problems associated with having a detached garage.

In response to Mr. Hammack's question, Ms. Haight said they had considered adding only a one-car carport, but felt it would be a strange, unsightly addition. Mr. Hammack told Ms. Haight that variance requirements were very strict, and that it would be very difficult to approve her application.

Mr. Hart and Ms. Haight discussed the option of a two-car carport that could be parked front to back, staying within 7.5 feet rather than 5.1 feet. Ms. Haight she had three cars, which would make it difficult to park in that configuration. Mr. Hart commented that it would be easier to approve a special permit request at 7.5 feet than a variance for 5.1 feet.

Chairman Ribble called for speakers.

Mr. Vogt asked to speak to the setback issue. He showed a plat depicting a 7.5 foot setback and a 5.1 foot setback and stated that the design with the 5.1 foot setback was the better choice since it would be in line with the current garage structure and would enhance the overall look.

Ms. Gibb asked staff whether the difficult conditions under which a variance can be granted was explained to applicants. Ms. Langdon responded it was normally relayed to applicants during pre-application meetings, however, she could not confirm what specifically was told to this applicant.

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

Mr. Hart asked if there was a way for the applicant to convert the variance application to a special permit request without a waiting period or having to repay the application fee. Ms. Langdon stated that the Board would have to defer decision or continue the variance public hearing. She said it could then be done administratively. Ms. Haight said she would like the opportunity to change it.

Mr. Hart moved to defer decision on VC 2011-BR-011 to February 1, 2012, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. RONALD B. SYDNOR, SP 2011-SU-078 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of deck 11.9 ft. from side lot line. Located at 4345 Silas Hutchinson Dr., Chantilly, 20151, on approx. 11,880 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 181A.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Thomas L. Fitzpatrick, the applicant's agent, Post Office Box 221874, Chantilly, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation.

Mr. Byers stated that although the property was developed under R-2 Cluster regulations, it was rezoned to the R-C district in 1982. He wondered why it was based on an R-2 Cluster. Susan Langdon, Chief, Special Permit and Variance Branch, said she believed it was because of a court case at the time. Mr. Hart offered a brief history, noting that the judge had upheld a downzoning to the R-C district, but all those applicants who had already submitted plans to the County were allowed to proceed under the R-2 Cluster zone.

Mr. Fitzpatrick presented the special permit request as outlined in the statement of justification submitted with the application. He said the application was in compliance with Section 8-913 of the Zoning Ordinance and all the provisions contained therein.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2011-SU-078 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD B. SYDNOR, SP 2011-SU-078 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of deck 11.9 ft. from the southern side lot line. Located at 4345 Silas Hutchinson Dr., Chantilly, 20151, on approx. 11,880 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 181A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 2011; and

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

1. The applicant is the owner of the property.
2. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
3. Such modification in the yard shall result in a yard not less than the minimum yard requirements of the zoning district that was applicable to the lot on July 25, 1982.
4. It was R-2 Cluster to make those requirements.
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, and the additional standards for this use as contained in 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 and size (approximately 340 square feet) of the deck, as shown on the plat prepared by NOVA Associates, as revised by T.L. Fitzpatrick, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The deck shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:00 A.M. LTF REAL ESTATE COMPANY, INC., SP 2011-HM-056 Appl. under Sect(s). 5-403 and 5-303 of the Zoning Ordinance to permit a health club. Located at Terminus of Business Center Dr. on approx. 11.09 of land zoned I-3 and I-4. Hunter Mill District. Tax Map 18-3 ((8)) 6 A3. (Admin. moved from 9/21/11 at appl. req.)

Chairman Ribble noted that SP 2011-HM-056 had been administratively moved to December 7, 2011 at 9:00 a.m., at the applicant's request.

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The meeting recessed at 11:27 a.m. and reconvened at 11:32 a.m.

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~ ~ ~ November 16, 2011, Scheduled case of:

9:30 A.M. SNSA, INC. D/B/A FAST EDDIE'S BILLIARD CAFÉ, A 2011-MV-033 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the proposed use of the property must be classified as a Commercial Recreation Special Permit Use, that the proposed accessory uses are not subordinate, and that the entertainment uses must be limited in order to be considered accessory to the principal use. Located at 6220 Richmond Hwy, Alexandria, 22303, on approx. 2.51 ac. of land zoned C-8, H-C and CRD. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D.

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Roger Marcy, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. Staff recommended the Board uphold the Zoning Administrator in this matter.

Chairman Ribble asked if there were any questions of staff.

In response to Mr. Hart's questions, Eileen McLane, Zoning Administrator, Zoning Administration Division, gave the following information. There was no other determinations regarding a stage or a deejay booth as being accessory to a principal use such as a restaurant. The eating establishment definition allowed for a dance floor to be accessory to an eating establishment, and it could not exceed one-eighth of the dining area. That was originally put in the Ordinance in 1975, and at that time and through the next 20 years, the eating establishments that we were seeing were small. One-eighth resulted in a small type of a dance floor which was truly just accessory to the eating establishment. In the prior five to six years, uses are coming in with sizes of 10,000 and greater square feet, where one-eighth turned out to be 600, 700, or 800 square feet. When that first started happening, they were looked at just to make sure that the one-eighth was not exceeded.

When complaints started coming in about these uses, and based on enforcement, it really was not an eating establishment. It had to be reconsidered exactly what the trend was, and what was happening with the use. The County had backed off the one-eighth, due to these very large uses a couple of years ago, and have been working downward in the size since then. It has all been based on the experience with various eating establishments and the problems when they got to a certain size. Staff had a discussion, and decided that 150 or one-eighth, whichever was less, appeared to be a number that would be appropriate to ensure that these dance floors were truly accessory. This had received the full support of the Board of Supervisors.

Mr. Hart said he wanted to know if there were any other determinations made before this which stated the dance floor was not subordinate unless it was one hundred fifty square feet or less, as the 150 square feet was not in the Ordinance now. Ms. McLane said she would have to check on that.

Discussion ensued with Board members, Ms. McLane, and Michael Congleton, Department of Code Compliance, regarding dance floors; computations used; and other determinations not necessarily about a dance floor, but where the question was posed on whether some combination of things required a special permit for a commercial recreation use, whether it was a dance floor, dartboards, vending machines or other things.

Ms. Gibb assumed the chair.

Douglas McKinley, the appellant' agent, came forward. He presented the arguments forming the basis for the appeal. The appellant had been denied its application for a permit to permit dancing on the grounds that the proposed dance floor, which was one-eighth of the dining area as the statute provided, was over a hundred and fifty square feet. Mr. McKinley said that an interpretation of the Zoning Ordinance must be reasonable and fair, and must be in accord with the purpose of the Ordinance. It should have been applied consistently or administratively applied consistently. That is, one interpretation should not be given to one business and then deny the same to another similarly situated business, thus denying them competitiveness. The County was allowed to regulate dancing by a specific statute.

Mr. McKinley said the statute which the Zoning Administrator said gave her the power to interpret, did not have the word interpretation in it. It said she could administer, and she can enforce. It was the County Ordinance that said the Zoning Administrator could interpret, but the cases have allowed interpretation as long as it was fair and reasonable and within the purpose of the statute. He said if what they were doing was within the intent of the statute, then the intent of the statute was to render the dancing function useless economically, because what it also did was say there is only 15 square feet per person allowed. By the way they handle their density requirements, you can only get ten people on the dance floor.

According to Mr. McKinley what had really happened was dancing had become economically popular in one specific area. Essentially, it was a Hispanic function. Culturally, they enjoyed dancing, and wanted to have it. If a dance floor was set up for someone else, no one would be there. It will have a disparate impact here. It was wrong to say arbitrarily in the face of the statute that said you can have one-eighth, that you can only have a hundred and fifty square feet no matter the size of your dining area.

Mr. McKinley spoke about research he did on other clubs, which he believed showed this determination was not fair.

Discussion ensued with the Board and Mr. McKinley on the discretion of the Zoning Administrator in evaluation of matters such as this, and also when considering other accessory uses, such as billiard tables.

Chairman Ribble called for speakers.

Steve Pattison, 6117 Bangor Drive, Alexandria, Virginia, came forward. He said he believed the reason for this hearing was, in part, because a two-year temporary special permit was not renewed, which had allowed Fast Eddie's to have a dance floor. The reasons that it was not renewed was because of the negative impact it had in terms of crime and repeated fire code violations in the dance hall itself. He believed there was 99 police or crime incidents during the two-year period during which Fast Eddie's had their temporary dance floor permit, not to mention the negative impact on the neighborhood, such as littering, urination in yards, gang members, and fighting in the streets. He had witnessed a police beat-down in his driveway. He cited more undesirable incidents and behavior. He said there were other ways to make money.

Chairman Ribble asked staff if they had anything to add.

Ms. McLane said that under the definition of eating establishment, it says that entertainment which is provided for the enjoyment of the patrons of the eating establishment. They can establish the eating establishment, and if they cannot make that work, because they don't have a dance floor, then that really causes you to think what is driving this bus. Is it the dance floor? Is it a dance hall? Or is it the eating establishment?

Ms. McLane said this was not an exact science. The reason to have a Zoning Administrator was to administer on issues where there was vagueness, which gave flexibility to address situations as they came up. In order to have a longstanding interpretation, it had to start somewhere. This was being started as of 2011, as far as what constituted accessory types of uses to an eating establishment. It was not a static thing, as uses changed and evolved. The Zoning Administrator needed to be able to administer the code in relation to how those uses were evolving. Ideally, the Ordinance would be amended to address those, but until that time happened, then the interpretation stood. This was not arbitrary and capricious. It had been an evolving interpretation over the last several years, and it had come to the hundred and fifty square feet for the floor area.

Ms. McLane continued on one more point. They were not saying that the appellant could not have a dance floor, but rather that it was not accessory to an eating establishment. There was another use in the Ordinance, the commercial indoor recreation use, which in her opinion, was more appropriately situated.

Discussion ensued with regard to reception halls with regard to dancing, and billiard tables as accessory to eating establishments.

Mr. McKinley spoke of other eating establishments which had dancing areas and billiard tables.

Chairman Ribble closed the public hearing.

Mr. Hart said he was going to split up the appeal into two different motions. He made a motion to overturn the determination of the Zoning Administrator pertaining to the determination of the limitation of the dance floor area.

Mr. Hart believed that the Zoning Administrator had the discretion to make an evaluation of any combination of uses which was applied for as to whether it was by right or with additional permits or approvals that might be needed. In large measure, the Ordinance anticipated that this was not an exact science. Sometimes the intensity of a use was not always dependent on the square footage allotted to it. It might have to do with the hours of operation or the character of the activity, and whether something was subordinate was not always reducible to an exact science. He thought the Zoning Administrator's discretion here was properly exercised. The determination that this particular package was something more than an eating establishment with accessory uses was within the Zoning Administrator's discretion.

The Board thought there was a problem with the August 4th letter which went through this particular application and applicable Zoning Ordinance provisions. Where Mr. Hart believed this was plainly wrong was right at the end. The piece where they would overturn the Zoning Administrator and go with the appellant was on the last sentence. The conclusion that they would be limited to a dance floor of not more than 150 square feet in area with no stage and deejay area, which appear to be interrelated, was not based on a long-standing interpretation. It has been conceded essentially that was of relatively recent origin. The Section which specifically deals with dance floors is a mathematical calculation.

The Ordinance cut both ways. In this particular instance, although the Zoning Administrator had discretion to interpret the Ordinance, she had to go by the Ordinance as written and not how it might be, or not how the Board of Supervisors anticipated it would be in six months. What it said today was entertainment, which is provided for the enjoyment of patrons, shall be considered accessory to an eating establishment, to include dancing by patrons, provided space made available for such dancing shall not be more than one-eighth of that part of the floor area available for dining. The word shall was mandatory. There was not an additional limitation that could be read into that to further reduce the size of the by-right dance floor below the one-eighth.

Mr. Hart also concluded that although the letter was wrong about the limitation on the size of the dance floor, the overall determination as to this particular application was correct, because of these other subjective pieces in it, such as the darts, the billiards, and other things which could not be objectively measured. The dance floor by right could be one-eighth of the floor area available for dining. There was nothing about how the area of square footage for the stage or the deejay booth was regulated. It appeared from the record, and in a rough estimate, that the area of the stage was about three percent, the area of the deejay booth about one percent, and that those are relatively small and separated from the rest of the dining establishment.

Mr. Hart thought it was inherent in an ordinance that contemplated dance floors that there would have to be some space for the music, whether it was a stage for the musicians, a piano, or a console for a deejay. The provision in Sect. 20-300 said, provided the space made available for such dancing shall not be more than one-eighth of that part of the floor area available for dining. The Board thinks the one-eighth is the dance floor, not the dance floor, plus the deejay booth, plus the existing stage. Those were Mr. Hart's proposed findings of facts and conclusions of law with respect to the dance floor.

With respect to the issue of the billiard tables or the darts or the combination, it is not an exact science. Even if the Board might disagree with the Zoning Administrator's judgment, it has not been shown that she was plainly wrong on that, so the Board would leave that alone. At least on the appeal of the August 4th letter, that was Mr. Hart's motion.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting.

Mr. Hart then made a motion to uphold the Zoning Administrator with respect to the commercial recreation use classification and denial of a dance permit.

He believed the Zoning Administrator went too far in reading an additional limitation into Sect. 20-300, so as to further restrict the size of a by-right dance floor. The specific question that was presented was not a clean application for a dance floor only. It was an application for a restaurant with several billiard tables and the darts room. He said it was not the function of the Board to either rewrite the application or answer different questions other than what were proposed in the appeal. Given the narrow question before the Board, Mr. Hart thought they were entitled to a by-right dance floor of one-eighth.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, After Agenda Item:

Request for Additional Time
Carol S. Jackson, Trustee, SP 2008-DR-102

Mr. Byers moved to approve two years of additional time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting. The new expiration date was November 5, 2012.

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~ ~ ~ November 16, 2011, After Agenda Item:

Request for Additional Time
Salameh Brothers Construction Company, VC 2008-DR-102

Chairman Ribble noted that the staff recommended denial of this request. Susan Langdon, Chief, Special Permit and Variance Branch, said it had been nine years, and the applicant was currently not returning phone calls for a status update.

Mr. Hart stated his confusion, noting that the applicant's July 15, 2011 letter said the plan had been approved, and only needed to be recorded. Ms. Langdon responded that the applicant had conveyed the

same information to the Board for the last two meeting dates. In response to a question from Mr. Hart, Ms. Langdon said a letter notifying the applicant of this hearing had not been transmitted, however, telephone messages had been left indicating the staff's concern with this case.

Hussein Gold, a business partner of Mr. Salameh, informed the Board that the applicant had been out of the country.

Mr. Hart said he would feel better if the Board sent the applicant a letter informing him of the next meeting date.

Ms. Gibb moved to defer consideration of this item until February 1, 2012, and requested that a letter be sent notifying the applicant of that date. Chairman Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ November 16, 2011, After Agenda Item:

Request for Additional Time
Chan S. Park, SP 2005-SP-012

Mr. Smith moved to approve 12 months of additional time. Chairman Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting. The new expiration date was August 31, 2012.

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~ ~ ~ November 16, 2011, After Agenda Item:

Consideration of Acceptance
Application for Appeal by Keyvan Yousefie

Ms. Gibb and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, discussed the timing of the original payment for the appeal fee. It was submitted on October 5, 2011, but returned by the bank. Ms. Stanfield said that the appellant had resubmitted the appeal fee with a money order.

In response to a question from Mr. Hart, Ms. Stanfield said that the application and fee had been submitted within the required thirty (30) day deadline. She stated she phoned the appellant to inform him of the bounced check. The appellant said he would resubmit the \$600 fee in person on Friday, October 28, 2011, however, he did not show.

Hussein Gold appeared before the board, stating he was one of the business partners of Annandale Liberty which owned the property that was the subject of the Notice of Violation. He said Keyvan Yousefie was hired as an agent to assist in this matter. Mr. Gold stated that although Mr. Yousefie was given a company check,, he used his own personal check to pay the appeal fee, therefore, the owners of Annandale Liberty had no personal knowledge that the check had bounced.

In response to a question from Mr. Hart, Mr. Gold said that he was a one-fourth owner of Annandale Liberty, and that Mr. Yousefie was not affiliated with the company. They hired Mr. Yousefie as an agent, since he said he dealt with the Fairfax County government on a regular basis.

Chairman Ribble asked when he discovered that the check had been returned, and how fast he acted to resolve the issue. Mr. Gold replied that they were notified by the County by letter addressed to Annandale Liberty, and responded immediately.

Mr. Hart moved to accept the appeal. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting.

Mr. Hart suggested that Mr. Gold might want to consult with an attorney, since there were numerous outstanding issues that had been cited by the Notice of Violation.

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~ ~ ~ November 16, 2011, After Agenda Item:

Request for Intent to Defer for
Sridevi V. Sarma, SP 2011-DR-054 and VC 2011-DR-008

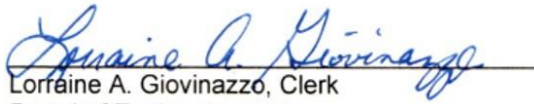
Mr. Hart moved to approve the request for an intent to defer to January 25, 2012, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:58 p.m.

Minutes by: Suzanne L. Frazier/Lorraine A. Giovinazzo

Approved on: March 29, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, 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 Wednesday, November 30, 2011. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Norman P. Byers was absent from the meeting.

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

~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. DANIEL I. OJEIFOH, SP 2011-MV-082 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 2708 Beacon Hill Rd., Alexandria, 22306, on approx. 21,028 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 79.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Daniel Ojeifoh, 2708 Beacon Hill Road, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-MV-082, subject to the proposed development conditions.

Mr. Hart and Ms. Hedrick discussed the proposed plantings referenced in Conditions 11 and 12, with Ms. Hedrick saying it was staff's intention that the plantings be along the rear property line and the larger driveway the applicant had widened.

Mr. Ojeifoh presented the special permit request as outlined in the statement of justification submitted with the application. He said the property was located adjacent to a convenience store and two pharmacies along a public transportation route, his clients generally used public transportation, and he did not believe traffic in the area would be adversely impacted by the home professional office. Mr. Ojeifoh said there was ample parking on his property, and no improvements would be made to the existing structure. He stated that he had read and understood the provisions in Sect. 8-907.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-MV-082 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL I. OJEIFOH, SP 2011-MV-082 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 2708 Beacon Hill Rd., Alexandria, 22306, on approx. 21,028 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 79. 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 30, 2011; and

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

1. The applicant is the owner of the property.
2. The staff has recommended approval, and the Board adopts the staff's rationale in the staff report.

3. The home is located in an area that is near other commercial-type uses and quite near Richmond Highway.

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 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, Daniel I. Ojeifoh, and is not transferable without further action of this Board, and is for the location indicated on the application, 2708 Beacon Hill Road, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses, as indicated on the special permit plat prepared by Dominion Surveyors Inc., dated August 23, 2011 as revised through November 7, 2011, 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 dwelling that contains the home professional office shall be the primary residence of the applicant.
6. The maximum number of employees shall be limited to four on-site at any one time, including the applicant.
7. The maximum hours of operation of the home professional office shall be limited to 10:00 a.m. to 9:00 p.m., Monday through Saturday, from January 15th through May 1st and 10:00 a.m. to 5:00 p.m. during the remainder of the year.
8. There shall be a maximum of 20 clients/families on site per day, and appointments shall be scheduled so that there is a maximum of 20 clients/families visiting the site during the hours of operation during the main tax season of January 15th through May 1st. Appointments shall be scheduled so that parking shall be available at all times for expected clients. During the remaining year, there shall be no more than 5 clients/families per day for the occasional consultation and/or tax extension filing.
9. All parking shall be on-site within the asphalt driveway depicted on the special permit plat.
10. The area utilized for the home professional office shall not exceed the basement/cellar space of the single-family dwelling, approximately 850 square feet in size, and one room, approximately 10 x 12 feet in size, located on the first floor of the dwelling. The layout shall be in conformance with the floor plans included as Attachment 1 to these conditions.
11. A staggered row of evergreen trees, a minimum of 6 feet in height at time of planting, spaced 10 to 12 feet on center, shall be planted along the rear property line to screen the use from the adjoining residential neighborhood.
12. Evergreen shrubs shall be planted along the perimeter of the newly constructed asphalt driveway to soften the appearance of the driveway and help shield headlights.

13. Prior to any clients coming to the site, the applicant shall call the Zoning Inspections Branch of the Department of Planning and Zoning to verify that Conditions 10, 11 and 12 as outlined above have been implemented.
14. A single easel style yard sign associated with the home professional office, size and location as permitted under Article 12 of the Zoning Ordinance, shall be permitted on site during the tax preparation season of January 15th through May 1st only. The sign shall not exceed six square feet in area and a height of four feet, and shall not be located closer than 10 feet to any lot line.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, 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 as outlined above. 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. Smith seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Hammack were absent from the meeting.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. SRIDEVI V. SARMA, SP 2011-DR-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 open deck to remain 4.8 ft. from one side lot line, 0.8 ft. from other side lot line and 1.6 ft. from rear lot line. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with VC 2011-DR-008). (Decision deferred from 8/3/11 and 10/5/11)

9:00 A.M. SRIDEVI V. SARMA, VC 2011-DR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with SP 2011-DR-054). (Decision deferred from 8/3/11 and 10/5/11)

Chairman Ribble noted that the Board had previously approved an intent to defer decisions on SP 2011-DR-054 and VC 2011-DR-008 to January 25, 2012.

Ms. Gibb moved to defer decisions on SP 2011-DR-054 and VC 2011-DR-008 to January 25, 2012, at 9:00 a.m., at the applicant's request. Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Hammack were absent from the meeting.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. MARK W. GRAPIN, VC 2011-MA-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in a front yard on a lot containing 36,000 sq. ft. or less. Located at 7415 Marc Dr., Falls Church, 22042, on approx. 12,916 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((2)) 94. (Reconsideration granted on 9/28/11)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Grayson Hanes, the applicant's agent, 3110 Fairview Park Drive, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the memorandum dated November 23, 2011. She noted that the application was being heard that day as a reconsideration of the Board's September 11, 2011, denial of the variance.

Mr. Hanes stated that he would not be making a presentation, but that the applicant would give a brief statement, followed by his associate, Mark Shafer, who would discuss the legal aspects of the variance application. Mr. Hanes said a compromise by both sides would hopefully resolve the matter.

Mark Grapin, 7415 Marc Drive, Falls Church, Virginia, came forward to speak. He stated that before any project material was purchased, he called the County building office regarding a building permit. The office did not refer him any further in the County, with Mr. Grapin noting that the phone call left him with the impression that there were no other County offices with which he needed to check. After building the tree house, a Notice of Violation was issued, but a Stop Work Order was never received. Since the original public hearing on September 21, 2011, Mr. Grapin said he had reviewed the video of the BZA hearing several times to determine what the Board wanted to make the tree house more acceptable, and he had planted numerous trees and shrubs around the tree house to buffer it from the road. Mr. Grapin said that with counsel's help, he had come to understand the court's ruling under Cochran and how it applied to his property.

Mark Shafer, 3110 Fairview Park Drive, Falls Church, Virginia, said he was appearing on behalf of the Grapin family. He referenced a study that had been distributed to the Board which contained a report stating there would be no negative monetary impact on the adjacent properties. Mr. Shafer referenced the Cochran decision, noting how the law had been revised to remove the language requiring proof of undue hardship to the property owner. He said the variance could be issued as proposed with no restriction; however, the applicant had offered a time limit for the tree house.

Mr. Hart and Mr. Grapin discussed planting three evergreens along Parkwood Terrace, the time limit on the approval proposed in the conditions, and Mr. Grapin's willingness to change the paint color on the tree house.

Mr. Hanes stated that the application had received a great deal of support from the community. He asked that members of the audience who came in support of the application stand. Mr. Hanes also submitted a letter of support from a neighbor, Elizabeth Kephart.

Chairman Ribble called for speakers.

Adele Knott, 7410 Marc Drive, Falls Church, Virginia; and Tom Clark, 3230 Norfolk Lane, Falls Church, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2011-MA-007 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK W. GRAPIN, VC 2011-MA-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in a front yard on a lot containing 36,000 sq. ft. or less. Located at 7415 Marc Dr., Falls Church, 22042, on approx. 12,916 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((2)) 94. (Reconsideration granted on 9/28/11) 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 30, 2011; and

WHEREAS, the Board has made the following findings of fact as reflected in the transcript of the motion, as follows:

In Application Number VC 2011-MA-007 by Mark W. Grapin, under Section 18-401 of the Fairfax County Zoning Ordinance, to permit an accessory structure to remain in a front yard of a lot containing 36,000 square feet or less, on property located at 7415 Marc Drive, Tax Map Reference 50-3 ((2)) 94, I move that the Board of Zoning Appeals adopt the standard variance resolution, and whereas the Board has made the following findings of fact:

This is a difficult case. It's -- actually the public hearing's gone a little shorter than I thought it would. There are a number of issues which were presented to us between the two hearings. I'm not sure if I've ever changed my mind on a reconsideration, but I think that -- or before today, but I think that at least I'm satisfied on one issue, that the procedural problem with granting a variance before now has been resolved.

I want to address a number of findings of fact and conclusions of law in somewhat greater detail than we usually do in anticipation that this may be headed for court no matter what and that the record be clear as to the basis for our decision. Approvals of variances seem to be reversed a lot more than denials. Our function, I think, is to sort these issues out in the context of the variance application only, the statutory criteria, and the Ordinance. I'm going to move approval with some modification to the development conditions, but I understand also that depending on the Board's wishes, it might be necessary to defer the decision briefly once I get the motion out on the table just to hammer out some of the development conditions or to allow perhaps the whole Board to vote on the motion. It's a -- it was a four-to-three vote, and we've only got five people here today.

I want to make a couple preliminary comments also. There's been a lot of media coverage over the past several weeks. We occasionally see that, not very often, thank goodness. Some of what's been in the newspapers or on television or on the internet hasn't always been entirely accurate, and some of the most inaccurate stuff is what seems to have provoked a lot of anger and outrage in material that's been transmitted to us, although happily I think this morning we really didn't see any of that. I want to make clear that this Board never ordered that the structure be removed. That's not something that we have historically done. It's not something that we really have the power to do. Whatever happened today, there wasn't really gonna be a showdown about removal of the structure. That's something a judge would have to order or possibly the Zoning Administrator or maybe the Fire Marshal under certain circumstances, but we don't do that. We didn't do it, and that was not something on our agenda.

This whole situation started with a violation letter that I think I mentioned should not have gone out in the first place, and I think we recognize that in a county of a million people, there are many properties that have to be administered. There's a lot of letters that go out. Not every letter is gonna be perfect, but ordinarily letters with mistakes -- I shouldn't say ordinarily -- once in a while they are administratively withdrawn and reissued. And as far as I can tell from the record, the only letter that went out announced that there was a violation and ordered the homeowner to correct the violation by removing the swimming pool from the front yard. Well, there is no swimming pool, and I don't know exactly where that came from, but nothing else ever was issued. The letter wasn't appealed, and it's not clear to me why that was, but in any event, the letter becomes a thing decided not having been appealed. It's not clear to me, however, whether that really would have affected anything. I don't think it really affects our decision on the variance. I think that there may be enforcement problems later if the Zoning Administrator were to go to court with the letter about removing the swimming pool, not having reissued that.

That may give rise to a 60-day rule problem, but I don't think the 60-day rule problem, in and of itself, would be a basis for granting a variance. I want to address that briefly, not because it's really come up in great detail today, but, again, in a lot of the material that we've been given, there's sort of a

fairness argument's been made, that Mr. Grapin went to the County before the thing was built and asked whether he needed a permit to put up the structure, was told that he didn't. Relying on that, he spent money, put it up. Ordinarily we don't get to consider estoppel on a zoning case. Historically, estoppel doesn't apply to the County except in narrow circumstances. The Zoning Administrator is allowed to change her mind notwithstanding what staff at the counter or over the phone may have said. The General Assembly has legislatively modified that in enacting the 60-day rule. If 60 days go by, they're not able to enforce something later. In this case, I don't think we know whether there was a 60-day rule determination been made or not. The issue of estoppel, though, is more of a defense to a violation than a basis for granting a variance. And I want to make clear that we are not granting the variance out of some reliance on -- if the variance is granted, we're not granting the variance on some reliance on the 60-day rule.

Let me go to 15.2-2309. We have to follow the variance statute when we're granting a variance. We have very little discretion. On a variance, we act only in an administrative capacity. I think the Cochran case confirms that, also Gayton Triangle versus Henrico County. That contrasts with our function on appeals where we are acting quasi-judicial and special permits when we have acted in a legislative capacity and we have much greater discretion. We do not have the discretion to grant a variance out of kindness or compassion. We don't have the authority to change the rules even if we think the rules may be inappropriate or obsolete. We act in an administrative capacity. We have to call balls and strikes.

Under 15.2-2309, we can grant a variance when a property owner can show that his property, among other things, was by reason of the exceptional narrowness, shallowness, size, or shape at the time of the effective date of the Ordinance or whereby reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property or if the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the property, and it goes on.

In this case, I think what's changed it for me is, although this -- I don't think this was really argued the -- previously, I think under the Zoning Ordinance, the R-4 District, this lot is already below the minimum width for a corner lot. It's 90 feet on the plat on the longer of the two short sides when it should have been at least 95 feet. The house also is situated much further back from the front setback line than it would otherwise be. The minimum front yard in an R-4 District is 30 feet. The house, for whatever reason, is set at 42.9 feet. And those two circumstances have reduced the available area behind the house such that there's no functional rear yard. It's five feet short to begin with, and they lose another 13 feet or so by the placement of the house. The size of the lot, the exceptional narrowness or shallowness of the lot below the minimum size in an R-4 District, coupled with the placement of the structure on the lot toward the rear of the property has eliminated a functional rear yard. I think that has some bearing, and I think that would allow us to go further under a Cochran analysis even if -- we don't have to conclude and I agree with Mr. Shaffer on this point, we don't have to conclude any longer that the Ordinance deprives the landowner of all reasonable beneficial use of the property taken as a whole. We still have to find that there's a statutory hardship, that it's something more than a special privilege or convenience for the applicant. My conclusion would be that because of the exceptional shallowness of the lot, we get past the first hurdle.

Let me say also -- and I disagree with Mr. Shaffer a little bit on this. I want to make clear that the basis for the motion is not the double front yard. The reason for that, I think that the Supreme Court has said in the Board of Zoning Appeals versus Nowak case that a double front yard on a corner lot is probably not an appropriate basis for concluding that there's hardship for a variance, and in the Nowak case the owner wanted to build to house closer to the side street than the front yard minimum setback would allow. There probably was another location on the lot where the structure could be placed, but they didn't want to do that. But essentially in that case, a double front yard wasn't a sufficient hardship. I think the other problem with a double front yard is that there are so many of them and that there are double front yards on every corner lot, and there's corner lots everywhere. There's many thousands. We probably in the county could have an amendment to the Ordinance to treat corner lots differently if we needed to, but I think in this case also the problem isn't really the double front yard. The problem is the prohibition on accessory structures in the front yard. The structure here is in the front yard however you slice it. It's forward of the front of the house, and it's forward of the side of the house. It's actually quite close to the intersection of the two streets.

Let me deal with the issue of clearly demonstrable hardship versus a special privilege or convenience. I think it's reasonable to expect that in a single-family home you would want some area in the rear yard for accessory structures, whether it's a shed or, in this case, a playhouse or a tree house, maybe a swing set, sometimes a detached garage, but it -- those are found customarily in residential neighborhoods, and you expect that there's going to be some area to do that. On this particular lot, because of the elimination of a functional rear yard, there really isn't any place for an accessory structure. I tried to think back again, going 12 years back. I think there may have been one occasion where we may have granted a variance for a playhouse of some sort on a weird through lot with no functional rear yard. So I don't think this is necessarily the first time we've done that.

I don't think it's necessarily a special privilege or convenience because of these problems with the lot, because there really isn't an effective place to put something else. I think it's possible that a structure could be placed on the east side of the house close to it, but with the -- the way this house is laid out with the windows and doors and rooms, that space isn't particularly accessible. It wouldn't really be visible from the kitchen area. It wouldn't be an appropriate location for something like a playhouse. It's not something that could easily be observed from the windows, and I don't think that's an appropriate location for it. I would conclude, at least for the basis of our decision, that the property had exceptional shallowness coupled with the circumstance of the placement of the structure rather than a double front yard as being the basis for going further under 15.1-2309.

Keep going here. Oh, factual findings regarding the structure. We don't really define the terms "tree house" or "playhouse." I think I would conclude that the structure is well constructed. It's framed and finished. It rests on the ground on four posts. There are masonry piers beneath the four posts. It doesn't seem to be resting on the tree. It seems to be built around the tree. It has windows and shutters, and it's painted. And, again, to me, it seemed more like a playhouse built around the tree rather than a tree house up in it. I don't think that necessarily, however, changes our approach to it. It is an accessory structure, I think, within the meaning of the Ordinance.

The -- one possibility I thought also was that perhaps the decision could have been deferred on this pending some review of the Ordinance and, if I understood correctly, that there was or is on the work program on Priority 2 an item for review of accessory structure regulations for front yards. Right now Fairfax County has an absolute prohibition, no sheds, no playhouses, no detached garages, no swing sets, no nothing. We, I think, raised that as a potential problem in the case with the World War II vet with the tomato plants in the railroad tie bed in the front yard, and I think he had railroad ties three high. And they said, well, that's an accessory structure, and you can't do that. And I don't remember -- we may have actually upheld the Zoning Administrator on that ultimately or maybe the case went away somehow, but I think that issue was still out there as to what extent do we really want to be regulating accessory structures in front yards. I don't think we've ever seen a case involving a tree house or something referred to as a tree house. I don't know that we want to see any more of them particularly, but maybe that should be looked at. However, Priority 2 is items that are probably a couple years away or more, and I don't think it makes any sense to defer this pending that.

If we -- if we're going forward with the variance, we have to conclude that the condition or situation of the property concerned is not of so general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance, and I think that we're -- we clear that hurdle also in this case again because of the configuration of the lot and the structure on it. We're already beneath the minimum width for an R-4 corner lot. We already have a house that's placed fairly close to the rear line and well back of what the front setback would otherwise be. I don't think that's a recurring situation. I don't think we're gonna see that very often.

I would note also -- and I -- if I didn't mention this before, I meant to. Within the neighborhood, the houses are -- with a couple exceptions, they're generally similar, the same size, in the center of the lot, but many of the corner homes were -- corner lots, the homes were turned 45 degrees to the street, which created a triangular area in the back of the house that had somewhat greater depth in the center of the area, created sort of functional rear lot even if the lots were of similar size. I don't know if any or all of those lots are gonna have the same minimum width problem under R-4, but at

least on some of the lots, with the orientation of the house differently, there was an area created. This house is already up. It's square to the lot lines, and it just has this little slot in the back.

If we're going further, again, under 15.2-2309, in authorizing a variance, the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, et cetera. We typically on the rare occasions when a variance is granted, we have development conditions, and I think that the conditions proposed by staff are a starting point. Again, I did go out there. I went out three times, and I tried to figure out what we would do to mitigate any impacts from this. And I expect that the -- even though we've -- I think we still don't know what exactly the complaint was, I expect it had to do with the appearance or the prominence of it. I thought there were three issues primarily that I wanted to try and address. I think two of those have been addressed already, and the third one, we can try and deal with today.

The first is the screening issue. At the first hearing we had talked about perhaps planting some evergreens. It seems that that's already been done, and although I think we might disagree exactly about the type or location of them, I think I'm satisfied, given the photographs that we've seen, and I think I saw one other photograph this morning, which should be in the record, looking from the driveway side that had some other landscaping planted between the structure and the driveway. So rather than requiring additional landscaping be planted, I think what we instead would do is -- I think I'm satisfied with the plants that have been planted, but we put in a condition that they be maintained in a healthy condition much as we've done on other cases with screening.

The second issue was the duration of it, and actually I think -- I don't have it this very second, but we got a proposed development condition this morning from the applicant, and it was thinking kind of along the lines -- here we go -- of what I was thinking. I guess I was thinking three years instead of five years, but I don't really have strong feelings about that. I don't think we've heard one way or the other whether that's a problem. So I think maybe we can go with that.

And then the third issue was the color of it. Don't -- I need this at some point. And we've kind of talked about that with the applicant, and I'll propose something at least for discussion purposes. We can talk about that.

I want to -- I'll go through those, the wording of those proposed conditions. I recognize that notwithstanding everyone's eagerness to be done with this, that we might not be able to do this just in one sitting, but we can try.

Let me make sure -- I think I've covered the basis for the variance, that estoppel doesn't apply. We're following the statute here and address the potential development conditions.

And I would find that the -- I'll put on the record that the applicant has satisfied the required standards for a variance, particularly under Section 2B in the standard variance motion, exceptional shallowness at the time of effective date of the Ordinance, that the lot would have been in existence before 1978. The houses all appear to be one of the Broyhill type subdivisions in the -- I'd say it's early '50s. It's certainly before 1978.

I've addressed Number 3 about the condition is not so general or recurring in nature as to make reasonably practicable the formulation of a general regulation.

On Number 4, that the strict application of the Ordinance would produce undue hardship, and in this case, there's no room for an accessory structure on this lot because of the absence of a functional rear yard.

Number 5, that such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity, I think we've addressed that.

That the strict application would effectively prohibit or unreasonably restrict the utilization of the subject property, again, that they can't really have an accessory structure at all.

The granting of a variance would alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience, I think we've addressed that.

That the authorization of the variance will not be of substantial detriment to adjacent property, we really don't have any specifics about what the complaint would be. I think we all might disagree about the aesthetics of it, but I think with the implementation of the development conditions, any detriment has been mitigated, that the appearance of it will be toned down, that it's gonna be screened somewhat better from the street, and that it's not gonna be there forever with the term limitation.

That the character of the zoning district will not be changed by the granting of the variance, going through the neighborhood there are a number of other accessory structures. They may not be in front yards, but there are sheds nearby in rear yards or maybe side yards. There's some sheds in the -- on the property immediately to the south. There also are other things like satellite dishes and things that are maybe somewhat accessory on other homes in the neighborhood. It's -- although it seems to be the only sort of tree house/playhouse kind of structure in a front yard, there are other things in front yards in the neighborhood, and I don't think this one structure for a limited period of time with -- on a fenced lot with screening around it is necessarily gonna change the character of the zoning district.

And that the variance will be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest, again, I think in this limited situation, I think that the criteria have been satisfied.

I don't think we want to see a whole lot of applications all of a sudden for playhouses or whatever in front yards, and I don't think we will. I think this is a unique situation in which all the planets lined up, and I suppose if this were to happen again, we would take each case one at a time, but I don't think anyone should take this as an invitation or a precedent that we're gonna be modifying the Ordinance in some way. That's really the Board of Supervisors' prerogative. And I'm gonna have a follow on motion about that because we've gotten so much material, the petitions and letters and things about the Ordinance, and really that's not something we can really address. If the Board of Supervisors wants to go there, change something on -- whether it's on Priority 2 or Priority 1 or deal with accessory structures, there's some other strange rules about basketball hoops in front yards or whatever, maybe it's time to look at some of that, but that's really their area and not ours.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of 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 size and location of an accessory structure, "Tree House," as shown on the plat prepared by B.W. Smith and Associates, Inc., dated April 18, 2011, as submitted with this application and is not transferable to other land.
2. This variance shall terminate five (5) years from its approval date or upon transfer of the Property by deed to a purchaser of the Property, whichever occurs first. This condition shall be recorded in the land records of Fairfax County, Virginia.
3. The applicant shall maintain the landscaping around the accessory structure in a good and healthy condition.

Chairman Ribble seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Hammack were absent from the meeting.

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Mr. Hart moved that a package concerning tree houses be compiled and transmitted for information purposes to the Board of Supervisors Development Processing Committee for their consideration. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Hammack were absent from the meeting.

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The meeting recessed at 10:19 a.m. and reconvened at 10:27 a.m.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. ROBERT GRIMS & YUNG HAE KIM, SP 2011-PR-083 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 17.1 ft. and 15.2 ft. from rear lot line. Located at 9750 Hatmark Ct., Vienna, 22181, on approx. 7,571 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 48-1 ((25)) 10.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Robert Grims, 9750 Hatmark Court, Vienna, Virginia, reaffirmed the affidavit.

Matthew Mertz, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-PR-083, subject to the proposed development conditions.

Mr. Grims presented the special permit request as outlined in the statement of justification submitted with the application, noting that he had lived in the home since 1999. He said he wanted to replace the existing deck with a sunroom and screened porch, and because his backyard sloped downhill away from the house, he did not feel the addition would obstruct the view of his neighbors.

Mr. Hart commented that lattice was not shown under the addition, stating that if it was not on the plat now, it could not be added later. Mr. Grims said lattice would not go under the addition.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2011-PR-083 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT GRIMS & YUNG HAE KIM, SP 2011-PR-083 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 17.1 ft. and 15.2 ft. from rear lot line. Located at 9750 Hatmark Ct., Vienna, 22181, on approx. 7,571 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 48-1 ((25)) 10. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 30, 2011; and

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

1. The owners of the property are the applicants.
2. The lot size is 7,571 square feet in an R-4 Cluster zoning.
3. The applicant meets all the submission requirements pursuant to Section 8-922 as listed in the special permit resolution, 1 through 6.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (234 gross square feet) and a deck with lattice (222 gross square feet), as shown on plat prepared by Larry N. Scartz, dated June 28, 2011, as revised through September 7, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,176 square feet existing + 3,264 square feet (150%) = 5,440 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The additions shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Smith was not present for the vote. Mr. Byers and Mr. Hammack were absent from the meeting.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC., SP 2011-SP-069 (place of worship) (Admin. moved from 9/28/11 at appl. req.)

Chairman Ribble noted that SP 2011-SP-069 had been administratively moved to December 14, 2011, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. JERRY V. & ELIZABETH ANNE PENDER, SP 2011-SU-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.8 ft. from rear lot line. Located at 14120 Sorrel Chase Ct., Centreville, 20121, on approx. 8,991 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-3 ((4)) 115.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Elizabeth Pender, 14120 Sorrel Chase Ct., Centreville, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SU-086, subject to the proposed development conditions.

Ms. Pender presented the special permit request as outlined in the statement of justification submitted with the application. She said that when she and her husband decided to construct an enclosed porch and open deck about a year ago, she learned that a special permit was necessary. Ms. Pender noted that the lumber had already been delivered and a contractor in place.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-SU-086 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JERRY V. & ELIZABETH ANNE PENDER, SP 2011-SU-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.8 ft. from rear lot line. Located at 14120 Sorrel Chase Ct., Centreville, 20121, on approx. 8,991 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-3 ((4)) 115. 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 30, 2011; and

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

1. The applicants are the owners of the property.
2. The Board has a staff recommendation of approval in the staff report, and the Board adopts that rationale contained therein.
3. Looking at the plat, this is a fairly small lot for a house of this size, even at R-5.
4. The house is rotated to the lot line such that the back left corner of the house is the closest corner to the rear line.
5. On this house functionally, that is where the porch addition would need to go, and so that makes that corner that much closer to the rear.
6. If you can see from the photographs, it is very well screened by large vegetation.
7. There would not be any significant negative impact on anyone.
8. The Board determined that the criteria in the standard Sect. 8-922 motion have been satisfied.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of an enclosed porch addition (288 square feet), as shown on the plat prepared by B.W Smith and Associates, Inc., dated January 12, 2011, revised through July 7, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion [2,142 square feet existing + 3,213 square feet (150%) = 5,355 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

5. Notwithstanding what is shown on the architectural renderings, the privacy fence along Green Trails Boulevard shall be limited to a height of seven (7) feet.
6. The applicant shall complete a Resource Protection Area (RPA) Exception application for review and approval, if required, by the Department of Public Works and Environmental Services (DPWES), prior to approval of a building permit.

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.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.

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Smith was not present for the vote. Mr. Byers and Mr. Hammack were absent from the meeting.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. ANGELA WILLSON-QUAYLE, SP 2011-PR-080 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2857 Willowmere Woods Dr., Vienna, 22180, on approx. 10,341 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 49-1 ((23)) 7.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Angela Willson-Quayle, 2857 Willowmere Woods Drive, Vienna, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-PR-080, subject to the proposed development conditions.

Ms. Willson-Quayle presented the special permit request as outlined in the statement of justification submitted with the application. She said her mother-in-law was recently widowed, wanted to be closer to her family, had difficulty walking, and it would be stressful for her to come upstairs to use the kitchen.

Mr. Hart and Ms. Willson-Quayle discussed the vehicles and parking at the subject property.

Chairman Ribble called for speakers.

Barbara Wilson, the mother-in-law of the applicant, 2857 Willowmere Woods Drive, Vienna, Virginia, came forward to speak in support of the application. Ms. Wilson said that having her own kitchen downstairs would allow her to live out her life with some independence, considering her walking difficulties.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2011-PR-080 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANGELA WILLSON-QUAYLE, SP 2011-PR-080 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2857 Willowmere Woods Dr., Vienna, 22180, on approx. 10,341 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 49-1 ((23)) 7. 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 30, 2011; and

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

1. The applicant is the owner of the property.
2. The Board adopts the rationale of the staff as expressed in the staff report.
3. The staff recommends approval of the application.
4. It seems fairly straightforward.
5. The mother-in-law will not be driving a car, so there is not an extra car to worry about in the driveway or parking on the street.
6. The apartment is going to be plenty large.
7. There is no opposition in the neighborhood.
8. There seems to be virtually no impact by this accessory dwelling unit.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Angela M. Willson-Quayle and James M. Willson-Quayle, and is not transferable without further action of this Board, and is for the location indicated on the application, 2857 Willowmere Woods Drive, (10,341 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by CRES, Ltd., dated July 22, 2011, as signed and sealed by John F. Veatch, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.

6. A walkway leading from the front sidewalk to the exterior entrance of the accessory dwelling unit will be completed at such time as the occupant of the accessory dwelling unit is not an immediate family member.
7. The existing trellis on the subject parcel shall be in conformance with Par. 4, 10-104 of the Zoning Ordinance.
8. The accessory dwelling unit shall contain a maximum of 1,036 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
9. All applicable building permits and final inspections shall be obtained for the construction, including kitchen, in the accessory dwelling unit.
10. 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.
11. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
12. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
13. All parking shall be provided on site as shown on the special permit plat.
14. The existing two-car garage on the property may not be converted to anything other than parking spaces and must be kept clear of debris at all time in order to accommodate off street parking demands for the subject parcel.
15. All play equipment shall be subject to the use limitations of Sect. 10-103 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.

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 as outlined above. 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. Beard seconded the motion, which carried by a vote of 4-0. Mr. Smith was not present for the vote. Mr. Byers and Mr. Hammack were absent from the meeting.

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~ ~ ~ November 30, 2011, Scheduled case of:

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| 9:00 A.M. | WAYNE MOTICKA, SP 2011-MA-055 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 0.0 ft. from rear lot line and 0.7 ft. from side lot line. Located at 3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with VC 2011-MA-009). (Decision deferred from 9/21/11 at appl. req.) |
| 9:00 A.M. | WAYNE MOTICKA, VC 2011-MA-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 7.0 ft. in height to remain in rear and side yards. Located at |

3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with SP 2011-MA-055). (Decision deferred from 9/21/11 at appl. req.)

In response to a question from Mr. Beard, Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applications were being deferred because the Board had asked the applicant to look into modifying the addition. Although the applicant had been working with an architect, a final solution had not been reached.

Mr. Beard moved to defer decision on SP 2011-MA-055 and VC 2011-MA-009 to February 1, 2012, at 9:00 a.m., at the applicant's request. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Smith was not present for the vote. Mr. Byers and Mr. Hammack were absent from the meeting.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. PAUL D. RINALDI TRUST, KATREEN K. RINALDI TRUST, DOODY CALLS FAIRFAX VA LLC, A 2011-PR-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are operating a contractor's offices and shops, which is a use not permitted, on property in the C-2 District in violation of Zoning Ordinance provisions. Located at 7139 Shreve Rd., Falls Church, 22043, on approx. 7,500 sq. ft. of land zoned C-2. Providence District. Tax Map 40-3 ((1)) 117.

Chairman Ribble noted that A 2011-PR-020 had been withdrawn.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. SJD-ZP, LLC DBA ZPIZZA, A 2011-PR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating an accessory service use in accordance with the limitations and conditions of Non-Residential Use Permit #110970039 in violation of Zoning Ordinance provisions. Located at 8442 Lee Hwy., Fairfax, 22031, on approx. 1.2 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((15)) 2. (Admin. moved from 9/28/11 at appl. req.)

Chairman Ribble noted that A 2011-PR-028 had been administratively moved to February 1, 2012, at 9:00 a.m., at the appellant's request.

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~ ~ ~ November 30, 2011, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La., Annandale, 22003, on approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, 7/28/10, 12/15/10, 2/16/11, 7/27/11, and 10/26/11 at appl. req.)

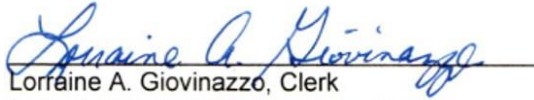
Chairman Ribble noted that A 2007-MA-011 had been administratively moved to December 14, 2011, at 9:00 a.m., at the appellant's request.

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As there was no other business to come before the Board, the meeting was adjourned at 11:13 a.m.

Minutes by: Suzanne Frazier

Approved on: July 30, 2014



Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals



John F. Ribble III, 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 Wednesday, December 7, 2011. The following Board Members were present: Vice Chairman Paul W. Hammack, Jr.; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Chairman John F. Ribble III was absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:03 a.m.

Mr. Byers referenced a quote by Abraham Lincoln which Franklin Delano Roosevelt had included in his 1939 State of the Union address and asked for a moment of silence in remembrance of the 2402 Americans who lost their lives at Pearl Harbor, which included 1103 sailors and 73 marines still on the U.S.S. Arizona beneath the placid waters of Pearl Harbor.

Vice Chairman Hammack discussed the policies and procedures of the Board of Zoning Appeals.

At the direction of Vice Chairman Hammack, the participants in the hearings swore or affirmed that their testimony would be the truth.

There were no further Board Matters to bring before the Board, and Vice Chairman Hammack called for the first scheduled case.

~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. CARLOTA LANCHIPA AND JOHAN CARDENES LANCHIPA, SP 2011-PR-085 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on errors in building locations to permit additions to remain 6.0 ft. and 7.0 ft. from side lot line. Located at 2922 Johnson Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 192.

Vice Chairman Hammack called the applicants to the podium.

Isabel Cardenes, the applicants' agent, 2922 Johnson Road, Falls Church, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit for an error in building location to permit a front porch addition to remain 7.0 feet from the northern side lot line. The front porch had been expanded in 2010. A minimum side yard of 10 feet is required; therefore, a reduction of 3.0 feet was requested.

Mr. Hart said he understood a building code violation had been issued and there had been litigation involving the Zoning Administrator, and he asked what had happened regarding those events. Ms. Cho said there had been two separate notices of violation issued, one specific to the addition and one dealing with maintenance. The maintenance related violation had been closed due to a revised determination that indicated the addition to the side was vested because it had been taxed for more than 15 years. The violation for the addition to the front was still pending.

Mr. Hart asked whether the litigation involved the addition to the side. Peggy Delean, Department of Code Compliance, said the litigation involved both the front and the side additions, but only the front addition remained an issue. The court proceeding had been scheduled for September 27, 2011; however, the County Attorney had decided to delay the proceeding until after the Board of Zoning Appeals hearing.

Based on the photos the Board had received the morning of the hearing, Mr. Hart said it looked like the corner of the front addition was approximately six feet from the side lot line, and the house next door looked like it was six feet away. Ms. Cho said, by looking at an aerial photograph, the homes along the subject street appeared quite close because the corners were in close proximity to each other due to the way the houses were situated at an angle on the sites.

In response to a question from Mr. Hart regarding whether the close location of the adjacent house was approved, Ms. Cho said she would assume that because of the age of the neighborhood, it was likely built prior to the implementation of the current Zoning Ordinance.

Ms. Cardenes presented the special permit request as outlined in the statement of justification submitted with the application. She said the porch in the aerial photograph was the same porch with the side walls added to enclose it, and nothing was expanded or removed. The porch was enclosed to prevent water from again seeping into the basement because her brother planned to leave and her mother would be living alone. They did not realize problems would result.

Ms. Gibb assumed the Chair.

As there were no speakers, Ms. Gibb closed the public hearing.

Mr. Byers moved to approve SP 2011-PR-085 for the reasons stated in the Resolution.

Vice Chairman Hammack resumed the Chair.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARLOTA LANCHIPA AND JOHAN CARDENES LANCHIPA, SP 2011-PR-085 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on errors in building locations to permit additions to remain 6.0 ft. and 7.0 ft. from side lot line. Located at 2922 Johnson Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 192. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2011; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the application meets all of the criteria, A through G.
3. This is not an expansion beyond the original footprint of the front porch, although it was enclosed.
4. The rationale for the enclosure from the standpoint of leakage is understood.
5. The original additions had actually been in existence, even prior to this expansion, since 1996.
6. The applicants have done a good job from the standpoint of removing those violations or those areas where they have been in violation before.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the front porch addition as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated November 11, 2010 and revised and sealed though September 14, 2011, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the front porch addition shall be diligently pursued and obtained within six months of final approval of this application.
3. The accessory structures (play equipment) shall be removed or relocated to comply with applicable Zoning Ordinance provisions within 90 days of this special permit 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.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. THOMAS B. BRADLEY AND JUDITH R. STARR, SP 2011-MV-089 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 6.5 ft. from side lot line. Located at 2410 Stirrup Ln., Alexandria, 22308, on approx. 12,794 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((11)) (6) 9.

Vice Chairman Hammack called the applicants to the podium.

Ronald C. McCormack, the applicants' agent, Ronald C. McCormack, P.C., 3740 Chain Bridge Road, Suite 106, Vienna, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit for an error in building location to permit a partially enclosed carport addition to remain 6.5 feet from the western side lot line. A storage area had been constructed within the footprint of the carport, thereby making the carport an addition because it was not open on three sides. The addition measured approximately 314 square feet in area and 10.3 feet at its peak height. A minimum side yard of 12 feet is required; therefore, a reduction of 5.5 feet was requested.

Mr. McCormack presented the special permit request as outlined in the statement of justification submitted with the application. He said that when the applicants purchased the property in 1991, they had no idea that the built-in structure at the end of the carport was in violation and did not learn about the violation until they had a screened porch put on their house, which necessitated a setback certification. The storage area was

not very visible from the front, being 57 feet back from the street, and was camouflaged on all sides with shrubbery, bushes, planters, and a privacy fence on various sides. He stated that the applicants had lived at the property for 20 years with no complaints from other property owners. A letter had been submitted from the neighbor to the side where the setback violation was located.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2011-MV-089 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 B. BRADLEY AND JUDITH R. STARR, SP 2011-MV-089 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 6.5 ft. from side lot line. Located at 2410 Stirrup Ln., Alexandria, 22308, on approx. 12,794 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((11)) (6) 9. 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 7, 2011; 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 compliance with the required standards.
3. The enclosure of the side of the carport really changes it very little from what it would be if the side of it had remained open.
4. The back side of the carport is still more or less open.
5. The roof appears to be the same.
6. The side of it is very low and is largely concealed by bushes.
7. It would not make much difference whether the side of the carport is enclosed for a storage area or not.
8. It does not appear that there were any complaints about this.
9. It has been there at least 20 years and perhaps somewhat longer.
10. The issue came up in the context of an engineering certification related to a by-right addition.
11. It does not appear that anything with this storage area on the side of the carport is something that any of the neighbors were complaining about or that an inspector had picked on before now.
12. There will not be any significant negative impact on anyone.
13. The Board has determined that the standards in the mistake section resolution have been satisfied.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 and size of the partially enclosed carport addition with storage structure as shown on the plat prepared by Dominion Surveyors Inc., dated and sealed March 18, 2011 and revised through July 1, 2011, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the addition shall be diligently pursued and obtained within six months of final approval of this application.

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 and Mr. Smith seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. JOSHUA ELLIOTT, SP 2011-SP-088 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 7.4 ft. from side lot line. Located at 8210 Blairton Rd., Springfield, 22152, on approx. 11,813 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((2)) 192.

Vice Chairman Hammack called the applicant to the podium.

Joshua Elliott, 8210 Blairton Road, Springfield, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow a reduction of minimum yard requirements based on error in building location to permit an existing garage addition to remain 7.4 feet from the western side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 4.6 feet was requested.

Mr. Elliott presented the special permit request as outlined in the statement of justification submitted with the application. He said that, according to a previous owner's son, a previous owner had originally built a carport in the mid-1980s, and later on in the '80s it was converted into a garage. Mr. Elliott stated that he bought the property from the widow of the previous owner with the understanding that everything was in compliance with building codes; however, in 2011 he was informed by the County that the garage was not in compliance and had been built within the 12 feet next to the property line. He said the reduction requested would not impair the purpose or intent of the minimum yard requirement or be a detriment to the neighbors. The garage sat on

a downhill slope of the neighbor's property and did not impede the view or access to the neighbor's yard. Mr. Elliott said no complaints had been raised by any of his neighbors in the past.

Mr. Hart referred to a plat in the staff report and asked what was approved on it that was located 7.2 feet from the side lot line. Ms. Hedrick said the drawing was for the one-story room addition to the rear; however, the previous owner had obtained an approved building permit for an open carport to be located that close to the side lot line. She said it was the second submission, an 18-by-22-foot carport, permitted and platted in 1984. After approval at some point between 1984 and 1991, the carport was enclosed into a garage addition without an applicable building permit.

Mr. Hart asked whether the garage was already in place in 1991 when the approval occurred for something else. Ms. Hedrick said that a building permit for a garage had not been obtained, and the plat for the one-story addition to the rear used the old 1984 plat with the outline of an open carport, and there was no indication in 1999 that the carport had been enclosed into a garage.

In response to a question from Mr. Hart regarding whether the existing structure was in approximately the same location to the left of the house as what was shown on the plat, Ms. Hedrick said it was 7.2 feet from the side lot line originally when it was a carport, and the most recent certified plat reflected 7.4 feet to the closest point. Mr. Hart asked how anyone could tell from looking at the plat whether it was a carport or a garage. Ms. Hedrick said the words written on the building permit that went with the plat said it was an 18-by-22-foot carport open on three sides.

Ms. Gibb asked whether the submission of the application stemmed from the County receiving a complaint. Ms. Hedrick said it had. Charles Fitzhugh, Department of Code Compliance, confirmed that a complaint had been received in February of 2010 regarding the addition of the garage being less than 12 feet from the side property line.

Ms. Gibb asked whether staff was in agreement with the garage having been built in the '80s. Ms. Hedrick said the carport had been constructed in the '80s. The applicant had provided photo images from the previous owner which showed that in 1991 the garage existed; however, the garage had not been taxed on the property for at least 15 years. She said part of the notice of violation had been for an accessory storage structure in the rear yard, which had since been remedied by the applicant reducing the height of the structure.

Mr. Byers asked whether the complaint had been for the accessory storage structure only and while investigating that issue, the garage issue was discovered. Mr. Fitzhugh read from the complaint, addition/garage is less than 12 feet from the property line. He said he also found a tree house and a shed on the property, which he discussed with the applicant, and those two issues had subsequently been cleared by the applicant.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to approve SP 2011-SP-088 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSHUA ELLIOTT, SP 2011-SP-088 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 7.4 ft. from side lot line. Located at 8210 Blairton Rd., Springfield, 22152, on approx. 11,813 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((2)) 192. 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 December 7, 2011; and

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

1. The applicant is the owner of the land.
2. The garage was built by converting an existing carport.
3. The testimony and aerial photographs indicate that the garage has been there since 1991 without complaint.
4. The complaint which is the basis of this notice of violation was lodged in February of 2010.
5. The impact has been very minimal.
6. The garage was there when the applicant purchased the property, and he had no knowledge that it was not in compliance.
7. The garage is located downhill from the adjacent property owner and is out of view.
8. To force compliance is going to cost at least \$30,000, according to the applicant's written justification, to dismantle it and reduce the value of the house.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 only for the location of an enclosed garage as shown on the plat prepared by The Engineering Groupe, Inc., dated July 14, 2011 as sealed on October 13, 2011, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the garage addition within 180 days of approval of this special permit.

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. Smith seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. JOHN B. MCCRACKEN JR., SP 2011-MV-073 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.8 ft. from side lot line and to permit an accessory dwelling unit within an existing dwelling. Located at 2403 Fairview Dr., Alexandria, 22306, on approx. 10,680 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((4)) (4) 8.

Vice Chairman Hammack called the applicant to the podium.

John B. McCracken, Jr., 2403 Fairview Drive, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow a reduction to minimum yard requirements based on error in building location to permit an accessory storage structure, a shed, which measured 9.7 feet in height, to remain 3.8 feet from the western side lot line. The Zoning Ordinance permits an accessory storage structure not exceeding 8.5 feet in height to be located in any minimum required yard. The Ordinance further states that an accessory storage structure which exceeds 8.5 feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line. A minimum side yard of 10 feet is required; therefore, a reduction of 6.2 feet was requested.

The applicant also requested special permit approval to allow an accessory dwelling unit to remain within the basement of an existing single-family detached dwelling. The size of the principal dwelling was 2,430 square feet of above grade living area. The size of the accessory dwelling unit, which consisted of one bedroom, a living room area, a full eat-in kitchen, and a bathroom, was 804 square feet or 33 percent of the size of the principal dwelling unit. There was also a large storage area and a recreation room located within the basement of the home, which is utilized by the entire household, with an internal stairway from the space to access the upper levels of the home. Both the principal and accessory dwelling units were occupied by immediate family members. Staff recommended approval of SP 2011-MV-073 for an accessory dwelling unit subject to the proposed development conditions.

Mr. Byers asked whether it was reasonable to assume that someone would not know what the setback requirements were given the fact that a building permit would not be required because the square footage of the shed was 140 square feet. Ms. Hedrick said that although the applicant had three additional sheds in the rear yard, the subject shed was the only one that exceeded the height limitation of 8.5 feet, and it did not need a building permit, but it did not meet the minimum side yard setback. She agreed that it was possible that if the applicant had come in to get a building permit if it had exceeded the 200-foot limit, there would have been a greater probability of determining there was a setback issue.

Mr. McCracken presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted his mother-in-law, who was 82 years old, to be able to stay independently in the basement apartment to live the rest of her life in a comfortable environment. There were many foods to which she was allergic and in the past had problems with accidentally eating the wrong foods and going into anaphylactic shock. Having her own kitchen and refrigerator had made it easier to keep her food separate from others. The basement provided her privacy and a quiet retreat when children were visiting. When experiencing sleep issues, the basement allowed her the opportunity to stay awake and move around without disturbing those living upstairs. Mr. McCracken said his mother-in-law had Lowe's install the shed five years prior. He said he had nothing to do with the installation, but had assumed Lowe's had known what they were doing.

In response to questions from Mr. Hart regarding whether he had seen and agreed with the proposed development conditions, Mr. McCracken said he had and was in agreement.

In response to questions from Mr. Hart, Mr. McCracken indicated that there was no electricity or plumbing in the large shed, four people who had four cars currently lived in the house, and he understood that the development conditions required that the four cars be parked on the site, and there was room to do so.

Mr. Hart asked whether there had been a complaint which led to the filing of the application and what it involved. Ms. Hedrick said there had been a complaint with respect to too many vehicles on the property, and at the time the applicant had many more of his children residing in the home. Mike Caudle, Department of Code Compliance, stated that he had taken the case over after the original inspector had been out to the property, but he confirmed that the initial complaint had involved the number of vehicles, and at the time of the initial inspection, it had been discovered that the accessory dwelling unit was there.

In response to a question from Mr. Hart, Mr. Caudle indicated that there had been no complaints about the sheds. He said the problem with the shed had been discovered through the permitting process.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Smith moved to approve SP 2011-MV-073 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN B. MCCRACKEN JR., SP 2011-MV-073 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.8 ft. from side lot line and to permit an accessory dwelling unit within an existing dwelling. Located at 2403 Fairview Dr., Alexandria, 22306, on approx. 10,680 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((4)) (4) 8. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,680 square feet.
4. With respect to the shed under Sect. 8-914:
 - A. There was testimony that the shed was built five years ago, as noted by Mr. Byers.
 - B. It is not something that you would necessarily pick up because a building permit for a shed this size is not needed.
 - C. If it had been 8.5 feet in height or less, it would not have violated the setback requirements. It happens to be 9.7 feet, so it is just a little over a foot in difference, which is something that actually could be remedied relatively easily, but really would not be worth it.
 - D. It is not causing any harm to anyone.
 - E. The Board heard no testimony in opposition.
 - F. Looking at the shed from the pictures, it is not an eyesore.
 - G. It appears that there is a tree buffer on the adjoining property.
 - H. There is also a shed on the adjoining property relatively near.
 - I. There is no harm caused and no complaints.
 - J. It will not be detrimental to the use and enjoyment of other property in the vicinity.
 - K. It does not create an unsafe condition with respect to property or public streets.

- L. It would be an unreasonable hardship to force compliance in this case.
- 5. With respect to the accessory dwelling unit:
 - A. The Board agrees with the recommendation of staff, as stated in the staff report, which recommends approval in this case.
 - B. Looking at the conditions, the proposed accessory dwelling unit will not constitute sufficient change to modify or disrupt the predominant character of the neighborhood.
 - C. The conditions do a good job, and the applicant has indicated agreement with the development conditions, which make clear that the occupants of the dwelling unit will be limited to the applicant's immediate family members, which will help to address any other concerns with renting it out to someone outside the family.
 - D. There will be applicable building permits and final inspections obtained for the kitchen.
 - E. All parking will be confirmed on site, and it looks like there is adequate space for that.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
- 2. This approval is granted to the applicant and title owners only, John B. McCracken, Jr. and Mary C. McCracken, and is not transferable without further action of this Board, and is for the location indicated on the application, 2403 Fairview Drive, Alexandria, (10,680 square feet), and is not transferable to other land.

3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Alexandria Surveys International, LLC, dated February 7, 2011 as revised through July 22, 2011, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the accessory dwelling unit shall be limited to the applicant's immediate family members.
6. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
7. The accessory dwelling unit shall contain a maximum of 804 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
8. All applicable building permits and final inspections shall be obtained for the kitchen in the accessory dwelling unit.
9. 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.
10. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit 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.
11. If the use of the accessory dwelling unit ceases for the applicant's immediate family members and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
12. All parking shall be provided on site as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. 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. Beard seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. PHYLLIS C. BIONDI, TRUSTEE, SP 2011-LE-087 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.2 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 12.2 ft. from side lot line. Located at 3311 Memorial St., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((15)) 47A.

Vice Chairman Hammack called the applicant to the podium.

Phyllis C. Biondi, 3311 Memorial Street, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested special permit approval based on error in building location to allow an accessory storage structure, a frame shed, to remain 5.2 feet from the rear lot line. A minimum rear yard equal to the height of the shed, which is 9.9 feet, is required; therefore, a reduction of 4.7 feet was requested. The applicant also requested special permit approval to allow a reduction of certain yard requirements to permit construction of an addition 12.2 feet from a side lot line to extend south along the existing western side of the dwelling toward the rear southern property line with a 0.8 foot eave overhang. A minimum side yard of 15 feet is required; therefore, a reduction of 2.8 feet was requested. The application also showed a proposed deck addition that could be built by right. Staff recommended approval of SP 2011-LE-087 for the dwelling addition subject to the proposed development conditions.

Mr. Hart noted that the staff report reflected Mason District, and he said he wanted to ensure the advertising had been accurate. Susan Langdon, Chief, Special Permit and Variance Branch, said the advertisements correctly showed Lee District.

Ms. Biondi presented the special permit request as outlined in the statement of justification submitted with the application. She said that when her father had purchased the house for her in 1990, a shed existed in exactly the same place as the current one. Approximately 10 years ago when she had gone away on vacation, her father replaced the shed with a new one on the same concrete pad because it had gotten rusty and unsightly.

Mr. Beard asked if the shed issue arose when the applicant had come in for the addition and whether a complaint had been received. Ms. Biondi said it was discovered when the plat was prepared for the addition. Ms. Horner said there had been no notice of violation involved.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Beard moved to approve SP 2011-LE-087 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PHYLLIS C. BIONDI, TRUSTEE, SP 2011-LE-087 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.2 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 12.2 ft. from side lot line. Located at 3311 Memorial St., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((15)) 47A. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2011; and

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

1. The applicant is the owner of the land.
2. The lot size is 14,000 square feet.
3. The zoning district is R-2.
4. Staff recommends approval of this special permit application.

5. As the applicant has stated, the shed was existing at the time of the purchase, and it was actually placed back on an existing concrete pad.
6. The height situation, very similar to the previous case, if it had been 8.5 feet in height, that is an issue, and with only another foot, it does not seem to be an obstruction issue.
7. No concern has been expressed in this hearing from any neighbors.
8. The applicant, pursuant to the addition, has satisfied all the nine provisions of Sect. 8-922.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location of the home addition and frame shed, as shown on the plat prepared by George M. O'Quinn dated March 7, 2011, revised July 19, 2011, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,356 square feet existing + 3,534 square feet (150%) = 5,890 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The new addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. SHALLA FLORES, SP 2011-SU-084 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 3425 West Ox Rd., Herndon, 20171, on approx. 37,103 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 72.

Vice Chairman Hammack called the applicant to the podium.

Shalla Flores, 3425 West Ox Road, Herndon, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow a home child care facility with a total of up to ten children at any one time, not including the applicant's child. Parking on the property included five spaces, which consisted of one in the garage and four in the existing driveway off West Ox Road. The proposed hours of operation were Monday through Friday from 7:00 a.m. to 6:00 p.m., and there would be a total of two employees. Ms. Horner said the application had been filed as a result of a notice of violation for a home child care use operating without a special permit. The applicant held a valid state license. Staff recommended approval of SP 2011-SU-084 subject to the proposed development conditions.

Ms. Flores presented the special permit request as outlined in the statement of justification submitted with the application. She said she had applied for the special permit so she could be in compliance.

Mr. Beard asked how many children the applicant currently cared for. Ms. Flores said eight. Mr. Beard asked for confirmation regarding the number allowed by the State and the County. He was told the State allowed twelve, the County allowed seven without a special permit, and the applicant needed a special permit to maintain the number at which she was currently operating and would allow up to ten children.

Vice Chairman Hammack called for speakers.

Nilo Mehrabian, 10308 Brittenford Drive, Vienna, Virginia, came forward to speak. She said she supported the applicant and thought the property had ample room for parking and the children inside and outside of the home. Her children went to the home from time to time. She said she had known the applicant for 14 years. The applicant had originally been her nanny in her home. Ms. Mehrabian said the applicant was a great provider who cared immensely for children.

Katherine Hart, 3213 Latigo Court, Oakton, Virginia, came forward to speak. She said she had known the applicant since early 2010 when her twins, who were born prematurely with numerous health problems, were three months old. The applicant had experience working with twins and low birth weight. Because of the applicant's experience with Head Start, Ms. Hart had been able to obtain medical approval for her twins to go into the applicant's in-home daycare. The applicant allowed therapists to work with the twins at her home to overcome eating issues caused by infant reflux. Ms. Hart said her children had done very well in the applicant's care.

Makita Scott Hunter (phonetic), 13171 Fox Hunt Lane, Herndon, Virginia, came forward to speak. She said the applicant had been the childcare provider for her twin daughters, who were currently four years old, since they were two months old. Ms. Hunter said the applicant was an outstanding provider. She said not allowing the permit would be a loss to the community as well as to her household. Ms. Hunter said she felt the facility was more than ample for the care of the children without disrupting anything nearby.

Nila Robinson (phonetic), no address given, Virginia, came forward to speak, and the oath was administered. She said she had known the applicant, who cared for her son, since 2001. She said the applicant had told her she thought her son's speech was not where it should have been, and she was able to seek early intervention services. Ms. Robinson said the applicant not only provided exceptional child care, but took pride in helping people.

Taralyn Kohler, 12490 Falkirk Drive, Fairfax, Virginia, came forward to speak, and the oath was administered. The back of her yard on Lot 12A was kitty-corner to the applicant's property. She said that since moving into the property, the applicant had taken down a lot of trees, and from a privacy perspective, it was now very open. She said she was concerned that if additional children were allowed, additional things would happen in the backyard, and the amount of primary colored plastic toys and things would increase. She would like the landscaping enhanced to afford her more privacy. She said she was not the person who filed the complaint, but she wanted to come and speak on behalf of some of the neighbors.

Mr. Byers asked Ms. Kohler to point out her property on a map, which she did. She said her house sat at the back of the property, and they could see everything that went on at the applicant's property because it sat up on a hill. She said her husband worked from home, and when the children were outside and the windows were open, they could be heard, and adding more children would increase the noise and playground toys.

Mr. Byers asked whether Ms. Kohler understood that the applicant could have seven children by right, and although the State allowed 12, the special permit from the County would limit the number to 10. Ms. Kohler said she understood, but wanted to make her concerns known and go on record since there had been a violation.

Referring to a photograph taken in the applicant's backyard, Mr. Hart and Ms. Kohler discussed the location of her house and the play equipment. Mr. Hart said he did not see how anyone could see into the backyard with the large trees. Ms. Kohler said the trees were very large, but old, skinny, and did not have leaves at the bottom, and in the fall and winter, there was no privacy because they were just big sticks.

Mr. Beard noted that Ms. Kohler said she was appearing to express the concerns of other neighbors. He asked if she was part of an organization. She said she was not and had just been speaking with other neighbors who had expressed concerns.

In her rebuttal, Ms. Flores said that when she had moved in, some trees were old and had to be removed to avoid them falling. She said that there were a lot of trees, and in the summertime, one had to be bending to look through to see the play area, which was located to the left of the backyard when looking out from the house. She said she also played with the children on the driveway and the deck, and living on a main street with a school across the street, there was always noise. Ms. Flores said Ms. Kohler's children's things were in the back corner of their yard, and with the trees, she did not see how it could be a problem, but she was willing to plant more trees.

Vice Chairman Hammack asked whether staff had considered additional screening as part of their recommendation and development conditions. Ms. Horner said that when she visited the site, it had seemed fairly wooded, and she had stood at the back toward the play area and could not see any other property so it did not seem like an issue.

Mr. Hart asked the applicant whether she had reviewed her request with the owners of Lot 9 or had heard anything from them. Ms. Flores said she had not.

Mr. Hart asked whether the owners of Lot 9 would have received a notice of the hearing. Ms. Horner said they had, and she had fielded three telephone calls from adjacent neighbors. She did not recall whether the owners of Lot 9 were one of them. The callers were abutting property neighbors who called to ask questions, but had no objections.

Mr. Hart asked whether it was staff's view that the screening was sufficient. Ms. Horner said that had been the finding at the site visit.

Vice Chairman Hammack asked whether the site visit was during the summer and there were leaves on the trees. Ms. Horner said it was early fall, and there were leaves.

Vice Chairman Hammack closed the public hearing.

Mr. Byers moved to approve SP 2011-SU-084 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHALLA FLORES, SP 2011-SU-084 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 3425 West Ox Rd., Herndon, 20171, on approx. 37,103 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 72. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 37,103 square feet.
4. Staff recommends approval.
5. The Board adopts staff's rationale.
6. Based on the testimony the Board heard, Ms. Flores is an excellent childcare provider.
7. Quality childcare is needed within Fairfax County because of the demographics of the county.
8. This is a very large lot. It is almost one acre in size.
9. The playground equipment itself is located in a very inconspicuous area.
10. It looks like there is sufficient vegetation to basically screen it for a significant portion of the year.
11. The applicant has done a good job from the standpoint of the childcare and everything else that is associated with it.

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 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, Shalla Flores, only and is not transferable without further action of the Board, and is for the location indicated on the application, 3425 West Ox Road, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit (SP) Plat prepared by L.S. Whitson, Sam Whitson Land Surveying, Inc., dated September 6, 2011, and approved with this application, as qualified by these development conditions.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The maximum number of employees shall be limited to one (1) on-site at any one time in addition to the applicant.
6. The dwelling that contains the child care facility shall be the primary residence of the applicant.
7. A minimum of five (5) parking spaces shall be provided on the subject parcel within areas of existing paving. In no instance shall the driveway or parking areas exceed 30% of any front yard.
8. There shall be no signage associated with the home child care facility.
9. The existing one-car garage shall not be converted to a use other than for off-street parking and shall be kept clear of debris at all times in order to accommodate parking for the principal and home child care uses.

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. 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 as outlined above. The number of children shall not be increased above seven (7) until all conditions are met. 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. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. LTF REAL ESTATE COMPANY, INC., SP 2011-HM-056 Appl. under Sect(s). 5-403 and 5-303 of the Zoning Ordinance to permit a health club. Located at Terminus of Business Center Dr. on approx. 11.09 of land zoned I-3 and I-4. Hunter Mill District. Tax Map 18-3 ((8)) 6 A3. (Admin. Moved from 9/21/11 and 11/16/11 at appl. req.)

Vice Chairman Hammack called the applicant to the podium.

Brian J. Winterhalter, the applicant's agent, Cooley, LLP, 11951 Freedom Drive, Reston, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a health club. She noted that revised proposed development conditions had been provided to the Board to update the date of the most recently submitted plans. Staff recommended approval of SP 2011-HM-056 subject to the revised proposed development conditions.

Mr. Hart asked whether the applicant was in agreement with the development conditions. Ms. Horner replied affirmatively.

Discussions ensued among Mr. Hart, Mr. Smith, and Ms. Horner regarding the development conditions. In regard to the trail improvements and connection referenced in Conditions 13 and 17, it was currently

unknown where the trail would connect to the park, and the Park Authority was agreeable to leaving that unresolved. If the Park Authority had not developed where the extension of the trail would be located and the applicant was ready to develop, it would be later coordinated at the time the Park Authority determined where it would be located. The Department of Transportation had not deemed that the traffic signal referenced in Condition 16 was currently warranted, but proffers were approved with the Lake Fairfax Business Park that recognized that it may be warranted in the future, so a pro rata share was being reserved from anyone who came in. The design had not been completed, and no implementation schedule existed. The \$18,685 figure referenced in Condition 16 was submitted to the Department of Transportation, and they were not in opposition to it. The ingress and egress for the project would be from Business Center Drive. Condition 7 was a standard condition received from the Planning Division based on the Comprehensive Plan for changes in use or new construction in special planning areas, such as in the subject case the Herndon/Reston suburban planning area, where there was an expectation that LEED certification be sought that was slightly modified with respect to the manual as part of the negotiation with the applicant.

Mr. Winterhalter presented the special permit request as outlined in the statement of justification submitted with the application. He said Lifetime Fitness was a healthy way of life company, which meant it focused on healthy living and healthy eating in addition to physical fitness. It applied a broad based approach for total body health, and its goal was to make it easy, convenient, and enjoyable for everyone to be healthy. In order to further the mission, it builds and operates premiere full-service family friendly health clubs. The site was ideally located to serve residential development to the east, office uses within the business park, and was convenient to new development to occur at the Wiehle Avenue Metro station area nearby. The structure would be a two-story building consisting largely of natural stone, brick, and glass. Within the health club, there would be an extensive array of cardio and weight training equipment, exercise rooms, a rock climbing wall, shower and locker facilities, an indoor lap pool, an outdoor recreation pool, a café area, a spa area, and children's recreation areas where parents would be able to drop off kids to have supervised exercise while the parents worked out. The applicant had agreed to significant stormwater management measures which would reduce the runoff rate from the site to protect the environmental integrity of Lake Fairfax Park, had committed to providing its fair share of contribution for the traffic signal, and had committed to LEED certification to ensure an environmentally sustainable health club.

In response to a question from Mr. Smith regarding what level of LEED certification the applicant would be applying for, Mr. Winterhalter said they would be seeking certification at the baseline level, which based on the location of the site and the nature of the health club use, comprised a substantial financial commitment.

Mr. Byers asked whether the 230,000 was a cap, and if not, what the limit of the applicant's liability was if it did not meet the certifications. Mr. Winterhalter said that County staff had determined the 230,000 square foot amount based on the County standard LEED development condition or proffer which required an escrow of \$2.00 per square foot. With a 115,000-square-foot building, the escrow amount would be \$230,000. If the applicant failed to obtain the certification, the County would keep the amount and apply it to green building initiatives for the County.

Mr. Hart asked whether the approach regarding the escrow was consistent in general with special exception applications with new construction over the previous three years or so. Mary Ann Welton, Planning Division, said it was consistent with what had been done over the prior four to five years, and the experience had been good with the prototype. She said \$2.00 a square foot was consistent with any kind of rezoning application or zoning change. Ms. Welton confirmed for Mr. Hart that if an applicant came in with a new use in an existing building rather than total new construction, it was being looked at on a case-by-case basis as to what extent they would be required to get certification.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2011-HM-056 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Smith stated that he would support the motion, but had concern regarding Condition 7, that if the applicant did not get certification, the escrow money would go to County environmental initiatives as opposed to use on the subject property. He said that since it was the applicant's money, it should be applied to the applicant's property.

Mr. Hart said he thought Mr. Smith's comment was very interesting. He said he did not believe there had been anyone who had not gotten their escrow back because they had all worked out. It was an incentive to do it, not a penalty. Mr. Hart said the Planning Commission's environment committee had been working with staff and meeting for over two years regarding potential revisions to the green building policy and had not addressed the application of forfeited escrows and what would happen, but it was an interesting point. He asked Ms. Welton to take back to the committee the possibility of coupling the escrows to something closer to the escrowed property and the question of what would be done with a forfeited escrow.

Mr. Smith said he was involved in an application for a gold level of LEED certification with an existing building, and it seemed that even if the certification was not obtained after making enhancements, they could still be required to spend the amount of money doing enhancements on the checklist to improve the particular building and property to advance the LEED initiatives. He said it would be unfair to take the money and use it elsewhere.

The motion carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LTF REAL ESTATE COMPANY, INC., SP 2011-HM-056 Appl. under Sect(s). 5-403 and 5-303 of the Zoning Ordinance to permit a health club. Located at Terminus of Business Center Dr. on approx. 11.09 of land zoned I-3 and I-4. Hunter Mill District. Tax Map 18-3 ((8)) 6 A3. (Admin. Moved from 9/21/11 and 11/16/11 at appl. req.) 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 7, 2011; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation in the staff report, and staff's rationale is adopted.
3. The potential disagreement about the development conditions, and particularly the escrow, has been resolved.
4. It is expected that the Board will see more of this sort of thing with special permits requiring new construction consistent with some of the changes from a few years ago to the policy plan for implementation of green building practices. There are a lot of reasons why the County and the industry is going to that either on developments/applications that require approvals or by right under certain circumstances. This particular escrow is consistent with what has been done. There have been more special exceptions for drive-through banks and drive-through drugstores and things like that, but more of this will be seen. An escrow is really at this point the most effective way the County has to ensure that the standards are met.
5. This will be a very attractive facility based on the materials that the Board has seen.
6. Lifetime Fitness has also put in a couple other facilities locally, one at Trinity Center, which is very attractive, and based on the material the Board has been given, this will be consistent with that.
7. It makes sense to put it here. There is a lot going for it.
8. There will not be any significant negative impact on anyone.
9. There was no opposition to it.
10. The applicable standards have been met.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, LTF Real Estate Company Inc., DBA Life Time Fitness, only and is not transferable without further action of this Board, and is for the location indicated on the application, at the terminus of Business Center Drive, Reston, VA, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William H. Gordon Associates, Inc., dated May 2, 2011 as revised through November 23, 2011, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) 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 is limited to 1,656 customers and 45 employees on-site at any one time.
6. Parking shall be provided in accordance with Article 11 of the Fairfax County Zoning Ordinance. If required by DPWES, a parking tabulation shall be submitted to and approved by the Director which shows that the required parking for all uses can be provided for on Lot 6A3 as shown on the special permit plat. All parking for this use shall be on site.
7. Prior to approval of the site plan for the building, the applicant will execute a separate agreement and post a "green building escrow" in the form of cash or a letter of credit from a financial institute acceptable to DPWES as defined in the Public Facilities Manual, in the amount of \$230,000. This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U.S. Green Building Council, under the most current version of the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design—New Construction (LEED®-NC) rating system or other LEED rating system determined, by the U.S. Green Building Council, to be applicable to the building. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that the building has attained LEED certification will be sufficient to satisfy this commitment. If the Applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification within fifteen (15) months of the issuance of the final non-RUP for the building, the escrow will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the applicant provides to the Environment and Development Review Branch of DPZ, within fifteen (15) months of the issuance of the final non-RUP for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the U.S. Green Building Council to fall within three points of attainment of LEED certification, 50% of the escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the applicant fails to provide, within fifteen (15) months of the issuance of the final non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that the building has fallen short of certification by three points or less, the entirety of the escrow for the building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

The applicant will include, as part of the site plan submission, a statement certifying that a LEED®-accredited professional who is also a professional engineer or licensed architect is a member of the design team, and that the LEED-accredited professional is working with the team to incorporate sustainable design elements and innovative technologies into the project with a goal of having the project attain LEED certification.

The Applicant will include, as part of the site plan submission and building plan submission, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design—New Construction (LEED®-NC) rating system, or other LEED rating system determined to be applicable to the building by the U.S. Green Building Council, that the Applicant anticipates attaining. A professional engineer or licensed architect will provide certification statements at both the time of site plan/subdivision plan review and the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain certification of the project.

Prior to site plan approval, the Applicant will designate the Chief of the Environment and Development Review Branch of the Department of Planning and Zoning as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

8. Glazing at the rear of building facing Lake Fairfax Park shall be designed to limit light spillage from inside the building.
9. Lighting shall be the minimum required by safety standards at the rear of the property adjacent to Lake Fairfax Park during the night hours in order to mitigate the impact of night lighting on wildlife in the adjacent park.
10. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
11. Storm water detention shall be provided such that the peak discharge rate in a two-year and 10-year 24-hour storm event be less than or equal to the peak discharge rate that would be discharged if the site was in a good forested condition.
12. Landscaping shall be provided as shown on the special permit plat, but shall not less be than 15% of the overall site area. Non-invasive species and locally common native species shall be used to the greatest extent possible as determined in coordination with the Fairfax County Urban Forestry Division.
13. The Applicant shall continue to collaborate with the Park Authority Trail Coordinator regarding unauthorized trail use on the subject parcel and will provide high-level construction schedule information to the Trail Coordinator, when such information is available. The Applicant shall coordinate, to the degree allowed by construction schedules, with the Trail Coordinator regarding planned trail improvements on Park Authority property adjacent to the Applicant's parcel to allow temporary construction access and to minimize potential conflicts caused by the Applicant's and the Park Authority's construction activities.
14. Limits of clearing and grading shall be the minimum possible and shall be no less than shown on the special permit plat as may be qualified by these development conditions.

15. A maintenance agreement for the off-site detention pond between the owner of the off-site pond and the owner of the subject parcel shall be implemented prior to final site plan approval.
16. Prior to the issuance of the Non-Residential Use Permit for the health club, the applicant shall contribute \$18,685 to Fairfax County as the fair share contribution (15%) toward the cost of a traffic signal to be located at the intersection of Sunset Hills Road and Business Center Drive.
17. A sidewalk, crosswalk, and/or trail connection shall be provided from the health club building to the perimeter of the subject parcel at a location mutually agreed upon by the applicant and Park Authority staff to provide for a future connection by the Park Authority to a planned segment of the Park Authority's Lake Fairfax's trail system.
18. Sidewalks shall be provided adjacent to Business Center Drive and Wildlife Center Drive. Additionally, an internal pedestrian and bike access from the exterior sidewalks on Business Center Drive shall be provided to the building on the subject parcel.
19. Bike racks shall be provided on site.
20. The maximum gross floor area of the health club shall be 115,000 square feet for the health club building and 1,500 square feet for the outdoor bistro, as shown on the special permit plat.
21. The building shall be constructed in substantial conformance with the materials and elevations as shown in 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.

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 pursued. 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 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 7, 2011, Scheduled case of:

9:00 A.M. SIGMA VAZ LLC, A 2011-PR-032 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing an office, which is a use not permitted without an approved Category 5 Special Exception, to operate on property in the R-4 and H-C Districts in violation of Zoning Ordinance provisions. Located at 7247 Lee Hwy., Falls Church, 22046, on approx. 10,925 sq. ft. of land zoned R-4 and H-C. Providence District. Tax Map 50-2 ((4)) 32. (Admin. Moved from 11/2/11 at appl. req.)

Vice Chairman Hammack noted that A 2011-PR-032 had been administratively withdrawn.

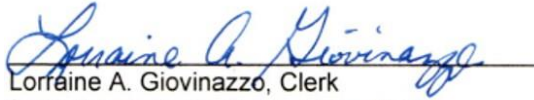
Mavis Stanfield, Deputy Zoning Administrator for Appeals, said that a notice of violation had been issued, and significant research was done into the notice of violation and the circumstances. It had been determined that the notice of violation had been issued in error, so it had been administratively withdrawn.

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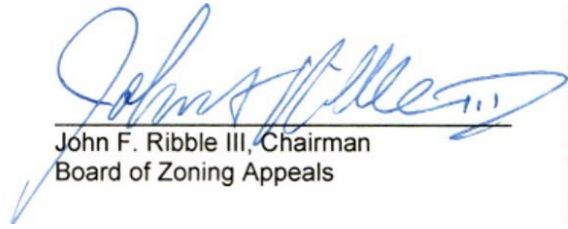
As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Minutes by: Kathleen A. Knoth

Approved on: June 27, 2012



Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals



John F. Ribble III, 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 Wednesday, December 14, 2011. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr.; James R. Hart; Norman P. Byers; V. Max Beard; and Thomas Smith. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. LUIS AND CARLA MARTY, SP 2011-HM-094, Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit home child care facility. Located at 1307 Deep Run Ln., Reston, 20190, on approx. 19,744 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 12-3 ((4)) (6) 46.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Carla Marty, 1307 Deep Run Lane, Reston, Virginia, reaffirmed the affidavit.

Kelli Mae Goddard-Sobers, Staff Coordinator, made staff's presentation as contained in the staff report. She noted that following a complaint in April, 2011, the Department of Code Compliance issued a Notice of Violation (NOV) to the applicants for having an accessory dwelling unit due to a second kitchen located in the basement. Ms. Goddard-Sobers said the applicants were also cited for operating a home child care facility with more than seven children. She stated that on May 27, 2011, a corrective work order was issued to the applicants for electrical, plumbing, and building elements that were modified without the issuance of the required permits, inspections, and approvals. Ms. Goddard-Sobers said approval of the special permit would address all of the zoning violations. Staff recommended approval of SP 2011-HM-094, noting that a development condition stating that the second kitchen could only be used for the home child care facility had been included.

In response to a question from Mr. Hammack, Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff did not believe that the applicant had an accessory dwelling unit. She explained that the basement kitchen was used only for the child day care center which the applicants operated.

Mr. Hammack, Mr. Hart, Ms. Langdon, and Mr. Adams discussed the issuance of a NOV for the second kitchen. Mr. Adams said the applicants could keep the basement kitchen if the BZA approved it since it was only being used for the child care facility. Mr. Hammack stated his confusion and felt it was inconsistent with the Ordinance. Mr. Hart asked if the applicants would be allowed to have a second kitchen if they had only seven children with a by-right child care center, where a special permit could not be necessary. Ms. Langdon stated that the applicants could apply for a second kitchen letter, which would need to be approved by the Zoning Administrator. However, if it was not granted, the second kitchen would have to be removed.

Mr. Hart asked when an inspector would check the premises to make sure of everything. Mr. Adams responded that the Department of Code Compliance was awaiting the Board's decision on the application.

Mr. Hart and Ms. Goddard-Sobers discussed the parking situation and pick-up and drop-off conditions for the day care center, with Mr. Hart noting that the Board had received a photo showing at least one neighbor's driveway being blocked by clients of the day care center. Ms. Goddard-Sobers that the schedule was arranged so that only one pick-up/drop-off was occurring at a time.

Mr. Hammack asked if the applicants were currently licensed by Fairfax County. Ms. Goddard-Sobers replied that the applicants could address that question, but noted that they were licensed by the state.

Mr. Byers asked why the day care center was allowed to continue operating when a corrective work order had been issued seven months previously and there could be significant safety issues. Jeff Perka, Department of Code Compliance, said he had inspected the day care center following receipt of the

complaint. He stated that had he seen a safety issue at that time, he would have stopped operation, but he did not.

In response to a question by Mr. Smith, Ms. Langdon said a kitchen had never before been requested in a home child care facility or home professional office.

Luis Marty presented the special permit request as outlined in the statement of justification submitted with the application. He said that the facility was licensed by the stating, noting that inspectors had approved the day care center. Mr. Marty stated that the kitchen facility needed to be in close proximity to the children, which necessitated a kitchen in the basement. He asked that his wife be allowed to address the licensing issue.

Mrs. Marty said she has always been licensed, noting that she has been a member of the Herndon-Reston Childcare Association for the past seven years and was currently serving as their secretary. She stated that she wanted to keep the ten children she currently provided care for.

Mr. Marty addressed Mr. Hart's concerns about parking, noting that a passionate neighbor in opposition to their day care center took pictures all day long. He said that not all the cars in the previously referenced photo were related to the day care center. Mr. Marty commented that one neighbor owned four vehicles, two of which are always parked in the cul-de-sac. Mr. Marty said that the parents had been instructed to pull in the driveway to pick-up and drop-off their children.

In response to a question from Chairman Ribble, Mrs. Marty said she had been advised by the Herndon-Reston Childcare Association that she needed permits and had obtained county and state permits. Mr. Marty added that the association is supported by the Fairfax County Office for Children, but that they did not address necessary zoning requirements.

Mr. Hammack asked the applicants if they had a Fairfax County business license; they responded that they did not, but had applied for one.

Mr. Hart and Mr. and Mrs. Marty discussed the number of employees on site, with Mrs. Marty noting that there were two besides herself. She said that only one employee drove to the property, the other came by bus. They also discussed the construction and installation of the basement kitchen. Mr. Marty said he had a written contract with a subcontractor friend who had done the work, but that he had researched whether permits were necessary and did not find anything indicating they were.

Chairman Ribble called for speakers.

Heidi Keusenkothen, 10909 Hunt Club Road, Reston, Virginia, spoke in favor of the application. She said that she lived in the neighborhood and had heard there was a day care center nearby. It was not until she saw the children being walked in their strollers that she actually knew where it was located.

Eve Medolia, 12000 Market Street, Reston, Virginia, spoke in favor of the application. She felt blessed to have found the applicants after having looked at ten different child care centers before finding this one. Ms. Mendolia said the home was clean, bright, and safe.

Theresa Wright, 11551 Hemmingway Drive, Reston, Virginia, said she took off work to speak to the Board regarding the application. She said she was a Fairfax County teacher and that it was difficult to find quality day care facilities. Ms. Wright felt lucky to have found the applicants and asked that the Board approve their application.

Chester Bethke, 1308 Deep Run Lane, presented letters from neighbors in opposition to the application who could not be present. He also submitted photographs of the property for the Board's review, pointing out the parking problems on the cul-de-sac. Mr. Bethke alleged that the mailman had difficulty accessing the mailboxes due to patrons parking on the street. He asked the Board to deny the application.

Mr. Hart asked Mr. Bethke if he would prefer the day care center to have seven children by right or ten children with conditions. He replied that he could not answer that question.

Mr. Hart and Mr. Bethke then discussed the parking situation on the cul-de-sac, with Mr. Bethke acknowledging that some of his neighbors did park their vehicles on the street on a regular basis.

Heime Castillo of 1309 Deep Run Lane, said that there needed to be additional landscaping on the subject property to better buffer his property from the day care center. He complained about the parking situation on Deep Run Lane, stating that neighborhood cars were being blocked by patrons of the day care center.

Mr. Hart asked how many vehicles Mr. Castillo owned and where he parked them. Mr. Castillo said he owned four cars, parked two of them in the driveway and two of them on the curb. Mr. Hart and Mr. Castillo also discussed the existing landscaping on the two properties. Mr. Castillo said he wanted additional plantings on the corner of the applicant's yard closest to his property.

Sue Bepta, 1308 Deep Run Lane, stated her opposition to the application, noting her concern with parking on the cul-de-sac.

Mr. Hammack questioned staff about the appliances contained in the basement kitchen area. Rebecca Collinworth, the inspector with the Department of Code Compliance who responded to the initial complaint, stated the kitchen included a microwave, toaster oven, refrigerator, and sink area.

In rebuttal, Mr. Marty stated that he parked in the street as a convenience for the day care center since the children began arriving before he left for work. He responded to Mr. Bethke's allegation regarding the difficulty of mail delivery on the cul-de-sac, stating that he had spoken to their mailman and two supervisors, none of whom had a problem with accessibility of the boxes. Mr. Marty submitted an additional three letters of support for the record.

Mr. Hammack handed out a copy of the Virginia Department of Social Services inspection report dated October 26, 2011, which showed some violation on the property. Mrs. Marty responded that the violations were administrative in nature, including immunization records, toy cleaning schedule, et cetera.

In response to a question from Mr. Beard, Ms. Langdon said staff had recommended approval of this application after proposing development conditions to address the parking issues, and the pick-up and drop-off times. She did not think the addition of three children would be burdensome.

Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to deny the application. He did not think the applicant met all the standards required of the special permit.

Mr. Beard seconded the motion.

Mr. Hart suggested a deferral so that staff and the Board could more fully address the issues raised during the public hearing.

Mr. Byers said he would not support the motion. He noted his agreement with Mr. Hart's comments to adopt additional development conditions to mitigate the concerns of the neighborhood and still have a quality day care center. Mr. Byers said he would support a deferral.

Mr. Smith also stated he would not support the motion.

Chairman Ribble said he was going to support the motion, but that it would result in a 3-3 vote, so he would support a deferral.

Mr. Hammack withdrew his motion.

Mr. Hart moved to defer decision on SP 2011-HM-094 to February 1, 2012, at 9:00 a.m., with the record remaining open for written and electronic comments.

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

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 11:02 a.m. and reconvened at 11:39 a.m.

Mr. Byers then 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 Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Smith seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote; Ms. Gibb was absent from the meeting.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. RALPH A. BIANCANIELLO, SP 2011-PR-090 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.7 ft. from rear lot line. Located at 3059 Bohicket Ct., Fairfax, 22031, on approx. 9,376 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 48-3 ((34)) 49.

Vice Chairman Hammack called the applicant to the podium.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Ralph A. Biancaniello, 3059 Bohicket Court, Fairfax, Virginia reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction of certain yard requirements to allow construction of a 260 square foot one-story screened porch addition to be located 13.7 feet from the rear lot line. She noted that a minimum rear yard of 25 feet is required; therefore, a modification of 6.3 feet or 25 percent was requested. Ms. Hedrick said staff recommended approval of the application, subject to the development conditions contained in the staff report.

In response to a question from Mr. Byers, Ms. Hedrick confirmed that the proposed screened porch would abut parkland.

Mr. Biancaniello presented the special permit request as outlined in the statement of justification submitted with the application. He said he had nothing to add to the staff's remarks, and thanked Ms. Hedrick for her valuable assistance.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Byers moved to approve SP 2011-PR-090 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RALPH A. BIANCANIELLO, SP 2011-PR-090 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.7 ft. from rear lot line. Located at 3059 Bohicket Ct., Fairfax, 22031, on approx. 9,376 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 48-3 ((34)) 49. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2011; and

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

1. The applicant is the owner of the property.
2. The Board has determined that the application meets all of the submission requirements as set forth in Sect. 8-922.
3. Staff recommends approval, and the Board adopts its rationale.

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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (approximately 260 square feet), as shown on the plat prepared by William E. Ramsey, dated August 16, 2011, as revised through August 22, 2011, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,000 square feet existing + 3000 square feet (150%) = 5,000 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. JONG YEOL NA AND KYUNG H. NA, SP 2011-SP-092 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 12.7 ft. from side lot line. Located at 9723 Thorn Brush Dr., Fairfax Station, 22039, on approx. 5.27 ac. of land zoned R-C and WS. Springfield District. Tax Map 97-3 ((15)) 51A.

Vice Chairman Hammack called the applicants to the podium.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Charles F. Dunlap, the applicant's agent, 207 Park Avenue, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants were requesting a reduction to minimum yard requirements based on an error in building location to allow a detached garage to remain 13.8 feet, with eave 12.7 feet from the southern side lot line. A minimum side yard of 20 feet, with permitted eave extension of 3.0 feet, is required; therefore, modifications of 6.2 feet or 31 percent was requested for the garage and 4.3 feet or 25 percent was requested for its eave.

In response to a question from Mr. Hart, Ms. Hedrick confirmed that the application had been previously approved, but construction was not begun before the permit expired, therefore, the applicants had to reapply.

Mr. Dunlap presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicants had diligently pursued the application, but were held up with the Department of Public Works and Environmental Services inspections, noting that one inspection took almost two and a half months to be completed.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2011-SP-092 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JONG YEOL NA AND KYUNG H. NA, SP 2011-SP-092 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 12.7 ft. from side lot line. Located at 9723 Thorn Brush Dr., Fairfax Station, 22039, on approx. 5.27 ac. of land zoned R-C and WS. Springfield District. Tax Map 97-3 ((15)) 51A. 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 14, 2011; and

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

1. The applicants are the owners of the property.
2. The Board does not have a staff recommendation, but Mr. Hart made the motion about a year ago and would adopt the rationale in Appendix 6 of the staff report.
3. The application was approved then, and because of the wording of the development condition, time has run out.
4. The Board did not think anything really has changed in the past year.
5. The approval is appropriate for the reasons that the BZA stated before.

6. The Board has determined that the criteria in the standard motion had been met.
7. The Board received another letter from the next-door neighbor who does not oppose leaving the garage where it is.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, 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 (detached garage) as shown on the plat prepared by Walter L. Phillips Incorporated, dated May 30, 2010, as revised through October 25, 2010, as submitted with this application and is not transferable to other land.
2. A building permit and final inspections for the accessory structure shall be diligently pursued and obtained within six (6) months of final approval of this application.

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. Byers seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. ROBERT F. AND ARLENE E. NORRELL, SP 2011-SP-091 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit

construction of addition 5.6 ft. from side lot line such that side yards total 16.3 ft. Located at 7121 Bridgeport Ct., Springfield, 22153, on approx. 10,489 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 212.

Vice Chairman Hammack called the applicants to the podium.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Schuyler P. Ahrens, agent for the applicants, 4871 Benecia Lane, Dumfries, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants wished to enclose an existing carport into a garage. The proposed addition would be located 5.6 feet, measured from the edge of the eave, from the side lot line. Mr. Horner stated that the Zoning Ordinance requires a minimum side yard of 8.0 feet under the cluster regulations of the R-3 Zoning District; therefore, a modification of 2.4 feet or 30 percent for the proposed addition was requested. She stated that staff recommended approval of the application subject to the proposed development conditions contained in the staff report.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He said the existing carport was built with the original house, approximately twenty years ago. Mr. Ahrens noted that the neighbor to the left of the applicants had the identical garage the applicant was requesting to build.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Smith moved to approve SP 2011-PR-091 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT F. AND ARLENE E. NORRELL, SP 2011-SP-091 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.6 ft. from side lot line such that side yards total 16.3 ft. Located at 7121 Bridgeport Ct., Springfield, 22153, on approx. 10,489 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-3 ((6)) 212. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2011; and

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

1. The applicants are the owners of the property.
2. The property is zoned R-3 Cluster Residential.
3. The staff is recommending approval.
4. There is no opposition to this.
5. There is relatively minimal impact, primarily just enclosing two sides of an existing carport.
6. There will be no greater impact on neighbors or the community.
7. It is consistent with the general character of the residential neighborhood, as pointed out by staff in the 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 487 square feet) of the addition, as shown on the plat prepared by Urban Ltd., dated August 31, 2011, signed by Chad E. Jernigan, Land Surveyor, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,198 square feet existing + 1,797 square feet (150%) = 2,995 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. NADEEM P. MALIK, VC 2011-SU-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of 1 lot into 2 lots with proposed lot 1 having a lot width of 137 ft. and proposed lot 2 having a lot width of 89 ft. Located at 3027 Ashburton Ave., Herndon, 20171, on approx. 2.3 ac. of land zoned R-1. Sully District. Tax Map 35-2 ((1)) 4.

Vice Chairman Hammack noted that VC 2011-SU-013 had been administratively moved to January 25, 2012, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. 7031 JK, INC., SPA 96-M-006-02 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 96-M-006 previously approved for commercial recreation use to permit a change

in permittee. Located at 7031 Little River Tpke., Annandale, 22003, on approx. 3.07 ac. of land zoned C-6, CRD, HC and SC. Mason District. Tax Map 71-1 ((1)) 116A. (Admin. moved from 11/16/11 for notices)

Vice Chairman Hammack called the applicant to the podium.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

H. Jenny Shin, 4600-E Pinecrest Office Park Drive, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. She said the application was to allow a change in permittee. No site modifications were proposed.

Ms. Shin presented the variance request as outlined in the statement of justification submitted with the application. She stated that it was the same business as previously approved, but under new ownership.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Beard moved to approve SPA 96-M-006-02 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

7031 JK, INC., SPA 96-M-006-02 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 96-M-006 previously approved for commercial recreation use to permit a change in permittee. Located at 7031 Little River Tpke., Annandale, 22003, on approx. 3.07 ac. of land zoned C-6, CRD, HC and SC. Mason District. Tax Map 71-1 ((1)) 116A. (Admin. moved from 11/16/11 for notices)

Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2011; and

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

1. The present zoning is C-6, HC, SC, and CRD.
2. The area of the lot size is 3.07 acres.
3. Staff recommends approval.
4. There are no site modifications or any changes in the usage that are proposed.
5. This is located in a shopping center with other businesses in a commercial area.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, 7031 JK, Inc., only and is not transferable without further action of this Board, and is for the location indicated on the application, 7031 Little River Turnpike, Suite 14-C, (1,860 square feet), 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 indoor commercial recreation use.

2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Huntley, Nyce & Associates, P.C. , dated August 2, 1995, as revised through December 5, 1995, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation shall be limited to 4 p.m. until 2 a.m. daily.
5. There shall be a maximum of one (1) employee at any one time associated with this use.
6. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as may be determined by the Director, Department of Public Works and Environmental Services.
7. Signs shall be permitted in accordance with Article 12, Signs.
8. The existing vegetation shall be preserved and maintained as indicated on the special permit amendment plat and shall satisfy the Transitional Screening requirement. The eight (8) foot high masonry wall shown on the approved special permit amendment plat along the southern and eastern lot lines shall satisfy the Barrier requirement.

These conditions incorporate and supersede 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, twelve (12) months after the date of approval unless the use has been established as outlined above. 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. Smith seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC., SP 2011-SP-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 12901 Braddock Rd., Clifton, 20124, on approx. 4.18 ac. of land of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 3. (Admin. moved from 9/28/11 and 11/30/11 at appl. req.)

Vice Chairman Hammack noted that SP 2011-SP-069 had been administratively moved to January 25, 2012, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. 8921 PROPERTIES, L.L.C., A 2011-MV-030

Vice Chairman Hammack noted that A 2011-MV-030 had been administratively moved to May 16, 2012, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. SANJEEV KAPOOR, A 2010-HM-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a use not permitted (a truck rental establishment) to operate on property in the PRC District without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 11410 North Shore Dr. on approx. 37,096 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 7. (Admin. moved from 3/2/11 and 9/14/11 at appl. req.)

Vice Chairman Hammack noted that A 2010-HM-015 had been administratively moved to April 18, 2012, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 14, 2011, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La., Annandale, 22003, on approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, 7/28/10, 12/15/10, 2/16/11, 7/27/11, 10/26/11, and 11/30/11 at appl. req.)

Vice Chairman Hammack noted that A 2007-MA-011 had been administratively moved to February 15, 2012, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 14, 2011, After Agenda Item:

Request for Additional Time
Sri Venkateswara Lotus Temple of Virginia, SPA 2004-SP-052

Mr. Byers moved to approve 24 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was December 16, 2013.

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~ ~ ~ December 14, 2011, After Agenda Item:

Request for Additional Time
Board of Trustees of Rajdhani Mandir, SPA 87-S-012-03

Mr. Beard moved to approve 12 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was January 14, 2013.

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~ ~ ~ December 14, 2011, After Agenda Item:

Request for Additional Time
Ernest W. Lawrence III & Alison E. Lawrence, SP 2006-MA-026

Mr. Hart moved to approve 18 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was January 11, 2013.

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~ ~ ~ December 14, 2011, After Agenda Item:

Request for Additional Time
Trustees of Reston Presbyterian Church, SPA 82-D-047-02

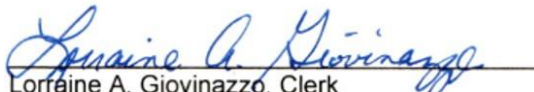
Mr. Beard moved to approve 30 months of additional time. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting. The new expiration date was May 6, 2014.

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As there was no other business to come before the Board, the meeting was adjourned at 12:16 p.m.

Minutes by: Suzanne Frazier

Approved on: April 16, 2014


Lorraine A. Giovinazzo, Clerk
for Kathleen A. Knoth, previous Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals